Legal Simuration: Law as a Navigation Tool for Decision-Making

【Special lecture】

Legal Simulation: Law as a Navigational Tool for Decision-Making

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Introduction

I thank the Japan Coast Guard Academy for inviting me to deliver this lecture with the help of Kawamura-san. I thank the President of the Academy, Majima-kocho, Professor Ochi and also Ichimaru-san of International Research Center of Marine Policy for the arrangements. I was inspired by Nishimura-san of International Research Center of Marine Policy on a tour of the Academy's Simulation Centre to give this particular revised title to my presentation. Legal decision-making, it struck me, can also be compared to steering a boat and being the captain. Indeed, what we were trying to achieve through presenting a seminar about legal pluralism was to familiarize the students and staff of the Japan Coast Guard Academy with important tools for how to navigate legal pluralism as a tool of instruction, and of day-to-day decision-making. This would be practically useful in everyday life, but particularly so in crisis situations when individual decision-making has potentially many implications not only for that individual, but for the people around him or her, for the nation and even for the international community. Officers of the Japan Coast Guard will find that this presentation could serve as a toolbox for policy-making and for training. In their working life, Coast Guard Officers constantly have to make strategic decisions. In this context, knowledge of legal pluralism or pluri-legality,

and awareness of the rather liquid nature of law, is probably a very useful tool to have.

The key arguments

My key argument is two-fold: Firstly, because we recognize globally today with more and more clarity that 'law' is not just state law, and that 'law' can manifest itself in different competing forms, we need to understand better what these alternative forms of law or normative orderings may actually be. The question here becomes what we are willing to call 'law', as we can use different words for this phenomenon, both in English and in Japanese. While there must be limits to legal pluralism theorizing, history teaches us that relying only on state law (法) is risky, is clearly too monist and thus not the right method, as it tells us only a limited story about the complex and internally plural nature of law and its processes. Law is more than rules made by rulers, law is also about morality and ethics (和), about social norms and customs (義理), and today, there is also the increasingly strong claim that international law (国際法) and human rights should be considered as forms of law. So, legal pluralism at this level is a fact, and state law or 'official law' is not the only form of law in existence. In this, I rely on the writings of Chiba-sensei (1986), explained further below.

Secondly, the growing significance and also practical importance of international law and human rights reasoning today has clearly not replaced earlier forms of law, but has made the competition between different kinds of law more intense than it was before. Therefore, to perceive a simple evolutionary process of progression from one form of law to another is also not the right way to look at the elephant of law, which has apparently four legs to stand on, not one. I shall use the image of the kite of law to identify four specific corners or angles that are always interconnected. From a perspective of late modernity or post-modernity, we realize today that it matters, first of all, from which perspective we look at a particular issue or an object. As skilful

navigators of vessels, you know about the importance of radar and multi-dimensional perspectives.

Law is very much a multi-dimensional challenge posed to the student's navigational skills. Applying such images to our understanding of law becomes an exercise in legal simulation. The challenge for this lecture is to understand legal pluralism and to test how the claims of law as a tool of management for global development can be credibly and sustainably maintained, at global, national and local level, by using pluralist methods. Approaching the field from a socio-legal angle based on earlier work by Professor Masaji Chiba (1986), this lecture therefore seeks to demonstrate the practical relevance of pluralist legal theorising. We deal with various aspects of theory first and then take a practical example, a fisheries dispute between communities of fishermen in India and Sri Lanka, to illustrate the usefulness of applying plurality-sensitive lenses in decision-making processes. This case study raises two specific questions: In certain conflicts, is it preferable to opt for a specific level of negotiation and management? And how do 'the politics of scale', as political geographers call it, match with this more legal approach in a specific case example?

Understanding legal pluralism and different types of law

When global legal theorizing started, thousands of years ago, thinkers like Aristotle and Plato in Europe and many other ancient philosophers, were treating law primarily as a matter of ethics and values. The state and its powers were certainly not absent, but major debates concerned the morality of rules, not so much the rules themselves and the power to make them. A higher form of law existed, it was believed, prominently through Nature, to some extent beyond human control. Hence the field of natural law is the earliest simulation scenario for legal pluralism, but inevitably it involved human activity and input. Soon, therefore, socio-legal approaches and especially state-centric 'positive law' became more prominent methods of legal analysis. Following several centuries of state-centric legal theorizing, today again scholars and common people are

arguing increasingly over the global phenomenon of law in terms of values and the various effects attached to its rules and practices.

