

**Research Seminar**

**June 7-8, 2012 Maison franco-japonaise (Tokyo)**

**The New Normative Spaces of Globalization**

**On International Commercial Arbitration in Asia**

**and the Principles of Asian Contract Law**

*Co-organized by:*

**Institut français de recherche à l'étranger, UMIFRE 19**

**(CNRS – Ministère français des Affaires étrangères et européennes)**

**Maison des Sciences de l'Homme en Bretagne (MSHB)**

*With the collaboration of:*

**GLSN Global Legal Studies Network / Réseau Mondialisation du droit -  
(Fondation Maison des Sciences de l'Homme Paris)**

## PRESENTATION

Entitled “**The New Normative Spaces of Globalization (On International Commercial Arbitration in Asia and the Principles of Asian Contract Law)**”, this research seminar is co-organized by the French Research Institute on Japan (French Ministry of Foreign Affairs - CNRS) and the Maison des Sciences de l’Homme en Bretagne (MSHB) with the collaboration of the *GLSN Global Legal Studies Network - Réseau Mondialisation du droit* (Fondation de la Maison des Sciences de l’Homme, Paris). This is the fourth scientific event organized at Maison franco-japonaise, Tokyo, dealing with “The Globalization of Law”<sup>1</sup>.

Based on previous experiences, we thought it was essential to introduce more interactivity and devote a larger amount of time to discussions, so this year we favored the dynamic format of a research seminar. Conceived in close relation to a research project initiated by Gilles LHUILIER on “The New Normative Spaces of Globalization”, this seminar will bring together participants from Japan, France, United States and Vietnam. It will involve several legal scholars and also legal practitioners (law firms, corporate lawyers), who will inform the debate based on their business experience. This seminar will give us the opportunity to bring to public attention new legal thinking and approaches in larger spheres.

## THEME AND MAIN RESEARCH QUESTIONS

The question whether a new space of commercial regulation is emerging in Asia is generally addressed through the traditional notion of legal order or legal system. Thus, Chinese Law or Japanese Law on Arbitration, for example, is examined by underlining the specificities of such domestic law. Would it be possible to question the emergence of an Asian space of business law, not only from the exclusive standpoint of legal norms but from the standpoint of the actors themselves and their legal practices?

Two concrete examples have been chosen to illustrate this hypothesis: international commercial arbitration in Asia and the so-called “Principles of Asian Contract Law” (PACL). Concerning conflict resolution and international commercial arbitration, the following questions can be raised: how do legal practitioners locate conflicts in Asia? Or do they choose arbitration courts, for example the European ones? How do they decide to locate conflicts to obtain exequatur in China, etc. As far as legal scholars and practitioners elaborating new transnational legal instruments (such as PACL) are concerned, the following questions can be asked: how do they

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<sup>1</sup> [http://www.mfj.gr.jp/institut/equipe/chercheurs/chercheurs/isabelle\\_giraudou/](http://www.mfj.gr.jp/institut/equipe/chercheurs/chercheurs/isabelle_giraudou/)

work exactly? What kind of techniques do they use to create a new set of rules? Do their borrowings, re-arrangements, constructions lead to the formation of some new space of business law blending each of these areas (Asia, Europe, Africa, Anglo-Saxon World, etc.) and legal traditions (Continental Law, Common Law, Asian Law, *Lex mercatoria*, etc.) envisaged separately by the classical doctrine?

Based on such examples, the participants question the merge of singular normative spaces. Pursuing issues addressed at the international workshop held at Maison franco-japonaise in June 2011 (“Global Law and Global Legal Theory – Academic Knowledge in Question”), they also address the very pertinence of the concept of “normative space” and try to answer three basic questions:

- 1) What is a “normative space”?
- 2) Where do normative spaces arise?
- 3) Why do we need the concept of “normative space”?

The terms “normative” and “normativity” have been associated with “spaces” by numerous authors in a wide variety of disciplines. However, so far, scholars of legal systems and of comparative law have been getting along quite well without the concept of “normative space”. In the same way, the shapers of transnational legal and private ordering regimes, as well as globe-trotting legal practitioners, have been easily mixing and choosing law without perhaps reflecting much on it or on how their activities relate to those of judges and legislators importing foreign legal concepts into their own national systems. So what are the advantages of positing such a category of “normative space”?

The purpose of the present workshop is to try to establish a more concrete notion of “normative space” in the context of legal studies, and to explore in what ways it might be a useful unifying notion for scholars, law-makers and practitioners.

This workshop will try to build on the working definition that characterizes “**normative space**” as a **locus of mixture and choice** (Gilles LHUILIER). The participants will examine further the extent to which “normative spaces” can be described and analyzed as spaces where the applying laws and other norms come from a mixture of national but also possibly other legal systems or norms, and are selected by the parties in an eclectic (though not at all arbitrary) fashion.

The participants – be they researchers in comparative law studying the “reception” of foreign legal concepts and similar phenomena or practitioners engaged in formulating transnational

legal schemes – will question the extent to which “normative space” can be unifying in more than a superficial sense. Significantly, would it help those focused on national systems as well as those framing transnational or other systems for private or public ordering to identify some facts about the **choosing, mixing and connecting of laws** – and to learn from each other’s discoveries?

## DESCRIPTION

The first day of this one day and a half seminar will be devoted to the **close examination of two significant issues of positive law**, while the afternoon of the second day will give the participants the opportunity **to question these legal practices from a theoretical standpoint**.

Two weeks before the seminar, two questionnaires concerning respectively PACL and international commercial arbitration will be sent out by the organizers Isabelle GIRAUDOU and Gilles LHUILIER. It will be addressed to the two presenters – **Naoki KANAYAMA** and **Yoshihisa HAYAKAWA** – and circulated among the participants. Additional relevant documents will also be circulated. The questionnaire and these documents will be the basis for the discussion. Building on these documents, **all the participants** will think about additional questions and will provide further comments, information, and many practical as well as theoretical insights on June 7<sup>th</sup> and 8<sup>th</sup>.

