ICD NEWS

LAW FOR DEVELOPMENT

INTERNATIONAL COOPERATION DEPARTMENT
RESEARCH AND TRAINING INSTITUTE
MINISTRY OF JUSTICE, JAPAN

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～Features～

Foreword

HERE'S THE ICD NEWS ENGLISH EDITION AGAIN

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Time flies. The season for publishing our ICD NEWS English version has come again. Since its first publication, the ICD has experienced not only the routine hustle and bustle as well as changes in its membership, but also some very exciting new events and work. The annual publication of ICD NEWS English version was planned at the time when my predecessor, Ms. AKANE Tomoko, decided to send out messages and information in the English language to our friends and partners all over the world. This was about a year ago. The ICD is again trying to share information about its activities and achievements, as well as some interesting developments which have taken place during the year.

Many of this issue's articles are not English translations of those which were originally written in Japanese or had already been published in some other periodicals. They have been written exclusively for this edition, and many were originally written in English. In that sense, they are fresh from the oven. This issue starts with a general introduction of the ICD as well as activities conducted by its close allies, namely: the Japan International Cooperation Agency (JICA) and the International Civil and Commercial Law Centre Foundation, followed by my own views on what legal technical cooperation is all about. Then, in line with Ms. AKANE's original idea that ICD NEWS should serve also as an information source on the Japanese system and its experiences, we have Associate Professor Stephen Green from Doshisha University, Kyoto, with his extremely interesting article on comparing Japanese and Australian legal education. There is also an important introduction by Mr. TAKIZAWA to the duties and activities of the newly established Japan Legal Support Centre - an organization aimed at promoting better access to justice in Japan. Our lecturers also contributed to the enriching of the contents of this edition with articles on recent developments – the newly launched ambitious project for Lao PDR, and a newcomer's first encounter with the world of legal technical cooperation in Viet Nam. We also have a reminiscence by Associate Professor Kuong Teilee of Nagoya University. It should be interesting especially for those who consider legal technical cooperation as his/her career. "E-mails" contain interesting reports from Cambodia and Nepal.

I would like to take this opportunity to thank all the guest authors of the articles who greatly contributed to the publication of this edition, as well as our staff members for their dedication to the compilation of this journal. Honestly speaking, it is not an easy job to compile literature in a foreign language. It requires a great deal of work. Still, I think it is worthwhile to continue our endeavors to share information and opinion with as many friends worldwide as possible. I will try my best to further improve the quality of our journal so as to make it a valuable resource for all interested in the field of legal technical cooperation. I hope you enjoy reading this edition.

Thank you.

Contents

In this journal, Japanese personal names are written in the conventional Japanese order: the family name is put first in capital letters and the given name second.

I. LEGAL TECHNICAL COOPERATION BY JAPAN

LEGAL TECHNICAL COOPERATION BY JAPAN
- WHO WE ARE & WHAT WE DO -

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FOREWORD

The International Cooperation Department (ICD) of the Research and Training Institute (RTI), Ministry of Justice (MOJ) of Japan will be celebrating its 10th anniversary of establishment very soon. Although the ICD has taken every opportunity to introduce itself to anyone who might be interested in its activities, its endeavor still seems to have been insufficient. In order to have its activities be broadly known, the ICD published a new English version of ICDNEWS, a departmental journal, in December last year. However, mainly due to time constraints resulting from its heavy workload (which is always a good excuse for not performing or delaying one's duties), the previous edition was more an English translation of a quarterly ICDNEWS Japanese version. Therefore, no comprehensive or holistic information about the ICD and its activities has been provided in English to date. What a pity. Thus, as part of its efforts to disseminate information about the ICD and its legal technical assistance activities globally, the ICD is trying to overcome its insufficient PR activities by attempting to provide ICD NEWS readers with as much information as possible concerning its organization, mandate, and activities. This approach is anchored in the idea that the first and most important step towards international cooperation is such a simple thing: getting to know each other.

I. BACKGROUND OF THE ICD – THE ONLY GOVERNMENTAL INSTITUTION SPECIALIZED IN LEGAL TECHNICAL COOPERATION

Legal technical cooperation by the Japanese Government with developing countries officially began in 1994 when the Ministry of Justice (MOJ), in cooperation with the Japan International

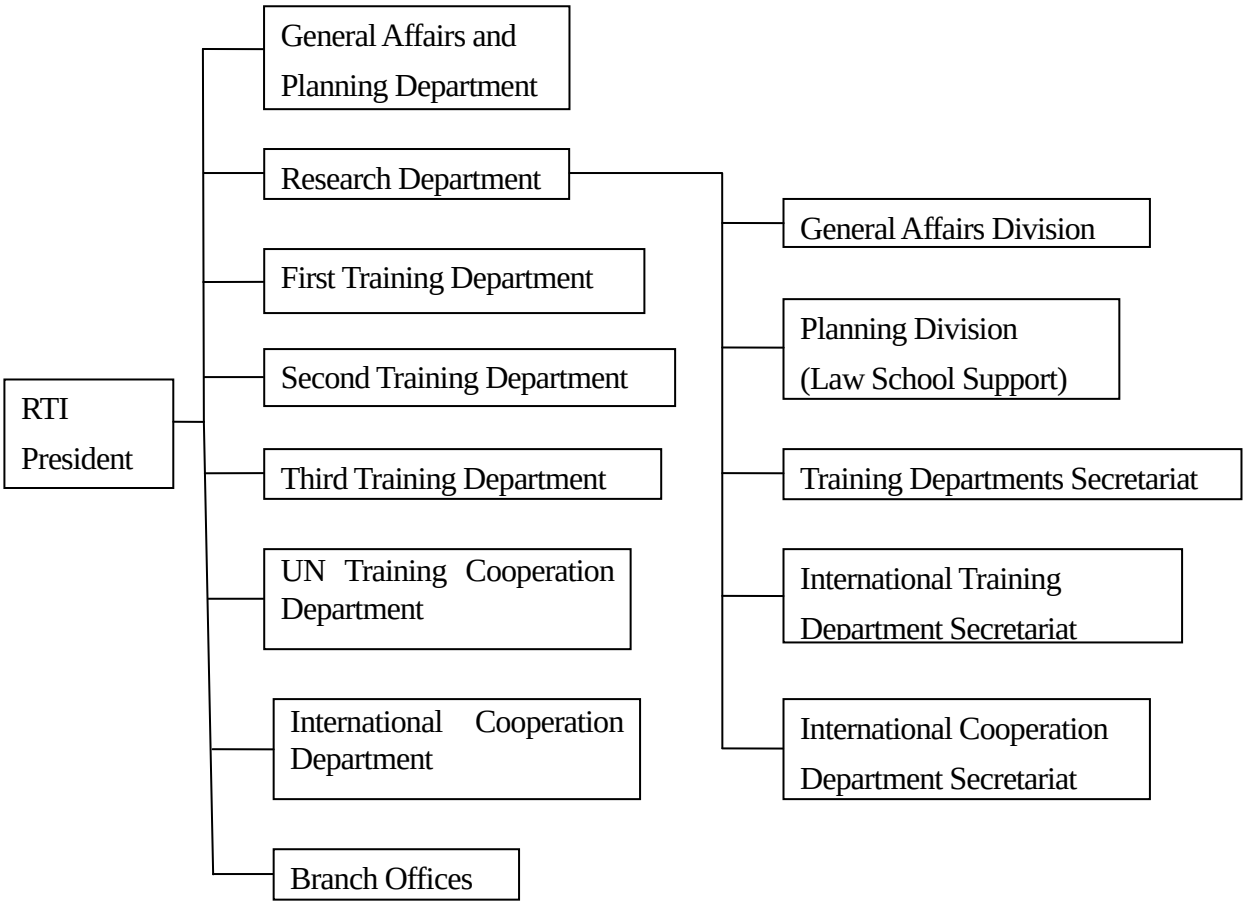
Cooperation Agency (JICA), received a Vietnamese delegation comprised of legal officers for the purpose of a study tour in Japan. In 1992, the Vietnamese Government had already officially requested Japan to help with its legislative reform. However, the Japanese Government and its MOJ, which had had few practical experiences in such types of cooperation, was unsure whether to accept the request or not. At that time, the available legal information on Vietnam was very scarce. Thus, the government needed considerable time to decide what to provide to Vietnam – nobody was sure whether Japan could be of any help in response to the request. OK, let's try and see what we can do. That very simple decision was the prologue to Japanese legal cooperation activities with developing countries in Asia, which later grew into a big and important mission of the MOJ as well as other institutions in Japan.

In the very early days, the mandate of technical cooperation in the legal field was assigned to the Minister's Secretariat, simply because they were already dealing with the Ministry's "external affairs", but soon it was transferred to the RTI which is an organization under the MOJ.

The RTI's history goes way back to 1939 when the Judicial Research Institute was founded under the Ministry of Justice of the Imperial Japanese Government, which was charged with the task of court administration including supervision over prosecution. After the 2nd World War in 1947, when the courts were separated from the executive branch and became fully independent as the judicial branch under the Constitution of Japan, the organization of the Judicial Research Institute was split into two different institutes. One remained under the MOJ, and the other was reorganized as a training institute which is now known as the Legal Research and Training Institute (LTRI) of the Supreme Court of Japan. The former, with occasional structural changes, in 1959 finally became the RTI as we know it now.

The LTRI as a Supreme Court institution deals with training of legal apprentices (those who have passed the unitary bar examination and wishing to become judges, prosecutors or private lawyers), training courses for incumbent judges and legal research for the judiciary. The RTI, on the other hand, specializes in training of incumbent prosecutors (First Training Department), prosecutors' assistant officers (Second Training Department), legal affairs officers who work for legal affairs bureaus throughout the country, and other officials under MOJ supervision (Third Training Department). It also has a department specializing in research and studies in criminal law and criminology (Research Department) of which an important task is the compilation of the annual "White Paper on Crime". Plus, the RTI has two important departments dealing with international affairs from different standpoints: the United Nations Training Cooperation Department and the ICD. The United Nations Training Cooperation Department is a department charged with the mandate of running the "United Nations Asia and Far-East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI)", a UN institute and the management of which is entrusted by the UN upon the Japanese Government.

The organizational structure of the RTI is as follows:



The RTI has its headquarters in a historic building known as the "Red-Brick Building" located in the central governmental district in Tokyo. For the sake of fulfilling its wide-range of duties, it also has facilities at several other locations throughout Japan.

The RTI recently had a change in its presidency. Mr. ASO Mitsuhiro who served as the President until October 2010 was promoted to the Superintending Prosecutor of the Fukuoka High Public Prosecutors Office and Mr. SHIMIZU Osamu, the former Chief Prosecutor of the Fukuoka District Public Prosecutors Office took office as the new RTI President. President SHIMIZU, with his 32 years of service as a government attorney, has deep and wide knowledge and experience not only in prosecutorial service but also in legal affairs administration.

Since its first engagement in technical cooperation in the legal field, the MOJ has received requests for cooperation from developing countries in Asia. Following Vietnam came Cambodia, Indonesia, and Laos – and the future numbers of countries are seeking Japanese cooperation in this area. There were also requests for organizing training courses not only for one country but also for a group of multiple countries tackling the same issues such as good governance or improvement of legal frameworks for strengthening market economies. Until the year 2000, the MOJ had dealt with such requests from and needs of our Asian friends at the RTI's General Affairs and Planning Department together with other original duties of that department, but gradually the department was overloaded and was unable to deal with duties related to legal technical cooperation properly in its spare time. Thus, as a fundamental solution to cope with that matter, the MOJ decided to set up a

new, specialized department under the RTI – the International Cooperation Department, or the ICD.

The ICD was established in April 2001 and is so far the only institution within the Japanese Government which specializes in legal technical cooperation for developing countries. Shortly after its establishment within the RTI, the ICD moved its office to Osaka -- the second biggest city in Japan. It is currently located on the fourth floor of the Osaka Nakanoshima National Government Building in the redevelopment area of central Osaka. The building is shared with the Osaka High and District Public Prosecutors Offices and a few other governmental agencies. In this modern facility with comfortable rooms and office spaces for its members and visiting experts, as well as an international conference hall, the ICD actively performs its duties.

II. MEMBERS OF THE ICD

The asset of the ICD is not its facility but its people. ICD members are carefully chosen from among legal professionals of the state. They have a wide variety of backgrounds, which enables the ICD to deal with a numerous variety of requests from and needs of our clients. Currently, 18 members including the Director are working for the ICD and five other members are currently dispatched to Hanoi, Vietnam; Phnom Penh, Cambodia; and Vientiane, Laos; as JICA long-term legal advisors.

A. Director

The ICD Director, who is responsible for running the department and supervising all activities carried out by it, is currently Mr. YAMASHITA Terutoshi who was newly assigned to this position in August 2010. Working for the Ministry and prosecution service for more than 27 years, Mr. YAMASHITA is one of the key officers engaged in the foundation of the ICD back in 2001. He was one of the first members of the ICD until he left in April 2004, according to the personnel rotation system applicable to the MOJ and prosecution officers. After having spent several years in the field of prosecution and other government positions, he came back as ICD Director this year, succeeding Ms. AKANE Tomoko, who was promoted to the Supreme Public Prosecutors Office. Not only because of his aforementioned career but also because of his experience as a lecturer of the abovementioned UNAFEI, he has in-depth knowledge about international affairs and legal cooperation activities as well as the legal and judicial systems of Asian countries, and is a recognized authority in this area.

B. Lecturers

Under the supervision of the Director, there are currently seven lecturers working for the ICD. Five are from the prosecution service, one was originally a judge, and the other was originally a senior legal affairs officer of the MOJ. The lecturers have 8 to 16 years of experience in their

respective careers.

1. MORINAGA Taro

The author of this article, Mr. MORINAGA, has served the MOJ and the prosecution service for 16 years as a government attorney. In addition to his extensive experience in investigations and prosecution mainly in the field of violent crimes and drug abuse, he gained experience in legal technical cooperation as a member of the ICD in 2003, and was dispatched to Vietnam as the Chief Advisor of the JICA Vietnam Legal Cooperation Project for almost three years from May 2004 to March 2007. After one year of service again in the field of prosecution at the Tokyo District Public Prosecutors Office, he came back to the ICD in April 2008. Besides assisting the Director in almost all activities of the ICD as part of his assignments, he is also in charge of cooperation activities for Nepal and Timor-Leste.

2. MATSUBARA Sadao

Mr. MATSUBARA, also with 14 years of experience in prosecution, joined the ICD in 2010. Although he is new to the department, he actively performs his duties as an ICD lecturer in charge of cooperation with Vietnam. Having studied in England for six months, he is equipped with a strong sense of cross-border communication, and, despite being a newcomer in the area of legal technical cooperation, he has already made acquaintances in Vietnam with whom he will surely keep good relationships, which will be a cornerstone for firm cooperation between Japan and Vietnam in the legal field.

3. ETO Mikine

Ms. ETO, a female prosecutor who also joined the department in April 2010 after building her 13-year career in the field, now deals with our largest client – the People's Republic of China. With her extensive talent and legal mind, she is successfully performing her important duties of cooperating with the Chinese counterparts. Legal technical cooperation with China mainly deals with the drafting work of Chinese civil-related laws such as the Civil Procedure Code and Private International Law, in concert with a group of prominent Japanese law professors.

4. UESAKA Kazuhiro

Mr. UESAKA's main duty is cooperation with Cambodia. He joined the ICD this year after having served the prosecution service for 11 years. He is now actively engaged in cooperation activities with Cambodia by acting as a support player for the long-term experts working in Phnom Penh on one hand, and also by giving lectures to Cambodian counterpart personnel himself while being on a field mission – the so-called in-country seminars. He is also actively engaged in the formation of future cooperation plans for Cambodia.

5. ITO Hiroyuki

Mr. ITO, who has long-aspired to work for the ICD, finally reached his goal this April after 10 years of service in prosecution and was assigned to support Lao PDR with a challenging, new project. The project's kick-off ceremony took place in July this year and he was dispatched to Vientiane for a

month to assist the project start-up, which was an extremely eye-opening event for him as it was his first international work experience. The mission the ICD gave him – "see it for yourself" – seems to have been a success. Now he is working hard to be a reliable support and resource for the project experts working on the front line in Vientiane.

6, MATSUKAWA Mitsuyasu

The honorable Mr. MATSUKAWA was originally a judge. He has 8-years experience on the bench and was seconded by the Supreme Court of Japan to the Ministry of Justice to work as an international cooperation expert. Due to some restrictions imposed on judges, he is not supposed to do any job in the executive branch under the principle of separation of powers. Mr. MATSUKAWA's current title is "government attorney" instead of judge, though in substance, he seems to be a judge to the marrow of his bones with his deep knowledge in law and the sense of impartiality. Yet, he is devoted to his current assignments with passion and enthusiasm. The ICD is truly grateful to the Supreme Court of Japan for providing the ICD with such excellent personnel. Mr. MASTUKAWA's life in the ICD has been hectic because, as the only professional judge in the department, he is assigned to deal with every court-related cooperation activity for Vietnam, Cambodia, Indonesia or any other countries.

7. ASAYAMA Naoki

Mr. ASAYAMA, a cool and tranquil man, is an expert in the field of civil affairs with 14-years experience as a legal affairs officer of the MOJ. He was transferred to his current position this year from the Osaka Legal Affairs Bureau (an institution under the MOJ handling property and company registrations as well as other legal affairs of the government). In the ICD, Mr. ASAYAMA fully utilizes his knowledge and expertise for organizing the multi-country training course for Central Asia - Uzbekistan, Kazakhstan, Kyrgyzstan and Tajikistan on civil and commercial issues. He is also in charge of running the Japan – Korea Partnership Training Course on property registration affairs.

C. Long-Term Experts

1. Vietnam

Currently two experts are dispatched from the ICD to Vietnam as JICA Long-Term Experts to work with other two JICA experts.

(i) NISHIMURA Osamu

The honorable Mr. NISHIMURA was originally a judge, just like Mr. MATSUKAWA in the ICD. Mr. NISHIMURA is assigned with the task of serving as a resident legal advisor in Hanoi for the "JICA Vietnam Project for Legal and Judicial Reform Assistance". Though he has never worked in the ICD office in Osaka, he holds membership of the ICD. Very diligent with his job, he quickly gained the full trust of his counterparts in Vietnam and has learned the Vietnamese language so well that he is now able to work on Vietnamese legal documents and translate them into Japanese. He is, among other things, in charge of activities with the Supreme People's Court of Vietnam, such as

drafting of procedural rules as well as capacity- building of judges.

(ii) NISHIOKA Takeshi

Mr. NISHIOKA shoulders and actively discharges the difficult duty of the Chief Advisor of the abovementioned JICA Vietnam Project. He joined the ICD in 2009, and after engaging in cooperation activities with Vietnam for one year in the ICD office in Osaka, he assumed the office of the Chief Advisor in Hanoi in April 2010. With 10-years experience in the field of investigation and prosecution, he is now actively working with the Supreme People's Prosecution (SPP) as well as with other counterparts in Vietnam. He is also responsible for the entire management of the Project Office which is located directly in front of the Supreme People's Court in Hanoi.

2. Cambodia

In Cambodia, the ICD has two members stationed at the project office located inside the premises of the Royal School for Judges and Prosecutors (RSJP) where they assist the capacity-development of prospective lecturers in the civil law area.

(i) NISHIMURA Emiko

It is a wonder that the ICD has so many "NISHI-"s dispatched to the Indochina region. The Japanese word "nishi" literally means "west". Because of their names, they may have gone west…. Forget it, please. It's pure coincidence. Ms. NISHIMURA, originally a prosecutor, is now working hard in Phnom Penh as a JICA Long-Term Expert. In spite of her heavy workload, she seems to enjoy her tropical life there very much. After having worked nine years for prosecution, she became a member of the ICD in 2009 and was assigned with the important task of helping Cambodia with its judicial training. She has been dispatched to Cambodia since April 2010.

(ii) OKAMOTO Yohei

The ICD has one more judge, the honorable Mr. OKAMOTO, stationed in Cambodia to work together with Ms. NISHIMURA at the RSJP. At the moment he is keeping very busy teaching civil law and civil procedure law to the prospective lecturers of the RSJP. He makes up for his relatively short career of four years as a judge with his abundant knowledge of civil-related laws and his impeccable communication skills, and most of all, his spirited, cheerful personality.

3. Laos

(i) WATANABE Yoko

For the sake of implementing the newly launched project in Lao PDR, the ICD dispatched Ms. WATANABE to Vientiane in July 2010 to serve as the Chief Advisor. Her 10-year professional career as a prosecutor and 2-year experience as an ICD lecturer, as well as her diligent, serious attitude towards any given mandate convinced the ICD that she is quite the right person to work for the extremely challenging project in Laos. At present she is working in a newly established office located within the facility of the Prosecutors Training Institute in Vientiane with two other JICA Long-Term Experts.

D. Training Officers

Without the help of training officers, neither the director nor the lecturers may perform their duties. They are truly invaluable human resources for the ICD, the activities of which heavily rely on their skills. Training officers' tasks include general administration, budget and accounting affairs, administration of training courses and logistics. Plus, they are required to make full use of their backgrounds in doing research or even giving lectures on topics related to their professional experience in practice. They sometimes accompany ICD lecturers to travel abroad for seminars and research activities and assist them in fulfilling their duties. If you attend a study tour in Japan organized by the ICD, these are the people who will welcome you and take care of you with almost everything related to your daily life in Japan throughout your entire stay. The ICD has two supervising officers – Chief International Cooperation Training Officers, four Senior International Cooperation Training Officers and four International Cooperation Training Officers, all of whom devote themselves to making participants in training courses feel comfortable and satisfied, and to building good relationships between the ICD and its client countries. They are recruited from among MOJ officers and prosecution officers and have different professional backgrounds.

1. Chief International Cooperation Training Officers

(i) TANAKA Mitsuru

Mr. TANAKA joined the ICD in 2009. Previously he worked for the Osaka District Public Prosecutors Office where he held a senior position as a division leader of prosecutor's assistant officers. With his warm and calm personality, he truly deserves to be the chief of the administrative section and oversees all ICD-related matters.

(ii) GONPEI Yukari

Ms. GONPEI joined the ICD in April 2010. Before joining the ICD, she was also a public prosecutor's assistant officer and held a position as a chief investigator at the Amagasaki Branch, Kobe District Public Prosecutors Office. At the ICD, she is mainly responsible for overall planning and accounting affairs.

2. Senior International Cooperation Training Officers

(i) UCHIDA Kiyoshi

Mr. UCHIDA's main task is cooperation activities with Vietnam, but he also assists cooperation matters related to Timor-Leste and China. He came to the ICD in 2009 from the Osaka Legal Affairs Bureau where he used to handle litigation involving the state such as administrative litigation and state liability lawsuits. He is also a professional in immovable property registration.

(ii) EGUCHI Saeko

Ms. EGUCHI bears an important mandate in relation to Nepal, Central Asia and Vietnam, and is also in charge of the organization of the Japan-Korea Partnership Training Course. Before joining the ICD in April 2009, she held a senior position at the Investigation and Remedies Division of MOJ's Human Rights Bureau. Even without such a career background, her humanity would be

impeccable for international cooperation activities. Her personality is a gift to the ICD.

(iii) SEI Hiroyuki

Mr. SEI has the nickname of “electrician”. Whenever someone has trouble with PCs, TV conference systems, video recorders, any other electronic appliances, he’s the one to be consulted. But this is not his main task. He was originally a public prosecutor’s assistant officer with a rich experience in the field of investigation and prosecution. Being with the ICD since April 2009, he deals with activities with Laos, China and Cambodia.

(iv) INAMOTO Yoshio

Mr. INAMOTO joined the ICD in April 2008, so he has the most lengthy experience with the ICD among all the training officers. Currently he is tackling the most burdensome but important work of budget and accounting affairs. Without his skills and patience, the ICD would quickly go bankrupt. Mr. INAMOTO also has a background as a prosecutor’s assistant officer and a chief investigator of the Kobe District Public Prosecutors Office.