The notion that law and morality are closely connected was specifically challenged and intensely questioned in the modern age of rationality. Especially in Europe, the impact of modern Christianity has been to cultivate a rational, secularizing approach without completely denying the role of God or some higher creative energy. Thinkers put things into boxes and separated elements of analysis, rather than showing the connections. This meant that making legal rules could become seen as a simple rational exercise, potentially disconnected from morality. The claim arose, too, that law could be value-neutral. However, today we challenge that approach again and recognize that any form of law making - and decision-making in the name of the law - has almost inevitable normative dimensions. Nothing is value-neutral. You move the steering wheel of your vessel, and something happens, the action has consequences, which we better understand well, otherwise there will be navigational mistakes.

So the total separation of law and morality is indeed a theoretical possibility, but is not useful in practice, as the best systems of formally perfect rules and processes might still result – and in fact have resulted – in disastrous aberrations of justice. That is why simplistic talk of 'rule of law' is potentially dangerous, as it merely justifies the power of those who claim the power to make rules. All safeguards are then removed, and absolute dictatorship becomes possible. In the command centre of a vessel, a wrong decision may quickly lead to disaster. I argue that this is very much the risk for legal navigation, too. Decision-making in both cases brings much responsibility.

So we require solid understanding of the multi-dimensional nature of law, in other words of legal pluralism, to be successful navigators. However, as an interdisciplinary field of activity, in which law is of necessity merely one of several elements, legal pluralism irritates lawyers as well as non-lawyers. Since it observes that no one academic discipline can claim to be the sole 'leader' in pluralist navigation, it faces suspicions of subversiveness and even nihilism,

especially from state-centric lawyers. The steering wheel, they claim, will become confused if the captain takes account of too many factors. But the Simulation Centre precisely prepares the navigator for learning to take account of the many factors co-existing at the same time.

Like naval students learning to navigate, academics in different disciplines struggle to understand and evaluate the complexities of observable processes and the implications of pluralism. However, neither law-centric approaches nor attempts to disregard law as a factor in development have produced convincing answers to how global development occurs and may be managed successfully. Recent writing suggests that the two have to be seen together and are needed in simulation exercises to explore the various possibilities. A recent study (Tamanaha, Sage and Woolcock, 2012: 14) argues.

> In the early decades of the twenty-first century, the development community finds itself confronted with an array of serious challenges pertaining to the reform of institutional mechanisms for mediating relations between peoples, firms, states, and international actors, and doing so in ways that are broadly perceived to be legitimate, equitable, and effective.

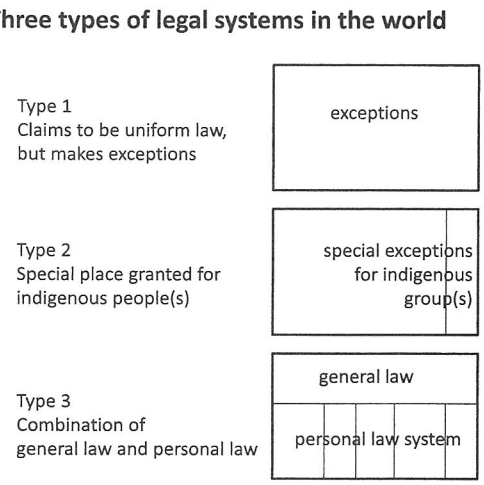
One could ask if there is too much focus in the above quote on 'institutional mechanisms' and thus processes and procedures, and too little thought about individual decision-makers, people involved in managing development. What the above statement clarifies, however, is this: (1) Law clearly appears in many different forms; (2) it is more than just state law and international law; (3) complex structures are in place all over the world; (4) the major challenge is to manage those plural structures; and (5) this challenge arises at many different levels, but at the end of the day, decisions are made by skilled individuals.

