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From the Editor

This year the ICCLP celebrated its tenth anniversary, which serves as a full stop of sorts. We first published our newsletter up until its sixth edition and then moved to the first edition of *ICCLP Review* five years ago. During this process of putting out both an English and Japanese edition of this regular publication, we were fortunate enough to receive the support and cooperation of a number people. As a result of my editing these publications, I have countless memories to look back upon. I have been constantly amazed by and in admiration of the enthusiasm of people who, although with their own work to do, were able to submit articles, reports and essays. Also in the process of translating these submissions for the English edition I had to ask many favours of the authors and I am obliged to them for their uncompromising and precise advice. In order to produce the English edition of the *ICCLP Review* we are indebted to Peter Neustupný, Hugo Dobson and Gregory Ellis, who were employed as research fellows of the center, and without whose assistance none of these publications could have been realized. The ICCLP is incredibly lucky to have met these young researchers and others like them, and benefited from their intelligence and sensitivity.

Over the last ten years we have organized many events both inside and outside of Japan. Both university education and administration are set to change from hereon. The ICCLP, which has become the pivot of international exchange activities in the Graduate School of Law and Politics, will also continue to metamorphose and face new beginnings from next year. Many thanks to all the people both within and outside Japan who have helped us in our activities over the last decade. I am sure their energy can provide the foundations for future international academic exchange.

October 2002, Wada Keiko ICCLP Coordinator and Review Editor

P.S The report by Professor Otaki Toshiyuki, former Japanese visiting research professor, entitled *Chiho-seifu no Zaisei-jichi to Zaisei-tosei: Nici-Bei Hikaku* (The Financial Administrative Self-governance and Control of Regional Government--a Comparative Study of Japan and the US) was published in June as the third edition in the Comparative Law and Politics Research Reports Series by the ICCLP. The same report can also be found in *Chiho-seifu no Zaisei-jichi to Zaisei-tosei: Nichi-Bei Hikaku:Chiho-zaisei-bunken-kaikaku no Shin-shiten* (the Financial Administrative Self-governance and Control of Regional Government--a New Viewpoint on the Decentralization of Regional Financial Administration), published in 2002 by the National Association of Accountants.

Part I

CULTURAL DIFFERENCE AND INTERNATIONAL LAW: THE LEAGUE OF NATIONS AND ITS TWO VISIONS OF THE NATION-STATE

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1. Introduction

The classic problem which has confronted the discipline of international law since the prevalence of positivist jurisprudence at the end of the nineteenth century is the problem of how order is created among sovereign states. Many of the greatest works of international law have been devoted to resolving this central issue-and the many other issues that it generates, such as the nature and source of obligation in international law. The purpose of this short paper is to suggest that it might also be useful to see international law as being preoccupied with the question of resolving the problem, not only of order among sovereign states, but also the problem of what might be termed 'cultural difference'. I seek to examine this theme by looking at the inter-war period during which time this problem assumed two different forms. First, the lawyers of the League had to address the problem of nationalism in the new states of Eastern Europe. Here the problem of difference assumed the form of the problem of how international law and institutions could ensure that different ethnic groups within the one territory could live in peace. Second, the League had to confront 'colonial problems', which involved managing relations between two disparate cultural groupings understood as being the 'civilized' Europeans and the uncivilized 'non-Europeans'; this had to be achieved in the context of all the changes that had occurred in international thinking and relations following the First World War. The problems of cultural difference acquired a particular significance because, as the following discussion attempts to suggest, issues of culture were intimately connected with issues of sovereignty.

In attempting to resolve these two major problems the League lawyers created two different regimes which embodied two different understandings of the character of the nation-state. The problem of nationalism and minorities was to be addressed by the Minority Treaty System of the League. Colonial problems were to be addressed by the Mandate System of the League of Nations.

My interest here lies in sketching the connections between the League's understanding of the particular character of the problem of difference in each of these regimes, and the technologies developed by international law and institutions for addressing the specific problem. This might in turn enable an understanding of the legacies of these two great League experiments in nation-building for contemporary international law and relations.

2. The League of Nations and the New International Law

By the beginning of the First World War, positivist jurisprudence, as expertly propounded by scholars such as Lassa Oppenheim, had established itself as the pre-eminent methodology of a modern, scientific international law.[1] After the tragedy of the war, however, positivism, with its emphasis on sovereign will as the basis of the whole international system, was attacked from a number of perspectives. Its exaltation of the absolute rights of sovereigns-including the right to go to war-was seen as having contributed to the conflict. Further, its claims to being an autonomous science, unlike naturalism, made it appear amoral and deficient. Thus, the jurists of the inter-war period who set about

* Professor of Law, S.J.Quinney School of Law, University of Utah; my sincere thanks to Professors Onuma Yasuaki and Nakatani Kazuhiro for the great kindness they unfailingly extended to me in my time at the University of Tokyo. Aspects of this paper were presented to the Comparative Law and Politics Seminar at the University of Tokyo, to the Kyushu Association of International Law, and at Hokkaido University, and my thanks are due to the participants at those events and, in particular, to Professors Onuma Yasuaki, Teraya Koji, Yanagihara Masaharu and Komori Teruo for making those events possible, and, equally importantly, for their very useful comments.

[1] Lassa Oppenheim, International Law (1905).

the task of creating a new international law, which seems to follow inevitably all major wars,[2] attacked positivism at a number of different levels.

It was no longer possible, after the positivist critique of naturalist international law, to re-establish an international law entirely based on naturalist premises. Rather, the lawyers of the inter-war period sought to create a pragmatic international law.[3] This project, which drew its inspiration from the social sciences rather than naturalism, attempted to create an international law which was responsive to social and political realities, on the one hand, and which would seek to further social purposes on the other. What was required, then, was what might be termed a 'sociological jurisprudence'. It was only through such a jurisprudence that it seemed possible to create a new international law[4] which was both ethical and effective.

The other major development of the period which promised to alter the whole character of international law and relations was the emergence of a new actor in the international arena, the universal international institution, the League of Nations. The League promised to further international co-operation at a number of different levels, in addition to establishing various protections against aggression. For these purposes, it developed a number of new doctrines and techniques which were unavailable to positivist jurists, who could only play the passive role of identifying and articulating the rules of international law, and who did not see themselves as changing the international system in any profound way.

Given that sovereignty is the central concept of international law, it was inevitable that the inter-war jurists attempted to articulate new versions of sovereignty which departed from the dangerous positivist notions of an absolute sovereign. For positivists, sovereignty is understood in formal terms as a set of competences, of rights and duties, and international law consists of identifying what rights and duties apply to and arise from a particular situation. Positivism, further, was emphatic in asserting that what occurred within the territory of a sovereign state was entirely within the domestic jurisdiction of that state. This classic principle, which endured in the inter-war period, is stated by McNair

> In consequence of its internal independence and territorial supremacy, a State can adopt any constitution it likes, arrange its administration in a way it thinks fit, enact such laws as it pleases...[5]

The basic concepts and techniques of positivism survived the challenges of the new international law – and continue to play an important role in contemporary international relations. Nevertheless, the emergence of international institutions provided international law with a new set of resources which could be devoted to furthering international welfare and harmony. While it did not have any legislative power over sovereign states, it was hoped that the League would coordinate the interests of the international community as such, and thereby prevent individual aggression. In addition, with respect to the Mandate and Minority Treaty system, the League was empowered, as a result of the unique circumstances arising from the War, to play an extraordinary role in managing and administering various territories-for the purposes of this article, the Mandate Territories and the states of Eastern Europe which were subject to the minority treaty regimes. With respect to these territories, the League

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[2] David Kennedy, *The Move to Institutions*, 8 CARDOZO L. REV. 846 (1987).