3. International Cooperation Training Officers

(i) MORIYASU Hiroshi

Mr. MORIYASU is a newcomer who joined the ICD in April 2010. Previously, he was a legal affairs officer of the MOJ at the Okayama District Legal Affairs Bureau handling registration affairs. Presently, becoming fully used to the hectic daily job at the ICD, he feels great pleasure in working in the field of legal technical cooperation with Mongolia and Nepal.

(ii) WATADA Ai

Working for the ICD since April 2009, Ms. WATADA has devoted herself to various mandates of the ICD and is currently in charge of cooperation with Cambodia and Timor-Leste. She is from the prosecution service, previously being a chief investigator at the Kobe District Public Prosecutors Office. She has already been to Indochina on several occasions to assist ICD lecturers and those trips may have brought her to love her job and the region very much.

(iii) TAMURA Mitsuru

Mr. TAMURA joined the ICD last April. His job is, besides administrative management work, to handle cooperation activities with China, Korea and Indonesia. At the very beginning, he confessed that he was puzzled by the different nature of his tasks from those he had dealt with as a prosecutor’s assistant officer at the Osaka District and High Public Prosecutors Offices. These days he is quite pleased to work in the field of international cooperation.

(iv) ISHII Ryoko

Ms. ISHII was originally a corrections officer specialized in the field of treatment of juvenile delinquents. Since her transfer to the ICD in April 2009, she has been performing administrative management work for the department, and currently is a key staff member for cooperation with China and Indonesia. She also assists activities concerning Laos.

III. VISION AND CHARACTERISTICS OF ICD ACTIVITIES

The concept of "legal technical cooperation" is still in its developing stage. Recently, scholars have attempted to define and clarify the concept, but there still seems to exist academic controversy. Since Japanese cooperation with developing countries in the legal and judicial sector did not necessarily start based on an overall, comprehensive plan or a firmly set strategy, the concept of legal technical cooperation itself remained ambiguous. Therefore, every stakeholder might have had its own view or perception. In the midst of this ambiguity, the ICD believes that Japanese legal technical cooperation activities embody certain basic characteristics.

JICA, ICD's biggest partner and the official implementing agency of Japan's Official Development Assistance (ODA), temporarily defines legal technical cooperation as "providing support for legal and judicial reform means to support the efforts undertaken by developing countries to develop their legal and judicial systems". The ICD has no objection to that definition. The point is that it states "to support the efforts". When this definition is further elaborated, it implies that there always has to be self-determined, self-governed endeavor by the recipient country towards good governance as an indispensable premise. Japan's Official Development Assistance Charter approved by the Cabinet in 2003 endorses that the idea: "supporting the self-help efforts to establish good governance of developing countries", is the most important philosophy of Japan's ODA. Furthermore, it is Japan's firm belief that "good governance" cannot be established without the promotion of the rule of law.

The above notion concerning Japan's legal technical cooperation indicates that the ICD and JICA conceive such cooperation as being something different from mere "transplant" or "succession" of Japanese laws, legal concepts, or systems. The vision which many of those Japanese scholars and practitioners have is that we should not simply export our laws, systems or thoughts to our client countries; we should never force our clients to import them because it will not work. After all, development of law and justice is a matter of sovereignty and, needless to say, it has to be in line with the history, culture, social and economic conditions of the recipient country, and most of all, the people's sense and attitude towards law and justice. Therefore, "grasp the needs of the clients", "do not force", "talk and think together"……these would be the key phrases.

The ICD believes that Japan has certain advantages in the field of legal technical cooperation – one being Japan's past experience of having itself been a recipient of legal technical cooperation. Japanese law today can be regarded as an amalgam of indigenous, Chinese, French, German, English, American, and many other laws. Ever since the very early stages of the formation of the state back in the 7th century when Japan began to imitate legal systems of Chinese dynasties, Japan has developed its legal systems by studying foreign laws and adapting them to its own society in a harmonious way with the indigenous legal concepts and systems. Especially during the years of the Meiji era (1868 - 1912) when Japan opened itself to the outside world and built the foundation for its

modern legal system and in the days of the construction of democratic Japan after the 2nd World War, Japan was heavily influenced by Western systems. During this course it carefully scrutinized and customized those systems to fit in the Japanese context. Due to such a history, comparative law studies have greatly developed in Japan and this experience can be utilized in many ways. The ICD's idea is that, since Japan has received so much from the international community, it is high time Japan paid back the favor to the world.

IV. COOPERATION AREAS AND TOOLS

A. Four Areas of Legal Technical Cooperation

While the overall concept is not yet firmly established, the ICD believes that there are four interrelated areas of legal technical cooperation: legislative drafting, system building, human capacity development and access to justice. This belief may appear quite "continental" because it starts with the premise that there is written law at the beginning.

1. Support for Legislative Drafting

This activity seems to be fairly self-explanatory. This is nothing but helping our clients to draft laws and other normative documents. In civil law countries such as Japan, this support is undoubtedly one of the most important areas of cooperation. Many of our client countries are suffering from lack of consistent and well-established laws. Many need new laws to cope with fast-changing societies and economies.

2. System Building

This concept is a little unclear but explainable. Laws always need subsystems for their implementation. For example, if there is a civil code, you may need registration systems and notaries. If there's a civil procedure code, you will need not only the court system but also the execution system. This does not necessarily mean that you have to help your client countries to build offices and institutions, but there is much to do to assist them to gain knowledge and skills on how to establish and run such institutions. System building is not limited to building organizations or agencies. Intangible matters also become issues in this area, such as, for example, court precedents as to which a systemized knowledge and skills in relation to their use can be regarded as a supporting system for consistent and transparent implementation of written laws.

3. Human-Capacity Building

No one will disagree with our idea that human capacity building is one of the most indispensable elements when trying to build a good and effective legal system. Even if there are good laws and systems in place, they will be useless unless there is personnel able to make them work. Judges, prosecutors, private lawyers, and government officials of our recipient countries are all in need of training and fostering.

4. Access to Justice

The fourth area, access to justice, is equally important for cooperation. Even if all the three areas above are fully covered -- meaning the recipient country is equipped with wonderful laws, effective systems and highly skilled professionals -- they will be meaningless if their citizens cannot make use of it. Raising awareness of laws, systems and people's rights as well as enabling people to use the legal system must be done along with other support activities. Unfortunately, the ICD has not shown good performance in this area to date, presumably because of its organizational character being a part of the Ministry of Justice, the government. Therefore, activities in this area have been conducted much more actively by the Japan Federation of Bar Associations (JFBA), the largest NGO in this field. However, with the recent experience of the Ministry of Justice in coping with problems in this area (Bad access to justice was also a big problem in Japan. Therefore, the government, as part of its overall justice system reform initiative which started in late 1990's, implemented certain measures to strengthen access to justice in collaboration with the JFBA.), it is high time ICD began playing a role in this area as well.

B. Cooperation Tools

In order to achieve specific goals of cooperation, the ICD and JICA use various "tools" in the course of their activities. These tools are selected in accordance with the needs and wishes of our cooperation counterparts and are in most cases used in combined ways, because each tool has its inherent pros and cons. These tools often form parts of certain cooperation projects, but can also be used upon separate requests even when there is no formal project in place.

1. Training Courses in Japan

Upon request by JICA, the ICD frequently organizes training courses for our counterpart's personnel for the purpose of providing lectures by Japanese scholars and practitioners as well as observation of Japanese legal practices such as, for example, watching court proceedings or on-line property registration systems and listening to explanations by judges or officers in charge. An average-sized training course would comprise of 10 participants lasting two weeks, but it depends on the needs of recipient countries. Although this is quite a costly activity and also imposes a big workload on ICD members (an average-sized training course normally requires four months of preparation on the ICD side), it is quite meaningful and effective because participants not only can receive lectures from various different scholars and practitioners on the same occasion, but also are given opportunities to see for themselves the actual legal practice in Japan and compare them with their own systems and practices. Another advantage of training courses in Japan is that participants, who are usually very busy with their official or professional duties, can leave their daily work behind and concentrate on obtaining new knowledge and skills by attending training in Japan. The disadvantage is that, due to its high costs, not as many people can attend courses, and if participants are not very much inclined to sharing their experiences gained in Japan with others after returning to their home countries, effects of training can be limited.

2. In-country Seminars

Short-term experts can also be dispatched to conduct seminars in recipient countries. Such in-country seminars normally span a few days to a week. In-country seminars have the opposite advantages and disadvantages to those of training courses in Japan –many people can attend, but they can only learn from one or few experts. Therefore, when JICA launches a project in a certain recipient country, it often combines training courses in Japan and in-country seminars for the same counterpart institution in order to achieve synergistic effects. The ICD cooperates with JICA in planning and implementing in-country seminars and often dispatches its lecturers as short-term experts. Moreover, the ICD sometimes conducts in-country seminars independently from JICA as necessary.

3. Long-term Resident Experts

Upon request by JICA, the Ministry of Justice dispatches ICD members to recipient countries as JICA Long-Term Experts who reside in the assisted countries for a period of normally two to three years and serve as legal advisors. As already mentioned above, the ICD currently has five members stationed in the Indochina region. Apart from these, the JFBA has also dispatched private lawyers to several countries in the Asian region under the JICA scheme. These experts are undoubtedly the main driving force of cooperation activities and work in close cooperation with their respective counterpart agencies and their staff members. Plus, they are the contact points of donor coordination. Needless to say, those long-term experts have the best access to information on recipient countries' laws and systems as well as their societies, and most importantly, they are the key to good relationships between Japan and recipient countries based on mutual trust. Without sincere and continuous commitment by such long-term experts, it would be impossible to keep good communication and mutual understanding with our clients.

4. Working Groups and Advisory Groups

Cooperation activities can sometimes involve quite big challenges such as supporting the drafting of a very big law or it can require quite a high-level of academic or practical skills and knowledge. In order to cope with such situations, JICA, with the help of the ICD and the JFBA as well as the Supreme Court of Japan and universities, often establishes teams known as "working groups" or "advisory groups" comprised of eminent law professors and experienced practitioners. ICD lecturers also serve as members of such teams. These groups hold regular meetings and discuss issues identified during the course of cooperation activities and give advisory opinions and comments either directly or through the long-term experts to the counterparts of the recipient countries. Group members are also frequently dispatched to the client countries as short-term experts to give lectures.

V. OUR CLIENT COUNTRIES AND WHAT WE DO WITH THEM

A. Socialist Republic of Vietnam

Vietnam is our oldest client. As already mentioned, cooperation with Vietnam dates back to 1994. Since then, the Ministry of Justice has continuously engaged in assistance to Vietnam, by conducting training courses in Japan and cooperating with JICA in implementing three phases of the project, "Japanese Cooperation in the Legal and Judicial Field" (1996 - 2007) and another project, "Technical Cooperation for the Legal and Judicial System Reform" (2007 - 2011). JICA is planning to launch the second phase of the current project in 2011 and the ICD is preparing for it.

The current project, with four counterparts - the Ministry of Justice of Vietnam, the Supreme People's Court of Vietnam, the Supreme People's Procuracy of Vietnam and the Vietnam Bar Federation - has a unique feature which has been developed from the lessons learned during past activities. Provided with the overwhelming volume of legal technical assistance rendered by more than 60 donors, the central agencies of Vietnam gained much experience and knowledge which undoubtedly served in developing its laws, systems, and professional skills. However, it became evident that the localities were not following and have been left behind. They were not able to catch up with the fast development of the central agencies, which resulted in misunderstandings and bad implementation of laws as well as miscarriages of justice. It seemed it was high time to exert effort to spread out and disseminate the outcomes of past experiences to provinces and districts. Obviously Japan alone cannot deal with all of the 63 provinces and hundreds of local authorities and judicial institutions nationwide. Thus, JICA proposed to designate one "pilot area" to begin intensive project activities in that area. The aim of this "pilot area" was to absorb every possible legal issue that arises in the ordinary course of discharge of duties by the provincial and district courts, procuracies, and other legal institutions within the pilot area. It also aimed to analyze them and reflect outcomes in the central authorities' supervisory and advisory functions, in drafting or revising work of legal normative documents, and in legal education. So far, the project seems to have achieved fairly good results.

In order to drive the project, two ICD members are working in Hanoi together with one private lawyer dispatched by the JFBA. A strong support system is also established in Japan with two advisory groups in place (one for legislative drafting and the other for improvement of judicial work), offering advice and support to dispatched ICD members continuously.

B. Royal Kingdom of Cambodia

Assistance for Cambodia began in 1996 and currently legal technical cooperation with Cambodia is the biggest in scale and volume among all such activities conducted by Japan for developing countries.

Legal technical cooperation with Cambodia started with the drafting work of the Civil Code and

the Civil Procedure Code in which a number of prominent Japanese law professors were, and still are, engaged. These two major codes were enacted in 2007 and 2006 respectively, but due to the lack of sub-systems and appropriate human resources to handle the codes in Cambodia, they are still not fully implemented. Therefore, Japan is not only continuing its support for Cambodia for drafting related laws and ordinances necessary for appropriate implementation of the Civil Code and the Civil Procedure Code, but also assisting Cambodia's effort toward human-capacity development. At present, two projects are under way. One is for the Ministry of Justice of Cambodia which helps legislative drafting in the civil area such as property registration, deposits and notaries, and the other is the "trainers' training" for prospective lecturers of the RSJP – the Royal School for Judges and Prosecutors. Three Japanese legal experts – two lawyers and one judicial scrivener - are working for the former project, and two – one prosecutor and one judge - are working for the latter, all being dispatched to Phnom Penh as JICA Long- Term Experts.

C. Lao People's Democratic Republic

For Lao PDR, one cooperation project was conducted in the past, from 2002 to 2006, which aimed at helping Laos to streamline its legal knowledge and develop some practical materials, such as prosecutors' manual, judgment writing manual, and a law dictionary. Although the project was successful, cooperation with Laos discontinued for a few reasons. The ICD was very much concerned about the small volume of legal technical support to Laos from donors, since it may have created an unwanted imbalance of legal development compared to its neighboring countries, such as Vietnam and Cambodia which have been enjoying affluent assistance from international donors. Thus, the ICD has continuously proposed JICA to start a new assistance scheme. After a series of surveys and studies about the reality and needs of Lao PDR conducted jointly by the ICD and JICA, a new cooperation project began in July 2010. This project aims at building a starting base for development of Lao legal theory and jurisprudence by compiling model textbooks for three areas of law, namely: civil law, civil procedure law, and criminal procedure law, to make them comprehensive textbooks which the Lao legal community has never seen before. The key here is that the counterpart institutions – Ministry of Justice, Supreme People's Court, Office of the Supreme People's Prosecutor, and, most importantly, the Law Faculty of the National University of Laos - are supposed to work closely together as one team with the support of the JICA Project Office in Vientiane and the three advisory groups set up in Japan. One ICD member has been dispatched to work as the chief advisor at the Vientiane project office located at the prosecutors' school together with a Japanese lawyer and a Japanese project coordinator.

D. Indonesia

The ICD has helped Indonesia in its judicial reform since 2002 mainly by organizing training courses in Japan. Whereas in the early days, focus was placed on a slightly broader area – how to

improve the quality and expediency of Supreme Court decisions and thereby reducing backlog cases – assistance later came to focus on the court-annexed mediation system. In the course of the implementation of a JICA project for that purpose, the ICD cooperated with the project by organizing training courses. However, the JICA cooperation project in this area was discontinued recently due to several reasons, including the rearrangement of priorities in the overall ODA scheme for Indonesia. Currently, the ICD is supporting the Indonesian Supreme Court on its own initiative for further development of the mediation system by dispatching our members as short-term experts or by receiving study delegations from Jakarta, and is hoping that the JICA support in this area will resume in the near future. Indonesia still needs help.

E. China

China is relatively a new client for the ICD. Cooperation with China with our involvement started in 2007. Unlike the cooperation activities for other client countries, activities with China have always been conducted in a very narrow scope in response to Chinese requests. Together with JICA, the ICD is organizing several seminars in Japan on the topics of civil procedure, conflict of laws, and tort.

Although "assistance" activities are narrow, there are several other activities in which the ICD is involved. Since China is undoubtedly a giant with tremendous investment-market potential, the economic circle is always interested in the development of Chinese legal system and its capability. In order to facilitate exchange of information in this area, the ICD, in cooperation with the International Civil and Commercial Law Centre Foundation (ICCLC), a non-profit organization set up by a number of well-known private enterprises, is conducting the "Japan-China Civil and Commercial Law Seminar" each year in Tokyo or Beijing to discuss recent trends and developments in the field of business law.

F. Uzbekistan and Other Central Asian Countries

Cooperation with Uzbekistan began with the project for compiling a comprehensive commentary on the Uzbek Bankruptcy Law in 2002, as to which ICD members played significant roles in organizing seminars and giving comments to drafts together with advisory group members. While this JICA project came to an end in 2007, a new type of cooperation scheme started, not only for Uzbekistan alone, but also for three other states in the Central Asian region -- Kazakhstan, Tajikistan and Kyrgyzstan -- in the form of a multinational seminar in Osaka. The seminar is designed to be a forum of information exchange in the field of business-related laws focusing on the market economy system.

G. Mongolia

Although JICA has provided assistance to Mongolia for several years, the ICD was not very

heavily involved in such activities. However, since 2010, JICA requested the ICD to become involved in its new project for the development of court-annexed mediation system, the counterpart being the Mongolian Supreme Court and the Bar Association. Currently the ICD holds membership in the advisory group set up for this purpose.

H. Nepal

Cooperation with Nepal is new to us. JICA started a program-type assistance to Nepal with the aim of establishing good governance in this post-conflict state and requested the ICD to cooperate with them. While striving for enactment of a new democratic constitution, Nepal is now making an attempt to totally renew its legal system, starting with the renovation of the Muluki Ain -- the old "code of the land" which covers criminal law, criminal procedure, civil law, and civil procedure. Nepal expects to separate and divide these into four modernized laws with the help of donors. The ICD has so far conducted several surveys and seminars in the field of criminal law, and is now assisting Nepal in drafting an entirely new civil code by participating in advisory group sessions and implementing training courses in Japan for the members of the "Nepal Civil Law Reform and Improvement Task Force" set up by the Nepali Government.

I. Timor-Leste

Timor-Leste is also a new client. Although circumstances do not allow the ICD to render full-fledged assistance to Timor-Leste, the ICD, in collaboration with JICA and Nagoya University, has been conducting training courses for strengthening legislative drafting capacity of the National Directorate for Judicial Advisory and Legislation of the Ministry of Justice of Timor-Leste since 2008. Though their harsh political conflict seems to be over, Timor-Leste is definitely in need of human resources in the legal and judicial sector. The ICD is seriously considering its future assistance for them.

VI. DOMESTIC PARTNERS

As it is quite apparent, the ICD cannot perform its duties by itself. Luckily, the ICD enjoys kind support from powerful domestic partners.

A. JICA

The Japan International Cooperation Agency, widely known as "JICA", is definitely our biggest partner in every aspect of legal technical cooperation. Most ICD activities are conducted in collaboration with JICA. It is an "independent administrative corporation" under the supervision of the Ministry of Foreign Affairs bearing the mandate to implement Japan's Official Development Assistance. It is truly a huge organization. Legal technical cooperation in which the ICD is involved

is mainly implemented by the "Law and Justice Division of the Governance Group, Public Policy Department" of the JICA Headquarters in Tokyo.

B. ICCLC

As already mentioned, the International Civil and Commercial Law Centre Foundation is a non-profit organization founded by Japanese private enterprises. It was established for the purpose of promoting mutual understanding between different legal jurisdictions and assisting legal technical development in collaboration with the related Japanese governmental institutions.

C. JFBA

The Japan Federation of Bar Association, having its headquarters in Tokyo, is the private lawyers' organization which, pursuant to the Lawyers' Law, every practicing lawyer must be a member of. In the field of legal technical cooperation, it is undoubtedly the biggest NGO. The JFBA not only sends numerous long-term experts to our client countries but also conducts training courses in collaboration with JICA. When the ICD organizes training courses, it often seeks help from the JFBA to offer lecturers out of JFBA's wide-ranged human resources. Because of its nature, the JFBA is particularly skilled at activities in the area of access to justice and in various JICA projects where they are entrusted with components involving capacity-development for private practitioners and lawyers associations.

D. The Supreme Court of Japan

Although international development activities theoretically belong to the task of the executive branch, the apex court of Japan has always helped the ICD and JICA by dispatching experienced judges on various occasions to seminars and training courses as well as advisory group activities. The Supreme Court also kindly sends judges to the Ministry of Justice to work as long-term experts in some client countries. The involvement of experienced and incumbent judges is indispensable to Japan's cooperation activities, because demand is growing rapidly in the field of judicial reform where skills and experience of prosecutors or private lawyers cannot cover or cope with, particularly in the field of civil adjudication, court-annexed mediation and judicial administration.

E. CALE and Other Universities

CALE, the Center for Asian Legal Exchange, is an institution of Nagoya University which enjoys high reputation for its cooperation activities in the field of legal education throughout the Asian region. With its high institutional skills and experience, CALE is the undisputed leader of legal technical cooperation in the academic realm. The institution has devoted its so much effort to Asian legal and cultural exchange that it established Japanese Law Education Centers in Tashkent, Ulan Bator, Hanoi, and Phnom Penh. It also plays a very important role in the field of legal technical

cooperation that no other institution than universities can play: it receives many students from various countries in the Asian region for education and capacity-building. The ICD is in close cooperation with CALE in conducting training courses and seminars as well as activities related with the fostering of the next generation who will participate in the Japanese effort in this field.

Other universities are also precious and indispensable partners of the ICD. Legal technical cooperation activities often require academic input which can only be gained from law professors and researchers. The ICD is thankful to many Japanese universities for their kind cooperation.

VII. WHAT ELSE WE DO

In addition to its main tasks of legal cooperation with developing countries, the ICD conducts activities outside the scope of technical assistance. Here are some examples:

A. Japan-China Civil and Commercial Law Seminar

This joint annual seminar is definitely one of the important events for the ICD. In this event, as already mentioned, the ICCLC plays a big role, since participants of this seminar mainly consist of business lawyers and executives of business enterprises who expect to gain updated information about Japanese and Chinese business law which directly affects their international trade and investment.

B. Symposium on Legal Systems in Asia-Pacific Countries

The ICCLC also plays an important role in this activity. Symposia are held annually, and the ICD invites scholars and practitioners from various countries in the Asia-Pacific region to do comparative studies on topics in the area of business law. So far, symposia have dealt with such issues as IP protection, derivative action, company auditing systems and others.

C. Japan-Korea Partnership Training Course

This is a specialized, practical joint-study program between the RTI and the Korean Supreme Court for officials of Japan and Korea on property and company registration systems. It is held twice a year in Tokyo and Seoul alternately. The outcome of training is quite beneficial to both Japanese and Korean officials working on the front line of registration services.

D. RTI - SPP Exchange Program

This program started in 2000 based on a proposal by the Deputy Chief Procurator of the Vietnamese Supreme People's Procuracy. Annually one or two officials of the Vietnamese Procuracy visit Japan and discuss with their counterparts issues concerning the prosecution system and practice. For the ICD, this is a precious opportunity to gather information on the Vietnamese legal and judicial

reform and to further develop cooperative relationships between Vietnam and Japan.

E. Annual Conference on Legal Technical Cooperation

Every year in January, the ICD organizes this conference with the participation of those interested in, or related to Japan's technical assistance to developing countries in the legal and judicial field. Scholars, practitioners, officials, students, and sometimes foreign guest speakers, gather in the International Conference Hall of the ICD in Osaka, exchange updated information and discuss important topics. In this coming January 2011, the 12th conference will be organized and discussions will be held on evaluating aid effectiveness.

VIII. NEXT GENERATION – UPRISING POWER

Recently, the ICD began to realize that fostering human resources that will engage in the field of international legal technical cooperation is of vital importance in light of growing demand for legal assistance. Needs of the recipient countries are becoming much more complex than ever, and it is high time that Japan took a strategic approach towards developing a larger volume of capable human resources for the sake of responding to requests from developing countries and the international community. There is a need for young scholars, lawyers, and legal professionals with a high level of capacity in cross-border communication and, most importantly, determined to contribute to the promotion of the rule of law, international peace, stability and harmonization.

