

Exclusive Interview

LEADERS IN JAPAN

No. 5

President of the International Criminal Court

Tomoko Akane



Considering the “Rule of Law” Amid Continuing Geopolitical Risks

By Japan SPOTLIGHT

Nearly three years have passed since the Russian invasion of Ukraine. Economic sanctions against Russia continue to be imposed as a penalty for violating the “rule of law” – the fundamental core of the international order. It is a good argument that in order to uphold the “rule of law” an aggressor must be tried in a court of law. The International Criminal Court is that court.

Judge Tomoko Akane, who assumed the post of president of the International Criminal Court in March 2024, was interviewed by Masakazu Toyoda, chairman of the Japan Economic Foundation, which works toward rebuilding a “rules-oriented” international trading system.

(Interviewed on Aug. 26, 2024)

What Is the International Criminal Court?

Toyoda: The International Criminal Court attracted a great deal of attention when it was reported that it had issued an arrest warrant for Russian President Vladimir Putin as a war criminal. In addition, the fact that the president of the court is a Japanese woman was – I am sorry to say this – a “nice surprise” for Japan. In this, the fifth in our “Exclusive Interview with Leaders in Japan” series, I have invited Judge Tomoko Akane, president of the Court.

I would like to start with the role of the International Criminal Court (ICC). What exactly is it? It is difficult for the general public to understand the difference between the ICC and the International Court of Justice (ICJ), and I would like to start from this point. If there is a difference between the two, could you tell us about the origin of the ICC in addition to the ICJ?

Akane: The ICJ is a court under the United Nations and has a history of over 70 years. It was created after World War II, but its origins go back to the time of the League of Nations after World War I. The ICJ settles disputes between countries in court. For example, it is a court that decides border disputes when two or more countries submit

such issues to the ICJ. Even now, when states are litigating cases concerning Ukraine or Gaza before the court, the ICJ only rules on whether the “acts of a state” constitute illegal acts under international law, such as violations of the principle of non-use of force or the obligation to prevent genocide.

The ICC is a court created by treaty, so it is not under the UN. It has a certain relationship with the UN, and the countries that are members of the UN consulted with each other and decided to create such a court. It was created to criminally punish individuals who committed specific crimes within a region subject to its jurisdiction, so the ICC only tries individuals. The origins of the ICC can be traced back to the Nuremberg Trials and the Tokyo Trials; criminal tribunals that were established to punish war criminals at the end of WWII. War crimes are not committed by the state as an abstract entity, but rather by individuals who are part of the state, so the idea is that war crimes cannot be effectively dealt with unless the individuals who are actual perpetrators of the said crimes are punished.

In the 1990s, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were established. These tribunals were designed to try war crimes and crimes against humanity committed only in a specific area such as the former Yugoslavia. In contrast, the ICC was established in 2002 with the aim of being a universal court.

Toyoda: So you are saying it was created outside the UN because it could not be created within the UN?

Akane: When the ICC was established, there were some discussions on creating a criminal court under the UN, separate from the ICJ, which is a court to adjudicate disputes between countries. However, it was decided to establish the court as an independent institution under a treaty, in order to exclude any undue influence of politics within the UN. It is made up of only those countries that have ratified the Rome Statute, which is the founding document of the Court.

Toyoda: The UN is dysfunctional because the veto power of the permanent members of the Security Council is being invoked very often, especially now. Are you not aiming to do something that the ICJ, which is under the UN, cannot do?

Akane: The ICC has a completely different jurisdiction, content, and function from the ICJ. While the ICC was created for the sole purpose of punishing individuals who commit war crimes and other crimes under the Rome Statute, the ICJ does not impose criminal penalties, though this is not because punishing war criminals cannot be done by the UN.

Toyoda: So you did not create it for that purpose, but when the Security Council is not functioning, as it is now, you can pursue individuals regardless of that.

Akane: Yes.

Toyoda: I think that makes a lot of sense. The G7's attitudes toward Russia's invasion of Ukraine and Israel's attack on Gaza are different, which has led to criticism of double standards. I think it is true that the ICC seems to reject double standards. What is the reason for issuing an arrest warrant for Putin? On what basis should we assume it was issued?

Akane: The Rome Statute contains detailed provisions on the issuance of warrants but the primary question is whether the relevant person may have committed any of the four core crimes: war crimes, crimes against humanity, genocide, and crimes of aggression. The Court looks at acts allegedly constituting crimes, regardless of the nationality of the perpetrator.