[3] American jurists were prominent in this project. See eg. Roscoe Pound, *Philosophical Theory and International Law* 1 BIBLIOTECA VISSERIANA 73 (1923) ; Manley Hudson, *The Prospect for International Law in the Twentieth Century* X(4) CORNELL L.Q. 419 (1925); for an important overview of this contribution, see Samuel J. Astorino, *The Impact of Sociological Jurisprudence on International Law in the Inter-War Period: the American Contribution* 34 DUQ. L.REV. 277 (1996).

[4] Alejandro Alvarez, *The New International Law*, 15 TRANSACTIONS OF THE GROTIUS SOCIETY 35 (1929).

[5] Oppenheim, International Law (Sir Arnold McNair, ed. , 4th ed. 1928). at 250. Of course, this general principle was subject to a number of notable exceptions; thus a state had to comply with international rules in its treatment, for example, of foreign diplomats and foreign nationals within its territory.

was empowered, to varying degrees, to enter into the interior realm of the territory and, equally importantly, to attempt to devise a *sociological* foundation for what was imagined to be a functioning nation-state. However, the character of that sociological foundation, and the techniques used to create it, acquired two very different forms, as an examination of the broad provisions of the Mandate System and the Minority Treaty System reveal.

3. The Minority Treaty System

The broad claim of nationalism, that every distinct nation-distinct because of religion, history, language- should strive towards achieving sovereign statehood has generated considerable tension in multi-national states. While nationalism emerged prominently in the nineteenth century, the religious and racial conflicts which were the cause of most nationalist struggles occurred, of course, in much earlier times. Religious and cultural tensions had led to many of the most devastating wars experienced by Europe in the sixteenth and seventeenth centuries. The Thirty Years War, fought along religious lines, extended throughout much of Western Europe. The Peace of Westphalia, which brought this war to an end, is heralded by virtually all international lawyers as signifying the birth of international law and the modern state system.[6] Sovereign, secular states became the primary unit of international relations as a result of the Peace. Thus, arguably, even the most traditional and orthodox versions of sovereignty doctrine characterize it as having emerged as a means of mediating in conflicts between groups belonging to different cultural entities. Nevertheless, the significance of this theme has not been sufficiently developed. This is in part, perhaps, because the purpose of the scheme was, precisely, to banish religious difference as an important conceptual tool with which to view international relations.

Nationalist violence resulting from the attempts of peoples in Eastern European claiming to belong to distinct cultures to free themselves of foreign, imperial domination, had been a significant cause of the Great War of 1914-1918. Thus the League of Nations, regarded the resolution of the problem of nationalist conflict to be among its primary tasks.[7]

The League sought to accommodate the nationalist claim--which, in its simplest form, argued for one nation, one state--by creating a number of new states in Eastern Europe and ensuring, as far as possible, that state boundaries corresponded with national groups. This initiative was largely dictated by the views of President Wilson of the United States who asserted the principle of self-determination as a means of achieving this, and who declared that `Self-determination is not a mere phrase, it is an imperative principle of action which statesmen will henceforth ignore at their peril'.[8]

The intricately multicultural nature of a number of states such as Poland defied any attempts to encapsulate distinct peoples in separate territorial units. As a consequence, the League subjected these states to the minority treaty system by which cultural minorities within a state were provided with a system of internationally administered protection.

The broad idea animating the League, both in the creation of the new states of Eastern Europe, and the minority treaty system was that the cultural identity of particular peoples had to be protected and respected in order to prevent a repeat of the tragic events which led to the World War. Within the treaty

[6] See for example, Louis Henkin et.al. International Law: Cases and Materials (2d ed. 1987); On the peace of Westphalia generally see Leo Gross `The Peace of Westphalia 1648-1948', 42 Am.J.Int'l.L. 20 (1948).

[7] Works on the subject include the classic by C.A.Macartney, National States and National Minorities (1934-reissued 1968); Jacob Robinson, Were the Minorities Treaties a Failure? (1943); P.de Azcarate, League of Nations and National Minorities (Eileen E. Brooke trans. 1945); contemporary scholarship on the period is constituted primarily by the pioneering work of Nathaniel Berman. See Nathaniel Berman, *'A Perilous Ambivalence: Nationalist Desire, Legal Autonomy, and the Limits of the Interwar Framework'* 33(2) Harv.Int'l.L.J. 353 (1992); Nathaniel Berman *`But the Alternative is Despair: European Nationalism and the Modernist Renewal of International Law*' 106 Harv.L.R. 1792 (1993).

[8] Macartney, at 190.

states, then, international lawyers had to devise a means of reconciling the claims made by different national groups within the one territorial state, each of which claimed to be culturally distinctive and therefore entitled to be sovereign. The problem of cultural difference, as it emerged in the context of the minority treaty system, took the form of the problem of how international law was to manage the rival nationalisms of the majority culture (which was understood by the League to control the state) and the minority cultures within these new states.

The minority protection regime was created by specific treaties between the 'new states' which emerged from the First World War, and the 'Principal Allied and Associated Powers' which consisted of the victorious powers. The Polish treaty was the first to be formulated; it was concluded on June 28 1919.[9] This became, the model for all subsequent minority treaties, although modifications were made in many cases.

The treaties embodied three basic sets of rights, all of which can be seen as attempting, in different ways, to mediate within and resolve the problem of cultural difference. The first set of rights focused on questions of nationality. These were necessitated by the fact that Poland, with its newly established boundaries, now contained German, Austrian, Russian and Hungarian nationals. Article 3 of the Treaty outlined the options available to these nationals; they could either choose to become Polish or else adopt any other nationality available to them in accordance with the terms of the treaty. Complex issues arose as to who could exercise these options and in what circumstances. The second set of rights could be termed 'equality rights', the basic civil and political rights embodied in liberal democratic constitutions. Hence Article 2 of the Treaty stated that:

> Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language , race or religion.[10]

Equality before the law regardless of race, language or religion was provided for by Article 7. Article 8 stated in part that:

> Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals.

While this appears to be orthodox enough, the statement 'in law and in fact' became extremely problematic in subsequent cases. Finally, special provisions were made for minorities. Article 9 basically provided that in towns where 'a considerable proportion of Polish nationals are of other than Polish speech', the public education system was to provide instruction in the language of the minority. Similarly, such minorities were to be given a proportion of the public funds made available for 'educational, religious or charitable purposes'. These regimes thus created represents a radical departure from classic ideas of sovereignty and an important step in the evolution of international human rights law, as these sovereign states subjected to the regime were now exposed to international scrutiny with regard to their treatment of minorities.