Technical cooperation in the legal and judicial field is more often attracting the younger generation in Japan. Many universities now offer regular courses and curricula on this newly emerging issue, either in their law faculties or faculties of international development. The number of scholars engaging in extensive research and studies in this area is also increasing. The ICD frequently receives inquiries from students who want to know how to get involved in this very interesting and innovative undertaking.

With such a pleasant phenomenon as background, in 2009 the ICD began organizing an annual symposium for graduate and undergraduate students in late summer. The aim of this event is to provide students with knowledge and information as to the actual situation of legal technical cooperation with developing countries and to further attract them to this field.

Also, as a part of the Government Internship Program, the ICD frequently receives internship students to observe and experience part of ICD lecturers' duties. This internship is always connected with training courses for recipient countries' officials held in Tokyo or Osaka. With the consent of participants from recipient countries, students sit together with them in training sessions, and try to find out by themselves problems and shortcomings in the legal and judicial systems and practices of the recipient countries and strive to figure out favorable solutions. This experience not only enhances students' interest in legal technical cooperation activities, but also contributes to the improvement of

their legal skills and knowledge. In 2010, five students participated in the training sessions for Nepal in the area of civil code drafting and another eleven participated in the training course for Timor-Leste.

The ICD considers such internships or PR activities for fostering future providers of legal assistance as one of its most important tasks, and will further try to provide such opportunities to the younger generation in order to build a rich human resource pool for future cooperation activities.

JICA'S COOPERATION IN CAPACITY DEVELOPMENT FOR THE LEGAL AND JUDICIAL SECTORS IN DEVELOPING COUNTRIES

TORII Kayo

Director

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Japan International Cooperation Agency

I. ABOUT JICA

JICA is an implementing agency of Japan's Official Development Assistance (ODA). It has a network of 96 overseas bureaus and has undertaken programs/projects in approximately 150 countries.

Since its establishment in 1974, JICA has provided various forms of technical assistance in fields diverse as agriculture, health, education, infrastructure, rural development, safe water, environmental protection, and governance. In October 2008, JICA merged with the overseas economic cooperation section of the Japan Bank for International Cooperation (JBIC). The new JICA is now able to provide not only technical assistance, but also concessional loans and grant aid, and is becoming the 'one-stop-shop for Japan's ODA'.

The new JICA's four missions are defined below, with a vision of "Inclusive and Dynamic Development"[1]:

Mission 1: Addressing the global agenda

Mission 2: Reducing poverty through equitable growth

Mission 3: Improving governance

Mission 4: Achieving human security

Since its establishment, JICA's cooperation focused on such fields as agriculture, infrastructure, and education, while governance assistance or policy-related assistance has been a continuing focus since the 1990s[2]. JICA considers the improvement of governance to be of vital importance for the stable social and economic development of developing countries.

II. CHARACTERISTICS OF JICA'S COOPERATION – FORMULATED AND IMPLEMENTED IN THE FRAMEWORK OF ODA

[1] http://www.jica.go.jp/english/about/mission/

[2] As for JICA's definition of "good governance" and "capacity development for the legal and judicial sectors" in the context of governance, please see JICA (2009) *Capacity Development for Legal and Judicial Sectors in Developing Countries – JICA's Cooperation for "Rule of Law" Promotion.*

A. ODA Policy

Since JICA is an ODA implementing agency, its cooperation programs/projects are formulated and implemented not only in alignment with the policies/strategies of developing countries, but also in line with various levels of Japanese government's ODA policies, such as the Official Development Assistance Charter (ODA Charter) and the Medium-Term Policy.

The revised ODA Charter regards capacity development for the legal and judicial sectors as a means of realizing "good governance" and states that support of developing countries' self-help efforts is 'the most important philosophy of Japan's ODA'[3].

Moreover, a clear indication of the increasing commitment of the Japanese government to legal and judicial cooperation was shown at the 13th meeting of the Overseas Economic Cooperation Council in January 2008. In it, a consensus was reached to strategically promote capacity development for the legal and judicial sectors as a key international cooperation area. This decision has resulted in the formation of the "Basic Policy of Assistance for Legal and Judicial System Development" in April 2009. The Basic Policy states that Japan will further promote cooperation in the legal and judicial fields with focus on basic laws (civil and criminal) and economic laws, with a view to promoting "rule of law" in developing countries, enhancing their compliance with global rules, and strengthening economic partnership.

B. Country Approach

On the operational level, Japan's ODA stresses "country approaches" that are aimed to suit the conditions in each developing country. Therefore, JICA's programs/projects are meant to be in line with the Country Assistance Program and the Country Rolling Plan, which are comprehensive aid programs tailored to meet the needs of each individual country. They are formulated based on regular dialogues and consultations between the authorities concerned in developing countries and the in-country "Japan's ODA Task Force" comprised of the Japanese embassy, JICA field office, and other stakeholders related to Japan's ODA.

Each Country Assistance Program elaborates challenges and pressing issues in development as well as efforts by the governments of developing countries and donor partners in addressing these challenges, and then prioritizes "development programs" to which Japan should allocate its resources.

This means that JICA's on-going projects in the legal and judicial sectors are positioned as one of the "priority development programs" of the Country Assistance Program of the respective countries. At the same time, projects in the legal and judicial sector are also expected to contribute to broader development goals.

[3] Ministry of Foreign Affairs (2003) *Official Development Assistance Charter*. Section I 2 (1)

C. Project Approach

Another aspect that characterizes JICA's cooperation is the "project approach," meaning, to establish an agreed-upon target within a given timeframe through close consultations and discussions with stakeholders in developing countries. Projects are monitored jointly with the counterpart institutions in developing countries, usually by using a tool known as the Project Design Matrix (PDM), to ensure mutual accountability.

Furthermore, midway during the project or at the start of a new collaborative phase, the project is jointly reviewed in response to changes in developing country's capacity, needs, or policy priorities and project's scope and assistance areas are adjusted in order to deliver more applicable assistance.

III. JICA'S COOPERATION IN THE LEGAL AND JUDICIAL SECTORS

JICA's support rests on three fundamental pillars, which are set out as follows:

(a) *Supporting the development of rules and regulations* including the drafting of specific bills and their promulgation;

(b) *Supporting the improvement of the capacity of public organizations* (the improvement of the capacity of organizations that implement laws or apply laws to dispute resolution); and

(c) *Supporting the legal empowerment of people and society*.

As a foundation for these three elements, JICA's approach stresses;

(d) *Supporting the development of legal professionals*, in order for them to independently promote legal and judicial development in the long-term while addressing harmonization with the culture and systems existing in each individual developing country.

JICA implements its support activities through appropriate utilization of these elements according to the needs, developmental issues, and situation of each individual country.

JICA began its involvement with technical cooperation in the field of capacity development for the judicial sector in developing countries in 1996 with the launch of the "Project in the Legal and Judicial Field in the Socialist Republic of Vietnam." The Project was built upon the tremendous contributions made by prominent pioneers, and was implemented with full cooperation from dedicated Japanese law scholars and practitioners from the Ministry of Justice, in particular International Cooperation Department, and the Japan Federation of Bar Association.

Since then, JICA's technical cooperation in this field has expanded to Cambodia, Laos, Uzbekistan, Indonesia, China, and Mongolia. More recently, JICA has responded to assistance needs in states in a reconstruction phase, such as Nepal and East Timor.

IV. FEATURES OF JICA'S COOPERATION FOR CAPACITY DEVELOPMENT IN THE LEGAL AND JUDICIAL SECTORS IN DEVELOPING COUNTRIES

A. Respect for Developing Countries' Ownership

The ODA Charter states that "Japan respects the ownership of developing countries, and places priorities on their own development strategies". In the context of cooperation in the legal and judicial sectors, this message is especially important. The choice of legal systems and the path to "rule of law" promotion are matters of state sovereignty, and the appropriateness of various options is the sole purview of the state itself. Efforts directed towards the realization of the "rule of law" must be based on the individual situations of respective countries. Accordingly, JICA facilitates the development of legal systems that suit the cultural and societal factors present within the existing systems in each developing country, by providing them with knowledge of other countries' systems as points of reference, rather than imposing any specific systems or ideas of Japan or any other nation.

B. Modalities of Support

A diverse group of Japanese experts (academics and legal practitioners) take part in JICA's cooperation in capacity development for the legal and judicial sectors in order to comprehensively cover the multitude of needs of developing countries. Their participation enables JICA to deliver assistance using diverse modalities: (a) dispatching long-term advisors; (b) establishing advisory committees in Japan comprised of academics and practitioners with extensive knowledge and experience in specific fields; (c) in-country seminars; (d) Japan-based workshops/training seminars; (e) JICA-Net TV Conference System; and (f) long-term human resource development (scholarships and/or long-term training programs)[4].

C. Focus on Sustainable Capacity Development

In JICA's projects in the legal and judicial sectors, joint study groups or working groups are often set up in order to examine drafting issues or matters related to the implementation or application of laws jointly with counterpart personnel in a developing country and Japanese long-term experts. This process also attempts to develop the capacity of legal and judicial professionals in developing countries in order to promote legal and judicial development by themselves in the future.

[4] For the details, please see p. 11-13, JICA (2009)

D. Addressing Practical Issues Faced by Legal Practitioners on the Ground

Support for drafting laws does not necessarily lead to expected objectives unless laws are properly implemented and citizen's access thereto is ensured. JICA's cooperation in the legal and judicial sectors increasingly focuses on enhancing the capacity of institutions responsible for implementing and enforcing laws and ensuring citizen's access to justice.

In the case of our cooperation to Vietnam, the project has gone one step further to address the problems faced by local legal practitioners. Through various activities for improving legal and judicial practices in local areas, it has tried to contribute to the improvement of its legal systems so that they better reflect the reality on the ground by feeding back the information gained from local activities into the rule-establishment process as well as into the central authorities guidance. By supporting capacity development of the local courts close to where the people live, the project has also tried to improve citizens' access to the legal and judicial system.

E. Japan's Own Experience and Knowledge

Beginning from the Meiji Restoration in the late 19th century, Japan has achieved a gradual formation of the "rule of law" through trial and error. The comprehensive legal reforms preceding the modernization of the state and society in the post-Meiji Restoration period, and the legal reforms conducted under the indirect rule of the Allies with the aim of democratization and peace-building following the Second World War were fundamental reforms involving the revision of basic legal principles and systems. By drawing upon Japan's own experience in customizing foreign legal systems to the cultural and societal elements of existing systems, JICA's support in this field seeks out a method optimally suited to the needs and conditions of the developing country itself.

It is also worth mentioning that due to this historical background, Japan has developed a pool of legal scholars and experts who are well-versed in both Japanese law and laws of other countries. Therefore, with Japan's assistance, a developing country is able to access, not only Japan's experiences, but also a wide range of information on the legal systems of other countries. This makes it possible to compare and contrast various legal systems and thereby design a legal system that is tailored to their own country. JICA's cooperation projects are founded on the cooperation and contribution of such legal scholars and practitioners.

V. THE WAY FORWARD

Although each collaborative project has been planned and implemented according to each country's needs and circumstances, and has fully utilized the strength of our resources, an overarching assistance methodology has not yet been established since the field of legal and judicial capacity development is still relatively new. There are many issues that need addressing to improve the effectiveness of our cooperation, such as effective donor coordination and creation of synergistic

effects with other development programs/projects. The agendas in the international donor community, such as aid harmonization including Sector Wide Approaches (SWAPs) in the legal and judicial sectors, should be further discussed. Moreover, as an ODA implementing agency which is accountable to taxpayers, JICA should also make efforts to illustrate the impact of cooperation in the legal and judicial fields on broader development goals.

Although there are challenges ahead, I do hope that those working in this field, both in developing countries and in the donor community, share the lessons learnt and continue discussions towards more effective and coordinated cooperation.

STATUS OF ACTIVITIES OF THE INTERNATIONAL CIVIL AND COMMERCIAL LAW CENTRE FOUNDATION

KOBAYASHI Kiyonori

Secretary General

International Civil and Commercial Law Centre Foundation

It has been seven years since I took the office as the Secretary General of the International Civil and Commercial Law Centre Foundation (ICCLC). I have been given the opportunity to explain in this ICD NEWS what the ICCLC is and what the ICCLC does. It would give me great pleasure if as many people as possible related to legal technical assistance inside and outside Japan could take a look at this article.

I. BACKGROUND TO AND THE PURPOSE OF THE ESTABLISHMENT OF THE ICCLC

The ICCLC is a public-interest corporation founded by the private sector with approval by the then Minister of Justice in April 1996. It supports legal technical assistance projects in the civil and commercial law field, which are implemented by the government of Japan, from the perspective of the private sector. It is funded by the annual membership fees of member companies, and backed by a broad range of individuals such as academia and the legal community.

Upon receipt of requests from developing countries, mainly in Asia, the government of Japan began legal technical assistance in the civil and commercial law field in the beginning of the 1990s. In those days, while several Asian countries were experiencing strong economic growth and internationalization, their legal systems were not fully functioning due to the lack of civil- and commercial-related laws necessary for economic activities, and the know-how and human resources to operate them. These countries deemed those factors to be detrimental to their international economic activities, and thus requested the government of Japan to support them to improve their legal infrastructure.

In response to these requests, Japan began its assistance to those countries for the purpose of sustainable growth for both sides. This would occur through promotion of economic exchanges, and was desirable on both sides to deepen the mutual understanding on the legal systems and their operations in each country, and thereby explore ideal legal frameworks to promote international economic transactions.

For private companies as well, it is critical that the partner country has well-established legal

systems, mainly civil and commercial laws which are necessary for economic activities, and that it has systems to operate such laws in place. This necessity eventually led to the establishment of the ICCLC to support government assistance activities. Moreover, in addition to legal technical assistance, the ICCLC aims to share understanding with legal stakeholders in each country regarding the legal systems for international economic transactions through various forms of exchange activities.

II. HISTORY OF THE ICCLC

April 1996	Establishment
September 1996	Organization of a training course for Vietnam commissioned by the Japan International Cooperation Agency (JICA) (Thereafter, the ICCLC has continued to be commissioned to carry out legal training courses organized by JICA and the Research and Training Institute of the Ministry of Justice).
November 1996	Organization of the First Japan-China Civil and Commercial Law Seminar (in Tokyo) (Thereafter, annual seminars have been held alternately in Japan (Tokyo or Osaka) and China (Beijing).
July 1997	Commencement of comparative legal studies in the Asia- Pacific region. (The topic of the first study was "Bankruptcy Law Systems in the Asia-Pacific Region", and thereafter, studies have been continually conducted on different themes every two or three years.)
November 1997	Organization of the Symposium on Bankruptcy Law Systems in the Asia-Pacific Region in Osaka (Thereafter, the ICCLC has organized symposia in line with the themes of comparative legal studies every year or two.)
July 1998	Being authorized as a specific public-interest promotion corporation (Authorization has since been renewed every two years. Most recently it was renewed in July 2010.)
October 1998	Being commissioned by JICA to handle the logistics necessary for the organization of working groups, etc. in relation to the Legal Assistance Projects for Vietnam and Cambodia. (The ICCLC continues to handle logistics under the annual commission of JICA.)
September 1999	Organization of the Japan-Korea Partnership Program (in Japan and Korea) (The program has been organized annually in both Japan and Korea).
November 1999	Organization of the Japan-Vietnam Civil and Commercial Law Seminar (in Hanoi)

January 2007 Organization of the 10th Anniversary Ceremony and Lectures

III. OUTLINE OF ITS ACTIVITIES

The primary purpose of the ICCLC is to support, as a public-interest corporation, the government's legal technical assistance activities for primarily Asian countries by mobilizing the power of a broad range of private sector. In order to attain this purpose, the ICCLC seeks to promote exchanges with stakeholders in the civil and commercial law field in various countries through organization of symposia, seminars, and researching and studying comparative law systems.

A. Legal Technical Assistance (Commissioned by JICA)

JICA, as part of its grant aids, implements legal technical assistance for Asian countries in transition to market economies, by inviting judicial officials and legal draftsmen from those countries to Japan to attend seminars on various themes. It also assists these countries in drafting or amending laws with help from Japanese legal experts. The majority of such activities are organized in collaboration with the Research and Training Institute (RTI) of the Ministry of Justice. The ICCLC, being commissioned by JICA to undertake assistance projects in the civil and commercial law field, and with support by its members and other stakeholders, promotes legal technical assistance in full coordination with JICA and the RTI. It also enhances mutual exchanges with judicial stakeholders of the recipient countries or participants in seminars held in Japan with the purpose of maintaining friendly relationships with them in the future.

Legal technical assistance projects where the ICCLC is involved:

1. Vietnam: Since the commencement of a training course in Japan in 1994, assistance projects have been implemented continuously.
2. Cambodia: Since the commencement of a training course in Japan in 1996, assistance projects have been implemented continuously.
3. Indonesia: Assistance began in the form of a comparative study seminar on judicial systems in 2002. Currently the ideal form of assistance is under consideration.
4. China: A training course in Japan started in 2007. Currently, there is an ongoing project to improve the Civil Procedure Code and Arbitration Code in China.
5. Central Asia: Training courses for Uzbekistan were held in Japan from 2005 to 2007, and have been held for four central Asian countries (Uzbekistan, Kazakhstan, Kyrgyzstan, and Tajikistan) from 2008.

B. Activities Other Than Legal Technical Assistance

(All of these are organized in cooperation with the RTI.)

In order to smoothly and effectively promote legal technical assistance activities, it is indispensable to build close relationships in a step-by-step manner with legal stakeholders of the recipient and neighboring countries. To this end, the ICCLC promotes personnel exchange in the legal field through such activities as: organizing open symposia and seminars with the participation of invited legal experts from overseas, and commissioning studies on specific themes and compiling results of such studies, so as to enhance mutual understanding in the civil and commercial law field not only with the recipient countries but also with other countries in the Asia-Pacific region.

1. Japan-China Civil and Commercial Law Seminar

   (An ICCLC-led program held jointly with the RTI and the Japan External Trade Organization [JETRO])

In order to promote mutual understanding and exchanges in the civil and commercial law field between Japan and China, the ICCLC hosts, jointly with the RTI and JETRO, annual seminars in Japan or China, by inviting Chinese legal experts to Japan and dispatching Japanese legal experts to China. This seminar is one of the main activities of the ICCLC. Since its establishment in 1996, seminars have been held annually in Japan (Tokyo or Osaka) or China (Beijing) in turn on timely topics, with lectures given by invited experts from the non-host country. The counterpart organization in China is the National Development and Reform Commission, which has offered immeasurable support for the implementation of the seminars.

Seminar topics in the past five years:

2005 (Tokyo and Osaka):	Presentation of Sample Mergers and Acquisitions (M&A) by Chinese Companies and M&A-related Statutory Provisions
2006 (Beijing):	Presentation of Legal Systems Promoting Recycling-Orientated Society
2007 (Tokyo and Osaka):	Real Right Law, Civil Procedure Law, and Arbitration Law of China
2008 (Beijing):	Presentation of the Japanese Experience in, and Lessons Learned, from the Operation of the Anti-monopoly Act
2009 (Tokyo and Osaka):	Presentation of the Right Infringer Liability Law and the Anti-monopoly Law of China

2. Research and Studies, and Symposia on Legal Systems in the Asia-Pacific Region

   (Research and studies are commissioned by, and jointly conducted, by the RTI, and symposia are jointly held by the RTI and JETRO).

The ICCLC has organized study groups composed of scholars and legal practitioners in the Kansai region, which have conducted studies on certain topics such as bankruptcy law systems, mortgage law systems, alternative dispute resolution (ADR), international corporate law, etc. in the Asia-Pacific region. Between 2006 and 2008, the ICCLC commissioned the study group to conduct

comparative law studies regarding derivative actions in the Asia-Pacific region. In relation to this, it administered, not only regular meetings of the study group but also questionnaires in the target countries and field surveys, to present the study results in an international symposium and publish a wrap-up study report. Since 2009, it has been conducting studies on auditing systems in Asia.

Study reports published up to today (published by Shoji-homu Co.)

(i) Bankruptcy law systems in the Asia-Pacific region
(ii) Corporate bankruptcy and mortgage law in the Asia-Pacific region
(iii) The actual status and prospects for alternative dispute resolution in the Asia-Pacific region
(iv) Enforcement of intellectual property rights in Asia
(v) Prospects for international mergers and acquisitions in Asia
(vi) The actual status of derivative action systems and protection of shareholders in Asia

3. Japan-Korea Partnership Program

This program began in 1999 as a form of personnel exchange in the civil affairs field with Korea. Five officials from each country, officials from the Ministry of Justice and the Supreme Court of Japan, and those from the Supreme and District Courts of Korea get together in spring and autumn each year in either Japan or Korea alternatively to study civil administration practice (registration, family registration, and deposition systems) in both countries.

Fourteen years have passed since the establishment of the ICCLC. Throughout its history, with the kind support and cooperation by the member companies, the ICCLC has been able to successfully carry out its activities. The ICCLC will need to continue to renew its effort to keep pace with ever-changing situations in Japan and the recipient countries.

II. SPECIAL TOPICS AND ISSUES

WHAT LEGAL TECHNICAL ASSISTANCE BRINGS US

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I. FREQUENTLY ASKED QUESTIONS

"Why do we provide legal technical assistance?"
"What can we get through legal technical assistance?"
"Why is assistance necessary in the field of civil and commercial law?"
"What is important in providing legal technical assistance?"
"Is there a career path in this field?"

I have been frequently asked such questions as above. During the initiation of Japan's legal technical assistance, I was asked these types of questions after giving explanations about assistance activities. Nowadays, even though legal technical assistance is a little bit better known and explanations on it are unnecessary, such questions are often asked.

On August 28, 2009, a symposium titled "Let's Think Together About Our Legal Assistance – International Cooperation in the Legal Field" was held in Tokyo by the Research and Training Institute of the Ministry of Justice, Japan, International Civil and Commercial Law Centre Foundation (ICCLC), and Japan International Cooperation Agency (JICA), for the purpose of promoting the understanding of the appeal of legal technical assistance among university students and young jurists. The interest of the audience also focused on the questions mentioned above.

If I answered them in the manner of a lawyer, my answers would include the following: the significance, objective and effects of legal technical assistance are bla bla bla. In the way of a project expert, whether or not the ultimate goal, project purpose, outputs, activities and indictors are determined. If I took a high-handed attitude, I would explain the concept or strategies of legal technical assistance.

However, my intention of presenting this paper is not to give you such formal explanations on the topic.

My brief answer to the first question above is, "It is for you and for the other party. It is for Japan, and for the recipient country."

In this paper I would like to discuss where my answers come from, which are my own findings at present, based on my personal experience in the planning and coordination of, and engagement in legal technical assistance, and also based on the discussions with various scholars and law practitioners on this subject. I have to admit that my personal experience spans only four years from 2000 in the initial stage of Japan's legal technical assistance. Since international cooperation requires long-term endeavor, continuing commitment therefore will create a broad human network, which is conducive to the development of a relationship of trust and confidence between donors and recipients. A single public prosecutor may not be allowed to engage in this field in Japan due to its frequent personal rotation system, but institutions specialized in international cooperation may make long-term contributions.

II. WHY DO WE PROVIDE LEGAL TECHNICAL ASSISTANCE?

There are various reasons why we provide legal technical assistance. If the questioner is a lawyer, I would like to ask him/her instead, "Isn't it quite natural to do so if you are a professional?"

Those who can be categorized as professionals, from the standpoint of historical propriety, are said to be only priests, medical doctors and lawyers. What is common among these three professions is that they are predicated on "people's worry" and "people's unhappiness". All of them try to improve their expertise on a constant basis with an altruistic spirit (of dedication), use their expertise to solve others' problems and thereby contribute to society. These professions would not exist if people didn't have worries or were always happy. Because it is their mission, they must be altruistic, not selfish. Because they should not gain from people's unhappiness, they have been basically prohibited from running ads. They should not intend to make more profits than necessary. It is a lawyer's job to offer a helping hand if, in front of them, there is a person in trouble. A lawyer must have such spirit and intent.