For issuing an arrest warrant, the relevant requirements must be satisfied and a key element in this regard is the charges (although the word "charge" does not appear in the Rome Statute at the arrest warrant stage, it is used here for the sake of explanation). The charges are basically a factual narrative of the prosecution's case against each suspect. When the prosecution believes that there is an

evidentiary basis and requests an arrest warrant, the judges examine, based on the law and evidence, whether the prosecution's charges are substantiated and whether it is necessary to issue an arrest warrant. These are the considerations in issuing arrest warrants.

In the case of Putin, the Pre-Trial Chamber considered that the unlawful transfer of children, or adults, from occupied territory without cause is itself a war crime and that the prosecutor had brought sufficient evidence before it. Furthermore, repetition of similar conduct and the unlikelihood of voluntarily appearing before the Court lead the Pre-Trial Chamber to conclude that there was a necessity to issue an arrest warrant.

Toyoda: I have heard that the prosecution has filed requests with regard to Israel. Is it true that there has been discussion regarding these four crimes?

Akane: Yes, that's right. Now, the judges of the Pre-Trial Chamber are examining the underlying facts based on the evidence, particularly whether there is reason to issue a warrant, that is, whether the requirements are satisfied and whether there is a necessity.

Toyoda: Do you mean that a warrant of arrest can be issued but the arrest is not mandatory? Or is there some kind of obligation for participating countries that have approved the Rome Statute to arrest someone if an arrest warrant is issued?

Akane: Generally speaking, if a person subject to an ICC arrest warrant is in a member state, that member state has a legal obligation to arrest and surrender the person.

Toyoda: The ICC upholds justice. Without justice, there can be no sustainable peace and order, and sustainable peace can only be achieved by the rule of law. Japan has a Constitution that renounces war. Therefore, successive administrations, including that of Prime Minister Fumio Kishida, have said that international order should be maintained by rules, not by power. Unfortunately, both the UN and WTO are dysfunctional.

This may be a personal rather than a judicial opinion as the president, but what do you think about this situation in which both the UN and WTO are dysfunctional? Do you think that the ICC can prioritize the rule of law precisely because the United States, Russia, and China are not parties?

Akane: I think that each international organization has areas where they are optimally functional and other areas where they are not. As for the ICC, it is not directly related to the UN, so I think the rule of

law can be brought to the fore within its scope, supported by the states parties.

Toyoda: You said that the Rome Statute is incomplete, but why is that? How should it be supplemented?

Akane: Incomplete means incomplete in the legal sense. The Rome Statute has only 128 articles, but they purport to contain all rules relevant to the ICC, including what we call in Japan the Constitution, the Penal Code, the Code of Criminal Procedure, the Law of the Courts, the Law of the Public Prosecutor's Office, and so on. Therefore, there is very wide room for interpretation, and it is often a matter of debate among judges.

For example, in the Japanese Code of Criminal Procedure, there are detailed rules on the admissibility of evidence but there are no such detailed rules in the Rome Statute. This leads to difference in views among judges, since judges come from various backgrounds. There are too many areas that are left to be decided by case law. In that sense, I think it would be better to have more detailed provisions.

I mentioned earlier that there are four crimes (war crimes, genocide, crimes against humanity, and crimes of aggression), but the crime of aggression is regulated by amendments that were added at a later stage, which is a very difficult set of provisions to use. For example, if a state uses force against another and commits the crime of aggression, the ICC can institute proceedings only if both countries are States Parties. Other crimes can be invoked if one of the countries is a member, but not the crime of aggression.

In addition, jurisdiction can only be exercised over acts of aggression committed by a country, or a national thereof, that has ratified the amended provisions for the crime of aggression. Although the crime of aggression entered into force in 2018, even for States that joined the ICC before then, the provisions on the crime of aggression can only be used if that state expresses it will to use these amendments by way of ratification. So there are almost no situations in which the provisions can use it. It is flawed in terms of such usability.

In the case of Ukraine, there is a possibility that Russia's unilateral military invasion could be classified as a crime of aggression, but at this point neither countries are parties to the ICC, so it is not possible to use the crime of aggression provisions in the first place. This is why Ukraine is calling for the creation of a new special tribunal to try the Russian crime of aggression. Thus, the Rome Statute is not designed to function as a completed law.

Toyoda: Is there any movement to make the law more complete?