These provisions embodied a number of tensions and competing views on the character of minority protection, the significance of cultural identity and, in the final analysis, the purpose of the Minority Treaty regime. Many of the drafters-English and American lawyers and jurists were prominent in the drafting process- acted on liberal assumptions and were of the view that minorities were seeking equality, a goal which could be essentially achieved through the provisions ensuring the civil and political rights of minorities including, most prominently, the norm against discrimination. Seen in this way, the problem of difference could be resolved by norms prohibiting discrimination. As a further concession to the peculiarities of the multi-national state, however, the drafters included the provisions

[9] Robinson at 25. See `The Polish Minorities Treaty Between the Principal Allied and Associated Powers and Poland' June 28, 1919, 225 Consol.T.S. 412 [hereinafter `Polish Minorities Treaty].
[10] Article 2, Polish Minorities Treaty.

on culture-relating to education and the maintenance of cultural institutions. This measure, however, fell short of providing minorities with any rights to political autonomy, as it was feared that this would promote the emergence of a group identity which would eventually demand secession.

The vague provisions of the minority treaty system raised complex issues as to when it could be said that a state had fulfilled its obligations under the treaty. For example, when a state undertook to provide a minority with 'the same treatment and security in law and in fact' as it offered to the majority population, did this mean that the state was required to take special measures, something akin to affirmative action, to ensure this equality? What was the standard by which equality could be assessed?[11]

These questions inevitably impinged on the larger issue. What was the ultimate purpose of the minority treaty system? What was the relationship it envisaged between the majority and minority cultures? Here, there were at least three major frameworks suggested: 1) Interpreting the minority rights provisions in their most expansive terms, it was argued that, by enabling the preservation of minority cultures, they were in effect creating a 'state within a state'. This argument was put most forcefully by the states which were required to establish the regimes in their territory, and which protested that their sovereignty was profoundly impaired as a result; 2) The Assimilationist thesis, by contrast, saw the regime as being a transitory measure designed to enable their gradual assimilation into the larger community-thus resolving the problem of ethnic conflict; and 3) The 'Communities living in Harmony' thesis represented the intermediate position, which was espoused by the League Council, which argued that if minority rights were effectively protected, then minorities would live in harmony with the majority without being driven to seek their own state.[12]

The problem of cultural difference threatened to destroy the multicultural state and thereby, undermine international stability. Despite all the new technologies applied to it and despite the extensive deliberations of the Permanent Court of International Justice (PCIJ) which gave a number of advisory opinions on the meaning and effect of the minority treaties, however, the problem of cultural difference, as it manifested itself in the minority treaty system, defied easy resolution, not least because no clear agreement existed as to what the relationship between majority and minority cultures should be.

4. The Mandate System of the League of Nations

The Mandate System was devised in order to provide internationally supervised protection for the peoples of the Middle East, Africa and the Pacific who had previously been under the control of Germany or the Ottoman Empire, the powers defeated in the First World War. President Wilson opposed the attempts to make these territories the colonies of the victorious Allied Powers. Instead, he proposed the creation of the Mandate System, whose essential purpose was to protect the interests of 'backward peoples'. This was to be achieved by appointing certain states, officially designated as mandatories, as administrators of these territories on behalf of the League, and subjecting these mandatories to the League's supervision.

The primary and general substantive obligation undertaken by the mandatory power is stated in sub-section 1 of Article 22 of the League Covenant, which enunciates the concept of a 'sacred trust for civilization':

> 1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a

[11] See Advisory Opinion, Minority Schools in Albania Case, 1935 PCIJ (ser A/B) April 6, 1935.
[12] On these different understandings of the minority treaty system, see Macartney, 270 ff and Robinson, 25 ff.

> sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.[13]

The phrase 'people not yet able to stand by themselves' suggested that this arrangement was temporary, and it was generally understood that Mandatory powers were required, to promote both the welfare and self-government of mandate peoples.[14] Indeed, it was contemplated that certain Mandate territories, such as those of the Middle East, would become independent sovereign states.

The Mandate Article provided for a three tiered system of administration as Mandate territories were classified according to their degree of advancement. The non-European territories of the former Turkish Empire were classified as 'A' mandates whose 'existence as independent nations can be provisionally recognized'; German territories in Central Africa were placed within the 'B' regime, and South-West Africa and the Pacific territories under the 'C' regime.

The Mandate System, like so many innovations of the inter-war period, was seen as a departure from the evils of the nineteenth century system of international law and relations. Whereas nineteenth century positivist international law had legitimized colonialism and the exploitation of the natives, the new international law sought to protect them through appropriately designed international institutions. A further subtle, but significant shift occurred in the way in which non-European states and peoples were characterized. Whereas the nineteenth century jurists had established an explicitly cultural division between civilized and uncivilized states which they deployed for the purpose of excluding non-European states and rendering them non-sovereign, the Mandate System formulated the relationship as being, broadly, between the 'advanced' (European) and 'backward' (non-European) peoples who were 'not yet able to stand by themselves'. The broad duties articulated by Article 22 of the League Covenant were interpreted in the context of the more refined ideas of the proper duties of any colonial power-that of discharging the dual mandate of ensuring both the material progress of the peoples of the mandated territories, and their moral and political development. These more liberal-humanist conceptions of the civilizing mission which were articulated in their fullest form after the war,[15] represented a new way of conceptualizing the difference between Europeans and non-Europeans, and we see in the Mandate System the gradual emergence of a distinction based not only on 'civilizations', but on economic factors. The mandate peoples and territories were thus seen in economic terms, and the technologies developed by the League were directed towards alleviating that condition of economic backwardness. It was understood, furthermore, that the mandate experiment could in time extend beyond the mandate territories alone, and could provide important guidance for the management of relations between European and non-European states in general.

The fundamental paradox, however, was that even while the Mandate System proclaimed that it was inaugurating a new relationship between advanced and backward states, the assumption remained that mandate territories would play the same economic role as colonial territories. Thus Lord Lugard, who became a prominent member of the Permanent Mandates Commission (PMC), had asserted that 'the democracies of today claim the right to work, and the satisfaction of that claim is impossible without the raw materials of the tropics on the one hand and their markets on the other'.[16] Thus, it could be argued, when seen in economic terms, the purpose of the Mandate System was not so much to dismantle colonialism, as to reproduce it with a new set of ideological justifications which derived from the liberal-humanist sentiment of the time, and a new set of legal techniques created by international institutions.

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[13] LEAGUE OF NATIONS COVENANT art.22 para. 1-2.

[14] Thus Hall asserts that `self-government is the central positive conception set out in Article 22 of the League Covenant'. H. Duncan Hall, Mandates, Dependencies and Trusteeship (1945). The classic, most comprehensive work on the mandate system is Quincy Wright, Mandates Under the League of Nations (1930).

[15] The concept of the dual mandate had been magisterially elaborated by Sir Frederick Lugard, in his classic work, THE DUAL MANDATE (1922).

[16] Lugard, The Dual Mandate, p. 61.

Unlike the minority treaty system which ostensibly aspired to protect and strengthen the cultural identity of various nationalist groups, the Mandate System essentially sought to transform, to civilize the backward peoples of the mandate territories. The universalizing mission of nineteenth century, positivist international law had been completed to the extent that the status of virtually all peoples and territories, was now determined in accordance with that European international law. The Mandate System represented a further and more intrusive stage of the universalizing mission as it legitimized international law's presence within the dependent territory itself. As a consequence, a European/Western based international law regulated not only the relations between states, but, in the case of the mandate territories, relations *within* those societies.

