

Law Collisions and Gaps in Legislation

——the discussion towards the international community with fairness and justice——

1. What are Law Collisions and Gaps in Legislation and why we discuss them now?

When we discuss law collisions and gaps in legislation, we could refer to two aspects:①the collision and gap between the law of two countries and ②those between international law and domestic laws.

Here, I focus on the second aspect and especially on the law collisions and gaps in legislations on human rights and humanitarian law because the global cooperation under the rule of law grows its role in the international society as the global issues become bigger and bigger. Therefore, we cannot oversee the collisions and gaps between international law and the inherent situations of each country. It is necessary and urgent to discuss the problem for us, the students to get together for this precious occasion with the big responsibility to create the future of international community with fairness and justice for everyone in the world.

2. Collisions and Gaps in Legislation between International Law and Domestic Law from the Examples of Humanitarian Intervention and International Criminal Court

International law and norm of human rights sometimes conflict with the sovereign rights of countries: domestic law and customs. For example, under the severe humanitarian crisis, or crimes committed by the occupied nation (such as genocide), should we interfere with the situation? Or on what rational and ground could we make the intervention?

The claimed rationale behind such an intervention¹ is there is a “Responsibility to Protect” of states under certain circumstances to disregard a state's sovereignty to preserve common humanity, which is embodied in international customary law. On the other hand, some claim it is the violation of the discipline of noninterference in internal affairs and in most cases it appears the

¹ In his Nobel Peace Prize acceptance speech on December 10, 2009, President Barack Obama of the United States supported some of the operations justified under the doctrine: "I believe that force can be justified on humanitarian grounds, as it was in the Balkans, or in other places that have been scarred by war. Inaction tears at our conscience and can lead to more costly intervention later. That is why all responsible nations must embrace the role that militaries with a clear mandate can play to keep the peace."

neo-colonialistic intervention by big powers into developing countries under the banner of “Human Rights”.

This issue gives us the example of the collisions even among the discipline of international laws and the gap of legislation on human rights issues. I suggest in order to protect the international security and human rights order, we should take action under a clearer code of conduct for humanitarian interventions and also advocates a greater reliance on non-military measures².

Related discussions are seen on International Criminal Court (ICC). Some claims ICC is governed by the “European or Anglo-Saxon” centered notion of human rights. Others say it is very idealistic and insufficient on effectiveness and enforcement³. However, ICC is the accomplishment after the accumulation of long efforts to respond fairly to international organized crime and the crime to humanity and we should make it improve for a fair and effective organization also with the consideration of the perspective of “Human Security”.

To support the internal legislation of international law and enhance the access to law system (especially in the Asian countries where many countries still have the big problem on access to law system and formation of international law and custom), I would like to suggest and put emphasis on the capacity development of legal professionals.

² Note: I also would like to introduce Japanese unique history and background of security issues: the domestic law basically prohibits our Self-Defense Force to use force in other countries and there are big discussions on dispatching SDF troops overseas

³ On 14 July 2008, The court issued an arrest warrant on crimes against humanity and war crimes for al-Bashir, Sudanese President on 4 March 2009 for war crimes and crimes against humanity but the country deny to respond to the request of the court.