So we must talk about pluri-legality, or legal pluralism, or is 'transnational law' a better term today? The risk in talking about 'transnational

law' is, indeed, that one only focuses on relationships between states and international law, and thus leaves out the more individual dimensions of morality and of social norms and customs, which are also very important.

In terms of managing legal pluralism, we find three basic types of legal systems in the world. Japan is probably more type 1, but has been pushed recently towards type 2, recognising the special historical place of the Ainu people. But it is certainly not explictly a type 3 legal system. However, in lived reality, many questions arise also in Japan regarding minorities, family law and migration, in particular.

Picture 1: Three types of legal systems in the world



Type 1: In the global north, in Europe, North America and also in Japan, we assume to be governed by one law for all. We think that we use one legal system for all persons present in a particular state or territory, whether based on the linking factor of residence, domicile or citizenship. We also assume that this rule of law model has universal relevance, when in fact it is quite culture-specific and depends very much on the respective national context. In

lived experience, this formal model of legal uniformity survives in practice because of its inherent, but largely invisible capacity to allow the frequent exercise of discretion through making exceptions on the part of certain law-managing agents, in all kinds of specific legal scenarios. In reality, therefore, even the official law is internally plural, as officials regularly make important and multiple exceptions for specific situations. This general image of uniformity is therefore quite unreal, more like a fiction (Griffiths, 1986).

Type 2: A second major variation of the global picture of pluri-legal law is marked by the strategy of making exceptions for specific groups of people, customarily the original inhabitants of specific national jurisdictions as found today. The USA, Canada, Australia and New Zealand are classic examples of this specific form of yielding to legal pluralism. Japan, in relation to the Ainu people, is now another. Rich complex evidence is found in jurisdictions like India with its various affirmative action programmes, or now South Africa, and many other countries. Because some people within the state boundaries may have and/or raise specific historical claims to special recognition of their statuses and certain law-related issues, the formal legal structures acknowledge that specific kind of difference.

Type 3: The third type of legal structure and its plurality-conscious management is found in those many jurisdictions that operate a general law in many respects, such as a Constitution, a common contract law, commercial laws and evidence rules, civil and criminal procedure laws, and much of criminal law. However, side by side with such general laws, these jurisdictions also manage the many pluralist challenges of co-existing personal status law systems as part of their official laws. Often deeply politicised, both internally and externally, these personal status laws are a lived reality in many more jurisdictions of the world than their governments admit. Actually, in terms of numbers, this is the dominant pattern globally, and this has been so for millennia. Legal history

teaches that this pattern of pluri-legality is not a recent creation of colonial interventions, but reflects ancient patterns of competitive co-existence of different communities and faith groups. Their respective power relationships would have changed over time, often giving rise to violent contests and conflicts. Today, these types of culture-specific legal structures generate new tensions between the local lived experience and supposedly global claims of certain authoritative patterns, mostly in the name of human rights. Such new conflicts over values and customs are most clearly seen in Southern Africa's contested co-existence of 'official customary law' and 'living customary law', a pattern which confirms the concept of 'living law' as theorised by Eugen Ehrlich at the start of the twentieth century (see Hertogh, 2009).

Basic legal theory as a navigational tool

The prominent existence of legal pluralism poses huge challenges for legal theorists as well as practising lawyers. It is possible to identify several main barriers of knowledge, but the underlying key question remains always: What is law? I am not alone in saying that there is simply no global agreement on 'law'. Menski (2006: 32) claims that the central challenge is 'the absence of any worldwide agreement, in theory as well as in practice, about the central object of globalised legal studies, namely "the law" itself'. Brian Tamanaha (2009: 17) writes:

> *What is law?* Is a question that has beguiled and defied generations of theorists.....Despite a continuous conversation about the character and nature of law ever since [the ancient Greeks], theorists have not been able to agree on how to define or conceptualize law.