Equally significantly, the mandate system, was based on the premise that it was possible to formulate and realize a universal model of self-government and the nation state. This followed from the League's assumption that all the disparate mandate territories, spreading from the Middle East, to Africa and the Pacific, were to be directed towards the broad ideal self-government. At a more practical level, the validity or otherwise of mandatory policies could not be assessed by the League without the formulation of such a model. Given this constellation of ideas, the Mandate System problematized, in an unprecedented way, a series of questions: what is the universal nation-state that the mandate territories were to become? What should be the political, economic and social structure of such a state?

The League created a number of new techniques in an effort to fulfil its ambitions and resolve these problems. First, the League-acting through the PMC- developed a complex system of information gathering in order to ascertain the economic, social and political characteristics of a territory; essentially, the League attempted to render these territories completely transparent and visible to international scrutiny and management. Second, the League developed a set of standards against which the information it had gathered could be interpreted and assessed. These standards were used to determine the economic and social progress of a territory and, further, to formulate regulations for the governance of those territories. As a consequence of this, the nation-state that the Mandate System was striving to create was understood, not merely as a juridical status, but as a massive complex of standards and regulations which represented the sociological, economic and political criteria that a territory had to satisfy in order to become a functioning, independent, nation-state.. The mandate regime constituted the basic framework governing all aspects of the administration of the territory. The League's entry into the interior of the colonized territory, together with its ambition to reconstruct the sociological basis of the state, generated novel and more detailed elaborations of sovereignty doctrine.

Most significantly, every aspect of the social, economic and political life of the mandate territory became subject to the scrutiny of the PMC, ranging from the labor practices of the natives to their customs and their political institutions, to land tenure systems, external revenues, order and justice. Consequently, precisely because the PMC had access to the interior social life of the mandate territory and, further, the new technology of standards, it was possible to apply the categories of ‘advanced’ and `backward’ to every aspect of the social life of the mandate territory, this with the purpose of transforming the ‘backward’ into the ‘advanced’. Crucially, however, this project operated with the overall purpose of furthering the particular type of economic development that the League envisaged for the mandate territories, economic development which was essentially a reproduction of colonial economic relations. Thus extensive labor regulations were promulgated to attempt to make the native more productive, and the entire character of the self-government which the Mandate System ostensibly promoted was shaped by this powerful imperative of economic development.

The problem of difference as it emerged in the Mandate System acquired a new and more powerful character not only because it could apply to every aspect of the interior life of a non-European state. Furthermore, in terms of achieving normalization, it aspired to a universality which colonial powers could never achieve. Colonial territories were governed according to the specific views and policies of the controlling colonial powers; Portugal, Britain and Germany had very different approaches to colonial administration. However, the officials of the Mandate System, precisely because they were monitoring and gathering so much information from so many different territories in different

continents, could aspire to create a new universal science, a universal science of colonial administration that could transcend the peculiarities of any colonial power, and which could be used to create a 'universal' nation state.

5. Conclusion: the Legacies of the League Experiment

The problems that the League attempted to address with such innovative techniques continue to play a prominent part in contemporary international relations. These problems are especially acute in the many post-colonial states in Africa and Asia which have been overwhelmed by the challenges of achieving national unity in the midst of ongoing ethnic conflict, on the one hand, and development on the other.

One way of appreciating the significance of the problem of cultural difference is by noting the different doctrines and technologies that international law develops in an attempt to deal with the problem of nationalities. In doctrinal terms, the problem of nationalities has resulted in the formulation of a concept of self-determination which is still being debated and reconsidered. In addition, human rights provisions, such as Article 27 of the International Covenant on Civil and Political Rights, which have been devised for the protection of minorities, but such provisions have arguably diminished the protections that existed in the minority treaty system which appear to have been perceived as encouraging a cultural autonomy which could have resulted in promoting intense nationalisms. Emerging norms of democratic governance and autonomy rights could be seen as further attempts to address these problems: thus for example, it could be argued that if democracy became a reality in many countries, this would ensure the participation of minorities in the political process, and hence diminish ethnic tensions. But these norms leave unresolved the issue of whether, for example, minorities should be given special political rights, such as the right to autonomy, to make such participation effective. In the final analysis, perhaps, it is only through political negotiation together with adherence to the basic principles of human rights that some sort of settlement may be reached. Despite all these efforts, tragically, ethnic conflict is a powerful presence in much of contemporary Asia, Africa and Eastern-Europe. International law continues, then, to struggle with the problem of how to deal with cultural differences within states, how to mediate and settle the conflicts between different national groups within the one state making competing claims to territory and sovereignty.

In the case of the division between the advanced states and the backward states, the division in our time between the developed and the underdeveloped, the problem has resulted in the project of achieving 'development'. The mandate system has been replaced by global international financial institutions (IFIs), the World Bank and the International Monetary Fund, which have adopted many of the same basic techniques as the mandate system to manage third world countries.[17] If the policies of development prescribed by these institutions is defective, however, then the dynamic is endless, for each development initiative merely compounds the problem of poverty; and this in turn generates new initiatives which have a different focus, as witnessed by the shift by the IFIs, and especially by the World Bank, from dealing with purely economic issues, to political issues such as the questions of good governance. Nevertheless, the construction of the difference-which in effect represents a deviation from a western norm which must in some way be bridged, through a process of normalization-is crucial to the creation of new technologies and doctrines in international law and institutions, and an enormous expansion in their jurisdiction.

But it is not only in terms of understanding how international law continues to attempt to resolve the problem of difference that this problematic is important. At a more theoretical level, by shifting from the paradigm of order among sovereigns to the problem of cultural difference we might better understand the specific mechanisms of the colonial encounter, and the role of that encounter in the

[17] I have elaborated on this theme in Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions and the Third World* 32(2) New York University Journal of International Law and Politics (2000).

development of international law. At the end of the nineteenth century, non European states were declared by positivist international law to be uncivilized and therefore lacking in sovereignty. In effect, then, the paradigm of order among sovereigns prevents us from inquiring into the vital questions of how certain (European) entities were regarded as sovereign while other (non-European) were not; how these non-sovereign entities were gradually absorbed into a 'universal' international law, and the terms on which this occurred. It is through an examination, by contrast, of the issue of cultural difference that we could begin to inquire into the legal aspects of the colonial encounter, as the imperial idea that fundamental cultural differences divided the European and non-European worlds was profoundly important to the colonial project in a number of ways: for example, the characterization of non-European societies as backward and primitive legitimized European conquest of these societies and justified the extraordinary measures colonial powers used to civilize them. The mandate system illustrates many of these themes. The civilizing mission, which was central to the project of creating a universal international law, was animated, then, by a specific form of what might be termed the dynamic of difference: first, a non-European entity is characterized as backward, uncivilized or violent; second, international law creates the technologies to civilize or pacify this entity; and third, it develops sanctions and enforcement mechanisms to discipline this entity and absorb it into the expanding realm of international law. This dynamic is evident in certain versions of contemporary international law doctrines relating, for example, to legitimate governance, human rights, and development. The intimate link between culture and sovereignty is suggested by the fact that, as a study of nineteenth century international law and its application to colonialism makes clear, it is by establishing its cultural status as a civilized state that a non-European state could aspire to become a member of the family of nations as an equal, sovereign state. In the mandate system, this project goes a stage further, whereby international law, now applies the new technologies of international institutions to civilize the backward peoples of those territories in order to prepare them for entry into the family of nations.

