



Legal and judicial development project in Cambodia

From the Perspective of Assisting Legal and Judicial Development

The significance and difficulty of assisting legal and judicial development

It is currently my destiny to be engaged in assisting legal and judicial development in Cambodia and China. This activity is carried out when former socialist countries are shifting to market economies and need to develop new legal systems, and other countries that already have legal systems that conform with a market economy (donor countries) extend cooperation to them (recipient countries) with regard to the development of the latter's legal and judicial systems.

The law is an artificiality, but one that exists within society. Its meaning is not to perpetuate the societal status quo in a totally unchanged form, but on the other hand its effectiveness will not be maintained if it deviates totally from that status quo. Given this, when developing law one considers what the most desirable system for each individual country is, and although one's thoughts are based on the specifics of each country's circumstances, one also takes into account other factors such as trends worldwide.

This is, so to speak, like seeking the optimal mathematical solution from among multiple simultaneous equations containing numerous unknowns through collaboration between both donor and recipient countries. Although any given solution may be optimal for Japan, that same solution is not necessarily optimal for Cambodia or China. No right answers already exist in this sphere, so assisting legal and judicial development could be described as being no more than a series of operations to solve applied problems.

The importance of Japan's role

When a former socialist country strives to switch to a market economy, the legal system, particularly the system of civil law, becomes the infrastructure of the market economy. In a country in which the state controls economic activity, authoritarian administrative participation by the government is pivotal. In a market economy, however, private individuals engage in economic activity at their own initiative on the

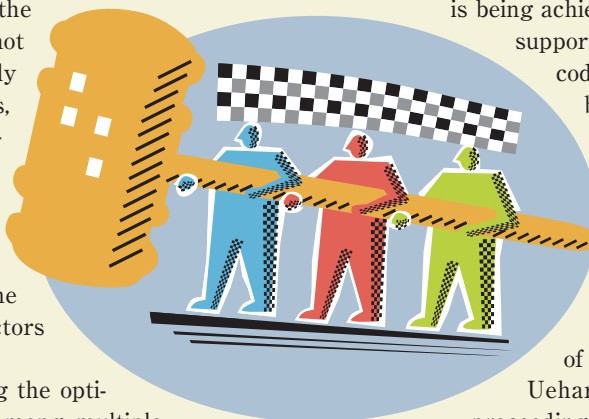
basis of contracts, and in this situation a prerequisite is that there be rules to regulate the market and that those rules be effective.

The end of the Cold War prompted many countries to begin legal and judicial development, and amid those moves Japan focused on providing assistance for legal and judicial system development in Asian countries, particularly in Cambodia. Cambodia began work on this in 1998, soon after emerging from the turmoil of its civil war, enacting a code of civil procedure and a civil code. These laws are being applied today, and we have entered a new phase centered on human resource development.

In China, meanwhile, where remarkable economic growth is being achieved, work got under way in 2007, and support for the formulation of laws such as a code of civil procedure and an act on liability for infringement of rights (tort law) is currently ongoing. It is worthy of note that Hitotsubashi University academics are playing a central role in this activity. Core roles as leaders are being played by Emeritus Professor Morio Takeshita with respect to the Cambodian code of civil procedure and Professor Toshio Uehara with respect to the Chinese civil proceedings act, in which I am also involved; as

regards the civil codes, important positions are occupied by Professor Tsuneo Matsumoto in the case of Cambodia and Professor Masami Okino in the case of China.

There are important aspects affecting the role that Japan should, and could, play in legal and judicial development of this kind. First, there is Japan's special responsibility with regard to Asia. I believe that, given its historical responsibility for war damage in Asia during World War II and the postwar turmoil, Japan has a duty to assist the endeavors of individual countries of the region to recover. In addition, Japan itself has a unique history—following the Meiji Restoration of 1868—of having established legal and judicial systems compatible with an Asian society after referring to a string of other countries' legal systems, for example the French, German, and US systems. In view of this, I feel that Japan is better qualified and equipped than European or other Western countries to provide appropriate assistance to other Asian countries addressing a similar issue.



Difficulties and issues in assisting legal and judicial development

The assistance activity in Cambodia relating to the code of civil procedure, of which an important phase has been completed, has proceeded as follows. First, there are Cambodia's unique prerequisites. In the genocide during the Pol Pot era the country's intellectual class was almost entirely exterminated (as was depicted faithfully in the movie *The Killing Fields*). The country's jurists were no exception, with the result that at the outset of the project there were virtually no citizens who had received a formal legal education.