However, as noted, two things are now clear in this global (Tamanaha, 2008; Twining, 2000) and postmodern age: 'Law' is not just state law, and law is potentially highly dynamic and everywhere situation-specific, which is why I

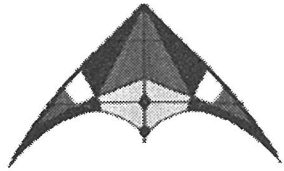
use images of water ('liquid law') and air (see the kite models of law below) to express that intensive dynamism. It may seem at first as though Parliament, judges and lawyers within formal legal systems can claim exclusive ownership of 'law', so that 'the law' is just 'the law'. However, as observed earlier, this dangerously circular definition simply empowers all kinds of dictators and disables various safeguards for justice.

If law is in reality plural, then how plural can law be? More specifically, if 'law' is more than state law, what else can it be? We may accept that law and morality are connected, but is morality itself a form of 'law'? Are religion/ethics and customs therefore alternative forms of 'law'? Somehow, we have fewer doubts about our answers when it comes to human rights and international law today. To address those questions, I developed a model of law that emphasises the co-existence and constant competition of different types of law. Building on Chiba-sensei (1986), this was at first a triangular structure (Menski, 2006; 612), in which legal positivism competes with forms of natural law and socio-cultural norms. Then I added international law and human rights into this. The result has now become a structure with four corners, a kite of law (*tako*): So the key questions become: Is law like a kite? What makes a kite fly and keep its balance?

Picture 2: The kite as a model of balanced law

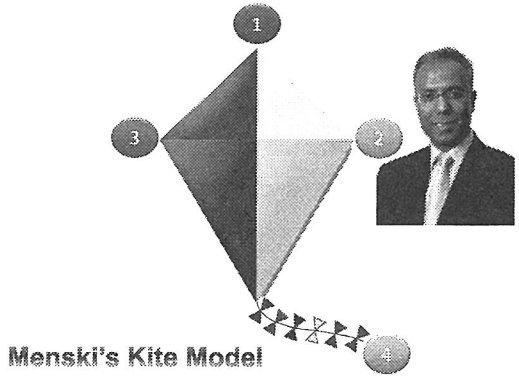
The kite model

- **Is law like a kite? What makes a kite fly?**



The practical application of this kite model has been tested in an intensive training programme for local council officers in a Borough of London, Tower Hamlets. Here is the image we chose for this training programme, together with a picture of the Executive Mayor of that Borough in London, Lutfur Rahman, who is a man of Bangladeshi origin and now a prominent Council Leader in multicultural Britain.

Picture 3:



From the triangle to the kite: Exploring legal pluralism in more depth

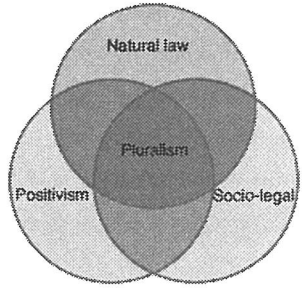
Traditionally, lawyers have been studying three major types of law: (1) natural law (religion/ethics/values); (2) socio-legal approaches (social norms and customs); and (3) most prominently of course, legal positivism (state-centric rules). Chiba (1986) had this pattern in mind when he devised his own model of the co-existence of these different types of law and identified a three-level structure:

- official law (公式法)
- unofficial law (非公式法)
- legal postulates (法前提)

Computer graphs that we used to illustrate the overlapping co-ordination of these types of law generated an instructive image that identified the existence of different combinations of legal pluralism.

Picture 4:

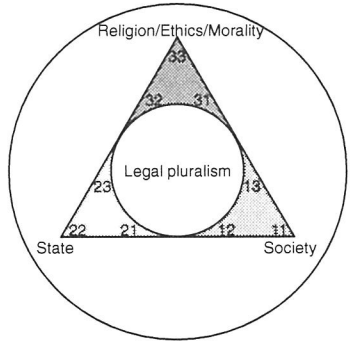
Law as overlapping circles



Next, based on Chiba-sensei's three-level structure of law, starting with the fact that law is first of all located in society, a numbering system was devised to explore the interactions of these three types of law:

Picture 5:

Global legal realism: The triangle
Menski (2006: 612)