Now that people in developing countries need support in the legal field, where lawyers can make contributions, there is no way that we should ignore such need.

Moreover, any Japanese lawyer must know that the present Japanese judicial system is modeled after Western legal systems. In the Meiji Era (1868-1912), in order to revise unequal treaties with Western countries, Japanese intellectuals thoroughly picked Western lawyers' brains. Though Japan bore their costs, knowledge and wisdom regarding justice and law were no doubt provided by lawyers from Western countries. The Japanese legal system was first influenced by the French system, learnt the German system till assimilating it into Japan, and then under the influence of the U.S., Japanese law deeply immersed itself into the common law. This historical background formed the present unique Japanese legal and judicial system. Therefore, whenever we try to reform our systems, we have always referred to Western systems.

Of course, it is not good just to receive benefits from Western systems. We should return the

favor. And the favor should be returned, not directly but indirectly, so that its effect may be enhanced. This means, responding to requests for assistance from developing countries may directly contribute to those countries, and also indirectly return the favor to Western countries. If so, how can we coldly turn down requests for assistance?

This is not limited to the legal field. In terms of international cooperation in general, Japan recovered from wartime devastation with support and loans from the World Bank and the international community. Even though Japan made great self-help efforts, its recovery was impossible without assistance from the international community. After its restoration, Japan soon became able to provide assistance to other countries, that is, Official Development Assistance (ODA).

JICA boasts over 40 years of experience in international cooperation, which has been called "Forty Years of Technical Assistance in the fields from rice cultivation to IT", since 1964 when its predecessor started its activities. It is said that in the beginning of the 1990s, JICA did not consider legal assistance, especially legislative assistance, feasible as a technical assistance. It was quite natural since law is closely related to, and indivisible from state power, and legal assistance was deemed to be an infringement upon national sovereignty.

On the other hand, the interest of developing countries focuses more on assistance in the fields of agriculture, industry, commerce, infrastructure, medicine, education, etc. to improve their lives, with law being given low-priority. The need for legal assistance has arisen always lastly when these countries become stable or when there is a necessity to respond to globalization.

In fact, three years before the establishment of JICA, the Ministry of Justice had already started organizing international training courses in the criminal justice field at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), one of the Ministry's institutes. Later, these training courses were organized within the framework of ODA, proving that legal technical assistance is viable in a way that does not infringe upon the sovereignty of other countries. As international cooperation in the legal field became possible through ODA, there was no reason for Japanese lawyers not to help people in need.

Based on the above-mentioned three points, I want to ask instead, "Why are you asking the reason for which we provide legal technical assistance?"

III. WHAT CAN WE GET THROUGH LEGAL TECHNICAL ASSISTANCE?

When we study Bachelor of Law courses in Japan, we devote ourselves to mastering statutes, jurisprudence, acts, case law and law practice. After graduating, those who aim to become law practitioners, maybe different from those who continue studies as law scholars, dedicate themselves to the studies of law and law theories, and acquisition of their interpretation and application skills in order to pass the national bar examination. Once they pass the exam, they constantly engage in the

resolution of disputes through interpretation and application of law, the existence of which is considered to be given. Speaking of “international” in the legal field, the majority of both scholars and law practitioners have more interest in the study of law and law practice of Western developed countries. Among developed countries, while there are some differences from country to country, there exist certain standards in terms of economic and social infrastructure, including education, and they have a common platform in respect to liberalism, democracy and market economy.

However, things are different in developing countries that need legal technical assistance. In many cases they do not share the above-mentioned common basic infrastructure, though the level of their differences may vary. Then, their interest, ideas, and doubts which may seem mystical to us at first glance, are in fact more fundamental than originally thought. If we consider law, law theories and law interpretation that we have learnt in Japan as something as a given, we may find trouble when asked why those given matters are the way they are.

Let’s take detailed examples of such questions on the judicial system.

1. Any systems have their merits and demerits. What are the demerits of the separation of powers?
2. It does not seem democratic that the Diet, the highest governing body, is not involved in the appointment of Justices of the Supreme Court. Why are they appointed by the Cabinet?
3. Why do only judgments rendered by the Supreme Court adopt the dissenting opinion system and not those by inferior courts?
4. Can the Supreme Court handle any types of cases without having specialized divisions?
5. Why do judges not enjoy immunity from arrest?
6. If cases are automatically distributed to judges in a court, there may be events where difficult cases are distributed to low-caliber judges. Isn’t this an irrational system for parties concerned in such cases?
7. Why is a civil case tried basically by a single judge?
8. Why is a civil judgment rendered in a different way from a criminal judgment?
9. Why is the starting point of the appeal period different in a civil case and a criminal case?
10. Isn’t there a possibility for the unified legal apprenticeship program to become a breeding ground for collusive relationships and corruption among the three types of legal professionals (judges, prosecutors and lawyers)?

Have you ever had these kinds of questions? Can you accurately answer these questions on the spot? I myself was able to answer some, but not all of them. As for the questions I could not answer immediately, I investigated them later, but it was not so easy to find answers to them. The answers cannot be found in law books, and it is necessary to truly read between the lines. The fact that we cannot explain why our judicial system is established in such a way indicates how ignorant we are of

our own system. Taking into consideration the purposes of systems, social conditions, cultural differences, and from the comparative law standpoint, we need to thoroughly comprehend these matters, and explain them to people in developing countries in an easy-to-understand way. This is an extremely daunting task. I have managed to find my answers to all the above questions, and they truly inspired my intellectual curiosity. As a result, such questions will surely increase interest in our own law and society, and such increased interest will eventually become the driving force for reforming the Japanese legal system.

I have received an unexpected benefit through my engagement in legal technical assistance. To bring the judicial system reform to a successful conclusion in Japan, the lay judge system began last year. In an effort to smoothly introduce and establish the new system to Japanese society, several measures have been taken such as: not to use difficult legal terms in court proceedings; to conduct trial proceedings and organize PR activities in an easily comprehensible manner for lay judges and citizens; to improve law education for junior and senior high school students, etc. In such a nationwide attempt, those who have had the most trouble with explaining the legal system are law practitioners.

Similarly**,** in legal technical assistance, lawyers of other countries are not familiar with the Japanese system, and we need to explain it to them in an understandable way, and usually through interpreters because English is not spoken in the recipient countries. First, we need to make ourselves understood by interpreters who are fluent in Japanese, and it is naturally necessary to simplify using allegories without any difficult legal terms. As I have already experienced it in legal technical assistance, I did not feel uncomfortable at the least at the time of the introduction of the lay judge system. Though my experience with legal technical assistance focused on civil and commercial law, which seems to have nothing to do with the criminal procedure in which I am involved as a public prosecutor, such experience turned out to be very helpful in my career. You never know when something is going to come in handy.

IV. ASSISTANCE FIRST GIVEN IN THE FIELD OF CIVIL AND COMMERCIAL LAW, AND THEN EXPANDED TO OTHER AREAS

Legal technical assistance can never be imposed on other countries, and it cannot be implemented unless there is a request for support. Even with a request, we cannot deal with all matters only with the spirit mentioned in I. above. Especially when assistance is to be provided through ODA, whether or not Japan should accept the request must be decided, taking into consideration the target country, law field, available human resources within Japan, etc. It was perhaps because these conditions were met that Japanese legal assistance started for Vietnam in their legislative effort of the Civil Code.

No undertaking may be possible without the existence of advocates and their passion for it. Just

at that time, Vietnam was in a period of transition toward a market economy while maintaining socialism, and was undertaking the revision of their Civil Code. In 1994, Japanese legal assistance for Vietnam started with the organization of a study trip to Japan. Later, in 1999, upon request from Cambodia, Japan started its legislative support of the Civil Code and the Code of Civil Procedure for Cambodia. Since then, Japanese assistance has expanded to include such recipient countries as Laos, Mongolia, Indonesia, Uzbekistan, etc.

It made sense that Japanese assistance started with legislative support of the Civil Code. When a country attempts to make the transition to a market economy, understanding the basic meaning of a contract and transaction is important. It is said that civil code is the basic law (constitution) of a civil society, which is established under the premise that persons involved in transactions are free, independent and equal. When discussing freedom, independence and equality, we may tend to consider them as human rights - exclusive features of the constitution. Actually, however, they are not.

Conversely, if we intend to provide assistance to a developing country under the slogan of the "protection of human rights", the country may become cautious when associating the slogan with organ trafficking or freedom of expression. However, if our assistance targets the civil or commercial law field, it implies that freedom, independence and equality - the basic idea of civil and commercial law and the fundamental thought of human rights, will naturally permeate the nation. And if such effort is reinforced with the developing country's incentive to adopt a market economy or accession to the WTO, dissemination will be promoted more effectively.

Currently, the assistance target is not limited purely to civil and commercial law. In fact, fields related to the judicial system were also targeted from the beginning, because unless we get acquainted with the judicial system and its reality of the recipient country, assistance solely in their substantive law and individual procedural laws may not be as fruitful as expected. For example, while Vietnam was aiming to accede to the WTO, the majority of the tremendous number of questions from WTO member countries was about the Vietnamese judicial system. The situation in other developing countries was not much different and it was quite natural that Japanese assistance was directed to court precedents, precedent publication system, judgment writing, etc. This fact is very significant in the way that assistance increases the predictability of law and judicial resolution in the country concerned. It is more natural that the scope of assistance has expanded to cover settlement, conciliation, the alternative dispute resolution system (ADR), etc. It may be considered that such assistance will contribute to the attainment of the ultimate goal of establishing the "rule of law" as a whole in the recipient country.

V. WHAT IS IMPORTANT IN LEGAL TECHNICAL ASSISTANCE?

The "rule of law" comes from common law. Civil law comes from Western developed countries.

Can Japan and its lawyers, which learnt law from both legal systems, contribute to developing countries by taking the initiative ahead of the home-ground countries of the major two legal systems? It is quite natural that you may come up with such a question.

On the other hand, how much civil law do lawyers from common law countries know, and vice versa? Moreover, how much are Westerners familiar with Asian culture, society, ideas and senses?

As a matter of fact, it is said that there is no other country like Japan where so many scholars study and write books about law and legal systems of other countries. Since "something natural may not be transmitted", there must be a lot of things that are quite natural for lawyers of the home-ground countries of civil and common law that cannot be transmitted to others. In the case of Japanese lawyers, in contrast, they have introduced the two major legal systems into Japan, an Asian country with a different culture from their home-ground countries, by clarifying their doubts about, and comparing both systems. Because of this historical background, there are certain matters that only Japan can transmit to developing countries. If you do not know something, just open books written by our predecessors and think with your head. That way, you may find answers to almost any questions. You don't need to be embarrassed because a proposal, not imposition, of third alternatives may certainly be useful for developing countries in Asia.

What should be noted is, in the same way as, or more than in other fields, the development of human resources is important in the legal field. Japan has also had the same problem. In the Meiji era, Japan quickly built the necessary infrastructure for courts and the Ministry of Justice, with similar appearances to those in Western countries, and translated law of Western countries to establish similar law and legal system. However, it was difficult to foster lawyers, and we are still struggling to solve this problem. This means that, developing countries will surely follow the same path as Japan, and so it is more important to focus on human resource development in our assistance. It was from this viewpoint of capacity-building that we have provided legislative assistance, not just by drafting law for them, but in the form of a joint study with the recipient country,

Such capacity-building assistance requires long-term activities and will not achieve results in a few years. However, these days there is a tendency to seek only good evaluations of assistance activities. Establishing goals and activities, analysis and evaluations of assistance are certainly important, but if we are too committed to the achievement of numerical targets, we may run the risk of missing and misjudging the essential goal of assistance.

In this respect, Boisonnade is a good example to show how long-term endeavor is important. He is still admired in Japan because he stayed in Japan for about 23 years to devote himself to developing lawyers in this country.

The necessity of long-term commitment is not limited to human resource development. For example, it has been more than 60 years that the equality of the sexes has been set forth in the Constitution of Japan. However, in reality the "appointment of women" and "gender equality" are still being sought in this country. Law cannot penetrate into society and be realized so easily.

Therefore, we cannot hastily require the recipient country to produce results.

Here, I would like to present an essay, "*Houritsu Jikan (*Current Legal Perspectives)", written by Dr. SUEHIRO Izutaro. In the first section of this essay, the author said that it is not always good for a judge to reach a conclusion rapidly in court proceedings. It is easy to resolve a dispute straightaway in accordance with law, but it is sometimes recommended to prolong the proceedings in order to reach an amicable resolution, and in the proceedings to be prolonged, it is also necessary to encourage parties concerned to reach a settlement. Since legal technical assistance requires a long-term effort and also the creation of opportunities for self-help by the recipient country, the purport of the above-mentioned essay may also apply to legal technical assistance.

It is a matter of course that legal technical assistance may not proceed as expected because it depends on the recipient country. If an ideal result you expect in legal technical assistance is given 100 points, it may be necessary to be so tolerant as to consider that 50 points is the perfect score because half of the result is subject to the recipient country, and if you get 40 out of 50 points, it can be deemed a success.

If we provide assistance to developing countries with such an easy-going attitude, we may gradually build a closer relationship of trust with them, which will eventually help build a good partnership in the future when they are not in need of our assistance. When this is finally achieved, the regional, social and economic relationship among the recipient country and its neighboring countries will be established, and this will ultimately benefit Japan.

VI. CONCLUSION

The fact that you can talk about law is a proof of a stable society and also a proof of peace. As disputes are resolved verbally through legal procedure and based on evidence, it is much more peaceful than resolution by force. Requests for legal technical assistance by developing countries indicate their intention to resolve disputes not by force but peacefully based on law. Thus, it can be considered that cooperating with those countries embodies the spirit prescribed in the preamble of the Constitution of Japan.

What use can it be to think about a career path when conducting such meaningful activities? I understand such a concern, but actually the world of legal technical assistance is not so mature as to offer a career path to people involved therein. Rather, at the present stage lawyers are expected to create their own career path in this world. If you do your utmost in the field of legal technical assistance, which is open in front of you, you will eventually discover your own way. In short, it embodies the idea of planned happenstance. Currently human resources with such an attitude are sought in Japan, and this may be, in fact, the biggest challenge we face.

A COMPARATIVE STUDY ON LEGAL EDUCATION AND TRAINING – THE AUSTRALIAN WAY AND THE JAPANESE WAY

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INTRODUCTION

In July 1999, the Justice System Reform Council (JSRC) was established by statute within the Cabinet Secretariat of the Japanese Government with the aim to consider the:

> fundamental measures necessary for justice reform and justice infrastructure arrangement … including the realization of a more accessible and user-friendly justice system, public participation in the justice system, redefinition of the legal profession and reinforcement of its function.[1]

The JSRC held discussions over a two-year period and in June 2001 presented its recommendations to the Cabinet.[2] The recommendations set down three fundamental and interrelated pillars of reform: one, construction of a justice system that meets public expectations by being easy to use, easy to understand, and reliable; two, reforming the legal profession supporting the justice system to enhance the quality and number of professionals; and three, establishing a popular base by introducing ways for the general public to participate in the legal system.[3]

Building on the JSRC's recommendations the "Program for Promoting Justice System Reform" was decided by the Cabinet in March 2002. One of the steps taken to bring about "reform of the judicial community to support the justice system" was the introduction of a new system to train judges, prosecutors and attorneys. The central concept of the new legal training system was supposedly to move beyond selecting people solely through the national bar examination, to a process of coordinating legal education, the new national bar examination (*shin shihou shiken*), and

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[1] Article 2 of the Law to Establish the Justice System Reform Council (No. 68 of 1999). This law is no longer in effect.

[2] 'Recommendations of the Justice System Reform Council: For a Justice System to Support Japan in the 21st Century', The Justice System Reform Council, 12 June 2001. <http://www.kantei.go.jp/foreign/policy/sihou/singikai/990612_e.html> (accessed 4 November 2010), hereinafter referred to as the 'Recommendations of the JSRC, 12 June 2001'.

[3] 'Recommendations of the JSRC, 12 June 2001', Ch. I, Pt. 3, Sec. 1.

the legal apprenticeship system.[4]

In answer to the question "How should we foster a legal profession rich in both quality and quantity, fit to support the justice system in the 21st century?" the JSRC acknowledged the existing system of legal education provided by law faculties (*hougakubu*) in Japanese universities. The JSRC stated that it could not be said "that law faculties and postgraduate schools have played a proper role in fostering the legal profession as a profession", and "thoroughly improving the undergraduate legal education" would not be sufficient to meet the goal of reforming the legal profession to enhance the quality and number of professionals.[5]

The JSRC recommended that the core of the new legal education system would be the establishment of law schools. As a result, an enormous change to legal education in Japan took place in April 2004 with the opening of 68 graduate law schools (*houkadaigakuin*),[6] offering students two or three year programs leading to the degree of "Doctor of Law (specialised occupation)".[7] A five-year (2006-10) transition period was provided for the new legal training system to completely replace the previous "exam based selection system" or old bar exam (*kyuu shihou shiken*), as it is referred to now.[8] Notwithstanding the long history of undergraduate law programs at Japanese universities there was no requirement for a candidate for the old bar exam to complete any formal legal education or graduate from university.[9] Primarily, only students who have graduated from law school will be eligible to sit the national bar exam from 2011.[10]

Legal education in Australia has not undergone the same large-scale changes over a short period of time as has been the case in Japan in the last six years, nonetheless changes have occurred. Perhaps the most obvious change is the increase in the number of law schools from 12 in 1987 to 32 in 2010. Given this expansion it is not surprising that there has been an increase in the number of student studying law, with students having diverse backgrounds, and a diverse range of career

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4 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 1.

5 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 1.

6 The Ministry of Education, Culture, Sports, Science, and Technology (MEXT) approved 68 educational institutions to open law schools in April 2004. An additional six educational institutions were later approved, and since April 2005 the total number of law schools has been 74. However, one law school announced in May 2010 that it would not be enrolling new students and would close once its current students graduate.

7 Students who have completed an undergraduate law degree may, subject to meeting the university's own admission requirements, enroll in a two year program, however, all other students must enroll in a three year program.

8 Candidates who passed the written exam (short answer and essays) but failed the oral exam in 2010 will have a final opportunity to re-sit the oral exam in April or May 2011.

9 Candidates who did not complete liberal arts study and obtain a bachelor's degree were required to take a preliminary examination to ensure they had a sufficient level of general knowledge and academic skills before they could take the legal components of the exam. Most candidates preparing for the old bar exam would in addition to their own study, attend a preparatory school (otherwise called a cram school) for the bar exam. With a pass rate of around two or three per cent before 2006 and no limit on the number of times a candidate could sit the exam a candidate may end up spending several years pursuing, but perhaps not achieving, their goal of passing the exam.

10 However, individuals who do not graduate from law school (for example if they do not have the financial resources to attend, or they have sufficient practical experience to obviate the need to attend) will be eligible to sit the national bar examination if they pass a preliminary examination to evaluate their basic knowledge and understanding of the law. 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 3(3).

directions after they graduate. Other changes in legal education since the 1990s include: an expansion in the type of combined / dual degrees offered by universities; the development of graduate programs and more recently the move by some law schools to eliminate their undergraduate law programs and only offer graduate programs; and an increased focus on the formal teaching of practical legal and/or generic skills, in addition to traditional analysis of legal rules and principles.[11]

The effects of the changes to legal education in Japan are still unfolding. The current situation and prospects of the graduate professional law school system has been the subject of numerous articles, seminars and the like by scholars, attorneys and other commentators both in and outside of Japan.[12] This is one area of Japan's justice system reforms that will likely continue to be a major area of focus for some time in the future. However, I share the same view as at least one other scholar that the result of the intense focus on Japan's law schools "has been the deemphasising of undergraduate legal education", which is a mistake and that "law faculties are still the dominant place of legal education" in Japan.[13] It is for these reasons and that my involvement with legal education in Japan is at the undergraduate level that this article will primarily focus on developments in undergraduate legal education.

In this article I will give a brief outline of the background and recent developments in legal education at universities in Japan and Australia. In addition, I describe an innovative legal education program that was established in Japan and brings together students studying law in Japan and Australia.

I. UNDERGRADUATE LEGAL EDUCATION IN JAPAN

As of 2000, there were around 93 universities in Japan that had a law faculty or other law program. In 2000, in total there were about 45,000 students enrolled in each of the four years of these undergraduate law programs.[14] By comparison, in fiscal 2009 at Japan's 74 law schools there were 14,200 graduate students enrolled.[15] In September 2010, an advisory panel of the Central Council

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[11] *Highlights of AUTC's Learning Outcomes and Curriculum Development in Law Report*, Australian Learning and Teaching Council, 2009.

[12] For example, the *International Conference on Legal Education Reform: Reflections and Perspectives*, Taipei, 16-17 September 2005 – papers in *Wisconsin International Law Journal* 24(1), 131-222; Mayumi Saegusa 'Why the Japanese Law School System was Established: the Mechanisms of Institutional Creation' presented at the annual meeting of the *American Sociological Association*, Montreal, 11 August 2006 <http://www.allacademic.com/meta/p103976_index.html>; Colin Jones, 'Japan's New Law Schools: The Story So Far', *ZJapanR/J.Japan.L*, 14(27) 248-56; and a panel presentation 'Legal Education in Japan: To be or not to be' at the *Inaugural East Asian Law and Society Conference*, Hong Kong, 5-6 February 2010.

[13] Conference panel presentation 'Beyond Borders in the Classroom: The Possibility of Transnational Legal Education' Kyoto, 10 February 2007 as reported in 25 *Ritsumeikan Law Review* (2008) 183 at 194. See also, Kichimoto Asaka 'Common Law Education in Japan: Past, Present, and Future' 39 *Victoria University of Wellington Law Review* (2008) 747 at 753.

[14] "Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 2(5).

[15] < www.mext.go.jp/component/b_menu/other/__icsFiles/afieldfile/2010/05/28/1293988_09.xls > (accessed 22 November 2010). In fiscal 2010, 4,122 new students enrolled, which was a drop from the peak number of 5,784 new

for Education made an interim proposal to reduce the number of law school students. The stated aim of this proposal was to improve the quality of judicial education.[16] This proposal together with a number of other factors impacting on the declining pass rate of the new national bar examination, means that it is highly likely that the number of students enrolled at law schools will continue to decrease rather than increase.[17] The fact that there are vastly more students studying at law faculties than at graduate law schools demonstrates why law faculties are still the dominant place of, and an important place for legal education in Japan.

Legal education at law faculties in Japanese universities has existed since the late nineteenth century.[18] A feature of law faculties is that they were initially established with the aim of educating civil servants rather than lawyers. As a consequence, many law faculties comprise three departments – private law, public law and politics. The primary function of undergraduate law programs is to provide people planning a career for example in government or business with a certain level of legal education, rather than to provide professional training for individuals wanting a career as a judge, prosecutor, or attorney.[19] Many students who enter an undergraduate law program have no intention to become a judge, prosecutor, or attorney. On graduating many will establish a career in areas with no obvious connection to the law.

Generally, an undergraduate law degree requires four years of study. However, many students aim to complete most of the credits required to graduate by the end of their third academic year. One reason for this is that undergraduate students usually begin job hunting in the second semester of their third year of university. Job hunting is nearly a full-time occupation for senior students.[20] Other students, who demonstrate outstanding academic potential as an undergraduate, may commence graduate studies (for example, a masters degree, or enter law school) in their fourth year.