Akane: There is, but since this is a treaty, it cannot be changed without the consent of the member countries. An amendment requires a rather difficult procedure: first, two-thirds of the member

countries must approve the amendment, and then each country must go through the domestic ratification process. Therefore, in reality, it is quite difficult to amend the provisions of the Statute.

In particular, each country has its own interests regarding the crime of aggression, and many countries have their own armed forces. For this reason, countries are reluctant to create an article that is easy to invoke. In 2010, the Statute was amended to include detailed provisions on the crime of aggression, but there was a great deal of controversy at that time as well. Ultimately, it took seven to eight years for these amendments to enter into force. Furthermore, Japan has not ratified these amendments.

Toyoda: You have said it would take seven to eight years to reach a verdict at the ICC, which is too long. I think this means you are trying to improve the efficiency and speed of the trial process. How can we do this? There is also an argument that the WTO trial process is too slow. I think there are various reasons for this, but it is very important to speed up the process.

Akane: The reason why it takes so long to reach a verdict at the ICC is that many cases are complicated and there are many witnesses. There are many technical issues that make trials lengthy. For example, because it is often impossible to conduct a perfect investigation in situation countries, a lot of indirect evidence is piled up during trials. Also, the judgments themselves are lengthy because the judges give different opinions. The judgment itself can be as long as 1,000 pages, which means a lengthy process of considering the various submissions of the prosecution and defense, and then several deliberations.

To speed up the process is not so easy, because it requires a change in the mindset of judges and prosecutors. On the other hand, since it is still a complex process, it is inevitable that it will take a certain amount of time, so reforming the system is not something that can be done in one or two years.

One thing I would point out is that if member states cooperate more with the investigations that the ICC's Prosecutor's Office is carrying out, evidence gathering and so on, and if a lot of good evidence is gathered, trials can be expedited because they can be done with good evidence. If more member states cooperate with us and gather good evidence, we would be able to have quicker trials. Also, if they cooperate more in various ways, such as in arrests, we can speed up the process and improve efficiency.

There are not many Japanese nationals at the ICC, but Japanese prosecutors and judges are excellent in terms of their legal mind and experience, and the police are also well trained for the criminal investigations, so I think it would be different if more people like them joined the ICC.

Toyoda: Rather, does it mean that the Japanese can contribute?

Akane: I think that we can.

Toyoda: It seems to me that you were able to get to the point of issuing an arrest warrant for Putin in a relatively short period of time.

Akane: This also depends on the case; some cases are earlier, some later, so it is hard to say.

Toyoda: How long did it take for Putin?

Akane: About one month. But some are even quicker.

Toyoda: By the way, is Israel among the contracting countries?

Akane: It is not but Palestine is. Palestine is an observer state of the UN, so it is considered eligible to be a State Party of the ICC.

Toyoda: As for lengths of time, the WTO has set a time limit for the examination body. The fact that this is not being adhered to has been a source of frustration for some countries.

Akane: In the case of the ICC, there is no such time limit for issuing arrest warrants. Certain time limits do exist, notably concerning the judgment of the Trial Chamber or the Pre-Trial Chamber's decision on the confirmation of charges.

The Asia-Pacific Region & the ICC

Toyoda: A big change of subject, as now I would like to talk about Asia. You seem to be concerned about the lack of interest in the Rome Statute by Asia-Pacific countries. Do you think there is any reason for this? What are you doing to improve the situation? And is it true that you are concerned about this lack of interest?

Akane: Yes. The regions are divided into five areas: Africa, Asia, Latin America, Eastern Europe, and the fifth is "Western Europe and Others". Not only Western Europe, but also Canada, Australia, and New Zealand are in "Others". This is so-called Western Europe. Canada, Australia, and New Zealand are also member countries, but they are not included in the Asia-Pacific region.

The Asia Region has the lowest membership rate. There are about 54 countries that can join, but only 19 are members. Asia is a very



large region, and it includes the Pacific countries, Cyprus and Turkey. Jordan is a signatory, but there are not many Islamic member countries in the region.

Toyoda: Why is the membership rate so low?

Akane: I think it is historical. The reason why people in the West took the lead was that Europe had gone through two world wars and had suffered enough from them, so there was a momentum to create a permanent international criminal tribunal. The Netherlands also invited the court, and we are now in the Netherlands, which means that we are very close to other European countries. This makes it easier for people to come to the ICC, and it also makes it easier to generate interest within each country.