Corner 1: socio-legal norms and customs

11 = 'pure' customs (which are very rare)

12 = customs influenced by state law

13 = customs influenced by values

Corner 2: positivist state law

22 = 'pure' state law (which is rare, too)

21 = state laws influenced by or taken from social norms

23 = state laws influenced by certain values

Corner 3: values/ethics (Chiba-sensei's 'legal postulates')

33 = pure values (probably rare

31 = values influenced by certain social norms

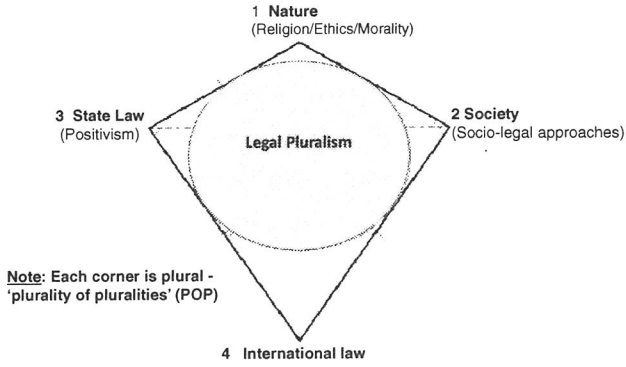
32 = values influenced by certain state laws/principles

Recent advances in theory (Menski, 2010; 2011, 2012, 2013) modified this earlier model and now identify four types of internally plural law in constant competition. This is admittedly messy, but it became impossible to ignore international law and human rights, also because later work of Chiba-sensei (1989) seems to include those types of law under his 'legal postulates'. My own models retain the critical difference or distinction between 'traditional' natural law and 'new' natural law. The latter is how some scholars see human rights jurisprudence in the wider context of legal theorising, often combined with international law regulation, which is another kind of positive law. We find therefore now that law is at the same time four competing entities:

- 1 natural law, culture-specific values (Chiba's 'postulates')
- 2 socio-legal norms, customs, conventions (Chiba's 'unofficial law')
- 3 state-centric positive law in various forms (Chiba's 'official law')
- 4 international, globally valid principles, human rights (Chiba's 'postulates')

Picture 6: The kite of law

Menski's Kite



It is important to be aware that in the kite the numbers have now changed, reflecting a more historically grounded perception of how the whole structure came to be what it is today:

- 1 natural law, values/ethics (was there first in theory)
- 2 social norms (always present wherever people live)
- 3 state laws (but often not made by the state)
- 4 'new natural law' (combined with new international law positivism)

The next important step in this ongoing process of theorising law has been focused on practical application. Using law's internal plurality, decision-makers of different kinds have to learn to manage this pluri-legality. Like skilful navigators in a simulation centre, they do so by making a sequence of strategic choices. Also among decision-makers there are many pluralities, however. The potential decision-maker is never just the state and its bureaucrats, it could be (1) individuals; (2) individuals as members of a community or group, or a group as an entity; (3) individuals acting on behalf of or for a state, either individually or as a group member, but as an actor/actors in an official capacity;

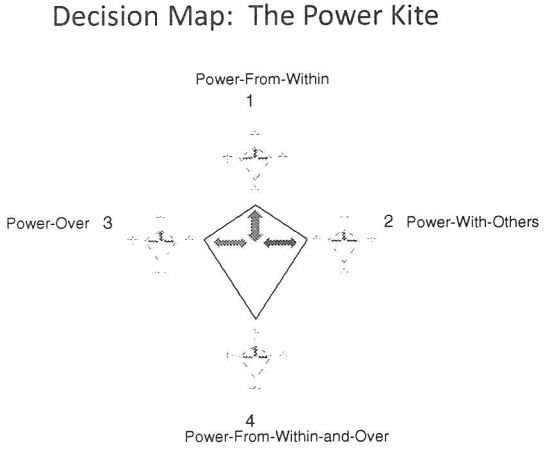
and (4) individuals/groups and whole organisations making decisions about human rights and international law principles.