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students that enrolled in fiscal 2006,「法科大学院 入学者選抜実施状況」(Houkadaigakuin Nyuugakusya Sembatsu Jisshi Joukyou)['Status of law school admissions', 10 May 2010] <http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/012/siryo/__icsFiles/afieldfile/2010/09/07/1296855_2.pdf> (accessed 21 November 2010).
「平成 18 年度法科大学院入学者選抜実施状況の概要」(Heisei Juuhachinendo Houkadaigakuin Nyuugakusya Sembatsu Jisshi Joukyou no Gaiyou)['Summary of implementation of 2006 law school admissions', 15 May 2006] <http://www.mext.go.jp/b_menu/houdou/18/05/06051209.htm> (accessed 21 November 2010).

[16] 'Panel calls for cut in number of law school students', Kyodo, 30 September 2010 <http://www.breitbart.com/article.php?id=D93GS2M00&show_article=1> (accessed 21 November 2010).

[17] The pass rate for the new national bar examination has decreased from a peak of 48.3 per cent in 2006 to 25.4 per cent in 2010, 「各法科大学院の改善状況に係る調査結果」(Kaku Houkadaigakuin no Kaizen Joukyou ni Kakaru Chousa Kekka) [`Findings related to educational improvements in each law school', 16 September 2010] <http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/012/siryo/__icsFiles/afieldfile/2010/10/25/1298023_5.pdf> (accessed 21 November 2010).

[18] The first university law faculty was established in 1877 at the University of Tokyo.

[19] 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 2(5). See also, Jiro Matsuda 'The Japanese Legal Training and Research Institute' 7(3) *The American Journal of Comparative Law* (1958), 366.

[20] 'Major trade firms mull pushing back start of recruitment process', The Mainichi Daily News, 7 October 2010 <http://mdn.mainichi.jp/mdnews/national/news/20101007p2g00m0dm007000c.html> (accessed 22 October 2010). See also, Masami Yamamoto 'Recruitment policy confusion / Firms divided over benefits of delaying job hiring process', Daily Yomiuri Online,1 November 2010 <http://www.yomiuri.co.jp/dy/business/T101031002297.htm> (accessed 17 November 2010).

Each university's law faculty has its own degree structure and requirements, and there is no nationally defined curriculum for undergraduate law programs. To be awarded a bachelor's degree in law a student will typically have to take a majority of credits from law or politics, and a minimum number of credits from an approved list of general subjects, usually to be taken in the first and second years. The general subjects usually include liberal arts subjects, English and other foreign languages, and in some cases subjects studied at another university, for example, if the student participates in a study abroad program. Some faculties require students to take compulsory law subjects, which may be in both fundamental as well as advanced areas of study.[21]

While it is not the primary focus of this paper, for completeness it is important to note that many university law faculties offer graduate programs. These programs lead to a master's degree or a doctoral degree. As stated above, professional degree programs offered by graduate law schools lead to the degree of "Doctor of Law (specialised occupation)". Traditionally, graduate law degree programs offered by a faculty of law have a strong theoretical focus as their primary aim was solely to foster future legal scholars, researchers, and law teachers.[22] Today, many students undertake graduate studies without any intention of embarking on an academic career, but rather to pursue in-depth study of an area that they found interesting as an undergraduate, and then to establish a career in the public or private sector.

Because of the large number of students in many law faculties, the form of teaching of compulsory undergraduate courses, and of popular courses is typically by way of large (possibly several hundred students) lecture classes with minimal student participation (if any).[23] However, small-sized, seminar courses are offered in the third and fourth years on a subject in the seminar course professor's area of expertise and interest.[24] These seminars are supposed to provide students with intensive academic training, and are an important opportunity to develop interpersonal relations with faculty members and other students. In addition, students with a common area of academic interest, or sharing a common goal often form a study group or "circle" to pursue their interest or goal outside of formal classes.

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[21] For an outline of the Faculty of Law course requirements at some universities see, Kansai University Faculty of Law <http://www.kansai-u.ac.jp/English/academics/fac_law.html>; Kyoto University Faculty of Law <http://edb.kulib.kyoto-u.ac.jp/bull/html/03_schools/grd03_law.html>; The University of Tokyo Faculty of Law < http://www.u-tokyo.ac.jp/res02/pdf/rules/studentaffairs/13hougakubu-kisoku-en.pdf>.

[22] For a discussion on the impact of the graduate professional law school system on academic track graduate law programs and legal scholarship in Japan, see Mark Levin, Stephine Jean Hembree, and Catherine Taschner 'Whither Legal Scholarship in Japan?' (1 February 2010). Available at SSRN <http://ssrn.com/abstract=1548075>.

[23] For the total number of students in each year see footnote 14 above and accompanying text. See also, Hisashi Aizawa 'Japanese Legal Education in Transition' 24(1) *Wisconsin International Law Journal* (2006) 131 at 138; Mark Levin, Stephine Jean Hembree, and Catherine Taschner 'Whither Legal Scholarship in Japan?' (1 February 2010). Available at SSRN <http://ssrn.com/abstract=1548075>.

[24] These courses are called "zemi", an abbreviation of the German pronunciation of seminar, and may have around 15 students, however, a popular zemi may have double this number of students.

Japanese university law professors have been described as heavily academically oriented, with little or no experience outside of the academic world.[25] There are few Japanese law professors teaching undergraduate courses that have qualified to practice as lawyers, prosecutors or judges.[26] A view, which may be uncharitable, on this situation expressed by Dr. SONOBE Itsuo, former Justice of the Supreme Court of Japan, is that "[i]n Japan, the academic world is completely separated from the practicing world. Scholars are like octopus (*tako*) living in a small trap (*tsubo*). They don't know the outside world. So the academic world is called octopus-trap (*tako-tsubo*) society".[27] In the context of expressing its recommendations about universities establishing graduate law schools,[28] the JSRC stated:

> … it is incumbent on universities with the intention of establishing law schools to make considerable efforts to change themselves by shifting their principle from the traditional one focusing on research and study to a new one truly focusing on education of students.[29]

While the focus of graduate law degree programs may be to foster future legal scholars, researchers, and law teachers, the absence of specific training for teaching combined with the prevalent view that professors are research scholars may, in some cases, mean that the importance of teaching law to undergraduate students is overlooked. One Japanese law professor noted that the attitude among professors is a source of dissatisfaction for students.[30] I suggest that factors such as the predominant pedagogy, the one-way lecture, and students' passiveness may be behind the dissatisfaction with undergraduate legal education in Japan.

While the JSRC's recommendations on legal education centered on the establishment of graduate professional law schools, the few references the Council made to law faculties seem unfavourable. The JSRC stated that "conventional legal education at universities" had been insufficient; lacking in both basic liberal arts education and specialised legal education. Further, the

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[25] Hisashi Aizawa "Japanese Legal Education in Transition" 24(1) *Wisconsin International Law Journal* (2006) 131 at 141; Mark Levin, Stephine Jean Hembree, and Catherine Taschner 'Whither Legal Scholarship in Japan?' (1 February 2010) fn. 11 and accompanying text. Available at SSRN <http://ssrn.com/abstract=1548075>.

[26] The JSRC recommended that "practitioner-teachers" should form an important part of the teaching staff at graduate law schools ('Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 2(2)e) The minimum standard requires that at least 20 per cent of full-time educators at law schools must have legal work experience (The Ministry of Education, Culture, Sports, Science and Technology (MEXT) "FY2003 White Paper on Education, Culture, Sports, Science and Technology" 2004, at 51), as a result law schools have hired serving and retired judges and prosecutors as well as lawyers, many of whom have no teaching experience.

[27] David O'Brien and Yasuo Ohkoshi 'Stifling Judicial Independence from Within: The Japanese Judiciary' in Peter Russell and David O'Brien (eds) *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World*, University of Virginia Press, 2001, 37 at 47.

[28] The JSRC's recommendations contemplated some law schools being established by institutions other than universities. 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 2(2)a. Of the 74 law schools at least one was established by an institution other than a university: Omiya Law School, is sponsored by the Daini Tokyo Bar Association and financed by one of Japan's private education corporations.

[29] 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 2(2)a.

[30] Hisashi Aizawa "Japanese Legal Education in Transition" 24(1) *Wisconsin International Law Journal* (2006) 131 at 141.

JSRC stated that legal education provided by university faculties of law had failed to perform "a proper role in fostering the legal profession as a profession".[31] However, this was never the primary role of law faculties but rather that of the now one-year training course for legal apprentices at the Legal Training and Research Institute of the Supreme Court and, perhaps by default, the preparatory schools specialising in teaching candidates how to succeed in taking the national bar examination.[32]

Given that one main area of focus of the JSRC was reform of legal education, and given the significant changes the Council's recommendations would bring to the system of legal education it is surprising that it did not make any clear recommendations on the future role of law faculties.[33] Not surprisingly there was no recommendation to abolish existing law faculties.[34] In the changed environment of legal education in Japan where does this leave university law faculties?

The JSRC said that the role of university law faculties would remain the same: to produce graduates who will pursue a legal career and careers in various other areas of society. Further, as a result of the introduction of professional graduate law schools the JSRC expected undergraduate legal education to become more energised as universities divide educational roles between law faculties and law schools, or offer fundamental legal education and introduce a 'sub-major system' to give undergraduate students a broader education.[35] It is unclear how law faculties and law schools at the same university are working together to divide educational roles, especially as their roles are so different. Whether legal education in Japan has become more energised is a matter of contention. My observation of undergraduate legal education being invigorated is that it is largely dependent upon the motivation and efforts of individual faculty members.

In addition, the JSRC recommended that undergraduate legal education should allow students who demonstrate a high level of academic achievement to be able to reduce the number of years required to complete the degree requirements: the skip-grade system.[36] Universities have established and utilise the skip-grade system to allow students, who demonstrate outstanding academic potential,

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[31] 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 1.

[32] Legal apprentices are appointed by the Supreme Court of Japan from among those who have passed the national bar examination. The course for legal apprentices was originally a two-year course, it was reduced to 18 months in FY1999, and further reduced to a one-year course in FY2006. For information on the training of legal apprentices see <http://www.courts.go.jp/english/institute/institute.html#Apprentices>.

[33] On the JSRC's omission of other key areas of the justice system from significant scrutiny or specific reform, in particular the system through which the Japanese government manages its own litigation, see Luke Nottage and Stephen Green 'Who Defends Japan? Government Lawyers and Judicial System Reform in Japan' in Leon Wolff, Luke Nottage, and Kent Anderson (eds) *Who Judges Japan? Popular Participation in the Japanese Legal Process* Edward Elgar, Cheltenham, 2011.

[34] A professor of law at the University of Tokyo stated that the undergraduate law programs remain because they are steady revenue generators for universities (Karen Sloan 'China, India, Japan grapple with the quality of legal education' *National Law Journal*, 15 October 2010 <http://www.law.com/jsp/nlj/PubArticlePrinterFriendlyNLJ.jsp?id=1202473458433&slreturn=1&hbxlogin=1> (accessed 28 October 2010). A Japanese lawyer stated that perhaps the reason undergraduate law programs were not abolished was to avoid widespread job losses and a reduction in income for universities. Takahiro Saito "The Tragedy of Japanese legal Education: Japanese "American" Law Schools 24(1) *Wisconsin International Law Journal* (2006) 197 at fn 38.

[35] 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 2(5).

[36] 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 2(5).

to commence graduate studies after three years of undergraduate studies.

II. UNDERGRADUATE LEGAL EDUCATION IN AUSTRALIA

While I teach law to undergraduate students at Japanese universities, I completed my legal education and training at the Australian National University. It is not surprising that in the years that have passed since I graduated from university and qualified as a lawyer there have been substantial changes to legal education in Australia, but not on the scale of the changes that have occurred in Japan in the last six years.

The first Australian law schools were established in the mid-19th century.[37] By the 1930s law schools had been established at universities in the six state capital cities.[38] In the 1960s and 1970s the number of law schools increased from six to eleven. In 2010, 32 of the 39 universities in Australia have accredited law schools.[39] It is difficult to state the exact number of students who are studying law in Australia. However, each year about 7,000 students enroll in university law programs.[40] The Australian Law Students' Association, a national association comprising all law student societies and law students associations, states that it represents approximately 28,000 law students.[41]

Some factors which contributed to the growth in the number of Australian law schools in recent years include: the high level of student demand to study law; an overall increase in the number of universities, and a view by the new universities that a law school added prestige and would reinforce the university's status; and the growth in the popularity of double degree programs (law combined with a degree from another faculty, see further below).

Similar to a degree from a law faculty at a Japanese university, Australian law programs do not have as their sole aim preparing students who will pursue a career in legal practice. It is estimated that of all new students who enroll at university to study law, only half intend to practise law when they graduate.[42] University law degree programs have two dimensions: focused training for legal practice; and the broader pursuit of law as a general discipline.

Legal education in Australia teaches broad generic skills such as analysis, reasoning, problem-solving, and clear communication. These are skills that go beyond the legal context in

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[37] Law teaching was established by the Universities of Melbourne and Sydney in the 1850s.

[38] The names of the six state capital cities and, in parenthesis, the names of the respective states: Sydney (New South Wales), Melbourne (Victoria), Brisbane (Queensland), Perth (Western Australia); Adelaide (South Australia), and Hobart (Tasmania).

[39] The number of law schools in each state and territory (in order of total population of the state or territory from largest to smallest): NSW 9; Vic 6; Qld 6; WA 4; SA 3; Tas 1; the Australian Capital Territory 2; and the Northern Territory 1. Two universities are private institutions, and the remainder are public.

[40] Luke Slattery 'Law Deans Divided on Standards Proposal for Accreditation' (2008) 46(4) *NSW Law Society Journal*, 22.

[41] See, ALSA web site <http://www.alsa.net.au/about-alsa> (accessed 26 November 2010).

[42] Luke Slattery 'Law Deans Divided on Standards Proposal for Accreditation' (2008) 46(4) *NSW Law Society Journal*, 22.

which they are taught, and equip students for a wide range of careers. A degree in law is perceived to be a useful qualification that provides students with many employment opportunities other than in legal practice.

For students who study law with the view to it becoming the focus of their professional career, obtaining a law degree is the first step towards being licensed to work as a practising lawyer.[43] Under Australia's federal system of government, legal practitioners are regulated by each state and territory.[44] The admitting authority in each state and territory undertakes accreditation of all law schools in its jurisdiction. Each admitting authority implements the principles and practices that underlie the 'Uniform Admission Rules'.[45] Key aspects of the Uniform Admission Rules are the length of time required to complete a law degree, and the content covered in the degree program.

A number of compulsory core subjects and a range of elective subjects make up a degree program. The course structure and the range of elective subjects available for study are determined by each individual school. The knowledge requirements for a student to qualify as a legal practitioner requires completion of a course involving 11 areas of legal knowledge specified in the Uniform Admission Rules. The 11 areas of knowledge that must be included in an accredited law degree are: criminal law and procedure; torts; contracts; property (both real and personal property); equity (including trusts); company law; administrative law; Federal and State constitutional law; civil procedure; evidence; and ethics and professional responsibility professional conduct (including basic trust accounting).[46] The Uniform Admission Rules define the general content of each area of knowledge and leave law schools with some scope as to how the subject areas are integrated into the degree program. Perhaps a negative aspect of the Uniform Admission Rules is the limiting effect of the subject-matter coverage. That is the requirement to provide courses in these areas prevents greater diversity amongst law schools in Australia.

In addition to the 11 areas of required legal knowledge, a law school can set its own additional compulsory courses.[47] Law schools offer a range of elective subjects from which students may select courses to complete the required number of subjects. Generally, the range of elective subjects reflects the particular focus of each law school as represented by the skills and interest of its teaching

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[43] In Australia, "legal practitioner" is the contemporary name used to refer to either a barrister or solicitor, such professionals being similar to *bengoshi* (弁護士) or attorney-at-law in Japan.

[44] In February 2009 work to fully nationalise regulation of the legal profession in Australia commenced. A stated purpose of the reform is to simplify and harmonise regulation of the Australian legal profession and place its oversight under the control of a single national body. For information on the Council of Australian Governments National Legal Profession Reform, see <http://www.ag.gov.au/legalprofession>.

[45] The 'Uniform Admission Rules 2008', prepared by the Law Admissions Consultative Committee, are available at <http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=3043E5A9-1C23-CACD-2244-5630B0BFA046&siteName=lca>.

[46] The 'Uniform Admission Rules 2008', 'Schedule 1 Prescribed Areas of Knowledge', <http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=3043E5A9-1C23-CACD-2244-5630B0BFA046&siteName=lca>.

[47] For example, there are 15 compulsory courses set by the Australian National University College of Law see '2010 Undergraduate Handbook' Chapter 6 at 515 & 517 <http://www.anu.edu.au/sas/handbook/2010/07_CoL_2010.pdf>.

staff.[48] Examples of some additional subjects are: jurisprudence; international law; comparative law; comparative trade law; environmental law; tax law; and intellectual property law.

In general, it is possible to say that at an undergraduate level, the aim of most law degrees is to: teach fundamental principles of Australian law and the ability to apply these principles to factual situations; equip students with a knowledge of fundamental legal procedures; introduce students to practical skills such as legal research, legal writing, advocacy; to teach students to appreciate the role of law in society; understand and respect the ethical standards of the legal profession; and learn fundamental legal practice skills.

Law schools offer courses for undergraduate and graduate students, typically a Bachelor of Laws (LLB), or a Juris Doctor (JD). The undergraduate degree is a four to six year course which students can enter directly after graduating from high school.[49] Graduate law courses are typically for graduates who have a non-law bachelor's degree. These are three year courses that award a LLB (Graduate), or a JD.

A LLB degree is offered in a number of formats. One format is a four-year undergraduate programme. However, it is more common for students who wish to obtain a LLB degree either to do so concurrently while studying for a degree in another discipline, or to do so after having graduated with another degree. The reason for this is that in the practice of the law it is widely recognised that some knowledge of other disciplines is important.[50] Studying for a LLB degree and, at the same time, studying for a degree in another discipline is known as a combined, or double degree program. The other discipline studied could be a degree in any of liberal arts; commerce; economics; engineering; information technology; science; medicine or even music. A combined or double degree takes a minimum of five-years of full-time study to complete. Of the five-years of study law subjects typically take up three-years. On completion of the double degree program a student will graduate with a LLB degree and a degree from another faculty.

A recent addition to the range of degree program offered by Australian law schools is the graduate-level law qualification Juris Doctor (JD). This programme is based on the American Juris Doctor degree. Generally, this is a three-year program, although some law schools allow acceleration of study if students undertake subjects on an intensive basis.

In a significant development in legal education in Australia the University of Melbourne has moved to a system of only offering graduate level entry to study law. The University of Melbourne is the first Australian university to introduce a comprehensive graduate school model of education, and

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[48] For example, the University of Canberra states that the main areas of focus in its undergraduate law teaching are in commercial law and in Justice, Law and Society; and La Trobe University states it has a strong justice and global business law focus.

[49] Gaining a place in an undergraduate law course is a highly competitive process based on a student's overall academic achievement in the final year of senior high (secondary) school. Universities do not conduct their own entrance examinations, but in addition to academic performance law schools may use other criteria to select students.

[50] The JSRC referred to the need for Japan's legal profession to include a wide variety of people who have academic backgrounds other than in law, 'Recommendations of the JSRC, 12 June 2001', Ch. III, Pt. 2, Sec. 2(2)c.

this was done to align the University with U.S., European and Asian higher education and to give students highly transportable qualifications.[51] One other university has announced that it is moving to a professional pathway in 2013, requiring applicants to have completed an undergraduate degree. Selection into the new JD program will still be substantially based on demonstrated academic performance/achievement.[52]

When law programs were established most law teachers were initially part-time practising lawyers, who would give lectures when the obligations of their main work allowed them to. Today, law teachers are predominantly full-time academics who combine research, scholarship and teaching. Part-time practising lawyers still play an important role in law school teaching. There are two reasons for this. First, it fosters good relations and to exploit synergies between academia and the legal profession. Second, as law school budgets are insufficient to engage enough full-time staff. The combination of a large number of full-time law academics (approximately 1,000 in number) and the importance of the volume of research output in law school funding, has seen an increase in scholarly writing by Australian legal academic.

A Japanese lawyer who graduated from an Australian university with a LLB degree and qualified as a lawyer in Australia assessed the undergraduate legal program in Australia as follows: "[s]ince each course is well organized, highly standardized, and extremely challenging, only very patient students of high intellectual caliber can survive".[53]

I suggest that the Australian model of university legal education combining undergraduate and graduate programs as well as combined degree programs are just some of a number of positive features of legal education that could be considered by policy makers and university administrators who have responsibility for legal education in Japan.

III. AN INTERSECTION OF LEGALEDUCATION IN JAPAN AND AUSTRALIA

There are a number of recent positive developments in undergraduate legal education in Japan. One example is an annual competition that commenced in 2002: the Intercollegiate Negotiation Competition.[54] This two-day competition for university students, despite its name, consists of an arbitration round and a negotiation round, with a Japanese-language division and an English-language division.[55]

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[51] Paul Kelly 'At long last, the very model of a major university', *The Australian* 18 April 2007 <http://www.theaustralian.com.au/news/opinion/at-long-last-the-very-model-of-a-major-university/story-e6frg74x-1111113359964> (accessed 29 November 2010).

[52] The University of Western Australia "Faculty of Law: Course Pathways 2011" <http://www.law.uwa.edu.au/courses/undergrad/pathways2011> (accessed 29 November 2011).

[53] Takahiro Saito "The Tragedy of Japanese Legal Education: Japanese "American" Law Schools 24(1) *Wisconsin International Law Journal* (2006) 197 at 207.

[54] For details of the competition see < www.osipp.osaka-u.ac.jp/inc/index.html>.

[55] The INC is open to undergraduate and graduate students and, therefore, it is possible for students from professional graduate law schools to participate. However, from my knowledge no law schools have participated, probably as this

Teams of four or five students must analyse a lengthy set of facts and sequence of events which focuses on an international business transaction between two parties. Students have approximately two months to analyse the problems, research the law, prepare their written memorandum for the arbitrators (the judges for the competition are professors, lawyers, businesspeople, and, in the Japanese-language division, current and former judges), and practice for their oral presentations.

The major objectives of the steering committee in creating the competition were to encourage the spread of negotiation education and to improve student skills in negotiation and arbitration.[56] In 2002, the first year in which the INC was held, about 70 students from four universities participated. In 2010, the ninth year of the competition, about 270 students from 17 universities participated. This is a testament to the way that both students and professors have adopted the INC as an extremely valuable experiential learning opportunity.

While the INC was established in Japan, like the business transaction that is the subject of the arbitration and negotiation, this is an international competition. Since 2005 two Australian universities have sent a combined team in both the English-language division and the Japanese-language division. Overall, about two-thirds of the students participate in the Japanese-language division, with about one-third in the English-language division. Those participating in the English-language division are divided nearly evenly between Japanese students and foreign students, from a wide range of countries, enrolled either in undergraduate or graduate programs at the participating universities.

The opportunities and benefits that students can derive from participating in the INC are too numerous to list. However, some comments from professors, who are team advisors, and from students include that students experience working with people from different backgrounds and with different views. They need to learn to work together as a team which sometimes presents conflicts that students must resolve. Therefore, the competition promotes leadership and teamwork. Students learn about business etiquette, presentation skills, communication skills and negotiation strategies. Students learn about the law too, but as the INC is such a different learning experience to normal lectures students may not realise how much legal content they have actually learnt.

I see the INC as a very positive step to provide Japanese law students with interesting experiential learning opportunities that combine learning the law and learning practical skills. A number of Japanese universities have embraced participation in other law competitions as part of their undergraduate programs. For example, a small number of universities participate in the Vis Arbitral Moot, and the Red Cross International Humanitarian Law Moot. This situation gives me a sense that positive change is occurring in undergraduate legal education. However, I am not sure

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practical experiential learning opportunity does not assist law school students in their national bar examination preparations.

[56] The Steering Committee which established the INC was Professor Yoshiaki Nomura, Osaka University; Professor Noboru Kashiwagi, Chuo University; Professor Tetsuo Morishita, Sophia University; and Professors Shozo Ota and Daniel Foote, University of Tokyo.

whether such change can be attributed to the JSRC recommendations on the "vitalizing" undergraduate legal education.

