Among so-far-unexplored international systems is the First Optional Protocol to the International Covenant on Civil and Political Rights. It sets forth the procedures for individual communications to the Human Rights Committee, a treaty organ in charge of supervising the implementation of the Covenant. Japan is not yet a state party to this important document. One of the biggest obstacles seems to lie in the minds of the powerful General Secretariat of the Supreme Court. The Protocol paves a way for the victims of human rights violations to resort to the Human Rights Committee after exhausting all domestic remedies, judicial remedies being no exception. The Human Rights Committee in its quasi-judicial capacity then applies the Covenant and determines whether there happened a violation of international obligations. Ratification of the document would make it inevitable for Supreme Court's judgments to be put under international consideration. That is exactly why Japan's top judicial bureaucrats keep on turning the cold shoulders to the Optional Protocol.

It should be recalled that the Japan's domestic system for the protection of human rights in now being incorporated into the ever-growing international system. Such days when a nation can make a boast of being self-sufficient in the field of human rights have been put behind us. Ratification of the Optional Protocol would provide national policy-making elites, the Supreme Court in particular, with a perfect opportunity to realize it. Protection of human rights in Japan is not complete unless the top court alters its views apathetic to human dignity. Much is expected of International Human Rights Law in making it a reality.

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invoke the culture which is convenient to justify and enhance their own political interests. It may be a dominant culture, but there can be another alternative culture in the society. As a matter of fact, from such "another" culture has been voiced strong sympathy for the idea of universal human rights. It definitely is an Asian culture as well. The important task is to pump up Asian indigenous voices in pursuit of human rights. It is an inevitable task shared by academics to show the universality of human rights in this diverse world.

What Japan's experiences may offer is not insignificant in this respect. The dominant culture in Japan has tolerated, if not encouraged, the segregation and exclusion of socially vulnerable groups and "heterogeneous" elements. Voices against such a deeply impregnated structure had been turned down one after another by policy-making elites including judges. The arrival of international human rights waves, however, brought about a significant change. The examination of Japan's transformation, *albeit* incomplete, may reveal universally valid functions of international human rights as well as desirable interactions between internal and external human rights movements. It may provide a valuable evidence in favor of the universal nature of human rights.

Tasks are still piled up a lot before us in Japan, however. "Exstra-human rights areas" still remain here and there. Infamous "daiyo-kangoku" or a substitute prison system which is believed to be a hotbed of false accusations, detention centers for illegal entrants where serious abuses of human rights are said to be taking place on a daily basis, and a reliably attested pattern of gross discriminations against women in employment instantly come to mind. In addressing these serious problems, more effective use of international systems is expected.

rights activities. The very foundation of international human rights law was exposed to serious challenge.

It is true that on the one hand arguments against universality of human rights have been put forward in a newly emerging post-cold war context replete with political connotations. On the other hand, however, it is none other than a price to be paid by international human rights lawyers who have failed to develpo the firm conceptual bases for this dynamic field of law. Deeper analytical research has been simply avoided by presupposing universality of human rights as if it were self-evident throughout the world. In fact, the reality of the world shows enormous historical, cultural and religious diversities. Unless it is persuasively presented that such diversities enrich, not compromise, universal nature of human rights, a recent challenge against legitimacy of international human rights may not be effectively beaten down.

4 Authoritarian Rule in Asia and Universality of Human Rights

It is in Asia where the plug of heated controversies was ignited and sparked hard concerning universality of human rights. Political elites in Asia often point to cultural differences in challenging the idea of universal human rights, which they say are a Western production unsuitable to Asian soils. The stress on a distinctive Asian philosophy based on culrural relativism may be described as "a political ploy by certain ruling elites to preserve their existing methouds of rule".

Let it be noted that culture serves as a method to control the society by having people accept the reality and behave accordingly. Such being the case, it is no wonder that ruling elites readily turn to culture to justify their particular political positions. Yet, they only

international protection of human rights is undoubtedly remarkable. It is more so as compared to pre-war days when human rights were treated as a matter of exclusively domestic jurisdiction.