Also, Africa and other parts of the world are relatively well represented. Africa still has strong ties with Europe, so I think that they were sometimes encouraged to enter by Europe. Africa also has a human rights court that has jurisdiction over the African region, and the criminal and human rights-related systems are relatively well developed, at least formally. Some African nations also want to be assisted by an international court such as the ICC to do justice.

So what about Asia? First of all, there is no uniformity among Asian countries. They are really diverse, and there is no cohesion. There is no soil that can be grouped together as with the European Union in Europe, and there is no soil that can be grouped together as with the African Union in Africa. There is a lot of cohesion in Latin America, but no such cohesion in Asia. It is far from the ICC, and at the time it was created, there were no major international armed conflicts in Asia, so there was not a lot of momentum to be interested in it. Then there are many countries that have kings, and I imagine there was some concern that investigations might be directed at head of state.

Toyoda: What are you doing to address these concerns

and improve the situation?

Akane: Since the ICC was created by the member states, this is an obligation of the members. Since it is the duty of member countries to increase the number of new members, the Assembly of the Parties (ASP) is taking the initiative. However, the ASP has not been very active in promoting the membership of Asian countries, partly because there are not many Asian countries in the ASP. Therefore, since I became the president of the Court, I have been working to encourage the ASP to become more active in this area.

We also have embassies of Asian countries in the Netherlands, New York, and Brussels, and when I visit these countries, I gather the ambassadors and ask their countries to join.

Toyoda: Since Japan is by nature a powerless country, I also believe we should continue such efforts as long as we emphasize the “rule of law”. What do you think about this?

Akane: There is a meeting of Pacific island countries called the Pacific Islands Leaders Meeting held once every three years, and I heard that Foreign Minister Yoko Kamikawa say that she told these island countries that they should definitely join the ICC. She has also talked about this at multilateral meetings.

Toyoda: Europe has had two world wars, and Africa was involved in some way or another. It is true that now, when people ask me whether Asia or Africa is more stable, it seems that Asia is more stable. In that sense, is it possible that Asia is less interested, because it is more blessed?

Akane: I don't know about that. There are many problems in the Asian region, for example, the Rohingya issue in Myanmar. The Philippines is also under investigation by the ICC, so I can't say that there are no problems there. However, awareness is still low.

Toyoda: I think a kind of enlightenment is still needed.

Akane: Yes. This is the responsibility of the ICC, and also of Japan as a member country, but we have not made much effort to increase membership, and I think we should do something about it.

Toyoda: I know that Minister Kamikawa is making efforts to expand the number of signatory countries, but in terms of financial support, is it fair to say that Japan is doing relatively well?

Akane: In terms of the budget, Japan is the largest contributor with a contribution rate of 15.4% in last year's budget.

Toyoda: Which nations are second and third?

Akane: Second is Germany and third is France. The regular contributions of the ICC are commensurate with contributions at the UN. As the US and China are not included, the aforementioned countries are the top contributors.

Toyoda: How about Australia?

Akane: I think Australia is 10th and South Korea is sixth. As mentioned, the amount due for the regular budget is determined in a manner commensurate to contributions at the UN, so Japan is not necessarily the top contributor as it is voluntarily paying a large sum. South Korea is also moving up in the ranking of contributions, and is actively engaged in a variety of activities. So I think it is necessary to cooperate with South Korea and strengthen Japan's contribution.

Legal Assistance in Asia

Toyoda: I understand you were once involved in supporting legal development in Asia as director of the International Cooperation Department of the Research and Training Institute of the Ministry of Justice. What is your assessment of the current state of legal system development in Asia?

Akane: I was in charge of the International Cooperation Department from 2009 to 2010, and I think the situation has changed a lot since then, but as I mentioned earlier, Asia is a large region, and there are many different countries. The countries that Japan supported were basically Vietnam, Laos, Cambodia, Indonesia, Myanmar, and Uzbekistan. There is quite a variety within those countries. Vietnam and Cambodia cooperated with us because they wanted us to do it from their side, and I think their legal system has been improved to a certain extent. I think Laos and other countries have also achieved legal development.

One thing that can be said about Asia in general is that there is more corruption in the judiciary than in Japan. The same is true in Africa as far as I know, as in the Western nations. In this respect, Japan should be proud of the high level of integrity among the members of judiciary. I have never heard of a Japanese Supreme Court judge taking a bribe, so I think Japan is the best in the world in this respect.