Certainly, the advent of the professional graduate law school system in Japan has received a lot of attention. Law faculties offering undergraduate and graduate law programs were left with no new path which they had to follow. This may be an advantage as it allows law faculties to innovate and develop new programs to foster leaders in the private and public sectors, as well as legal professionals such as lawyers, judges and prosecutors.

I humbly suggest that there are aspects of Australian universities legal education programs which deserve close consideration, and that legal education at all levels is a vital element of bilateral legal exchanges between Japan and Australia.

"LAW TERRACE" - A NEW STEP TOWARDS BETTER ACCESS TO JUSTICE

TAKIZAWA Kazuhiro
Government Attorney
Japan Legal Support Centre

I. INTRODUCTION

Dear readers. I'm a staff member of the Japan Legal Support Centre (hereinafter referred to as "JLSC")[1]. I worked as a public prosecutor and a government attorney. When I was working for the government, I was in charge of drafting a bill which later became the Comprehensive Legal Support Act 2004 (hereinafter referred to as "CLSA2004") prescribing relevant matters to the JLSC. I am very pleased to have an opportunity to present the comprehensive legal support system in Japan and our organization, which is designated as the centre of the system. Please note that any opinions conveyed in this article are my personal opinion and do not represent the official views of the JLSC or the Japanese government.

II. BACKGROUND TO THE INTRODUCTION OF THE COMPREHENSIVE LEGAL SUPPORT SYSTEM

The base of the current Japanese legal system was established soon after World War II. While some parts of the system have been modified in accordance with economic and social environmental changes in Japan, the core has remained unchanged for more than 50 years.

Japanese society has undergone dramatic changes from a state where:

(1) numerous restrictions were imposed through a series of acts and laws to protect the people or companies; and
(2) the government played a certain role to prevent the people or companies from becoming involved in legal disputes,

to a state where deregulations were required for economic development and enhancement of freedom. Changes in Japanese society naturally required judicial system reform, because in a society where deregulations have been accomplished and the government has ceased to be the guard of the public, courts are the only public authorities that individuals and corporations can resort to for official

[1] The JLSC is commonly known as "Houterasu" in Japan. "Hou" means law and "terasu" means a terrace. The nickname represents JLSC's role, place like a terrace for legal disputes settlement. Japanese word "terasu" also means light as a verb, so the nickname can be read that "law lights our society", equal to "rule of law".

dispute resolution. Consequently, the judicial system needed to be user-friendly.

In 1999, the Judicial System Reform Council was established within the government to make necessary research and guidelines for the future judicial system. The council submitted its opinion to the then Prime Minister in June 2001, and the Cabinet made a decision to undertake the judicial system reform wherein the public opinion was to be reflected. In December 2001, the Judicial System Reform Promotion Headquarters, which was chaired by the Prime Minister and consisted of Ministers, was founded to draft bills concerning the judicial system reform. The Headquarters submitted several bills related to the Judicial System Reform to, and passed by, the National Diet. The CLSA 2004 is one such judicial system reform act, aiming to improve access to justice and to make the judicial system user-friendly.

With regard to the judicial system reform, several points were at issue during the early period (1999-2004), including:

1. Provision of Dispute Resolution Information

Information on judicial procedures for resolution of legal problems was not sufficiently provided. Although many public organizations, including courts, handle legal disputes, there was no mechanism for their collective-information provision on dispute resolution proceedings or access points. This posed great difficulties for individuals to obtain information on the proceedings or access points which would best suit their needs. Thus, there was a strong need to establish a certain institution which would collect and provide comprehensive information on various dispute resolution systems and access points to such systems to make them more accessible to people.

2. Legal Aid Services

In former times, civil legal aid services were provided by an incorporated foundation[2] which received a government subsidy[3]. It was expected that the number of civil legal aid users would increase in accordance with the improvement of the information provision system on procedures and access points for settlement of legal disputes. Naturally, to respond to the needs for civil legal aid, the amount of the subsidy needed to be increased. On the other hand, the subsidy system was criticized as there was no evaluation system to explain to tax payers how usefully the subsidy was spent. Being criticized by the public, the government introduced an independent administrative agency system to provide services which were indispensable for people's lives and which were not supplied by private persons or bodies. Independent administrative agencies are funded by the government and their operation efficiency and achievements are evaluated. If their performances are sub-standard or it is

[2] The foundation was established by members of the Japan Federation of Bar Associations in 1952.

[3] The government started to provide the subsidy to the foundation in 1958. The amount of the subsidy at that time was 10-million yen. In 1990, its amount exceeded 100-million yen for the first time, and in 2000, a memorial year of enactment of the Civil Legal Aid Act 2000, the amount surpassed one billion yen (reached about 1.8 billion yen). The Civil Legal Aid Act 2000 was replaced by the CLSA2004.

deemed their services can be replaced by the private sector, their businesses are partially or completely abolished. To adequately meet the needs for civil legal aid, it was necessary to establish a new body similar to an independent administrative agency.

3. Court-Appointed Defence Counsel for Suspects

Formerly, only the indicted had the right to court-appointed defence counsel and courts paid fees for this counsel. In response to this situation, some lawyers protested the necessity of introducing a system to assign court-appointed defence counsel to suspects as well to protect their rights. It was said that if such a system were introduced, the number of cases to be handled by court-appointed defence counsel would be ten times larger. Therefore, it was necessary to estimate the number of cases to be handled by court-appointed defence counsel and to make contracts with an appropriate number of lawyers nationwide to nominate as court-appointed defence counsel. It was deemed that a public body, rather than courts, was more suitable to undertake such work.

4. Dispatch of Lawyers in Rural Areas

In rural areas, the number of lawyers[4] to meet the existing demands for legal services was relatively small. It is thought that lawyers generally tend to practice law in urban areas, due to such reasons as: they expect more legal needs or more lucrative cases in urban areas and they tend to prefer a convenient lifestyle in urban areas. In fact, however, even in rural areas, there were more legal needs than expected and people had difficulties in finding lawyers. Some people had to travel a long distance to receive legal counselling in a big city. Thus, there was a need to establish a public body which would employ lawyers and dispatch them to rural areas to meet their legal needs.

5. Crime Victim-Supporting Systems

Although there existed several systems supporting crime victims, victims had difficulty in making use of these because the systems were operated separately and there existed no mechanism to provide overarching information on crime victim-supporting systems. Victims often asked to be given opportunities to observe criminal court procedures and to receive advice or explanation by a lawyer, and/or to file a civil case against the perpetrator under lawyer's advice. However, usually they had no access to information about lawyers and had no idea on how to find experienced lawyers willing to support them. Thus, there was a need to establish a public body to provide information on crime victim-supporting systems and introduce victims experienced lawyers at their requests.

4 There were about 16,000 lawyers ("*Bengoshi*" in Japanese) in 1996 but its number has gradually increased and reached 20,000 in 2003. Japan is divided into 203 areas over which district court branches have jurisdictions, but in 18 of them there was no lawyer and in 40 of them only one lawyer practiced law as of October 2003. The fact that there is only one lawyer means that contending two parties are unable to consult lawyers in the same area.

III. OUTLINE OF THE COMPREHENSIVE LEGAL SUPPORT SYSTEM AND THE JLSC

The CLSA 2004 provides basic principles to create a more user-friendly judicial system. It also designates the JLSC as the comprehensive legal support centre. The CLSA 2004 prescribes JLSC's five main businesses as follows:

(1) Providing information services;
(2) Providing civil legal aid services;
(3) Providing services related to court-appointed defence counsel;
(4) Providing legal services to areas which are under-served; and
(5) Providing victim-support services.

The JLSC is funded by the government for its operation. The JLSC was founded in April 2006 with a capital of 351 million yen invested by the government. It has one headquarter and 50 local offices corresponding to district courts. It also has 26 offices for areas with limited legal services. JLSC's chief executive officer serves as its president. The president is designated by the Minister of Justice in consideration of the Supreme Court's opinion. The president may designate four executive directors as the president's assistants. There are four executive directors as of September 2010. The CLSA2004 regulates that two inspectors shall be designated by the Minister of Justice for the JLSC.

For the fiscal year 2010, approximately 15.5 billion yen was allocated for services related to court-appointed defence counsel and almost the same amount for the other services. For the purpose of JLSC's efficient operation and maintaining the quality of its services, the CLSA2004 introduced an evaluation system for the JLSC. The JLSC's organization and its evaluation system were designed in reference to those of independent administrative agencies. The Minister of Justice set out mid-term objectives (one term being four years) to show the goals of JLSC's business operations in consideration of the Supreme Court's opinion and consultation result with the Minister of Finance. The JLSC is obliged to submit an annual business operation report to the Evaluation Committee[5] in the Ministry of Justice, and the committee evaluates JLSC's performance to make its operation better and more efficient.

IV. JLSC'S MAIN BUSINESSES

1. Information Provision Services

The JLSC provides useful information to encourage better use of legal procedures, including court proceedings, by the public. The JLSC also provides information on access points which individuals can contact to resolve their legal problems. The JLSC provides this information via

[5] The committee consists of 10 members, and the CLSA2004 regulates that one of them must be a judge recommended by the Supreme Court.

telephone and the internet. The JLSC also has a call centre to field questions from users. There were about 649,000 questions and answers given in the fiscal year 2009.

2. Civil Legal Aid Services

Civil legal aid services enable people with financial difficulties to hire lawyers when they want to use civil court procedures.

Japanese nationals and foreigners who reside in Japan lawfully are eligible to make use of JLSC's civil legal aid services. Financial eligibility is also required. For example, in the case of a person with no family, his or her monthly income shall be approximately less than 180,000 yen.

Initially, eligible users are able to consult a lawyer free of charge. The JLSC pay the consultant fee. If users need further aid from lawyers, the JLSC performs a merit test to check the nature of the case (to make clear aiding the case meets the purport of the Civil Legal Aid Services) and the probability of winning. Subsequently, users who pass the merit test will be funded by the JLSC when they hire lawyers to represent them at court or to draft documents to be submitted to courts[6]. The JLSC temporarily pays lawyers' fees for users, and users of the representation service and the document-drafting service have to repay to the JLSC the amount the JLSC paid for them. Users living on welfare can be exempt from paying back if they make a request to the JLSC.

There were about 237,000 users of legal consultation services, 101,000 users of the representation services, and 6,800 users of the document-drafting service in the fiscal year 2009.

3. Services Related to Court-Appointed Defence Counsel

In cases where those who are indicted or detained for criminal investigations are unable to hire lawyers due to financial difficulties, a court appoints defence counsel for them (court-appointed defence counsel)[7]. The JLSC nominates candidates for court-appointed defence counsel when courts require them and informs courts of them. The JLSC pays defence counsel's fees. When the indicted is sentenced guilty, he or she is obliged to pay his/her defence counsel's fees. However, a court may discharge him or her from payment of such fees after taking his/her financial situations into consideration.

The JLSC also nominates candidates for official attendants for juveniles in the juvenile trial procedure[8] and for court-appointed attorneys for victims in the criminal procedure[9]

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6 A lawyer "*Bengoshi*" can represent his or her client at any courts. A judicial scrivener, called "*Shihoushoshi*" in Japanese, is entitled to represent his or her client at a summary court which deals with a case whose objective values not more than 1.4 million yen. Judicial scriveners are also entitled to prepare documents to be submitted to courts for their clients.

7 In case of detained persons whose crimes are punishable by capital punishment, imprisonment for life or maximum imprisonment for more than three years, they are allowed to retain court-appointed defence counsel.

8 A juvenile's case is first examined at a family court and the family court decides whether a juvenile is punished through criminal procedure or not, examining all related matters at a juvenile trial, etc. If a juvenile who is 14 or older committed a serious crime (in Japan illegal behaviours by less than 14-year old juveniles are not regarded as crimes), family court may order a public prosecutor to attend a juvenile trial. In this case, a family court shall appoint an official attendant to defend the juvenile. When juveniles committed serious crimes and are detained in a juvenile detention facility, the family court may appoint an official attendant. If bereaved families of victims or

upon requests from courts.

In the fiscal year 2009, roughly 61,900 lawyers were assigned to act as court-appointed defence counsel for suspects, 74,700 lawyers to aid defendants, 550 lawyers to act as official attendants for juveniles, and 200 lawyers to support crime victims.

4. Services for Areas with Limited Legal Services

In some rural areas in Japan, as mentioned above, residents have difficulty in finding lawyers to consult or hire regarding their legal problems as few lawyers are available in those areas. The JLSC dispatches its member lawyers to such areas to meet their needs for legal services.

5. Victims support services

The JLSC provides information about crime victim-supporting systems, including information on the participation in criminal procedures at courts and on damage claim through civil procedures. It also provides information about the systems and experienced lawyers supporting victims. In the fiscal year 2009, the JLSC provided such information to crime victims on about 26,000 occasions, and introduced about 900 experienced lawyers to victims.

V. CHALLENGES FACING THE JLSC

Since 2006, the JLSC has been providing information about procedures useful to resolve legal disputes. It would at first be better for people to acquire the ability and knowledge necessary to avoid legal problems by understanding the justice and the legal system. Unfortunately, the general public have few opportunities to understand the justice and the legal system in the school education process. Especially after graduating from school, people have very few opportunities to receive law education. This is the main reason why people get involved in legal problems which could be avoided if they had the opportunity to learn about easy dispute resolution systems before problems become serious.

Some experts say the JLSC should play a role in the field of law-related education. The Minister of Justice set out the second mid-term objective in January 2010, and she ordered the JLSC to undertake law-related education nationwide as part of information services, in cooperation with relevant organizations.

In response thereto, the JLSC began considering how it can contribute in familiarizing the public with law and improve law-related education across the country. For that purpose, some JLSC local

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surviving victims of serious crimes, or offences committed by juveniles not less than 12 years old request the family court to allow them to observe juvenile trials at family courts, the courts shall provide attending lawyers with the opportunity to submit their opinion, and in case juveniles do not have attending lawyers, the courts shall appoint official attendants for them.

[9] Bereaved families of victims or survivors of serious crimes, such as murder or assault, can request courts to permit their participation in the criminal procedure. If courts permit, they are entitled to make actions regulated by the Code of Criminal Procedure, including asking questions to the accused and expressing their opinions in the procedure. They can entrust such actions to lawyers. If they have financial difficulties, the court shall appoint court-appointed attorneys for bereaved families of victims or surviving victims.

offices are planning to hold meetings with relevant organizations to discuss this issue.

Thank you very much for reading this article. It is my great pleasure if you have come to understand the key role of the JLSC and a part of the Japanese legal system.

III. ACTUAL

RESTART IN LAO PDR
– A NEW COOPERATION PROJECT –

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The National Flower of Laos
– Dok Cham Pah (Plumeria)

I. OUTLINE OF AND SITUATION IN LAO PDR

Laos is a land-locked, picturesque country in the center of the Indochina peninsula sharing borders with Thailand, Myanmar, China, Viet Nam and Cambodia. Laos, once a French protectorate together with Viet Nam and Cambodia (the French Indochina), gained independence in 1949, but was dragged into a long civil war until it finally became a new communist state in 1975 as Lao People's Democratic Republic. The political regime hasn't much changed since then, and Laos maintains a socialist system led by the one and only political party, the Lao Revolutionary Party. Naturally, the governance system very much resembles that of Viet Nam -- its "brother".

Laos is often described as being one of the most under-developed and poorest countries in the Asian region. Various statistical data indicates that this may be true. It is not a big country anyway. The territory is not so small, but it has only a population of approximately six million people, and even in the center of Vientiane, the state capital, there are not a great deal of fancy department stores or huge buildings, let alone Mc Donald's and Starbucks Coffee shops. But I would recommend you to visit Laos yourself. You will not sense the "poverty" or "underdevelopment" in this country at all, as indicated by such statistics. Laos seems to be a blessed gift of the Mother Mekong and is a really calm and beautiful country. Cities are clean enough with many trees and flowers on the side of the streets. People are extremely charming and polite, always joining their palms together (apparently

influenced by Theravada Buddhism) whenever they greet you, and warmly say "*sabaidee*" (which means, "Hello") with a shy smile. Once you encounter the richness of their culture, spirit and humanity, you will surely realize that "poverty" or "prosperity" cannot be measured by numbers. Laotians are quite gentle and quiet people – sometimes you have difficulty to make them speak up. In a seminar session with Vietnamese participants, you frequently have to tell them that you are hearing them "too well" and that they do not need to speak so loud. But with the Laotian people, you often have to ask them politely to speak up a little; otherwise, you may not hear them. I know one Japanese legal expert who seriously started considering that the international community should leave Laos as it is and should not pollute and torment them with what we call modern law – better designate the whole country as a World Heritage site and preserve it.


A beautiful Buddhist Temple in Louang Prabang

But the reality of globalization does not seem to like this idea, and Laos is also following the path of development in which inevitably the justice sector reform comes into question. In this area, Laos seems to be – with all due respect and no offence – truly lagging behind. Of course, no one is to blame. I am not a history scholar, but I suspect that the development of law in Laos was hindered by several elements, possibly by the colonial policy of the French which paid less attention to the social development of Laos and the following Indochina conflict which gave Laotians no chance or time to thoroughly consider how to build a modern legal and judicial system in tranquility. After reaching peace in 1975, they had time to build its own legal system – and Laos did so, with the help of its brother, Viet Nam. However, only one decade later, Laos also had to start the reform – the "New Thoughts" ("*Chintanakhan Mai*") policy, a Laotian version of the Vietnamese "*Doi Moi*" – which required it to undergo a fundamental change in many concepts relating to law. With the absolutely insufficient human resource in the field of law and much less experience than Viet Nam as well as some differences in cultural background (reading habit, for example), Laos seems to have had difficulties in understanding and customizing modern law. This, in the author's view, may have been behind the poor development of the justice sector, especially in the theoretical aspect. And, most importantly, Laos did not receive as much help in this sector from the outside world as its neighbors like Viet Nam or Cambodia, which may be another factor causing the slow legal and judicial reform process in Lao PDR. Even now, there seems to exist only three active donors for the justice sector in Laos: the UNDP, the UNICRI supported by Luxembourg (which succeeded the precious efforts exerted by Sweden for more than 12 years until 2008), and the Japan International Cooperation Agency (JICA). Meanwhile in Viet Nam some sixty big and small sized donors are working.

II. JAPAN'S EXPERIENCE WITH LAO PDR

It was in 1999 when the Ministry of Justice, upon request by JICA, organized the first training course for Laotian officials. Since then, a total of 192 Laotian legal officers and professionals have taken part in training courses held in Japan.

Meanwhile, realizing the necessity to render more comprehensive assistance to improve the capacity of Laotian legal professionals in the state sector, JICA, upon request from the Laotian Government and after a series of close consultation with the ICD and Nagoya University, decided to launch a legal technical assistance project in Vientiane in 2003, for the purpose of strengthening institutional capacity of the legal and judicial authorities in order to enhance legal knowledge and practice of legal and judicial officers. In the background of this decision was the fact that, after some research and surveys on the reality of the Laotian legal and judicial system and practice, it became apparent that although Laos was eagerly making efforts to develop its laws and legal system for the purpose of adapting itself to the socialist-oriented market economy system under the "New Thoughts" policy adopted way back in 1986, legislative drafting and examination of bills in the legislature was very ineffective and inefficient. Moreover, the legal and judicial sector was suffering not only the absolute insufficiency of human resources but also a lack of adequate learning materials such as handbooks or manuals which could be used as reference by judges or prosecutors in their performance of daily duties.

Thus, the first project was expected to produce the following five outputs:

(i) Textbooks on civil law and commercial law, and a law dictionary (lexicon) for legal officers and judiciary personnel;
(ii) Law database for central authorities;
(iii) A prosecutors' manual
(iv) A judgment writing manual; and
(v) The number of lecturers with experience of teaching civil and commercial law would increase.

In order to effectively implement the project, the ICD continually sent its members to Vientiane as JICA Long-Term Experts to work in close cooperation with Laotian counterparts, the Ministry of Justice, the Supreme People's Court, and the Office of the Supreme People's Prosecutors. In addition, the MOJ and the ICD repeatedly conducted training courses for Laotian officials in Japan, fourteen courses in total, until November 2006, including ones organized before the launching of the first project.

The result of this three-year project with a one-year period of extension for the dissemination of project outputs seemed to be fairly satisfactory. Still, the effectiveness and impact of the project activities and outputs remained unclear. Everyone involved in the cooperation activities for Laos knew that that project was only a tiny step forward – just the beginning. There was still a long way to

go.

However, the Japanese side did not immediately move to start another cooperation program or project. Except for Nagoya University which continuously received a number of Laotian legal officers, judges, and prosecutors as LLM course students, no further action was taken. It may be attributable to several reasons, but the author suspects that the Japanese side at that time may have been, so to say, at a loss about how to further proceed. The progress of the project ironically made them realize that the level of under-development of Laotian law and legal system was much more serious than they had previously imagined, and it was quite difficult for those who were involved in cooperation with Laos to find out what an appropriate approach to an effective solution might be. Perhaps it was time for the Japanese side to stop and consider whether they were on the right track.

The ICD was very much concerned about the halt of cooperation with Laos. Although the pause for rethinking was understandable, there was a fear that Lao PDR would be left behind and a regional development gap could become something like an air pocket in Indochina which might ultimately lead to instability in the region. Even judging from scarce information resources, it seemed that there was much to do. A long interval could be quite detrimental to sound legal development, especially in a situation where support from other donors was also shrinking. It seemed that Laos attracted less attention from donors compared to its fast developing neighbors, Viet Nam and Cambodia, probably because of the size and volume of its economy. Something had to be done – but what and how? That was the question that the ICD faced.

III. IDENTIFICATION OF PROBLEMS AND ISSUES IN THE LAO LEGAL DEVELOPMENT

Bearing in mind that the preceding project was unable to fully reveal and cope with the problems and needs of the Laotian legal community despite of its ambitious activities and devoted effort, the ICD realized the necessity to obtain as much information as possible on the reality of the Laotian justice sector once again. However, the severe financial situation did not allow the ICD to repeatedly send its members to Laos for surveys and research. Thus, the ICD consulted the Center of Asian Legal Exchange (CALE) of Nagoya University, one of its domestic partners which is very active in the field of legal technical cooperation, and they kindly agreed to set up a workshop to be attended by ICD lecturers and CALE members as well as Laotian LLM course students who were originally judges, prosecutors and legal officials, as well as university lecturers. This was designed to hold regular meetings in Osaka and Nagoya to discuss, with the participation of JICA staff members as observers, about what was needed in Laos. Workshop sessions began in September 2008, and in the course of heavy discussions, various issues and problems in the Laotian justice sector were identified.

In parallel to this, almost simultaneously the Laotian side also made a move. The Laotian

Government, through the channel of the regular ODA request dialogue with Japan for the year 2009, officially requested the Japanese Government to help with the development of curricula as well as the improvement of teaching methodology at the three law colleges under the supervision of its Ministry of Justice located in Louang Prabang (Northern Area Law College), Vientiane (Central Area Law College) and Savannahket (Southern Area Law College). This request on one hand gave the ICD-CALE workshop a whip, and on the other hand gave JICA a justification for conducting a series of preliminary surveys as to the feasibility of a project which was formally requested by Laos.

Thus, while continuing the ICD-CALE workshop, the ICD participated in several research missions conducted by JICA with the main focus on legal education and fostering of legal officers, judges, and prosecutors, as well as private lawyers in Lao PDR. Though research missions were sent to Laos four times, the first two of them, which took place from January to February, and May 2009, respectively, were more meaningful in that they identified the prospective project target and formed the project basis.