Having said that, international human rights law is not yet supported by a wide range of academic studies like constitutional law. Its foundation remains fragile. Academics of international human rights law, overwhelmed by the speed of developments, often deferred the in-depth studies and settled for producing purely descriptive literature. As properly pointed out by Prof. Philip Alston nearly a decade ago, international human rights law has been largely kept separate from mainstream international law. Not much interaction with the philosophy of law or economics was witnessed. Less rigorous standards of legal analysis were permitted to be applied among like-minded academics, which was certainly not conducive to the academic refinement of this field of law. One commentator dammingly asserted: " [A] dvocacy on the part of scholars in the are of human rights has replaced serious study to such an extent that law and wishful thinking are inextricably intertwined".

Fragility of international human rights law was thrown into relief in the processes leading up to the Second World Conference on Human Rights held in Vienna in June, 1993. The Conference is remembered as an epoch-making occasion opening the road to the establishment of a long-cherished UN High Commissioner for Human Rights. Amnesty International and the US government were major driving force behind it. The Conference not only opened the road to the High Commissioner : the Pandora's Box of international human rights was also opened. Universality of human rights was publicly called into question. Questioning universal nature of human rights is tantamount to challenging legitimacy of international human

compulsory periodic reporting systems. Increasing number of citizens are approaching the treaty organs when the nation's compliance with the relevant treaties is examined under the reporting procedures. For those whose claims were rejected by domestic elites, the international organs are virtually the last resort to turn to for help. Major battlefields for War reparation are now in the international forum as well. Particularly with regard to "comfort women" issues, mounting international pressure is inserting new dynamism into the claims of victims of former military sexual slavery. Their claimes would have been easily suppressed by the "impeccable" bureaucratic elites without the aid of international mechanisms. On the strengths of international human rights, victims do not seem to budge an inch against gigantic state power.

3 Tasks before International Human Rights Law

The international human rights law is not necessarily a clearly established field of legal studies. It is still in the process of progressive development. Basically, it consists of treaties and declarations for the promotion and protection of human rights together with their implementation measures. The central documents are the Universal Declaration of Human Rights adopted in 1948 and the International Covenants of 1996. The evolutionary process has never been systematic. Naked politics, not refined logics, often served as a midwife of new documents and procedures. The manifestation of politics is not something that should be entirely rejected, however. In fact it has a welcome aspect ; those using human rights for their own political purposes later find themselves shackled by the very human rights they once made use of, which process unexpectedly encourages the evolution of international human rights. The recent development of

"there still is the Supreme Court" was now to be replaced by "there still is the international mechanism". The international system for the protection of human rights is certainly not omnipotent. The UN Commission on Human Rights as well as treaty-based organs do not always guarantee desirable results. Not all international standards or rulings of human rights organs are equipped with binding force. Nevertheless the international machinery continues to attract vernacular human rights activists for its unparalleled strengths.

First, international standards and rulings of human rights organs, regardless of their legal force, serve as a universally valid yardstick against which national behaviours are persuasively measured. Second, the international standard-setting and implementation processes are administered by a diversity of actors. Various values are usually reflected there in a sharp contrast to the Japanese administrative and judicial spheres where uniformity always prvails. Thus rights claimants may expect to build a "coalition" with their possible sympathizers in the international policy-making processes. Third, if claims are projected into the international processes through a "coalition", it would provide claimants with a good reason to rechallenge domestic policy-making elites. Claims which, refined only by domestic legal arguments, are not persuasive enough may gain new brightness and strength supported by international human rights arguments. A driving force may be brought forth to get out of a desperate stalemate. It is no wonder that given the predominance of uniformity in the national policy-making processes rights-claimants in Japan find the international mechanisms particularly attractive for the restoration of their inherent human dignity.

Several human rights treaties to which Japan is a state party provide for measures of international implementation, including

stances surrounding the nation were intensively considered, which finally led to the conclusion that there was no other choice but to acceed to the Convention. The government in reaching the conclusion attached special importance to the nation's strategic position as an Western ally.

Long awaited accession to the Convention was achieved in 1981. Domestic law was revised accordingly to secure the compliance with the international obligations. The term "refugee" was legislated for the first time in the history of immigration law. More noteworthy, the nationality clauses were eliminated from social welfare regulations. Foreigners had been refused social welfare services totally in the land of Japan for reasons of nationality in spite of persistent objections filed by Korean residents. Billows deriving from the Refugee Convention requiring a contracting party to guarantee the national treatment brought in a significantly different domestic legal picture in one night.