### During the first day of the seminar (June 7<sup>th</sup>).

the participants will focus on positive law and examine:

- the elaboration of the so-called *Principles of Asian Contract Law*, PACL (**Session 1**)
- the practice of international commercial arbitration in Asia (**Session 2**).

While addressing the set of questions mentioned above, Naoki KANAYAMA will talk about the efforts of a multi-national group of Asian contracts scholars to develop a private convention of contract law principles, drawing from multiple national traditions. In the same way, Yoshihisa HAYAKAWA will describe the roles of choice and mixing in developing the infrastructure for private international commercial arbitration in Asia.

The following questions will be more specifically addressed:

1. How exactly do each of the actors involved (contract parties, arbitrators, PACL’s redactors) *choose* the law, how exactly is the “choice of the law” made in each case?

2. What are the constraints legal actors (involved in the elaboration of the PACL or in international commercial arbitration in Asia) have to deal with when they *choose* the law, and, consequently, what are the possible constraints on mixing?

### During the second day of the seminar (June 8<sup>th</sup>),

the participants will examine the cases dealt with the first day and their common features from a theoretical point of view. They will discuss the “choice of the law” by focusing on three different questions/aspects:

1. **HOW?** The *choice of the law* is analyzed as a (normative) practice.
2. **WHAT?** The *choice of the law* is examined through its result, i.e. the chosen norms, and analyzed as a normative product.
3. **IN WHAT TERMS?** The *choice of the law* is examined through the discourses of the actors themselves (discourses on their own choosing practices and on the chosen norms).

## PROGRAM

### June 7<sup>th</sup> (Thursday)

#### **PACL and International Commercial Arbitration in Asia – A Close Examination of Two Distinctive Objects of Research**

*Morning, 9:30 am – 12:30 pm*

##### **First Object of Research – The Principles of Asian Contract Law, PACL**

- *Presentation:* Naoki KANAYAMA
- *The choice of law and new borrowing practices – Questions & Answers about PACL (all the participants)*

*Lunch*

*Afternoon, 14:30 pm – 18:00 pm*

##### **Second Object of Research – International Commercial Arbitration in Asia**

- *Presentation:* Yoshihisa HAYAKAWA
- *The choice of law and new borrowing practices – Questions & Answers about international commercial arbitration in Asia (all the participants)*

### June 8<sup>th</sup> (Friday), 14.00 pm – 18.00 pm

#### **The Similarity between Two International Practices – On Normative Spaces**

- *Observations :* Gilles LHUILIER, Thomas BRISSON, Kō HASEGAWA
- *Discussion*

<b>Venue</b>	Maison franco-japonaise 日仏会館 Bureau Français 6 <sup>th</sup> Floor (Room 601) 3-9-25 Ebisu, Shibuya, Tokyo TEL +81-3-5421-7642/7641 FAX +81-3-5421-7652 <b>ACCESS:</b> <a href="http://www.mfj.gr.jp/acces/">http://www.mfj.gr.jp/acces/</a>
<b>Date</b>	<b>June 7-8, 2012</b> Thursday 7th, from 9.30 am to 6.00 pm Friday 8th, from 2.00 am to 6.00 pm

#### CO-ORGANIZERS :

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

**Maison des Sciences de l'Homme en Bretagne** (MSHB)

*With the collaboration of **Global Legal Studies Network**: [glsn.eu](http://glsn.eu)*

#### CONTACT :

- Isabelle GIRAUDOU (Researcher, Maison franco-japonaise), co-organizer : [igiraudou@mfj.gr.jp](mailto:igiraudou@mfj.gr.jp)
- Gilles LHUILIER (Professor, South Brittany University, Research Associate at CEDE-ESSEC Business School), co-organizer: [gilles.lhuilier@wanadoo.fr](mailto:gilles.lhuilier@wanadoo.fr)

**LANGUAGE:** English (Japanese and French may also be used during the discussion).

**NUMBER OF PARTICIPANTS:** about 18

*With the participation of:*

Gilles LHUILIER (Professor, South Brittany University, Research Associate at CEDE-ESSEC Business School), Thomas BRISSON (Assistant Professor, Paris VIII University), Naoki KANAYAMA (Professor, Keio University), Yoshihisa HAYAKAWA (Professor, Rikkyo University), Kō HASEGAWA (Professor, Hokkaido University), Dai YOKOMIZO (Professor, Nagoya University), Sōichirō KOZUKA (Professor, Gakushūin University), Hiromi UEDA (Professor, Asia University), Béatrice JALUZOT (Assistant Professor, IEP, Lyon III University), Sylvain SERVERIN (Teaching Assistant, Ritsumeikan University), Andrew SUTTER (Registered Foreign Lawyer; Specially Appointed Professor, Rikkyo University), Laurent DUBOIS (Registered Foreign Lawyer, Tokyo), Étienne LAUMONIER (Lawyer, Hanoi), Isabelle GIRAUDOU (Researcher, French Research Institute on Japan, Maison franco-japonaise).

*To be confirmed:*

Tetsuo MORISHITA (Sophia University), Tamesaburo YAMAMOTO (Professor, Keio University), Tomoyo MATSUI (Professor, Sophia University), Hiroshi MATSUO (Professor, Keio University), Emi MATSUMOTO (Professor, Niigata University), Mayuko UEHARA (Professor, Meisei University), Dominic ROUGHTON (Lawyer, Tokyo), Thibault JALABERT (Consultant), ...

*Announcement also available on [glsn.eu](http://glsn.eu)*