Toyoda: In a sense, that is a point of pride.

Akane: Yes. I think we should be proud of it.

Working at the ICC

Toyoda: Now, please forgive me as I am going to ask you a somewhat personal question. I would like you to tell us how you came to work at the ICC. Why did you become interested in the ICC? From what I have read, it seems that your study in the US was a turning point, but in what way did you become interested in the ICC?

Akane: The ICC was established in 2002, and when I studied in the US in 1989, there was no ICC at that time. I became interested when my supervisor at the Ministry of Justice actually asked me if I would like to run in the election for ICC of judges. Then I started studying about the ICC and became interested. Many people assume that I took the initiative to prepare for such a career, but actually that is not true.

Before going to the US to study American law, the Japanese criminal justice system was everything for me, and thus I had never thought about whether it was better or worse than the US one. The laws are different, and the operations are different between the two. Then I could see the good points of Japan, and on the other hand the good points in other countries. It was a turning point for me in the sense that I found out that I would need to have a broader perspective.

Toyoda: So your perspective has broadened.

Akane: Yes.

Toyoda: But that did not immediately lead to the ICC?

Akane: No. My supervisor suggested it.

Toyoda: What did you think when your boss said this?

Akane: At first, I was not sure what to do. The reason was that I would have to make great efforts for election. Of course, the Ministry of Foreign Affairs would do its best, but I would also have to go to various countries and promote my candidacy. I had only worked as a prosecutor in Japan, and I was worried about my English ability and other skills. I knew that the ICC existed, but I had never envisioned myself going there.

However, my supervisor told me that previously a person from the Ministry of Foreign Affairs had served as an ICC judge, but this time he asked me if a prosecutor would be willing to serve as a judge. If I didn't do it, there would be no one to follow from the Ministry of Justice. So they told me to create that opportunity, for the sake of the young prosecutors. So then I thought I should not turn down this offer.



Toyoda: You had a great boss.

Akane: Yes, I did. In a way, I thought my boss was great. In the sense of connecting to the young people of the future, I was told that although it might be difficult for the first person, once a path was established, it would not be so difficult, and the young people would follow.

Toyoda: That is a wonderful story. You had an ambassador-level person from the Ministry of Foreign Affairs working for the ICJ.

Akane: It used to be so, but now a former professor of the University of Tokyo is working there.

Toyoda: In my observation, there are many people from the Ministry of Foreign Affairs who I think would make a great contribution if they joined international organizations, but many of them will not join. It is not necessarily true that many people from the Ministry of Economy, Trade and Industry are also willing to join. So I think your boss is admirable.

Akane: Another thing that worried me was the nine-year term. If I were elected, I would have to spend my life from the age of 61 to 70 in the Netherlands. This is a very long period of time, and I knew it would be mentally burdensome. I think there were men who could go. There are many people of my age who speak good English. But in the end, it was me. In my case, I thought that if I could inspire young people, I would go.

Toyoda: Is there a growing interest in the ICC among young legal professionals?

Akane: Yes, we have received a very positive response from young people. In particular, there are several excellent prosecutors and lawyers who are turning their attention to such areas. Young people today speak better English than we do, and in that sense, I have high expectations for them.

Toyoda: I think that is wonderful. In general, I think you are saying that an increase in the number of Japanese nationals in international organizations will be good for Japan as well as for the world. I think I understand what you mean by “for Japan”, but what do you feel when you say “for the world”?

Akane: Japanese people work very hard for others and for the institution, and although there are only about 10 employees at the ICC, many of them work really hard and do their best, even if it is not for their own benefit.

Toyoda: That is excellent.

Akane: Yes. Everyone is really great. Many of them are willing to do their best for the institution and for peace. So I think that if there were more Japanese people, the institution would be better and we could do more work for the world. This is not only true of the ICC, but I have had the opportunity to meet several Japanese people from various UN agencies, and they all devote themselves to the development of the organization and the work that it should do.

Perhaps that is the outcome of Japanese education. In Japan, we have a large population, we are not blessed with natural resources, and we are accustomed to working together to improve society, so many people are able to contribute even if they join an international organization. In that sense, I think that Japanese people could do a better job if they joined.



Toyoda: So Japanese have the advantage of being able to build up an organization well.

Akane: That's right. Japanese people work steadily, building up a system in an efficient way by using data and valuing cooperation.

Toyoda: I understand that very well. Having heard your story, it is quite important for a boss to make a recommendation for a job at an international organization.