The two great experiments in nation-building undertaken by the League suggest two ways of understanding the relationship between the problem of cultural difference and the emergence of sovereignty. In the case of the minority treaty system, sovereignty was intended to embody a dictinct culture: and the existence of different cultures within the one territory required the formulation of a minority protection regime which was at least nominally intended to preserve the identity of that minority. In the mandate system, by contrast, sovereignty was based, not on the principle of cultural distinctiveness itself – although many nationalist groups in Africa and Asia seized on Wilson's statements to assert their own claims to statehood – but on achieving, basically, a particular type of culture, Western 'civilization'. In more recent times, the whole problem of cultural difference has assumed a new form whereby certain states have used the vehicle of sovereignty to express their own cultural identities-the cultural relativism debate has been the most notable expression of this trend.[18] The problem of cultural difference, then, continues to present itself in both old and new versions, and poses formidable challenges to the development of international law and institutions.

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[18] See Onuma Yasuaki, Towards An Intercivilizational Approach to Human Rights, 7 Asian Yearbook of International Law 21 (1997) for an account of this debate and an attempt to suggest some ways of addressing the many challenges it presents. See also Karen Engle, Culture and Human Rights: the Asian Values Debate in Context, 32 (2) New York University Journal of International Law and Politics (2000).

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TOWARDS A RADICAL THIRD WORLD APPROACH TO CONTEMPORARY INTERNATIONAL LAW*

B.S. CHIMNI**

I Introduction

In this article I hope to outline a *radical* third world approach to contemporary international law. The underlying assumption is that there is no *unique* third world approach to contemporary international law. There are only third world approach*es*. The situation is no different from the west where there are several theories of and about international law: liberal, realist, policy oriented, feminist, post modern etc. It is important to affirm the absence of a unique approach for an important reason. Third world approaches are often neglected for not meeting the demand of articulating an approach that is *completely distinct* from western approaches to international law. Thus, for example, if you articulate a critical approach to contemporary international law, the reaction often is that surely it is no different from the critical legal studies approach. If it is a liberal critique it is subsumed under the western liberal approach to international law. And so on. In this regard Edward Said has well observed that:

> … the history of all cultures is the history of cultural borrowings. Cultures are not impermeable; just as Western science borrowed from Arabs, they had borrowed from India and Greece. Culture is never just a matter of ownership, of borrowing and lending with absolute debtors and creditors, but rather of appropriations, common experiences, and interdependencies of all kinds among different cultures. This is a universal norm.[1]

To put it differently, the demand that third world approaches to international law somehow present a unique indigenous perspective is impossible to meet. On the other hand, we can surely talk of the *leading* western or third world approaches to international law. In that sense, the gist of leading western approaches is the legitimization of dominance, whereas the essence of dominant third world approaches is resistance and reform. However, while the story of resistance and reform to western dominance is common to third world approaches to international law there are often sharp differences when it comes to the nature and extent of the critique of contemporary international law.

In articulating a *radical* third world approach to contemporary international law I will proceed in the following way: First, I will briefly articulate the principal features, strengths and weaknesses of the dominant third world approaches to international law (TWAIL) in the first decades after decolonization (hereafter TWAIL I). This will allow me to distinguish the radical approach from the "mainstream" third world approach to international law. Second, I will consider two alternative western visions of reform of the present international legal order, viz.. the neo-liberal, and the more critical "new approaches to international law" (NAIL), and contrast it with the *radical* third world approach. The objective of the exercise will be to spell out, among other things, some of the methodological and sociological assumptions which inform the radical approach to contemporary international law and to indicate its positive agenda. The final section contains a few concluding remarks.

II The Third World Approach to International Law in the First Decades after Independence

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[1] Edward W. Said, *Culture and Imperialism* (Alfred A. Knopf, New York, 1993) pp. 216-217. Emphasis in original.

(TWAIL I)

Central features

TWAIL I was articulated, among others, by Georges Abi-Saab, R.P. Anand, Mohammed Bedjaoui, T.O.Elias, Prakash Sinha, Nagendra Singh, and J.J.G Syatauw.[2] If one is permitted to generalise, it is possible to identify eight features which were common to the writings of TWAIL I.[3]

First, it traced the history of colonial international law and showed how it had legitimized the subjugation and oppression of third world peoples.

Second, it stressed that third world states were long familiar with the idea and practise of international law, even though many of these states in the past were not sovereign states in the modern sense.[4]

Third, it noted that there was nothing in their cultural and political tradition which inhibited third world states from playing an active role in the contemporary international legal process.

Fourth, it did not completely repudiate modern international law but called for the trasnformation of its content to meet the concerns and aspirations of the newly independent states and its peoples.

Fifth, it laid great stress on the principles of sovereign equality of states and non-intervention as important shields against the intrusive politics of dominant states.

Sixth, it placed immense faith in the United Nations System to democratise international relations. It believed that the UN system should reflect and represent the common interests of human kind as opposed to "national interests" of individual member states.

Seventh, it concluded that more international law was better than less. It was thought that expanding scope of international law would help establish the rule of law in all spheres of international life and in so far as third world states participated in the formulation of new rules these would reflect their concerns and interests.

Eighth, it believed in the global coalition strategy to bring about the desired changes in the content of contemporary, as opposed to colonial, international law. The non-aligned movement (NAM) and the Group of 77 were two manifestations of the global coalition strategy.

Strengths of the approach

In my view the first generation of third world scholars made a fundamental contribution to the understanding of contemporary international law through defining and articulating the attitude of the newly independent states to international law. The new generation of third world scholars (TWAIL II) owe much to them. Allow me to identify *some* major strengths of TWAIL I.

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[2] See Nagendra Singh, *India and International Law: Ancient and Mediaeval* (S.Chand and Co Pvt.Ltd, New Delhi, 1973); R.P.Anand, *New States and International Law* (Vikas Publications, Nedw Delhi, 1979); S Prakash Sinha, *New Nations and the Law of Nations* (A.W.Sijthoff, Leyden, 1967); J.J. G. Syatauw, *Some newly established Asian States and the development of international law* (Martinus Nijhoff, The Hague, 1961); T.O.Elias, *New Horizons in International Law* (Martinus Nijhoff, Dordrecht, 1992) 2nd edition; *Africa and the Development of International Law* (Martinus Nijhoff, Dordrecht, 1972); Georges Abi-Saab, "The Third World and the International Legal Order", in *Revue Egyptienne de Droit International* vol. 29 (1973) pp. 27-66; Mohammed Bedjaoui, *Towards a new international economic order* (UNESCO, Paris, 1979).

[3] This section relies in part on my recent article "Teaching, Research and Promotion of International Law in India: Past, Present and Future", *Singapore Journal of International and Comparative* Law vol. 5 (2001) pp. 368-387.

[4] For the study of eurocentrism in the history of international law by a Japanese scholar see Onuma Yasuaki "Eurocentrism in the History of International Law" in Onuma ed., *A Normative Approach to War* (Clarendon Press, Oxford, 1993) pp. 371-387.

First, it noted the contribution of third world communities to the evolution and development of international law. This helped destroy the myth that international law was in some peculiar way "invented" in the West.

Second, it astutely recognized that the complete rejection of the rules of international law was not a feasible option. Despite the anger that TWAIL I harbored against colonial international law it showed a great deal of realism in not calling for the complete rejection of international law.

