

# Mutual Legal Assistance and Infringement of Foreign State Sovereignty

## — A Preliminary Analysis from the Perspective of Enforcement Jurisdiction Based on Practical Considerations (summary)

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This article examines the concept of “infringement of sovereignty” within the framework of mutual legal assistance in civil and commercial matters. The primary objective is to establish criteria—derived from practical implementation—that can be utilized to assess whether the exercise of enforcement jurisdiction encroaches upon the sovereignty of a foreign state.

The article begins with an analysis of the implications of Japan’s 2018 declaration of refusal regarding Articles 8 and 10(a) of the Service Convention (Chapter 1). This is followed by an examination of the procedural mechanisms for serving administrative documents abroad (Chapter 2). The discussion then shifts to the use of digital technologies in judicial procedures and mutual legal assistance (Chapter 3), followed by an examination of how mutual legal assistance interacts with the 2022 amendments to the Code of Civil Procedure, particularly those concerning the digitalization of service, hearing, and witness examination (Chapter 4). Building on these inquiries, the article systematically explores “infringement of sovereignty” within the operational framework of mutual legal assistance from a practical standpoint (Chapter 5).

Throughout the preceding chapters, this article has demonstrated that, in legal practice, the prevailing criterion for determining whether the execution of enforcement jurisdiction infringes upon a foreign state’s sovereignty is whether its specific effects interfere with the foreign state’s enforcement jurisdiction. In the context of assessing the effects of sovereignty infringement with due consideration to various factors, this criterion appears to be compatible with the common law jurisdiction—particularly the view that mutual legal assistance should be governed by a balancing test within the framework of international comity. This approach contrasts with the traditional academic framework rooted in civil law jurisdictions. Nevertheless, there are notable commonalities between the two, especially in light of recent academic theories emerging in Japan. Furthermore, this article has shown that both the practical

criterion and the traditional academic framework share a common philosophical foundation.