Akane: That supervisor had a very broad perspective. I think the key to the future will be whether people with experience in international work can guide their subordinates with insight. If the supervisor himself does not have a broad perspective, he will be reluctant to decide to send a competent person to an international organization, considering the work just in front of us more important. So unless you have a boss who can have a more long-term vision, that will not happen. However, the Ministry of Justice in Japan still has such people, and I hope they will continue to do so.

Toyoda: It is really good, in the WTO as well, that the Japanese are making great contributions, but we don't even have a deputy director, though there are always Chinese deputy directors. There are many capable people in Japan, and if the Ministry of Foreign Affairs would give them a little more support, I think there are many people who could become executives in international organizations. There would be some qualified to be WTO secretary general in Japan, but they are too modest and hesitant.

Akane: I recently met a young bureaucrat from the Ministry of Finance who said he would like to work for the WTO. There are people like that, and I think they will go to work for it if their superiors encourage them to do so.

Toyoda: In Japan, we need something to push us up to the point where we are somehow able to take the plunge.

Akane: Also, there are various domestic issues at the moment, so from a short-sighted point of view, I understand the desire to keep excellent people in Japan. However, I would like those superiors to take the viewpoint that once they send that person to an international organization and then bring him or her back to Japan with a good post, it will be even better.

Toyoda: Generally speaking, it is said that today's young Japanese neither try to study abroad nor want

to go abroad, but from what you have just said, it seems that there are some Japanese who are ready to go abroad. People who are not young often say that today's young people are not open to the outside world, but what are your thoughts on this?

Akane: It is said that the number of foreign students is also decreasing. I have been at the ICC for more than six years, and during that time Japanese courts send about 10 people to Europe every year to study abroad. Of course, these people are sent on a voluntary basis. They organize their own study groups and come to the ICC to hear about the precedents of the ICC, and then return home after studying. When I see such people, I strongly feel that they could enhance Japan's contribution to world affairs. Prosecutors who have been abroad often come up to me and we talk about various things, and I feel the same.

Since I joined the ICC, I have encouraged various Japanese students to apply for our internship because I am keen on increasing Japanese staff, and finally the person whom I recently asked to be an intern did become so at the ICC. If you only think of the risks involved in going abroad and give up on it, you will not know what kind of other worlds are out there. Of course there are many hardships, but it is also true that young people need stimulus to stir their adventurous spirit.

Toyoda: If Japan, a country without power, is active in building the rule of law, we must go outside and create it with people from other countries. As you mention, there needs to be something for senior people at the top which could work as encouragement to get as many interns as possible. If we can do that, I think young people will play an active role as long as they have a chance.

Akane: I think so. There are young people who are just as capable and motivated as those in the past. I wonder if something is missing to draw out that power.

Toyoda: I rather think the government should greatly increase the number of scholarships for studying abroad, including those from the private sector.

Akane: Companies also have branches in various places, and I think it is necessary to dispatch more and more young people overseas. I believe that the more Japanese people go abroad, the more various people will emerge among them.

Japan's Strengths & Weaknesses as Seen by Legal Professionals

Toyoda: Changing the subject again, what are Japan's

strengths and weaknesses from a legal perspective? As a country that emphasizes the rule of law, do you feel that Japan has any particular legal strengths?

Akane: After the Meiji Restoration, Japanese lawyers learned many things from Western countries. First, they studied continental law systems, then English law. After WWII, they studied American law, and the law of Japan itself is a mixture, so they naturally study common law and continental law systems. Moreover, I think Japanese legal education is superior in many ways. Although the method of education has changed now with the establishment of law schools, the basis of legal education is still solid, and young legal professionals have acquired enough legal knowledge and a fundamental legal mind.

Therefore, excluding the language disadvantage, they have the background to work well as lawyers when they go abroad. I think this is one of our strengths. In Europe, for example, common law professionals sometimes do not understand well what continental law professionals think, but Japanese legal professionals understand both ways of legal thought, so they can understand why there are conflicts among others. Therefore, we can get along well with both as lawyers.

Toyoda: Do you mean flexibility and breadth of vision?

Akane: There is that, too, and I think there is a solid understanding of what the law is.

Toyoda: Conversely, what are the weaknesses?