As a result of the first research conducted in Vientiane, as well as in Louang Prabang and Savannahket, the mission found that in Laos there was a serious disconnection of practice from theory, and vice versa, possibly arising from insufficient knowledge of legal theory. The mission conducted a series of interviews with officials and lecturers of the courts, prosecution offices, law colleges and the National University, as well as the bar association and some foreign law firms and corporations doing business in Laos, and based on their explanations and comments, the mission realized that in Laos, theory is nothing but reading and memorizing the provisions of law, while practice is nothing but the experience handed down from one generation to another. University professors or training facility lecturers in their classrooms would do little more than reading aloud the provisions of law and urge students to learn those without giving any detailed explanations or comments thereon. At best, a small number of professors who had the chance to study abroad would teach what they had learned abroad, but those lecturers would not deal with Laotian law. Universities and training facilities frequently invite practitioners such as senior judges and prosecutors to give lectures, but they would tell students merely their experience in practice which was in most cases isolated from legal theory. In legal practice, insufficiently equipped with theory or legal information, officials and practitioners have to deal with daily tasks and duties completely relying on individual experiences, resulting in inconsistent application of law. Foreign firms expressed their frustration in dealing with the Laotian legal system – nothing was predictable; decisions may vary, depending on personal skills and knowledge as well as the mindset of each officer or legal professional in charge.

Accordingly, the mission came to a preliminary conclusion: the ultimate cause of such phenomenon most probably is attributed to the lack of Laotian legal theory which otherwise has to be the basis of practice and has to be taught in schools and training institutions. Without the development of legal theory and fundamental logic, Laotian law might have no future. It is not the issue of curricula or teaching methods at schools; neither is it the publication of handbooks itself.

What is really needed is legal theory and "legal mind", which form the cores of education, studies and practice.

In the past project, Japan might not have paid enough attention as to this very simple fact. Since, as a general rule, in technical cooperation projects it is always intended to generate concrete and tangible outputs, such as written laws, textbooks and the like, the past project may have focused too much on mere details and paid less attention to the huge essential problem the Laotian legal community has been facing. The Japanese side concluded that it might be high time to directly tackle this issue and let our Laotian friends mark the first small step towards building a true Laotian legal system embodying a firm legal theory, which is not French, German, English, American, Russian or Japanese, but Laotian in origin.

IV. FORMATION OF A NEW PROJECT

The problem seems very serious, but resources are limited. The key to the solution was how we could cope with this issue in the most effective and efficient way. The ICD recommended that JICA encourage our counterparts to review and thoroughly re-study their own laws and systems, and to record the process and results thereof in usable ways.

The ICD had the perception that in Laos, just like in Viet Nam in the early days, laws were merely "orders" coming from the top. Under such notions or concepts, the author suspected that, it was, and to some extent it is even now, quite common in socialist countries, that people are not supposed to question the raison d'etre of a law or its provision; people are meant to follow them and not allowed to interpret them. Orders are orders. There is nothing to be studied or analyzed. Now, those days seem to be gone, at least in Laos. So, why don't we together review the existing laws, study and analyze them, and utilize the results in practice, in the field of education, judicial practice as well as legislation work. And a good way to do this might be the compilation of comprehensive textbooks – not those which merely repeat the written provisions of law, but those which study, discuss, and analyze the law and explore the way how to reflect the fruits of studies and analyses in actual legal practice.

Doing that work with all stakeholders was another important issue. The scarce resources scattered in different institutions have to be gathered – "united we stand, divided we fall", don't we? As any development specialist who has worked in, say, a transition country, may well know that bad connection or communication between different governmental agencies or institutions is quite a hazard in tackling with a sector-wide issue, and the formation of fundamental legal theory or legal mind cannot be achieved in an environment where stakeholders do not cooperate with each other. It needs academic resources. It needs practical experience. It needs comparative law. It needs voices from citizens. And most importantly, theory has to be fed by practical experience and practice has to be equipped with firm theory as a backbone. A "chain reaction" of continuous mutual feedback is

indispensable to the sound development of basic theoretical studies which will lead to the reform and improvement of the entire justice sector in Lao PDR.

Eventually, the Japanese side came to the conclusion that it was not enough for Laos simply to implement the project as originally requested with only the three law colleges as project counterparts. Obviously involvement of more stakeholders was needed to make the project outputs or results accessible to everyone in the justice sector, including the academic circle. Thus, JICA and the ICD decided to make a counterproposal to the Laotian Government, asking them to consider including the Ministry of Justice itself, the Supreme People's Court, the Office of the Supreme People's Prosecutor, and the Law Faculty of the National University of Laos as counterparts, and change the proposed project to another with a purpose set at "*institutions and officials/lecturers in the legal and justice sector and legal education develop their basic institutional/individual capacity to make systematical studies on theories and practices of civil law, civil procedure law, and criminal procedure law, and to utilize studies and lessons learned in legal education, training and practice*". Although actual activities focus on the development of three comprehensive model textbooks on civil law, civil procedure law and criminal procedure law of Lao PDR, the textbooks themselves are only working materials. The real purpose lies in capacity development towards building a foundation for linking between theory and practice.

The Japanese mission returned to Vientiane with the abovementioned idea and resumed dialogues with Laotian stakeholders in May 2009. In the beginning, everyone was quite puzzled. I was able to see it in their expressions. Many of our prospective Laotian counterparts were feeling uneasy. The idea seemed to be too full-fledged. "Are we able to do that? We have never done such a project before and we are not sure how much work it requires." That was the first response from many officials. "Our institutions and agencies are not very much used to working together. Isn't it better to have several separate projects, one for each institution?" was another opinion. In fact, such a reaction was anticipated. After a series of thorough discussions, misunderstandings, worries, and anxieties were put aside and the Laotian side finally seemed to understand the point. Then, they gradually became enthusiastic about the plan. The basic idea was agreed upon by all prospective counterparts, and the details were further discussed and agreed upon during subsequent research missions.

After some more series of direct dialogues and workshops with the concerned Laotian officials and professors for the purpose of clarifying the nature of project activities and workloads, the final agreement in the form of "Records of Discussions" (RD) accompanied by a "Project Design Matrix" (PDM) was signed on 7th June 2010, which prescribed the overall design and plan of a four-year project named "Human Resource Development in the Legal Sector". Although this project appears to be on the surface just another textbook compilation work, it addresses sector-wide issues and interfaces with other improvement and reform efforts in the justice sector of Laos due to its nature. Moreover, it goes along with the sector-wide strategy of Laos adopted in September 2009, the

"*Master Plan on the Development of the Rule of Law in the Lao PDR towards the Year 2020*"

For the purpose of implementation of the project, JICA sent three Japanese experts to Vientiane in July 2010, one of them being an ICD member serving as the Chief Legal Advisor at the project office located at the Prosecutor's Training School under the Office of the Supreme People's Prosecutor. At the same time, in Japan, three Advisory Groups – civil law, civil procedure law and criminal procedure law - were established, comprised of prominent law professors, practitioners and ICD members in order to assist the project office as well as Laotian counterparts. These Advisory Groups will also frequently send its members to Laos for short-term seminars and surveys.

On the Laotian side, a large number of officials and lecturers are participating: 26 law college lecturers and officers from the Ministry of Justice; 11 judges and court officers from the Supreme People's Court; 8 prosecutors and officers from the Office of the Supreme People's Prosecutor; and 9 professors and lecturers from the Law Faculty of the National University of Laos. They will form groups in accordance with their expertise, and will tackle the first-ever task of building up a truly Laotian practice-annexed legal theory.

V. PROSPECTS

While the former Japanese project helped Laos to publish some textbooks and manuals, and the Swedish International Development Agency (SIDA) did tremendous work of compiling textbooks for the National University, the type of work required in the current project seems to be quite new for Laos. Naturally, as it is almost always the case with legal technical assistance programs and projects, the current project may also bump into obstacles and unforeseen problems.

However, it is my firm belief that Laos today is not the same Laos as it was a decade ago. During the research missions I took part in, I could see and feel the steady development of the capacity of our counterparts. Awareness as to the necessity of building up a firm foundation of legal theory and legal knowledge for the improvement of quality of legal and judicial work is rising. It is true that Laos has many problems in the legal sector. But their experience of working and making efforts to develop its own way of legal thinking and concepts will certainly contribute to taking further steps towards the building of a rule-of-law state which every Laotian now is longing to live in. The ICD is quite optimistic about it.

MY CONTACT WITH VIETNAM THROUGH LEGAL TECHNICAL ASSISTANCE

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I. AUTHOR'S BACKGROUND AND TRANSFER TO THE INTERNATIONAL COOPERATION DEPARTMENT

A. Request for the transfer to the International Cooperation Department

I used to work for the prosecution service and have 14-years experience in the field of investigations and public trials. At the Public Prosecutor Offices, a survey on requests for personnel transfer is conducted every year. Until the last survey, I had never requested a transfer to work outside the prosecution service. Just prior to the most recent survey, however, I chanced to read an article in a prosecution journal written by a former prosecutor who had been dispatched to Vietnam as a long-term legal advisor. The article greatly interested me, and inspired me to pursue the same type of work during my career. This was the underlying reason why I made a transfer request to the International Cooperation Department (ICD) of the Research and Training Institute, Ministry of Justice. To be honest, though, I made this request without having given it much thought and consequently held low expectations that my request would be approved.

After the survey, in January 2010, my superior sounded out my intentions for the transfer and my request was later approved. When I was informed of this, I felt happy, but even at that time I was unsure the kinds of duties I would be assigned at the ICD. I questioned if I was capable of performing my future assignments, but was able to convince myself that things would go well in the new position, and to focus on my prosecution duties at that time.

B. Necessity for More PR Activities

The fact that I was not sufficiently aware of the activities of the ICD indicates that (still to this day) they need more PR activities. The ICD has not fully achieved name-recognition even within the Ministry of Justice and the Public Prosecutors Offices, and there are few people in the general public who are familiar with its activities. I believe the same can be said about Japan's legal technical assistance. Legal technical assistance aims help developing countries to realize a society where its individuals can live with peace of mind, by providing assistance in their effort to draft laws and for human resource development. Legal technical assistance is significant not only for the international community at large, but also for Japan as it is closely

linked with global economic activities. Moreover, since government uses taxpayer money to improve legislation in other countries, it is naturally required to be accountable for its expenditures. Amid calls for reduction of government spending, I believe it is necessary for the government to put greater efforts into publicizing the significance of legal technical assistance within Japanese society, and to detail its activities in further promoting it. I must admit, though, that before I joined the ICD, I had not thought this way; nor was I familiar with legal technical assistance in general.

C. Transfer to the ICD

When finally, in March 2010, my transfer date was approaching, I made a courtesy call to the ICD. An experienced senior lecturer at the ICD told me I would be in charge of the project for Vietnam and that my job would be pretty challenging, but he hoped I would always perform my job well. The only thing I could do at that time was simply to respond to him cheerfully by saying, “Yes, sir.” I had not realized at that time how challenging my mission would be, however. Hearing the name “Vietnam,” I simply felt happy and thought it sounded interesting and wondered if I would have a change to take business trips there. It was only shortly after I took the new position that I realized how tough my mission would be.

II. MY FIRST ENCOUNTER WITH VIETNAM

A. First Day in the New Position

As of April 2010, I was transferred from the Tokyo District Public Prosecutors Office to the ICD located in the Osaka Nakanoshima National Government Building. I am originally from Osaka, but have worked in various places within Japan throughout my career and it was after a number of years that I went back to Osaka to take up this new post. On my first day in the new position, feeling happy to be back in my hometown and surrounded by the Osaka dialect, I took the train in to the office. I was given an orientation by the Director and a senior lecturer to learn the duties assigned to ICD lecturers.

B. Legal Technical Assistance Provided by the ICD

The ICD provides legal technical assistance (such as legislative support) to developing countries in Asia, in cooperation with the Japan International Cooperation Agency (JICA), an independent administrative agency. Its activities include: (i) dispatching long-term experts to recipient countries; (ii) inviting judicial officials or legal practitioners of recipient countries to Japan to attend training courses; (iii) dispatching short-term experts to local seminars; and (iv) participating in working groups in Japan. What impressed me most in the orientation was the belief that legal technical assistance should be provided not in an obtrusive manner but

instead with a respect for the ownership of recipient countries.

Legal technical assistance aims to create a situation where laws and legal systems take firm hold in recipient countries. If the goal is only to produce superficial results, it may suffice to simply explain Japanese laws and transplant them as they are, in recipient countries. However, such transplanted laws or legal systems will almost surely not function in those countries. Laws must be created reflecting cultural foundations, social backgrounds, and realities of its owner country to make them truly effective and useful for the people. Thus, if due attention is not paid to the actual situation of these countries and support is instead given in an obtrusive manner, assistance will not bear fruit and laws and systems formulated in such a manner will not be enforced properly. In addition, the intent to impose laws may provoke anger against the donor in recipient countries, thereby harming the relationships between countries. Thus, assistance must be given (in addition to taking their actual situations into consideration) in an interactive way through dialogue, listening to recipient countries' opinions, and respecting their ownership.

C. Legal Technical Assistance for Vietnam

1. Beginning of Assistance

As I was assigned to the project for Vietnam, I began to study the current and former projects as a first step by reading relevant documents and data kept in the ICD. It was not an easy task, partly because Vietnam is the country with which Japan has the longest history of legal technical assistance, and partly because the project for Vietnam has grown both in scale and quality.

Vietnam has promoted a market economy and a policy of opening itself to foreign investment since the adoption of the Doi Moi (Reform) Policy in 1986. As part of these efforts, it became necessary for the nation to improve its legislation in step with the progress of its market economy. Against this background, in 1992 Vietnam requested that Japan assist it in its effort for legal reform. In response to this request, in 1994, the Ministry of Justice of Japan began legal technical assistance for Vietnam by inviting Vietnamese judicial officials to a training course held in Japan. Accordingly, in 1996, JICA formalized assistance for Vietnam in the form of an ODA technical cooperation project, which has been carried out up to today.

2. The First Project

The first project, which began in 1996, was continued until Phase 3, with its scale and needs gradually expanded, and was succeeded by the current project, "Technical Cooperation for the Legal and Judicial System Reform[1]" in 2007. In the meantime, the scope of Japanese support has been expanded to include (in the course of improvement of Vietnamese

[1] For more information on the project, refer to http://www.jica.go.jp/vietnam/activities/project/06.html.

legislation) not only legislative support - which has been a core activity from the beginning - but also human capacity-development for proper operation of laws. As a result, efforts on both Japanese and Vietnamese sides have focused on capacity-building of legal professionals - such as judges and prosecutors. Legislative support has also covered a wide-range of laws, including: the Code of Civil Procedure, Revised Bankruptcy Law, Revised Civil Code, Civil Judgment Execution Law, State Compensation Law, etc. In addition, in the field of human resource-development, a prosecutors' manual and a judgment-writing manual were also compiled with Japanese assistance. Vietnamese involvement also expanded to include the Supreme People's Court, the Supreme People's Procuracy, and the Vietnam Bar Federation. This is in addition to the Ministry of Justice, the first counterpart organization.

3. Current Project

The current ongoing project focuses on the development of local personnel as well as organizational skills-development. Bac Ninh Province, located northwest of Hanoi, was selected as the pilot area for the project. Various activities, such as interviews and seminars for judicial officers and legal practitioners, have been held in the Province to identify practical problems. Results of analyses of these problems and review of their resolution methods were fed back to the concerned central agencies. The current project seeks to not only utilize these results to reinforce leadership capabilities of the central agencies over local agencies, but also to improve legislative procedures, etc. The method used in this project may be considered as being epoch-making in that it places importance on the improvement of legal practices in provincial areas. This project involves (in addition to the above-mentioned project counterparts) the People's Court, the People's Procuracy, legal agencies under the jurisdiction of the Ministry of Justice, and lawyers in the Province of Bac Ninh. Therefore, the increased number of target agencies and wide-ranging support activities require better mutual communication and coordination among the institutions concerned. This fact made it more difficult for me, a newcomer to the ICD, to grasp the overall picture of assistance to Vietnam.

Supreme People's Court

D. Study of Vietnamese Law and Vietnamese Systems

After reviewing the history and contents of Japanese legal technical assistance to Vietnam, I decided to learn fundamental grounding, i.e. Vietnamese laws and its legal systems. Furthermore, I found it necessary to re-study Japanese laws in the civil and commercial field, as Japanese assistance for Vietnam focuses on those fields. As a public prosecutor with over

10-years experience, I have extensive knowledge of Japanese criminal proceedings. On the contrary, my knowledge and practical experience in relation to civil and commercial laws is much weaker, as I engaged in only prosecution services and nearly 20 years have passed since I studied the Civil Code and the Commercial Code to pass the National Bar Examination. As these codes have been substantially revised since then, I found it necessary to re-study the laws. This being the case, I began to read law books in relation to those two Japanese codes, but contrary to my school days, I had difficulty understanding their contents and struggled against sleepiness while reading. Embarrassingly I had trouble even understanding Japanese laws, let alone Vietnamese laws. As a matter of course, I did not understand the Vietnamese language and therefore, I primarily read Japanese translations of Vietnamese laws. Luckily, Japanese translations of a few fundamental laws of Vietnam are available in the ICD, such as the Constitution, Civil Code, Criminal Code, Code of Civil Procedure and the Code of Criminal Procedure (including materials exclusively online). In the early days of Japanese assistance, there must naturally have been less materials available and it clearly was daunting work for our assistance pioneers to explore legal assistance for Vietnam.

E. Differences between Vietnamese and Japanese Laws

1. Governing System

As I studied Vietnamese laws, I was truly surprised at the big differences between Japanese and Vietnamese laws. To begin with, the separation of three branches of government is not adopted as the governing policy[2] in Vietnam. In Japan we tend to consider the separation of the three branches as an absolute pre-condition. State power is separated into the legislative, judicial, and executive branches to prevent abuse of power through a system of mutual checks and balances by the Diet, courts, and the Cabinet, which are responsible for each other. In Vietnam, however, the idea of separation of power has not been adopted. Instead, the democratic centralism system commonly found in socialist countries has been adopted, where all forms of state power belong to the people and the people exercise their power through representative at the National Assembly. While being based on the democratic centralism system, they hold the principle of the distribution of state power among national agencies as the fundamental principle of government. Thus, the fundamental principle of government itself is unlike that of Japan. Indeed, it may be wrong to consider which system is better or if Vietnam should adopt the principles held by Japan. The types of governing principles to adopt is purely an issue that concerns the sovereignty of the country in question and if a donor country interferes with this, it may be taken as foreign interference. In addition, it is myopic to assume we cannot provide support because the governing system of the

[2]See an article written by Mr.ITO, Fuminori in ICD NEWS (Japanese version) No. 28, pp.7.

recipient country is different from our own. Further, I believe support must be provided, given the governing system of the assisted country, to improve its legal system within the framework of such a system to ensure human rights and the rule of law.

2. Judicial System

With regard to the Vietnamese judicial system[3], it is a two-tier appellate system, in principle, with the people's joint judge-jury system, which marks a striking difference from the Japanese system. In Vietnam, juries selected from among citizens participate in the first-instance trial in the same capacity as judges. Juries are selected by the local assembly called the People's Council, at the recommendation of the Vietnam Fatherland Front, which is a public political union prescribed in the Constitution. This consists of political, social and economic organizations such as the Communist Party, the Vietnam General Confederation of Labor and the Vietnam Women's Union. Thus, the Vietnamese selection process is quite different from the Japanese lay judge random selection process, but it may serve as a useful reference for Japan's system from the perspective of the citizen participation system in the judicial process. In addition, in Vietnam there is a supervisory judgment system and a retrial system. The former system rectifies material errors in the application of laws, while the latter corrects the content of factual findings when new facts come to light. Japan also has the retrial system, but not the supervisory judgment system. I found this system originated from the French "Court de Cassation System", which is commonly found in socialist countries. The right to petition a supervisory judgment belongs to the Head of the Court or the Procuracy, but not to the parties concerned. Therefore, even if the concerned parties are satisfied with the judgment, it may be reversed through a petition filed by the Head of the Court or of the Procuracy. Furthermore, protestation against the decision rendered in the supervisory judgment system is permitted only within a limited period of time, and furthermore protestation is possible as many times as desired during this period. This may not only damage legal stability but may also ignore the multi-level appeal system, because the head of the first-instance court may protest the decision of the appellate court. The supervisory judgment system may be maintained due to the judicial situation in Vietnam, where the ability of judges varies and various court decisions contain material errors in the application of laws, making it necessary to rectify them.

3. Penal Code

Thirdly, the Penal Code of Vietnam[4] is also quite different from the Japanese Code in that criminal offenses and penalties are all listed in the code. In Japan, in addition to the Penal Code, there exists many special laws prescribing constituent elements of crimes and penalties,

[3]See the above article written by Mr. ITO, Fuminori in pp.14 - 15.
[4]See an article written by Mr. YAMASHITA, Terutoshi in ICD NEWS (Japanese version) No. 5, pp.127 -129.

which I myself took for granted. Article 2 of the Penal Code of Vietnam states, "Only a person who has committed a crime set forth in this Penal Code shall assume the criminal responsibility thereof," and criminal offenses and penalties are all required to be listed in the Criminal Code. This principle is supposedly common in penal codes in Socialist societies, which is a major difference from the Japanese system. Moreover, aggravation of sub-divided penalties is also different from the Penal Code of Japan. For example, when the crime committed is an injurious assault, according to the Japanese Code, the statutory penalty against the crime will be the same irrespective of the extent of injury. Furthermore, within the scope of the statutory provisions, the penalty is determined at the discretion of the judge. Conversely, the Vietnamese Criminal Code provides that the judgment of criminality and statutory penalty is determined according to the extent of the injury.

4. Civil Code[5]

(i) Property rights and obligatory rights

What surprised me most was the lack of distinction between property rights and obligatory rights. In Japan, law students first begin by learning the differences between property rights and obligatory rights. I had previously believed it would be a matter of course and a common practice throughout the world about distinguishing between property rights and obligatory rights. However, there seems to exist no such thinking in the Vietnamese Civil Code. This was initially a big surprise for me, but as I continued studying the Vietnamese Code, I came to believe it was not always possible to clearly distinguish property rights from obligatory rights.

Regardless, such important differences between Japanese and Vietnamese laws made me realize that, since our way of thinking is completely different, in order to effectively provide legal technical assistance, it is crucial to carefully listen to the opinions of the recipient country without taking our own systems for granted. In this example, unless the Japanese and Vietnamese sides understand each other's way of thinking in terms of the distinction between property rights and obligatory rights, they will end up not reaching any agreements.

(ii) Contracts:

The distinction between civil contracts and economic contracts is also a feature of the Vietnamese Civil Code. In the Vietnamese Civil Code, general contracts between individuals are distinguished from large-scale transactions conducted by state enterprises, etc., which is a feature of a planned-economy. In Japan, transactions are handled in the same way irrespective of their scales under the Civil Code. In the case of transactions between merchants, the

[5]See an article written by Ms. KADO, Kiyoe: "*Vetonamu 2005-nen Minpo [The 2005 Civil Code of Vietnam]*", Jurist No. 1406, pp. 89 – 91; one by Prof. MORISHIMA, Akio in ICD NEWS (Japanese version) No. 27, pp. 17; one by Prof. NOMURA, Toyohiro in ICD NEWS (Japanese version) No. 27, pp. 22 – 23; and one by Prof. MUTO, Shiro: "*Vetonamu Shihosho Chuzaiki [Business Diary in The Ministry Justice of Vietnam]*", Shinzansha Shuppan, pp. 154 - 166.

Commercial Law applies. However, the Vietnamese Civil Code distinguishes civil contracts from economic contracts, which is quite typical in socialism.

(iii) Household

Another difference to note is the concept of household. The Vietnamese Civil Code prescribes the household's capacity to hold rights. This may be attributed to their social background where each household engages in agriculture as a unit and shares production tools, etc. Though it is a typical Vietnamese concept based on traditional values, there are many issues to be solved in relation to these systems (as is often pointed out) such as the specification of the scope of a household and its decision-making method.