In decision-making processes of any kind, we can use the numbers given to the kite corners to trace how specific legal actors form their opinions and make policy decisions by picking up tools from around the kite of law. But this is not just a simple 1-2-3-4 process. A decision-maker may start from any one of those corners and create different sequences. What is not possible, however, is to simply claim that one is an official decision-maker and just picks corner 3 and ignores the rest. This point requires some further elaboration.

Deep legal pluralism

In reality, law is not just internally plural at the level of the four corners identified above, but it is actually what I now call 'POP', a plurality of pluralities. All four corners are themselves plural, experiencing much conflict within themselves. The next picture therefore shows recent suggestions (with elements of 'power' in it) about how various actors may be managing decision-making processes within their own corner of law.

Picture 7: The power kite



In this image, humans are found as decision-makers in all corners of the kite, but they play different roles and take different perspectives. Indeed it is critically important from what angle a decision-maker approaches this process of making a decision. The question becomes whether the actor or navigator is primarily one or more of the following: (1) an individual; (2) a member of a group; (3) a citizen; or (4) a global citizen. As we are all inevitably all of this, in which sequence do we then move around the kite and pick up tools? What is our mind map as decision-makers? Does it make a difference whether we act in a private or public capacity? More specifically, is a judge, for example, always an official acting out of corner 3? Or does the biography of the judge influence how decisions are made?

We realise therefore that these kites are always potentially of four types: every individual is a kite, social groups are kites, states are kites, and one huge global kite is floating in the sky, too. Since all these competing kites and their different pulls exist at the same time, it seems that individual decision-makers have to manage these conflicts as best they can and would benefit from being aware of their specific role and position on or within the kite structure. Again we see, therefore, that simulation exercises may be useful to prepare participants for the real challenges of the lived experience.

The key message in all of this is that legal pluralism may be messy and irritating, but it is absolutely essential as a navigational tool. We also saw that development experts have learnt the hard way that they cannot ignore or bypass local people's values and norms. The challenge therefore is to ensure that these local values and norms match the 'official law'. In that context, it may nowadays also be critically relevant to fit one's decision-making along perceptions of human rights and international standards. As recent writing by a leading legal theorist (Twining, 2009: 218) has brought out, the key challenge for all of us may be to remain conscious - at all times - of what is 'intolerable'. For a vessel's captain, risking the safety of one's vessel and the people on it may be a major, but not the only consideration. The key challenge for any

decision-maker is thus to define the most relevant criteria and standards, in a global context, but not at some distant desk, ultimately at the local and individual level, which is why scholars of globalisation (see Featherstone, Lash and Robertson, 1995) talk about the importance of 'the glocal'. In other words, conscious of the global context, one makes decisions, preferably the right decision, in efforts to find 'the right law' and to protect 'justice'.

An example of how this works in practice was tested in this seminar by asking the students to become judges in a case decided in the UK in 2000. The case of *Chief Adjudication Officer v. Kirpal Kaur Bath* [2000] 1 FLR 8 CA involved a marriage in London among Sikhs, who are governed by Hindu law in India, and did not know much about the laws of their new home, the UK, hence they followed their traditional Sikh customs (corners 1 and 2 of the kite of law). In this case, in 1956 a Sikh marriage ceremony was conducted in an unregistered Sikh Temple (*gurudwara*) in London. There was no state registration of the marriage, and the couple lived together as husband and wife and had two children. The husband paid taxes as a married man over many years (connecting himself to corner 3, state law). After the husband died in 1994, the wife applied for a widow's pension from the state, but her claim was rejected, simply because there was no registered marriage. The widow appealed several time and the case came to the Court of Appeal. The question all along was whether this Sikh marriage was a legally valid marriage.