Akane: It is still a lack of positive assertiveness. The other problem is language. When I first became a judge at the ICC, I did not speak up much. Even at meetings, I did not often raise my hand to express my opinion. When I did that, Westerners would think that I did not have an opinion. I was not like that. For example, if Mr. A was expressing the same opinion as mine, I would express my opinion only by saying "the same as Mr. A" because I did not have to elaborate on it. However, from the Westerner's point of view, if I were of the same view as Mr. A's, it was the Western style to repeat the rationale or add my own flavor to the argument. It was only after a few years that I began to understand this. In the beginning, I never raised my hand first, but recently I have started to try to raise my hand first. I believe that we Japanese are weak in this area.

Toyoda: At lectures, most Japanese people do not try to ask questions. Foreigners do, however, ask a lot of questions.

Akane: Even in the middle of a lecture, foreigners ask questions. Today, however, I gave a lecture at Hitotsubashi University to 70 to 80 students, mainly law students, and the questions never stopped. I

was told to keep the lecture short because they knew there would be a lot of questions, so I gave only 40 minutes, including my introduction, and the rest of the time was devoted to questions. I felt that I had a very good response there. In that sense, I felt that young people are not to be undervalued.

Toyoda: Is it still the outcome of today's education?

Akane: I think so. Currently, in law school, the direction is to encourage discussions, so that may be bearing a little fruit.

Toyoda: That's a good story.

On the Advancement of Women

Toyoda: I have heard that your role models are Helen Keller, Madame Curie, and the first Japanese female lawyer, Yoshiko Mibuchi, who is now made famous in a Japanese TV drama.

Akane: I have never referred to Ms. Mibuchi as a role model. I don't know her myself. However, I have read her biography, and I think she is a wonderful and very admirable person.

Toyoda: I think Helen Keller and Madame Curie were both fine people.

Akane: I believe that what all three of them have in common is that they overcame a great many difficulties to achieve greatness. I think this is wonderful not because they are women, but because they are human beings. Helen Keller is a miraculous person who overcame triple hardships, and there are not many people like Marie Curie, who achieved so much as to receive two Nobel Prizes. So I thought she was wonderful not so much as a woman, but in the sense that she overcame many difficulties and achieved greatness.

Toyoda: Have you had any difficulties or disadvantages because you are a woman?

Akane: Actually, not so much. My daughter says that I am surviving by being insensitive and less affected by anything discouraging that has been said about myself. It may be true that I haven't cared much about anything said about me. I entered one of the best high-schools in Japan with a good record for enrollment in a good university, and there I was educated with no gender discrimination, and at the University of Tokyo most of the classmates around me were men. So, the truth is that I have never really cared much about gender.

However, distant relatives or people in my father's company seem to have said, "What would be the merit for a woman being a lawyer?" My parents have never said so; rather, they thought that in today's

society it would be more beneficial for a woman to become a lawyer. They did not tell me that I should not do it because I am a woman, so I did not have much difficulty.

Even after having joined the Prosecutor's Office, because there were so few women there, I was rather treated better, and for my part I did not have much difficulty with that. Rather, the people at the Prosecutor's Office gave me a lot of good and helpful suggestions in my professional life in many ways.

For example, about seven years after I became a prosecutor, I took the liberty of applying for a scholarship offered by an American foundation, not to study abroad as recommended by the Prosecutor's Office, but to go on my own. When it looked like I was going to be accepted for the exam, I consulted my supervisor and asked him if I should quit my job as a prosecutor. My boss said, "Wait a minute. I'll talk to the ministry." The ministry said I should take a leave of absence, and I was able to take a two-year leave. And when I came back, I was given the same treatment as before, even though I had been away from work for two years. So I believe that there were senior officials among my ministry executives who were broadminded.

Toyoda: So you had a supervisor who recommended you for the ICC, and there were many admirable people in your ministry willing to allow you to take a leave of absence to study abroad.

Akane: Yes, that's right. I think I rather benefited in a way because there were fewer women, and considering how my boss felt at that time, even though I might quit after studying abroad for two years, it would be an investment in a way, and if he invested in some people with an open mind, someone might make it big. I imagine he was a boss who believed in that kind of mindset. I think that is why I stayed in the Prosecutor's Office for so long.

Strengthening Japan's Contribution to the Rule of Law

Toyoda: Thank you very much for this very good discussion. Finally, from the perspective of Japan's contribution to the rule of law, is there anything you would like to emphasize that Japan should do?