Third, it aptly underlined the significance of the principles of sovereignty and non-intervention for peoples who had just thrown of the colonial yoke. It recognized that if the third world countries were not to be colonised again they would have to pursue an independent path of development for which the affirmation of the principles of sovereignty and non-intervention was crucial.

Fourth, TWAIL I correctly recognized the potential of the United Nations system to usher in an era of change. It realized that the one state one vote formula allowed third world states in the UN General Assembly to call for the restructuring of contemporary international relations and law.

Fifth, it was right in believing that a global coalition of third world states alone could provide the counter-power to seek concessions from the former Metropolitan powers. The initial successes of NAM and the Group of 77 is testimony to this correct understanding.

Some weaknesses of the approach

Yet TWAIL I revealed, in my view, a number of weaknesses. I identify these below in a bid to distinguish my *radical* approach (or TWAIL II) from TWAIL I. It must however be quickly added that not all the following criticisms are applicable to each of the scholars who collectively defined and articulated TWAIL I. Thus, for example, the earlier writings of Bedjaoui, are relatively more critical of many inherited doctrines of modern international law. With this caveat let me turn to the weaknesses.

First, there was an absence in TWAIL I of a deeper understanding of the phenomenon of imperialism. It posited a simple structuring of history by which colonialism was identified with the phenomenon of imperialism. Therefore, with the attainment of independence the need for a *fundamental* critique of the structures and institutions of global capitalism was not felt. As a consequence, while all international law issues were approached from the perspective of the newly independent states, engendering a critique of first world policies, this critique did not go deep enough. For it did not concern itself with the structures and institutions of global capitalism that dictated continuity between colonialism and neo-colonialism.

Second, TWAIL I did not closely question the *culture* of international law even as it sought the transformation of its content. This was at least in part due to the fact that the principal articulators of TWAIL I had their education in the West and were still somewhat in awe of Western scholarship. Even as the contribution of Asian-African scholarship to international law was being affirmed Western scholars, opposed to much of this thinking, were treated with great reverence.[5] Indeed, members of TWAIL I sought to appropriate through association the academic capital of Western scholars. It meant that the agenda of research, and the meaning and standards of excellence of international law scholarship were defined in the West. It in turn generated an anxiety neurosis to be accepted by the Western peer group and set up a vicious cycle that continues to undermine independent scholarship in the third world.

[5] For parallels in Japan see Onuma Yasuaki, "Japanese International Law" in the Prewar Period--Perspectives on the Teaching and Research of International Law in Prewar Japan, *The Japanese Annual of International Law* No. 29 (1986) pp. 23-47; and Onuma, Yasuaki, "Japanese International Law" in the Post War Period--Perspectives on the Teaching and Research of International Law in Post War Japan", *The Japanese Annual of International Law* No. 33 (1990) pp. 25-53.

Third, TWAIL I conceptualized the framework of international law as being neutral. It was perceived as an empty vessel which could be filled with any content. It therefore (with the exception of Bedjaoui) did not pay sufficient attention to the *technology* of international legal process. Thus, it failed to appreciate that international law, as it had evolved, did not offer space for a transformational project. For a whole host of doctrines, in particular the doctrine of sources of international law, regulated the transformational space on behalf of hegemonic states. TWAIL I also did not explore fully the deep roots of indeterminacy in the structure and process of international law. It therefore overestimated the liberating potential of international law.

Fourth, TWAIL I had a particular relationship to the post colonial state and its policies. The post colonial conjuncture was seen as one in which support was to be lent to newly independent States to transform the content of international law. As Partha Chatterjee has noted nationalism 'constituted itself into a state ideology and appropriated the life of the nation into the life of the state'.[6] Thus, 'the world of the concrete, the world of differences, of conflict, of the struggle between classes, of history and politics, now [found] unity in the life of the state'.[7] The utopia it engendered 'was a systems-theorist's utopia, where the government was the perfect black box, receiving inputs from all parts of society, processing them, and finally allocating the optimal values for the common satisfaction and preservation of society as a whole'.[8] It explains the failure of TWAIL I to glance inwards (to pinpoint the class and gender divides) or to articulate an alternative discourse of post colonial realities. It also explains the hegemony (to revisit the theme of culture of international law) of the lawyer bureaucrat in the world of international law.

Fifth, the discussion on international institutions was largely confined to the rules of law which govern their legal status, structure and functioning, with matters of power and influence left to political scientists. The nature and character of these international institutions was sought to be understood from within a positivist legal framework with its emphasis on formalism. No attempt was made to situate them within the larger social order, in particular the historical and political contexts in which they originate and function. In the process it was overlooked that only when a coalition of powerful social forces and States are persuaded that an international institution is the appropriate form in which to defend their interests is it brought into existence, albeit through state action, and it survives only if it continues to serve these interests.[9]

Sixth, given its positivist legal framework, TWAIL I failed to study the ideological or legitimation role of international institutions. The legitimization role of international institutions assumes many forms. First, the organization represents its institutional field and concerns to the outside world. Second, it actively promotes norms of international behavior which facilitate the realization of its objectives. Third, it frames issues for collective debate and proposes specific policy responses. Fourth, it identifies key points for negotiation in order to fill gaps in the normative framework and to adjust to changes in the external environment. Finally, it evaluates the policies of member states from the standpoint of their mandate and concerns. The knowledge production and dissemination functions of international institutions are steered by the dominant coalition of social forces and states to legitimize their vision of world order. TWAIL I did not entirely grasp this.

Seventh, TWAIL I eschewed theoretical or inter-disciplinary inquiry. There was much ignorance about scholarship in the humanities and the social sciences. Disciplinary boundaries were strictly respected. There was, for example, a general absence of concern with political economy. Thus, for example, the dependency paradigm exercised negligible influence on TWAIL I writings on the new international

[6] Partha Chatterjee, *Nationalist Thoought and the Colonial World: A Derivative Discourse?* (Zed Books, London, 1986) p. 161.
[7] Ibid., p. 79.
[8] Chatterjee, op cit, p. 160.
[9] Craig N. Murphy, *International Organization and Industrial Change: Global Governance since 1850* (Polity Press, Cambridge, 1994) pp. 25 and 44; and Robert W. Cox with T.J. Sinclair, *Approaches to World Order* (Cambridge University Press, Cambridge, 1996).

economic order. These writings were essentially confined to considering the legal status of General Assembly resolutions coupled with commonplace statements regarding the growing inequalities in the world. That is to say, there was no systematic attempt at articulating an international law paradigm which took cognizance of the literature on political economy of underdevelopment.

Eighth, the absence of an appreciation of the culture of international law translated into the absence of any form of collective activity by TWAIL I. I have often wondered what prevented the proponents of TWAIL I from coming together and establishing structures that would serve future generations as forums for doing collective thinking. True, TWAIL I must be given credit for starting journals (e.g. *Indian Journal of International Law*) and yearbooks (e.g. *Asian Yearbook of International Law*). However, more collective strategies and fora were needed if the overwhelmingly dominant influence of Western scholarship was to be challenged.

Finally, despite its commitment to a more egalitarian and just international law, TWAIL I was distanced from the experiences and concerns of ordinary peoples in the third world. I recall a deep sense of alienation attending the different courses on international law in India. While we did study aspects of colonial history it was not always integrally linked to the study of contemporary international law. When it came to the latter, lectures and materials were confined to abstract international law doctrines in Western textbooks which are emptied of all social concerns. Further, there was no attempt to identify and explore issues which were meaningful from the point of view of the ordinary people of the underdeveloped world. The Law of the Sea negotiations that lasted from 1971-1982 is a good example. While everyone wrote on the subject its implications for ordinary people, either bearing on their livelihood or otherwise, was almost of no concern to international law scholars.