The Court of Appeal ultimately applied what is called a presumption of marriage, holding that: 'Where there was an irregular ceremony followed by long cohabitation, it would be contrary to the general policy of the law to refuse to give the benefit of presumption'. While such a marriage would also struggle to gain legal recognition in Japanese law, I suggest that this is the correct decision, and evidence of skilful kite navigation on the part of the judges in the Court of Appeal. Interestingly, this decision is not treated as a precedent, but it skilfully uses the English law principle of equity, another form of talking about

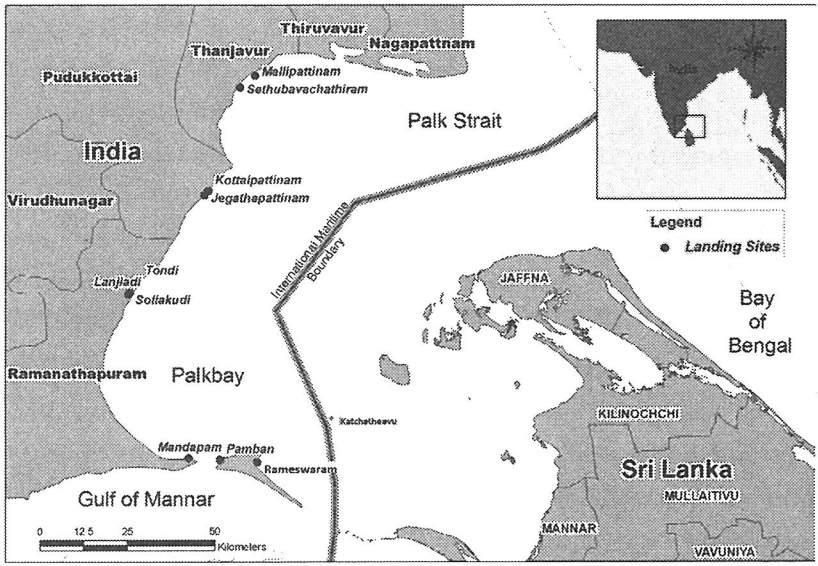
'justice', specifically in a scenario where the application of the formal law would result in manifest injustice.

In this particular case, there is evidence of balanced judicial kite flying, which takes account of all four corners of the kite. The starting point of decision-making is located in corner 3, but within that corner it is recognised that (1) the religious law of the Sikh religion was followed and respected by the couple, as well as (2) the customary norms of Sikh people, now living in the UK, but unaware of the official English law regarding registration of marriages. Further, the decision to grant the Sikh widow her pension rights is also a matter of human rights and international law (corner 4). The judges as officials of the state law in corner 3 thus made an exception by holding that the customary Sikh marriage conducted in this case can be treated as a legally valid marriage. This decision, thus, also confirms Chiba-sensei's observation that good law is always dynamic and situation-specific. It was good to see that some students in the seminar could follow that plurality-conscious train of thought and came to the right decision themselves.

The dispute of fishing communities between India and Sri Lanka

To offer the audience a more relevant example, this particular dispute was chosen, based on a recently published article (Stephen et al., 2013). This case scenario also raises important questions over how one navigates naval disputes. It offers another example of how pluralism works (or may not work) in conflict scenarios. One important question here is at what level or 'scale' such kind of conflict ought to be negotiated. In Other words, is this a matter for individuals (kite corner 1), communities (kite corner 2), state organisations (kite corner 3), or even the international community (kite corner 4)?

Picture 8: Map of Palk Bay Along with the Major Trawl Centres in Tamil Nadu. (Source: University of Jaffna, Department of Geography, 2012).



The problem can be described as follows: The Palk Bay is a shared marine resource, a rich fishing ground, involving local fishing communities that are Tamils, and thus 'brothers at sea', from India and from Sri Lanka. There is an international maritime boundary, but this is not respected, for a number of reasons, by the Indian fishermen. There were earlier attempts in 2004 to reach some agreement, but they came to nothing. More recently, an agreement over fishing rights between these fishers from the two countries was reached in August 2010, but this agreement remains largely unimplemented. The negotiation processes in terms of politics of scale highlight the various difficulties encountered. In a trans-boundary context of this kind, national and regional identities at times override local identity and interests, making locally constructed solutions difficult, if not impossible, to implement.