F. Vietnamese Language

While studying Vietnamese law, there were several parts I did not understand through the translated text. Hoping to read the original text some day, I began studying the Vietnamese language. Vietnam is a multi-ethnic country consisting of 54 ethnic groups, but the language spoken by the Kinh Tribe - which accounts for roughly 86% of the total population - is Vietnamese, the official language. Vietnamese seems straightforward to learn for Japanese people as it does not have verb conjugations or declension of adjectives, and its alphabet is based on English. However, the phonetic changes make it very difficult to learn, with the Hanoi dialect having six different tones and the southern-region having five. In addition, Vietnamese has 11 vowels while Japanese, five - all of which makes the language very difficult to pronounce. My Vietnamese teacher candidly told me I would be understood only by those familiar with the Japanese language, as my pronunciation was clearly lacking. Well, if they understood Japanese, I would not have to speak Vietnamese. There is still much to learn in my Vietnamese study.

III. JOINT RESEARCH WITH THE SUPREME PEOPLE'S PROCURACY OF VIETNAM

A. INTRODUCTION

I was assigned to coordinate the joint research with Vietnam, which was held in Japan from June 21 to 25, 2010. Since 2000, in parallel with the implementation of support activities for Vietnam, the Research and Training Institute (RTI) of the Ministry of Justice has annually conducted joint research with the Supreme People's Procuracy of Vietnam on Japan-Vietnam judicial systems, by inviting experts from the Procuracy. On the Japanese side, the purpose of this joint research is not only to promote personnel exchanges, but also to obtain as much information as possible on Vietnam to maximize assistance activities. It was my first meeting when a Vietnamese counterpart was invited to Japan and I was very much looking forward to

it. At the same time, however, as it was my first assignment in coordinating a type of seminar for Vietnamese officials, I was anxious whether it would end with success and whether the Vietnamese officials would be satisfied with the results, etc.

I went to Narita Airport with an administrative officer of the ICD to pick up two officials from the Vietnamese Procuracy. Although we had their photos in advance, we did not recognize them till they spoke to us. That was our first meeting.

B. VIETNAMESE PRESENTATIONS

In the beginning of the joint research, I first explained about the Japanese criminal procedure, and then the two experts of the Supreme People's Procuracy of Vietnam made presentations on the judicial system in Vietnam. After their presentations, an exchange of opinions was held with ICD lecturers. The joint research also included such activities as a courtesy call on the President of the RTI, observation of court proceedings at the Tokyo District Court, etc.


Supreme People's Procuracy

In the presentation[6] the experts explained the revision of the Vietnamese Code of Criminal Procedure and issues concerning the reform of the organization and activities of the Procuracy based on the judicial reform plan of Vietnam. According to their explanations, if my understanding is correct (I say so because it was interpreted from Vietnamese to Japanese), the main points of the revision of the Vietnamese Code of Criminal Procedure included:

(i) Selective introduction of adversary elements while maintaining the inquisitorial procedure;

(ii) Introduction of statutory provisions to strengthen defensive rights,

(iii) Enhancement and reinforcement of the supervisory function of the Procuracy over investigative agencies; and others.

1. Inquisitorial vs. Adversarial System

The Vietnamese Code of Criminal Procedure has adopted the inquisitorial system and the court has the authority to: initiate criminal actions (Article 104, paragraph 1 of the Vietnamese Code of Criminal Procedure), send records back to the Procuracy for supplementary investigations (Article 179 of the said Code), and make a ruling beyond the scope of prosecution by a prosecutor (Article196 of the said Code). At present, while the inquisitorial system is maintained in principle, it is under review on how to enable the court to make rulings from a neutral position based on the pleadings of parties concerned. The intended

[6]See an article written by this paper's author in ICD NEWS (Japanese version) No. 44, pp.79 and onwards.

method aims to selectively accept adversarial elements in accordance with the actual situation of Vietnam in order to enhance pleadings in public trials. The Japanese Code of Criminal Procedure, which has adopted the adversarial system, has partly introduced inquisitorial elements such as an *ex officio* examination of evidence (Article 298, paragraph 2 of the Japanese Code of Criminal Procedure) and the order of examination (Article 304, paragraph 1 of the said Code). It is difficult to determine which system is appropriate – the inquisitorial system or adversarial system – so it may be best to make use of both elements according to the actual situation of each country. In this regard, in light of the fact that in Vietnam the role played by defense counsel in criminal procedures is not necessarily sufficient in both qualitative and quantitative senses, the opinion that the inquisitorial system should be maintained seems dominant. In this context, in Vietnam, the enhancement and reinforcement of the supervision over investigative agencies by the Procuracy is currently being examined. In Japan as well, the relationships between the Public Prosecutors Offices and investigative agencies is often discussed. It is interesting that similar issues are discussed in both countries.

2. Governing Authority of the Procuracy of Vietnam

As for issues relating to the organization and activities of the Procuracy of Vietnam, the main points at issue, in my understanding, are:

(i) the position of the Procuracy in the national governing system;

(ii) the scope of the Procuracy's authority to supervise civil procedures; and

(iii) the revision of organizational framework, such as the foundation of the High Procuracy, etc.

In Japan, the administration of Public Prosecutors Offices is under the jurisdiction of the Ministry of Justice. In Vietnam, on the other hand, the Procuracy is a judicial organ prescribed in the Constitution and belongs directly to the National Assembly. Among diversified opinions about the position of the Procuracy in the Vietnamese national governing system, some argue that because public prosecution is a function of administrative authorities, the Procuracy should be placed under the control of the government. It remains strongly asserted that the Procuracy should belong directly to the National Assembly to ensure neutrality in the exercise of the prosecution authority and supervision of the state power.

3. Involvement of the Procuracy in Civil Proceedings

In addition, with regard to civil suits, the Procuracy of Vietnam previously had the authority to file lawsuits in certain cases - such as an infringement on social benefits - and was also allowed to attend civil trials. At present, prosecutors may attend civil trials only in cases where, for example, the party concerned has filed a complaint regarding information-gathering activities of the court, where a prosecutor has participated in the first trial of the case concerned, or where a prosecutor has lodged an objection to the court of first instance. In this regard, it is said that as a result of limiting the Procuracy's authority to

supervise civil suits, the number of wrongful court decisions has increased and therefore, prosecutors' authority over civil lawsuits should be restored. In Japan, the Public Prosecutors Office is not involved in civil suits except in a limited number of cases. Considering the number of civil cases, in the first place, there are too few public prosecutors to field them.

In Vietnam, the number of civil cases is expected to increase and their contents will become complicated in the future along with its economic development. It is a matter of concern whether the Procuracy can continue its involvement in civil cases if this trend continues.

4. Organizational Change of the Procuracy

As for the organizational framework of the Procuracy, corresponding to the organizational change of the courts that is under review, organizational restructuring of the Procuracy is also being considered to make the Procuracy be composed of: (i) the Supreme People's Procuracy; (ii) High People's Procuracies; (iii) Provincial People's Procuracies; and (iv) Regional People's Procuracies integrating the District People's Procuracies. I am aware there may be an opposing opinion against the integration of the District People's Procuracies as it would result in it being incompatible with the organization of investigative agencies, making it difficult to exercise the authority of prosecution in close relationship with investigative activities. In my opinion, since the establishment of High People's Procuracies and the integration of the District People's Procuracies into Regional People's Procuracies would be incompatible with the hierarchical structure of administrative organizations, such incompatibility would prevent government institutions from affecting prosecution services, leading to more independent exercise of the prosecution authority. The future progress of this issue deserves attention.

C. FINDINGS ABOUT VIETNAMESE PEOPLE

The presentations on the judicial system and judicial reform in Vietnam, given by two experts from the Supreme People's Procuracy of Vietnam, was quite intriguing. Over a couple of days with my counterparts, I was able to catch a glimpse of the traits of Vietnamese people. It may have been my counterparts' personal characteristics, but I was very much impressed by the very frank and cheerful Vietnamese personality.

In the case of Japanese people, when we pay a courtesy call, for example, we are often nervous or embarrassed and unable to speak normally. My two Vietnamese experts, however, were unabashed and created a friendly atmosphere through humor, etc. They asked about my family and also surprisingly questioned an ICD senior lecturer about his salary. In Japan, it is unusual to ask someone about his/her family (let alone salary) in a business setting. This quite impressed me, so I later asked my Vietnamese teacher if asking such things is common in Vietnam. She said that in Vietnam, it is quite natural to ask someone you have met for the first

time if they are married or have any children. Further, it is not uncommon to ask about a person's salary. I was very surprised to learn that topics of conversation can vary so much in different countries. My teacher added that when she is back in her hometown, a lady in her neighborhood often asks about her salary or whether she has a boyfriend. She says she doesn't mind it, but feels embarrassed when the lady gossips about her with their neighbors."

IV. FIRST BUSINESS TRIP TO HANOI

From July 18 to 28, 2010, I visited Hanoi for the first time as a member of the Research Team for Terminal Evaluation of the afore-mentioned "Technical Cooperation for the Legal and Judicial System Reform." JICA monitors the progress of projects by making an evaluation prior to the inception of projects, mid-term evaluation and terminal evaluation before completion of projects. As the above-project is scheduled to be completed in March 2011, the terminal evaluation was implemented in July 2010.

I had been to Ho Chi Minh City for sightseeing in 2003, but this was my first trip to Hanoi. Since Vietnam has achieved rapid economic growth in recent years, I was very much interested to know what kind of city Hanoi was.

A. Arrival in Hanoi

When I arrived at the airport, I encountered something typical in tropical countries. I had worked in Okinawa Prefecture before, which is located in the southernmost part of Japan and the smell in Vietnam was similar to, but stronger than that in Okinawa. I departed from Kansai International Airport in Osaka, Japan, but the other members of the Research Team left from Narita Airport in the Tokyo area, so we were to meet inside Hanoi Airport. I was told to wait at a coffee shop inside the airport, but not informed of the shop's name. In spite of my concern that I would not be able to meet my colleagues, it was quite easy as there was only one coffee shop near the arrival gate.

While we were heading for the center of Hanoi by car, I enjoyed seeing the city sights and noticed that there were many buildings with narrow frontage but considerable depth. That type of townscape reminded me of Kyoto, an ancient capital of Japan, because in Kyoto there are many older houses with similar structure. In Kyoto, because taxes were imposed according to the size of frontage, many buildings had narrow frontage and deep depth. I asked the interpreter about the buildings in Hanoi and he replied that they were built for the same reason as those of Kyoto. It was very interesting to know that the same tax system and countermeasures were taken in both Japan and Vietnam in spite of the distance between them.

The current Japanese legal technical assistance for Vietnam is often described as "having a narrow frontage, but considerable depth." This means that a focus is placed on specific

objects based on an agreement by both countries, and target laws of legislative support are limited so that no support will be provided in relation to other laws as a general rule[7]. Abstractly speaking, our support has a similar characteristic to the buildings in Hanoi.

One other thing I noticed looking around the city, that there were fewer bicycles and motorcycles than I had expected. According to a member of the delegation, who had lived in Hanoi, the number of cars had increased considerably in Hanoi and conversely there were fewer motorcyclists. Those cars, including many luxury cars, helped me appreciate the rapid economic growth in Vietnam.

B. Visit to the JICA Project Office

Before beginning the terminal evaluation, we had a meeting with JICA long-term experts who were dispatched to Hanoi for 2 to 3-year terms. Currently, there are three long-term experts - originally a prosecutor, a judge and a lawyer - and one operational coordination officer, who work in the Project Office, in addition to local staff members. Although the office has just one work room and reception area, the long-term experts were working in a friendly atmosphere sitting closely to each other.

As mentioned earlier, the current project covers many fields, and the Province of Bac Ninh has been designated as the pilot area. Thus, the long-term experts often need to make an approximately two–hour drive from Hanoi. It must be difficult, but all perform their duties admirably. Furthermore, the long-term experts are also studying Vietnamese and they were already reading documents in Vietnamese, which was very impressive to me. I often tried to speak to the charming local staff members in Vietnamese, but I may have been just a nuisance to them.

C. Visit to Counterpart Organizations

In order to conduct the interviews, the Research Team members, myself included, visited the following counterpart organizations:

- Ministry of Justice;
- Supreme People's Court;
- Supreme People's Procuracy;
- Vietnam Bar Federation;
- People's Court of the Province of Bac Ninh,
- People's Procuracy of the Province of Bac Ninh; and
- Civil Execution Bureau of the Province of Bac Ninh.


Ministry of Justice

[7]See an article written by Mr. MORINAGA, Taro in ICD NEWS (Japanese version) No. 37, pp.15.

These institutions all highly evaluated the current project and hoped for a subsequent project. The details of the terminal evaluation are scheduled to be published by JICA, so I refrain from discussing it in this paper. Instead, I would like to relate on my approximately ten-day stay.

June is the hottest month of the year in Hanoi, but it was still very hot at the end of July when we visited (Japan also seems to be getting hotter lately, perhaps due to the impact of global warming). It was especially hot in Japan this year, so I did not feel uncomfortable in Hanoi, though the sunlight was stronger there. As mentioned earlier, we visited several institutions and it was meaningful that local judicial organizations explained to us directly some actual problems arising in practice. Such information is very helpful to consider future support activities.

When we visited counterpart organizations in Bac Ninh Province, they thoughtfully held a reception for us, which we greatly enjoyed. In Vietnam, it is customary to offer drinks to guests, and I had difficulty keeping up with my generous hosts who quickly refilled my glass at every chance. I will be mindful of this before my next visit to Vietnam.

V. CLOSING

I have explained my career trajectory in the ICD. I would like to thank you for reading this until the end. My relationship with Vietnam will continue for some time and I am determined to make every effort to be familiar with Vietnamese law, its legal system, and culture and language, to make as significant contributions as possible to optimize Japanese legal technical assistance to Vietnam.

IV.PEOPLE

MY SMALL AUTOBIOGRAPHY IN THE CONTEXT OF LEGAL DEVELOPMENT COOPERATION

Dr. Kuong Teilee

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I. THE FIRST ENCOUNTER

My first encounter with legal development cooperation activities started in 1993 after I left UNTAC and assumed the position of Human Rights Assistant at the United Nations Center for Human Rights in Phnom Penh (later renamed the "Cambodia Office of the United Nations High Commissioner for Human Rights"). I worked in the Legal Assistance Unit of the Office and performed the duties of monitoring and coordinating cooperation activities for prison improvement, media freedom, ethnic minorities' rights and housing rights. Cambodia after the 1993 election was at a very exciting moment. There was a high expectation for changes to take place in the emerging land of peace, despite the fact that the Khmer Rouge forces remained causing problems in some areas and the emerging changes sometimes seemed too adventurous for the Cambodian nation-building process.

In my capacity as a human right assistant to the Legal Assistance Unit, I learnt a great deal through working with a team of very dynamic and enthusiastic foreign experts and human rights officers in some legislative assistance projects. We were in constant contacts with the National Assembly members, officials in the legislative and other departments of different ministries and officers of the growing non-governmental organizations (NGOs). Many legislative development projects were initiated by the government with the advice and assistance of the increasing number of foreign organizations and aid agencies operating in Cambodia. I then realized the growing complexity of legal development cooperation activities and felt the need to pursue further knowledge in law to catch up with the development in this work. I needed to get away from the center of the confusion and learn more about it from a distance. My plan after graduation was then very simple – return to work on legal development projects with the United Nations or other aid agencies in a more responsible position.

II. MY ADVENTURES IN JAPAN AND THE SECOND ENCOUNTER

Coincidentally enough, I got to know some Japanese scholars and practicing lawyers in Nagoya and Tokyo. They brought me to Japan on a three-month training program in late 1994. The program was supported by the United Nations Center for Regional Development (UNCRD), Nagoya University, the Japan Union for Civil Liberty and the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI). Japan then became an important candidate in my choice of the place for further education. After the three months in Japan, I returned to resume my position with the Human Rights Center and started looking for financial supports for my possible study in Japan. In 1996, I was granted a two-and-a-half year Aichi Prefecture scholarship for pursing a Master program at the Nagoya University. With some hesitation, I finally decided to quit the very exciting job in Phnom Penh and came to Nagoya as a graduate student at the Graduate School of International Development.

In my research, I was particularly interested in examining the issue of domestic implementation of international norms and treaties from the constitutional law perspective. Much beyond my original expectation, I did not return to Phnom Penh after two and a half years, but continued to the Ph. D. program at Nagoya University. Upon my graduation in 2002, Nagoya University offered me a position at the Center for Asian Legal Exchange (CALE) to work as a research fellow in legal assistance studies. This was the second opportunity for me to be connected to the world of legal development cooperation. By then, it had already been an exciting moment in Japan for a few years. Japanese people were debating about the question of Japan's engagement in legal development programs in Asian countries. I was subsequently promoted to the associate professorship two years later in 2004.

III. COMPARISON OF THE TWO ENCOUNTERS

My second encounter with legal development cooperation activities did not much resemble my first experience. They were different in two important ways. When I worked in Phnom Penh, I was a very practice-oriented man and did not consider at all any "grand" theories relevant to missions in the field. Theories merely seemed to serve the development of the brain and items of luxury. My work was driven by the belief in an actual mission which could only be achieved by making desirable changes in the field.

Also working exclusively in the field, I indeed performed two mutually interacting roles. Sometimes I belonged to a group of donors who only thought about what to give and what not to give. But on other occasions, I felt like being part of the recipient and tried to convince the donors to pay stronger attention to one issue and not others. This was not because I was a Cambodian working in Cambodia and felt any identity dilemma in my work. It was simply because I wanted my work to

be useful and that usefulness would sometimes be most appreciated if I considered it in the recipient's shoes.

On the other hand, my current work as a member of the academia in legal development cooperation has put me in a different position. I not only put myself between the donor and the recipient, but sometimes I tend to think as a third party, as if I had nothing to do at all with the claims made by the donor or the recipient. Usually, this phenomenon occurs in occasions when I start to think about things in a broad theoretical framework – something that transcends the interests of one party or another. It is a view which I was not able to appreciate well before working at my current position. My priority before was to see things change on the ground. But now I have learned to appreciate the fact that sometimes things cannot happen the way I expect it. My other mission is to find out why – just for the sake of knowing other aspects of the reality.

One more important point is that in those Phnom Penh years my main duty was to make things change. Any project that may be necessary only for hypothetical future changes did not interest me. I believed that the "no change" of the present could not bring change to the future. But my current position is different, if not quite the reverse. The efforts to secure an opportunity for future changes, despite their having to depart from the point of "no change", may be just as essential as the efforts to induce immediate changes. Changes need to be related positively or negatively to a certain aspect of continuities. In other words, all efforts have to walk on the fine line of balancing between "continuity" and "change". Not all changes can be more desirable than "no change". Reflecting on what I felt before coming to Japan, the confusions that I found with regard to legal development cooperation activities could therefore be now understood as the mere results of the many different approaches towards particular sets of combination between the "continuities" and the "changes". These sets of combination simply looked so different that they could not equally convince different eyes.

IV. MY CURRENT APPROACH TO LEGAL DEVELOPMENT COOPERATION

I have not given up my original belief that changes are needed. A change that stands still is a change that may become "no change". But there is a kind of change which is little apparent. It is nonetheless a change in its own right. Such is the change in the way people think and understand problems. For those who are truly committed to a scholarly life and have sufficient trust in the academic power, this statement will not be hard to accept, but the same may not be true to others. However, others are often most informed of what actually happens in the real world. The best way to move on in the current circumstance is perhaps to shorten the distance between this "one" and that "others". A common forum for all is just all the more important for me and everybody else together working to promote legal development cooperation in the world. It will surely bridge my past to my present in exploring with more appreciation the diversity of legal development projects.

E~MAIL

To : icdmoj@moj.go.jp
From : Cambodia

Construction is booming in Phnom Penh. In the area where I live, I always see many buildings under construction. Most are apartment buildings for the rich, or for foreigners, or commercial facilities. Buildings with over ten floors are also on the rise.

The construction sites where many workers get together are bustling with snack stalls in the morning and drink stalls in the daytime. All the stalls are for workers. I also see workers sleep in hammocks.

Cambodians work very hard. They work even during my lunch break so that buildings become higher and higher in seemingly an instant. I am really afraid that lightning will strike the workers in such high places because they do not stop working even in thunderstorms.

Buildings stand densely because earthquakes rarely occur in Phnom Penh. People do not seem to care about either sunshine or landscape. I heard that the right of sunlight (which is important in Japan) does not exist here. Cambodians may actually prefer something to block strong sunshine, which is typical in a tropical country. People do not care much about privacy either, maybe because glass mirrors are installed in various places.

A 14-story-high building was under construction just next to my apartment building. I was afraid that it was going to be an eyesore, but construction suddenly stopped. Though I am not sure about the details, I heard that my apartment owner made a complaint about the construction. I expected the construction never to resume, but sadly it started again after a month or so. Rumors say that the builder got support from some person of influence. It seems very “Cambodian” that support from an influential person really works. Anyway, I tried to convince myself that a high building next to my apartment was not so bad because it could block strong afternoon sunshine.

By the way, living in such a tall apartment building is unaffordable by any means for the common Cambodian people and may be beyond their wildest dream, because in Phnom Penh land price is rising sharply. Taller buildings, however, can let people realize their own economic growth, thereby be confident and motivated to make further progress like Japan used to be in its period of rapid economic growth.

To promote further progress, Cambodia needs to be a country where “honesty is the best policy”. I hope legal assistance can be of some help to this end.

(NISHIMURA Emiko, JICA’s Long-Term Expert in Cambodia)

E~MAIL

To : icdmoj@moj.go.jp
From : Nepal

CHHATHA PARBA (FESTIVAL)

"Chhatha Parba (Festival)" is a very important festival for the mid and eastern Tarai people of Nepal, where the author belongs to. Especially the Maithili and Bhojhpuri language speaking Nepalis celebrate this festival in a fabulous manner. They celebrate it for the blessings of Goddess "Chhatha" Devi for peace, progress, prosperity and the good health of all family members.

During this festival, devotees worship the Sun God, the setting Sun as Goddess Mai on the sixth day, and the rising Sun as Dinnanath on the seventh day. People believe that the Sun God relieves human sufferings such as disease, childlessness, death of loved ones, and contempt of others. The wish-fulfilling Sun God grants their wishes if they strictly follow the religious rituals while celebrating the "Chhatha" festival.

Some of the important food items made for offerings are "Thakuwa" (a fried bread), "Bhuswa" (sweet balls made of flour and sugar), and "Khir" (a type of porridge prepared from "gomadi" rice), and molasses made of sugarcane juice. To retain the sanctity of these items, devotees personally wash and cleanse wheat and "gomadi" rice (a special rice which bears grains in the stem of the plant and not the ears).

This three-day festival starts on the fifth day of the bright fortnight in the month of Kartik (October-November) according to the Vikram calendar, and continues on to the sixth and seventh days.

The fourth day of the festival, called "Nha-kha", literally means to eat the prescribed food only after a purification wash. So, the devotees spend the whole day on purification rituals.

The fifth day of the light fortnight is called "kharana". Devotees fast the whole day. They first offer food to the Sun God, and then offer it to family members as a blessing from the Sun God. Thereafter, they eat.

On the sixth day, devotees take a 24-hour fast. After making all the items mentioned above, the devotees begin making preparations for setting off to a pond or river early afternoon to make offerings to the Setting Sun. This is the sixth

day. They set out at about 4:00 P.M. Once there, they set all offerings on the bank of a pond or a river. Such offerings comprise, according to the pledge made to the Sun God in return for a special favor they had wished for, “Pancha Gabya” (five different beef items), “chandan” (a paste made of aromatic wood, rice, coconut, areca nuts and sesame seeds), “Thakuwa,” “Bhuswa”, sugarcane plant, ginger plant, turmeric plant and betel leaves. Devotees perform offerings such as “Chhiti”, “Supa”, Dagri”, “Haathi”, and “Koshiya”.

On the seventh day, devotees begin preparing for the offerings to the rising Sun God at about 3:00 A.M. Some devotees perform worshipping called “Parna” to the God. Afterwards, they return home. Thus, ends the “Chhatha” festival.

The most conspicuous feature of this festival is that people worship the setting sun. This kind of worship is unique because the tradition of worshipping the setting sun is rare elsewhere in the world. The worship of the setting sun is one of the humanitarian features of this festival.

(Balram Prasad Raut, National Legal Advisor　JICA Nepal Office)

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