



Institute for Globalisation and
International Regulation (IGIR)

Japanese, Chinese and Indian Investments *In and Out*:
New Trends in the Globalization of Law *from and within* Asia

Theme and Main Research Questions

While Foreign Direct Investments (FDI) can be seen as one of the major challenges of the globalization of law, their evolution is too often analyzed from a Western perspective only.

In recent years however, new players have profoundly modified the cartography of FDI flows. For instance, Japan, China and India have moved from the position of mere recipients of FDI to that of key actors of international investments. This process of economic globalization is based on, as well as much as it participates to the internationalization of national laws that were already profoundly influenced by the West. Japan, China and India thus export a unique set of standards marked by very different economic, social and political realities, but always characterized by their syncretic nature. Jostled by globalization, national laws are now faced with an unprecedented epistemological revolution. Traditional sources and actors of law are deeply questioned by a globalization of knowledge and practices that are not only exported from a legal order to another, but gradually de-territorialized in many singular spheres thus constituting hybrid, plural and dynamic spaces.

These legal journeys often described as “aggressive legalism” in reference to Japanese policies, challenge modern and western conceptions of law while this “*métis*” law meets with other legal systems still invested by the West but on territories where globalization happens without him.

Far from the “ready made” legal-economic doctrine on what should be the foundation of a successful international investment, the practices of these three great nations challenge the very nature of the internationalization of law.

In the continuity of an academic research initiated by the MFJ, in 2009, on

"Law, Culture and Development in a Globalized Legal Environment", this project aims at conceptualizing, in a multidisciplinary fashion, the globalization of standards and practices of Japanese, Chinese and Indian international investments, in developed and developing countries and based on concrete "objects": bilateral investment treaties (BIT), large international contracts, corporate social responsibility (CSR) policies, methods of dispute resolution (arbitration and alternative dispute mechanisms), etc.

A Strategic Opening-up to Practitioners

Going beyond the traditional academic sphere, this conference and workshop will involve numerous legal practitioners (law firms, corporate lawyers) and business leaders. These professionals will not only inform and enrich the debate by their business experience, but also allow us to publicize new legal thinking and approaches in larger spheres.

A dynamic format

While the format chosen is that of an international conference, we are also convinced of the limits of such an academic exercise and feel that it is essential to introduce more interactivity and devote larger amount of time to discussions. Thus the second part of this meeting will be dedicated to a "closed" brainstorming conceived as workshop for publication.

Venue

Maison franco-japonaise 日仏会館
Bureau Français 6th (Room 601)
3-9-25 Ebisu, Shibuya, Tokyo
TEL +81-3-5421-7642/7641
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Date

June 2010, 11th (Friday) – 12th (Saturday) (morning)
Friday 11th, from 9.30 am to 6.30pm
Saturday 12th, from 9.30am to 1.00pm

CO-ORGANIZERS:

Maison franco-japonaise, Institut Français de Recherche à l'étranger, UMIFRE 19, CNRS-MAEE

Maastricht University, Institute for Globalisation and International Regulation

CONTACTS :

- Dr. Isabelle GIRAUDOU (Researcher, Maison franco-japonaise) - co-organizer
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- Dr. Leïla CHOUKROUNE (Assistant professor, Maastricht University) - co-organizer
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PANELS (Friday 11th):

- Investments and the Law *in and from* Asia: a Mapping Exercise (Panel 1)
- The Globalization of Investments Contracts (Panel 2)
- Disputes Settlements – An Asian Way? (Panel 3)

WORKSHOP (Saturday 12th, morning):

- Wrap-up Session:*
Globalization and Legal Journeys *from and within* Asia: New and Old Concepts

NUMBER OF SPEAKERS: 18

LANGUAGE: English (English required for presentations, possibility to use Japanese during the discussion, publications in English, French, Japanese, Chinese).

FORMAT: 15 minutes for each presentation (+10 minutes discussion).

Targeted audience:

Scholars (mainly those specialized in legal studies);
Practitioners (lawyers, mainly those of international legal firms based in Tokyo)
Business community (through the chambers of commerce present in Japan and the EU-Japan Center for Industrial Cooperation)
Interested officials

With the participation of:

MATSUSHITA Mitsuo (Professor Emeritus, Tokyo University, Former Member of the WTO Appellate Body), TANIGUCHI Yasuhei (Professor Emeritus, Kyoto University; Attorney at Law; Former Member of the WTO Appellate Body), KATO Masanobu (Professor, Sophia University), HAYAKAWA Yoshihisa (Professor, Rikkyo University; Attorney at Law), HISATAKE Masato (Professor, Tohoku University), Gerald Paul McALINN (Professor, Keio University), Luke NOTTAGE (Associate Professor, Sydney University), Gilles LHUILIER (Professor, South Brittany University), Julien CHAISSE (Assistant Professor, Chinese University of Hong Kong), Jawahar Lal KAUL (Professor, Delhi University), Nicole KORNET (Assistant Professor, Maastricht University), Leïla CHOUKROUNE (Assistant Professor, Maastricht University) - co-organizer, Isabelle GIRAUDOU (Researcher, Maison franco-japonaise) - co-organizer, KOBAYASHI Eiji (Attorney at Law, Nishimura & Asahi), Mark GOODRICH (Attorney at Law, White & Case, Tokyo), Dominic ROUGHTON (Attorney at Law, Herbert Smith, Tokyo), Vincent PACE (Foreign Attorney, Nagashima Ohno, Tokyo), Etienne LAUMONIER (Support Lawyer, Audier & Partners, Hanoi).