The basic problem is systematic and aggressive overfishing and crossing of naval boundaries by the Indian fishermen. The key players in the attempted

resolution of this dispute in August 2010 are ARIF, the Alliance for Release of Innocent Fishermen, from India, and NAFSO, the National Fishermen's Solidarity Organisation from Sri Lanka. The fishing population in India comprises 262.560 people, while in Sri Lanka it involves 119.000 people. India has 5.300 trawlers (28-55 feet, 70-193 horse power) and also very many smaller artisanal fishers who fish closer to the seashore and have their own protective agreements with the owners of larger fishing vessels. On the Sri Lankan side, trawling is not promoted for strategic and security reasons, as the Northern Sri Lankan Tamil fishing communities were involved in a deadly civil war with the Sri Lankan central authorities until 2009. Sri Lankan fishers are thus mainly artisanal fishers and they use different methods of fishing, mainly static nets, which are then destroyed by Indian fishing trawlers that transgress into Sri Lankan waters.

There were much earlier bilateral agreements, dating from 1976, which limited trawler fishing to three days a week to avoid overfishing. Katchatheevu Island was an issue between India and Sri Lanka, too. The island was transferred in 1974 to Sri Lanka. Conflicts arose earlier over the size of the boats and fishing practices, between trawler fishers and artisanal fishers, between India and Sri Lanka and because of the civil war in Sri Lanka, there are also conflicts between the Sri Lankan army/navy and their own Tamil fishermen. Following the end of the armed hostilities, more intensive Indian fishing resumed, and by 2010, 238 Indian fishermen had been shot and killed by Sri Lankan naval forces, with another 80 fishermen missing. Is this kind of conflict a matter for the respective communities, for the two regions, or the two states, or for international law? The issue of jumping of scales remains clearly a big open question.

Two delegations of fishermen met in India and held negotiations on 16-23 August, 2010. The Sri Lankan delegation comprised 12 people, with delegates from CARITAS Sri Lanka, NAFSO, the Sri Lankan Fisheries Department, a parish priest from a village, and some journalists. A tour of

various Indian fishing villages impressed on the Sri Lankans the mere size of the fleet and the pressures the local Indian fishermen are under to make a living and pay off loans, for example, for large boats and equipment. The negotiations resulted in a final agreement, which was sent to both national governments, with a personal appeal to the Indian Prime Minister to intervene. There was much press coverage and publicity, but the agreement is not implemented, and the dangerous conflicts carry on.

Interestingly, the agreement contains different rules and restrictions for fishermen from different villages, given their sometimes very close proximity of the international maritime boundary. Basically, the agreement seeks to restrict Indian fishers from following destructive practices, so there is a ban on purse seigning and pair-trawling, clearly to avoid damaging Sri Lankan nets. Overall, a reduction of the size of the Indian fleet was promised and it was agreed, somehow, that Indian trawling would stop after a year (2010-11). Only 70 days of fishing would be allowed in Sri Lankan waters, and this should never be any closer than 5 nautical miles to the sea shore. This was a collective, civil society-led agreement, based on 'shared understanding' and the participants' common identity as Tamils. However, there were soon local disagreements over the different rights and the Indians also asked soon for more time to stop trawling. While there was no implementation of the agreement, in February 2011, some Sri Lankan fishers captured Indian trawlers and it has become obvious that the agreement has broken down. A Joint Working Group of both countries is involved in further negotiations and the key issue remains that of 'jumping scales', the tricky question whether there should be a preference for local/regional/national/international intervention and involvement.

Conclusions

Whatever law-related or legal situation we study, legal pluralism is a notable fact and conflicts are often multi-dimensional and require skilled legal navigation of competing expectations and claims. To assist in such processes of

actual or simulated conflict management, legal theory is useful in practice. Legal pluralism is a necessary conceptual tool in this, as it is a fact of life. It remains difficult for lawyers and development experts anywhere to navigate these pluralist structures, as we are often not prepared by standard legal and other education for such pluralist challenges. It is hoped that the present lecture provided some useful insights. Since law itself is a Plurality of Pluralities (POP), I hope to have shown that any form of monist methodology will lead to unsatisfactory outcomes. Pluralism is not a magic silver bullet, but it helps in the search for better practice and agreeable and sustainable solutions. So in conclusion, legal pluralism may indeed be irritating and messy, but it is today an essential component of law and development processes.

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【追記】

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（河村有教　記）