Given this, it was not possible to adopt a method in which Japan cooperated only indirectly in the drafting of laws by the Cambodian side, so there was no alternative but for the Japanese side to prepare what would effectively be the draft law. This is a major characteristic of assistance for legal and judicial development in Cambodia. However, since law is subject to societal postulates, simply sending law produced in Japan to Cambodia in an unamended state would not have been appropriate from the perspective of the suitability of the law's content and its future effectiveness. In light of this, emphasis has been placed on close local cooperation, and the project has proceeded by holding a number of seminars in Cambodia every year and conferring constantly with the committee on the Cambodian side. This is a significant difference from the method in which Japan is assisting other countries, and I believe that it is an important reason why we have won the Cambodian side's trust in the assistance it is receiving from Japan. In consequence, the code of civil procedure has been enacted and brought into effect with very good results.

With respect to the desirable form of future legal and judicial development assistance, however, many problems remain. The most important aspect is the issue of human resource development. It is people who ultimately apply the law, and no matter how magnificent a law looks on paper, it is meaningless without a sufficiently large number of competent people to apply it. This aspect is a major characteristic that differentiates "hard" development assistance in physical forms such as roads and bridges from "soft" assistance for legal and judicial development. Educational establishments for training judicial officers and lawyers have now been opened in Cambodia, and Japan is providing educational assistance. Human resource development is an activity that truly breathes life into legal and judicial system development assistance to ensure its longevity, and it is essential that full consideration be given to this aspect.

This is, however, a very difficult issue. As can be grasped from historical works such as the novel and drama *Saka no ue no kumo* [Clouds Above the Hill], there were some very startling aspects to the nurturing and development of capable people during the Meiji Period in Japan. In the sphere of jurisprudence in Cambodia it will first be essential to develop a large number of Cambodian jurists who understand Japanese. In the past, Japan dispatched numerous scholars and judges to Germany, which was the main source of its laws, and their discussions there were reflected in the understanding and interpretation of Japanese law. Indeed, it appears that some prewar judges postponed pronouncing judgments until the arrival of the latest annotated editions of German law.

Since Japan is the mother country for Cambodia's code of civil procedure, it may be that the interpretation of

Cambodian law will be by reference to developments in Japanese law, and in this respect Japanese universities have an important role to play. For exchange students from Cambodia it will of course be important to be given introductory courses in English, but in order to gain a genuinely profound understanding of Japanese law it will be essential to learn Japanese, so there is high expectation that universities will provide appropriate Japanese-language education. As mentioned above, Hitotsubashi University, with its strong track record in legal and judicial development assistance, will have an important role.

Unraveling a tangled thread – the necessity for patience and steady effort

From the above, I hope that it has been possible to grasp something of the importance of assistance for legal and judicial development, and of the concomitant difficulties. If we presuppose that the state of the society of a developing country is a collection of problems that have become intertwined like a tangled thread, it is first necessary to unravel that thread. Since such disentanglement seems to require a lot of time and effort, we are likely to feel an urge to slash the tangle like a Gordian knot. To do so might give us the immediate impression of having done the trick, but it will certainly not have achieved a fundamental resolution of the matter. It is essential to achieve a genuine solution by undertaking patient and steady disentanglement for as long as is necessary.

One core component of this disentanglement process is law that can be trusted and the development of judicial procedures as places where that law is applied. This is not something that produces visible results in the way that building roads and bridges does, but nevertheless is of fundamental importance to the disentangling of societal problems. Laws and judicial procedures that conform with what is just are the last resort for the vulnerable and disadvantaged in society, so there is a direct linkage between ensuring their integrity and maintaining confidence in the social system as a whole. A society in which the judges are corrupt and make judicial decisions in return for bribes evokes despair among the disadvantaged toward the social system, making it difficult to create a stable society.

The development of legal and judicial systems, in particular the development of a code of civil procedure, has the effect of laying the foundation for confidence in that kind of society. It is also true to say that we, too, learn a great deal when undertaking activity of this type. To researchers it is particularly meaningful to see the birth of a nation with a code of civil procedure similar to our own. Law is an academic discipline in which it is not possible to experiment as it is in the natural sciences, but to witness the birth of a code of civil procedure on a societal base that completely differs from that of Japan such as Cambodia's, and then monitor how that country's laws evolve in the course of the 21st century, is extraordinarily interesting academically. It will also be of great benefit to the interpretation and writing of Japan's own code of civil procedure.

What I see in my dreams is that decades from now our successors as researchers will study abroad in Cambodia, and that while there they will take the solutions they discover in Cambodia and substitute them into the corresponding equation for Japan, thereby discovering new solutions for Japanese law.