PROGRAM

PANELS (Friday 11th, 9.30-18.30):

MORNING SESSION (9.30-13.00)

(9.30-9.45)

Opening:

- Mr Étienne ROLAND PIÈGUE (Conseiller économique et financier adjoint, Mission économique de Tokyo)
- Professor Marc HUMBERT (Director, Research Institute of Maison franco-japonaise)

A few words from the co-organizers:

- Dr. Leïla CHOUKROUNE
- Dr. Isabelle GIRAUDOU

(9.45-11.50)

❑ **PANEL 1:**

Investments and the Law *in and from* Asia: a Mapping Exercise

Moderator: **Professor Gilles LHUILIER**

(9.45-10.00)

Dr. Julien CHAISSE, Assistant Professor, Chinese University of Hong Kong
“*Declining Concepts and Emerging Issues in International Investment Law*”

(10.00-10.15)

Dr. Leïla CHOUKROUNE, Assistant Professor, Maastricht University
“*Emerging Practices from China and India, a Challenge for International Investment Law?*”

(15 minutes Discussion and Q&A)

Coffee Break (10 minutes)

(10.40-10.55)

Dr. Mitsuo MATSUSHITA, Professor Emeritus, Tokyo University
“*Japanese Policies Towards East Asian Free Trade Agreements: Policy and Legal Perspectives*”

(10.55-11.10)

Dr. Isabelle GIRAUDOU, Researcher, Maison Franco-Japonaise (Tokyo)
“*Investment Rules in Japan’s Preferential Trade Arrangements with Regional and Cross-Regional Partners: The Rise of Assertive Legalism*”

(11.10-11.25)

Étienne LAUMONIER, Support Lawyer, Audier & Partners (Hanoi)
“*Host Country Perspectives – Reshaping Investment and Enterprise Laws in Vietnam*”

(30 minutes Discussion and Q&A)

(LUNCH BREAK)

AFTERNOON SESSION (13.00 – 18.30)

(13.00-15.45)

❑ **PANEL 2:**
The Globalization of Investments Contracts

Moderator: **Dr. Julien CHAISSE**

(13.00-13.15)

Dr. Gilles LHUILIER, Professor, South Brittany University

“The Asian Investment Contracts as a Solution to the Global Financial Crisis? (Compensation, Triangular Trade, Contributions to a Joint Venture Company, Off-Set Contracts, Corporate Banks, Nearby Private Equity, ...)”

(13.15-13.30)

Dr. Nicole KORNET, Assistant Professor, Maastricht University

“Influences of Globalisation on Investment Contract Law and Practice”

(13.30-13.45)

Dr. KATO Masanobu, Professor, University of Sophia

“Attitudes Towards Contracts in the Globalized Economy”

(40 minutes Discussion and Q&A)

(14.25-14.40)

Vincent PACE, Foreign Attorney, Nagashima Ohno

“Japanese Companies’ Approaches to Investing in China (M&A, Joint Ventures, WFOEs, ...)”

(14.40-14.55)

Mark GOODRICH, Attorney at law, White & Case, Tokyo

“The Search for Energy Security – Contracts, Investments and Political Risk”

(14.55-15.10)

KOBAYASHI Eiji, Attorney-at-Law, Nishimura & Asahi

(35 minutes Discussion and Q&A)

(Coffee Break of 15 minutes)

(16.00-18.30)

❑ **PANEL 3:**
Disputes Settlements – An Asian Way?

Moderator: **Professor Gerald McALINN**

Introduction
(16.00-16.10)

(16.10-16.35)

Dominic ROUGHTON, Attorney at Law, Herbert & Smith (Tokyo)
“BITS, MITs and ICSID: An Introduction”

(16.35-17.00)

Dr. Luke NOTTAGE, Associate Professor, Sydney University
“Investment Arbitration for Japan and Asia: Five Perspectives on Law and Practice”

(17.00-17.25)

Dr. TANIGUCHI Yasuhei, Professor Emeritus, Kyoto University, Attorney at Law
(Former Member of the WTO Appellate Body)
“Different Approaches to Commercial Arbitration in East Asian Countries”

(17.25-17.50)

Dr. HAYAKAWA Yoshihisa, Professor, Rikkyo University, Attorney at Law
“The Distorted Image of the Japanese System of International Commercial Arbitration”

(17.50-18.30)

Discussion and Q&A

18.45 – 21.30 Reception (Maison franco-japonaise, 7th floor)

WORKSHOP (Saturday 12th, morning):
(10.00-13.00)

(10.00-11.00)

- WRAP-UP SESSION: Globalization and Legal Journeys *from and within* Asia: New and Old Concepts**

(Break of 5 minutes)

(11.05-13.00)

- Moving Forward: How to Publicize our Work (publication, network, ...)**

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We thank the following institutions for helping us to disseminate about our work:

- The Australian Network for Japanese Law (ANJeL)**



- Conventions, Réguler la mondialisation**