Akane: Japan lags behind in many respects in terms of its legal system. For example, the Rome Statute stipulates so-called war crimes and crimes against humanity, but Japan does not have such crimes in its laws. The Japanese government's position is that such crimes can be covered by ordinary crimes under the Penal Code, such as murder or rape, but war crimes are murders, and other criminal acts, committed during an armed conflict. In other words, core crimes are aimed at covering conduct committed in a particular and

broader context, but by dealing with them as ordinary crimes, one tends to be unable to capture this broader context. Another problem is that Japan is not a member of the Genocide Convention. Therefore, the word “genocide” does not exist in Japanese law. There is no crime of genocide.

If we talk about the rule of law, there should be such a law in Japan, and if there is an act of genocide anywhere, there should be international cooperation, with the participation of Japanese lawyers specializing in that field, to come up with a legal assessment of the situation. However, as there is no criminalizing of genocide, there tends to be no such cooperation. For example, there is now a discussion about the necessity of strengthening the Self-Defense Forces in preparation for contingencies in neighboring countries, but there is no discussion about what would happen if war criminals were among the many refugees who may come to Japan. This is an actual possibility and I would like to know how Japan would legally deal with such a situation. I mean that Japan is not willing to help other countries when genocide strikes them.

Toyoda: How many countries are included in the Genocide Convention?

Akane: 153 countries. Japan is the only major country not included.

A Problem for the ICC

Akane: Finally, I have one last thing I would like to mention. Regarding relations with Israel, since the US is of course pro-Israel, there is a movement among some members of Congress to impose legal and economic sanctions against the ICC. The House of Representatives has passed a law, the Illegitimate Court Counteraction Act, which targets the ICC alone. I am not sure if the Senate will pass it, but if the Senate passes it, and if the president signs it, then anyone the president designates will be subject to sanctions.

In principle, assets in the US will be frozen, transactions will be prohibited, and the sanctioned person will be banned from entering the US, but there is a possibility that secondary sanctions will be imposed on those who have indirectly cooperated with the ICC. The US dominates the financial world, and there is no European bank that does not do business with US banks. So, if there is an ICC employee who does not even have an account in the US but has an account in the Netherlands, if a Dutch bank does business with that person, it could be subject to secondary sanctions because it is indirectly connected to an American bank.

This would cause banks in Europe to overreact and say, “We will not do business with ICC staff.” Furthermore, any business with ICC officials would be considered indirect cooperation with the ICC, which would have almost the same effect as sanctioning the ICC as a whole, and the ICC accounts themselves could be frozen. If that were to

happen, all ICC operations would cease. Currently, there is such a risk. We have to do something to prevent it, so we are working very hard right now, and we are also lobbying the Japanese government and talking to the member countries at various opportunities to tell them to try to stop this.

Toyoda: That’s a problem. Depending on the outcome of the presidential election and the composition of Congress, we could have that sanctions law in no time.

Akane: The House of Representatives was predominantly Republican, so it took only two days to pass. Of course, I understand that the US is close to Israel, but that is in a political sense, and we are only aiming to punish individuals in accordance with legal procedures, not against Israel as a state nor the Jewish people as a whole. I hope this is understood. Ordinary people may disagree with what the ICC is doing, but they would not move to destroy it. We are just lawyers, so we don’t intervene in the political world, nor are we against the US. We are just carrying out our mandate in accordance with the law.

Toyoda: I understand. I hope many foreigners as well as Japanese will read this interview.

Akane: I meant that the pursuit of justice under the law should be respected even when the political landscape is opposed to it.

Toyoda: Thank you very much for talking to us.

Note: After this interview, Russian President Vladimir Putin paid an official visit to Mongolia, as is well known.

Mongolia is a member state of the ICC, which has issued an arrest warrant against Putin for war crimes, and it is believed that the two countries had agreed in advance that he would not be arrested, despite the fact that the ICC Statute requires that the arrest warrant be executed in accordance with the obligations of member states.

Under the ICC Statute, it is reported that the ICC may now decide whether Mongolia, as a member state, failed to comply with a request to cooperate by the ICC, to arrest/surrender him to it, contrary to the provision of the ICC Statute, and thereby preventing it from exercising its functions and powers under the Statute. The ICC so found at the end of October 2024 and reportedly referred to the matter to the Assembly of the States Parties.

(Japan SPOTLIGHT Editorial Section)

JS

Written and translated by Naoyuki Haraoka, editor-in-chief of Japan SPOTLIGHT, with the cooperation of Tape Rewrite Co.