In sum, the differences between TWAIL I and the radical approach that I espouse are many. The radical approach hopes to take TWAIL I forward by refocusing attention on the structures and practices of imperialism, critique the undemocratic character of post colonial states, question the culture and technology of international law, systematically expose the hegemonic character of international institutions (in particular the WTO and the IMF/World Bank combine), devise a research agenda that reflects the concerns and needs of the marginal and oppressed peoples in the third world, establish forums to bring together international law scholars from the third world for collective thinking on relevant problems, and above all reducing the distance of the world of international law from the lives of ordinary peoples. Before turning to the other two models of reconstruction I would like to stress however that it will be for TWAIL III to assess if TWAIL II lived up to its commitments and identify the weaknesses that characterized its world and analysis.

III Alternative Models of Reconstruction

I now turn to discussing, albeit in a telegraphic mode, three models of reform of the contemporary international legal system or, which is the same, three models of reconstruction. Reconstruction to me connotes reflection upon the structure and process of contemporary international law and relations with the aim of elucidating the conditions and possibility of the transformation of the lives of marginal and oppressed sections in the third and first worlds. The three models that I discuss are the neo-liberal, new approaches to international law (NAIL) and the radical models.

Model I: Neo-liberal: Strengthening the Global Capitalist Order

Model I, or what I broadly classify as the neo-liberal model, is the perspective which informs the thinking of Western States (and much academic writing) on the contemporary international legal system. It has at its centre the achievements and strengths of global capitalism, testified to by its resilience in the face of recurring predictions about its demise. It affirms the belief that there is no alternative to it. The collapse of 'actually existing socialism' is cited as conclusive proof of this. The fact that socialist China and inward looking India have turned towards market reforms is further evidence, if any were needed, that there is no alternative to global capitalism. The model recommends

privatisation, deregulation, and reliance on the market to the third world as the basis to pursue its development goals. It is this understanding, among other things, which informs structural adjustment policies (SAPs) recommended by the international financial institutions (IFIs) to the third world countries. Model I, in brief, endorses the contemporary international legal system which extends and sustains global capitalism.

For a period of time in the seventies the third world states sought to reform the global capitalist order. An equitable and just international law of distribution was sought to be shaped through the adoption of the Program and Declaration of Action on a New International Economic Order (NIEO) and the Charter of Economic Rights and Duties of States (CERDS). Faced with stiff resistance from the advanced capitalist countries this attempt at reform collapsed within a few years of being launched.

Meanwhile, the 1980s saw global capitalism enter a new phase of globalization. It was now the turn of the advanced capitalist countries to demand changes in the body of international law. These changes involved, first, the rejection of the proposals which constituted NIEO and CERDS. It meant that market intervention to shape an equitable and just international law of distribution was now considered a dysfunctional idea.

Second, it entailed the adoption of international legal instruments to free transnational capital of all spatial and temporal constraints. The whole globe was now to be treated as a single space. It called for the removal of "national" impediments to the entry, establishment and operation of transnational capital. The international legal process has sought to be used to translate this objective into legal rules. A whole host of international laws that seek to free transnational capital of spatial and temporal constraints have been adopted in the last two decades. These include, first, hundreds of bilateral investment protection treaties between the industrialized and third world countries. By 1999, 1857 BITS were concluded (up from 165 at the end of the 1970s and 385 at the end of 1980s), a predominant number of which were concluded between the industrialized world and the third world countries.[10] Second, the Agreement on Trade Related Investment Measures (TRIMS) took a number of measures in this direction viz. states are constrained from imposing local content and balancing requirements on foreign capital.[11] Third, the negotiations around the General Agreement on Trade in Services (GATS) have been used to open up the global service sector to transnational capital.[12] Fourth, there are soft law texts such as the World Bank Guidelines on Foreign Investment (1992) have been adopted in a bid to encourage further removal of the constraints on the entry and operation of transnational capital be limited.[13] Fifth, there is the proposed negotiation of a multilateral agreement on investment (although not described as such) on the agenda of Doha round of trade negotiations.[14] Sixth, a Multilateral Investment Guarantee Agency (MIGA) was established under the auspices of the World Bank to insure foreign capital against non commercial risks.[15] Seventh, the IMF is encouraging a move towards capital account convertibility despite all evidence showing the grave consequences for the economies embracing it, and in opposition to the original obligations contained in the 1944 Articles of Agreement which merely called for the "avoidance of restrictions on payments for current transactions".[16] Finally, mention needs to be made of the fact that the Draft Code of Conduct on Transnational Corporations which imposed certain duties -respect for host country goals, transparency, respect for environment etc- has been abandoned.[17] And further that the UN Centre for Transnational Corporations which was bringing some transparency to the functioning of TNCs was shut down in 1993.

[10] See UNCTAD, *Bilateral Investment Treaties 1959 to 1999* 1 (2000).
[11] For the text of the agreement *see* WTO, *The Results of the Final Act of the Uruguay Round of Multilateral Trade Negotiations* (1994).
[12] For the text of the agreement see Id.
[13] For the text *see* UNCTAD, *International Investment Instruments: A Compendium vol. I-Multilateral Instruments* 247 (1996).
[14] WTO, WT/MIN (01)/DEC/W/1, 14 November 2001-Ministerial Conference, Fourth Session, Doha, 9-14 November 2001: Ministerial Declaration.
[15] For the text of the agreement establishing MIGA *see* UNCTAD, op cit, p. 213.
[16] S*ee* J. Bhagwati, *The Capital Myth*, Foreign Affairs 7 (May/June 1998).
[17] For the text *see* UNCTAD, op cit, p. 161.

Third, international institutions were sought to be established or repositioned to ensure the adoption and effective implementation of the rules which facilitate and promote the accumulation of capital in the era of globalization. The Model endorses the transfer of economic sovereignty from states to international organizations in a bid to have uniform global standards that are centrally enforced.[18] In core areas of economic life third world States have seceded national economic space to international organizations.[19] Today, as one observer notes, 'the "commanding heights" of state decision-making are shifting to supranational institutions'.[20] The WTO and the IMF and the World Bank are the most crucial institutions in this respect. Even the UN system is being used to promote the interests of transnational capital (vide the global compact), including increasing the role that the corporate sector can play within the organization.

At the political level, new international law norms are being established to promote "good governance" in order to confer legitimacy on collaborating third world regimes at a historical juncture when authoritarian regimes no longer need to be supported, as in the past, to fight communism. Free and fair elections rather than participatory democracy is the norm prescribed by international law.[21] On the other hand, the discourse of human rights being used to entrench private rights.[22] Since the model ties the legitimacy of international rules to the element of state consent rather than to the justice of the rules the question of global distributive justice is not on the agenda.[23] It greatly limits the possibilities of genuine democratization of both international and internal relations. But a contrary impression is sought to be created through steering the knowledge production and dissemination functions of the Northern academia and international institutions. A massive amount of literature is produced to justify the extant global capitalist order.