Waves of international human rights movements which were just burgeoning in around 1980 were concurrently reaching out to this far east nation. It was precisely at that time that the government of Japan vaulted to ratify both International Covenants. Ratification of the Convention on the Elimination of Discrimination against Women in 1985 served as a powerful wedge driven in the stereo-typed role for men and women which had been institionally and even constitutionally condoned. The government initiated an ambitious project aimed at their voices duly and incessantly represented in gradually activated UN human rights organs. More sensitive to the international human rights movements, however, were ordinary citizens. Revolutionary ideas of resorting to international mechanisms so as to turn the domestic tables around swept the whole country. The phrase

Supreme Court as an omnipotent source of irresistable judicial instructions. Desperate voices for relief and remedy turned out to be consistently smashed by an otherwise guardian of human rights.

2 Encounter with International Human Rights

A one-in-a-million chance to bring around dorment human right ideals came when Japan encountered burgeoning international human rights movements. It was the arrival and acceptance of Indo-Chinese refugees that made us significantly aware of functioning international human rights law. Political turmoils falling on the Indochina in the middle of 1970's produced a large scale of refugees and displaced persons. Though it was not rare that boatpeople therefrom arrived at Japan directly or after being rescued, the nation's government originally permitted only temporary landing in accordance with its traditional immigration policies restricting the entry and residence of foreigners. It was toward the end of 1970's when Japan altered its closed-nation policies and started to accept refugees from the Indo-China. Behind the policy-change was strong pressure, particularly from the USA which was then frantically concerned about the possible spread of communism in the South-East Asia.

Incidentally, the Indo-Chinese refugess brought to light the fact that Japan was not yet a state party to the core document for the international protection of refugees : the 1951 Refugee Convention. Otherwise naively called "Magna Carta of refugees", the Convention obliges each contracting party to provide refugees with the national treatment in various fields. Japan's policy-making elites had been very much hesitant about joining the international refugee regime as it was not in line with their traditional policies denying full membership to non-Japanese. Specific geopolitical and diplomatic circum-

condoned, if not, encouraged. Children were considered objects of paternalistic care as opposed to bearers of human rights ; infamous prisons where "silence" predominates were left intact. It is well known that the Constitution had been helpless in eliminating discriminations against indigenous Ainu and other "peripheral" minority groups.

Of course constitutional lawyers have not been entirely negligent in challenging desperate situations. Not a few excellent academic studies have been produced for the advancement of lofty ideals of the Constitution. It is also true that victims of alleged human rights violations on many occasions joined together under the flag of the Constitution and got engaged in extensive social movements. Nevertheless, virtually all to no avail.

The crucial problem is that ideals of the Constitution have not been adequately shared by policy-making elites. Law-making and administration processes through which human rights ideals should be embodied have been effectively monopolized by those interest groups putting supreme priority on economic development and maintenance of a so-called "monoracial" nation. Those rejected from the processes include, *inter alia,* conscientious constitutional lawyers and social movements. What is worse, the interests projected in the law-making and administration processes were increasingly upheld by the judiciary. In 1960's citizens were occasionally blessed with outstanding judgments enshrining the spirits of the Constitution. The judicial tides promoting those encouraging rulings soon ran into heavy-handed blockades constructed by the conservative Supreme Court, which propounded a nebulous but enormously forceful theory of legislative discretion. Not much time was lost before strict internal control penetrated into every corner of the judiciary with the

研究ノート

United Nations and Japan : A Favorable Interaction in the Field of Human Rights

Kohki ABE

1 Ex-Constitutional Areas in Japan

A straightforward commnentator based in Tokyo refers to Japanese companies where an inconceivable spirit purification training is openly conducted as an "ex-Constitutional area". It should be more properly called an "ex-human rights area", which is not necessarily confined to business sectors in this islands nation.

Respect for human rights is one of the pillars of the Constitution of Japan. It enumerates divergent human rights norms to be guaranteed. It would be a source of pride if these prominent human rights provisions had been faithfully observed; in fact, the overwhelming reality since the Constitution took effect in 1947 indicates otherwise. The nation's basic law soon found itself markedly malfunctioning, besieged by forceful social pressure for economic efficiency and social harmony. All the values including human dignity started giving way to pursuit of economic development while "heterogeneous" elements in the society became the target of systematic suppression. Just recall how much injustice has been done to such socially vulnerable groups as women, children, the disabled, the elderly, detainees or foreigners: how much hardship has been inflicted upon such "invisible" minorities as resident Koreans or indigenous Ainu.

The Constitution was not effective in breaking the stifling situations. The stereo-typed role for men and women was institutionally