The global capitalist system and its institutions are also abjured of any serious responsibility for the dismal state of affairs in the third world. If things do not work for the third world the blame is attributed entirely to its own doings. The role of external factors is most often overlooked. When a crisis is in the making measures are recommended that take care of the worst fall outs of the workings of the global capitalist system. These include from time to time waiver of debts of the poorest countries, social safety nets, and the provision of humanitarian assistance. Meanwhile, however, care is taken to put in place laws and rules that enable the strict control of voluntary and forced migration. These practices have invited the label "global apartheid" from the Canadian sociologist Anthony Richmond.[24]

The ongoing changes in the body of international law have, it must be stressed, the active consent of significant sections of the third world elite. The latter faithfully act as transmission belts for the ideas emerging from the advanced capitalist world. This attitude reflects among other things the hope of third world business to profit from becoming junior partners in the globalization project. At the level of

[18] The WTO Agreement on Trade Related Intellectual Property Rights (TRIPs) is perhaps a classic case.
[19] These areas include technology, investment, agricultural and environment policies.
[20] William I. Robinson, "Globalisation: Nine Theses on Our Epoch", *Race and Class*, vol. 38 (1996) pp. 13-31 at p.18.
[21] As Crawford and Marks note, 'a preoccupation with elections is, indeed a striking feature of international legal discussions on democracy. To raise the question of democracy is largely to raise the question of whether international law requires states to hold periodic and genuine elections'. And as they go on to add, legitimacy is, accordingly, an event, an original act, as distinct from a process by which power must continously justify itself and account to civil society', James Crawford and Susan Marks, "The Global democracy Deficit: An essay in International Law and its Limits", in D. Archibugi et al eds., *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Polity Press, Oxford, 1998) pp. 72-90 at pp. 80 and 81.
[22] Thus, for example, the preamble to the WTO TRIPs text baldly states that 'intellectual property rights are private rights'.
[23] In recent years political philosophers like Rawls and Walzer have advanced this understanding. John Rawls, "The Law of Peoples", *Critical Inquiry*, vol. 20 (1993) pp. 37-68; "An Interview with Michael Walzer", *Theory, Culture and Society* vol.14 (1997) pp. 113-130. See also Crawford and Marks, op cit, p. 85.
[24] See Anthony Richmond, *Global Apartheid* (Oxford University Press, Toronto, 1994). See also B.S. Chimni, "The Geopolitics of Rwefugee Studies: A View from the South", *Journal of Refugee Studies*, vol. 11 (1998) pp. 350374; and B.S. Chimni, "Globalization, Humanitarianism and the Erosion of Refugee Protection", *Journal of Refugee Studies* vol.13 (2000) pp. 243-263.

strategy, the third world elite have accepted the idea that the global coalition should be replaced by issue based alliances with both first and third world states. At the receiving end of these policies and strategies are the working classes and disadvantaged groups in the first and the third worlds. Their condition has worsened in the last two decades.

What is true of the third world elite is also true of some third world international law scholars. They tend to accept this model as long as it *vaguely* accepts the need to reform North-South relations. From the perspective of methodology, this acceptance is in part the result of the problems which characterised the formulations of TWAIL I. It has also meant the acceptance of the TINA (there is no alternative) thesis. In part it is also a function of the fragmentation of international legal studies so that there are few attempts to study the larger picture and its consequences. Finally, the absence of links between the academia and the peoples movements has also resulted in acquiescence as it strengthens the belief that there is no other alternative to the extant global capitalist order.

Model II: New Approaches to International Law (NAIL): Emphasis on Deconstruction

A second model of reconstruction (or rather "deconstruction") is that proposed by NAIL which is an offshoot of the critical legal studies movement and whose key figures are David Kennedy and Marti Koskenniemi. This model is informed by three guiding scepticisms. First, scepticism is directed at the concepts of sovereignty and development. Second, there is scepticism towards the so-called larger forces of history or what is called grand theory. Third, and most importantly, there is the scepticism towards the language of international law which is viewed as being structurally apologetic.

On the sociological plane, NAIL is certainly critical of the adverse distributive consequences of the extant global capitalist order, in particular the growing North-South divide. But it suggests, among other things, that the language of progress, sovereignty and development has been invented and disseminated by former colonial powers to ensnare newly independent states and place them in eternal serfdom. For what better way to continue the subjugation of the formerly colonised peoples than through apparently emancipatory ideas and concepts that they themselves embrace and pursue. Thus, according to NAIL, the concept of civilisation (so critical to the colonisation process) is today replaced by those of sovereignty and development. The urge to develop has inexorably led third world countries to embracing the tenets of neo-liberalism. From the perspective of resistance, the old left opposition to neo-liberalism, in this view, is a road that leads to nowhere as it continues to be seduced by the concepts of "sovereignty" and "development". NAIL, on the other hand, attaches great significance to local resistance movements against the forces of global capitalism.

The model also articulates a distinctive conception of international law. Five features of this model may be highlighted for the present purposes. First, international law is merely viewed as a process of argumentation informed by a distinctive style:

> Rather than a stable domain which *relates* in some complicated way to society or political economy or class structure, law is simply the practice and argument about the relationship between something posited as law and something posited as society.[25]

Indeed, it views the state 'as a linguistic relationship between law and politics, as a site for rhetorical awareness of one another'.

Second, the model points to the indeterminate character of international law. It contends that 'international law is singularly useless as a means for justifying or criticising international behaviour'.[26] Its indeterminacy is not externally but rather internally imposed. Thus, ‘it might be

[25] David Kennedy, "A New Stream of International Law Scholarship", *Wisconsin International Law Journal* vol. 7 (1988) pp. 1-49 at p. 8.
[26] Marti Koskenneimi, *From Apology to Utopia* (Lakimieslieton Kustannus, Helsinki, 1989) p. 48.

useful to think of this project as a look at public international law from the *inside*'.[27]

Third, it suggests that international law creates the illusion of progress through an 'obsessive repetition of a rather simple narrative structure': 'as movements from imagined origins through an expansive process towards a desired substantive goal.[28] Whereas, 'international public law exists uneasily in the relations among these imagined points – constantly remembering a stable origin, foreshadowing a substantive resolution, but living in an interminable procedural present'.[29] At the institutional level there are periodic attempts at renewal which pretend to strengthen the rule of law and justice in international affairs.[30]

Fourth, it notes that international law reproduces the public-private divide and treats the legal regime of property and contracts as an apolitical realm (leaving unacknowledged the politics of the private) free from re-distributive consequences.

Fifth, NAIL poses the crucial question as to how can oppressed and marginal peoples advance their claims in a language which was originally designed (in colonial times) to exclude them? That is to say, the language of international law which has come to accepted as authoritative, and from within which the claims of the oppressed and marginal peoples for radical change are proposed, is the very language which ensured exclusion. In other words, from 'apology to utopia' is the duality which traps and consumes all attempts at the progressive transformation of international law.

In sum, this model believes in deconstruction itself as amounting to reconstruction. It hopes to retrace the steps through which the language of international law was "invented" in order to unveil the discursive practices through which it legitimises domination. Where construction as opposed to critique is necessary at the level of rule making and enforcement it is on the side of the marginal and poor groups in the first and third worlds, albeit it underlines the futility of such efforts. However, 'in this conception there is no general problem, and no general solution', though one may 'become interested in a particular redistributional struggle'. It is local struggles and global connections which are stressed in a bid to transcend the sovereignty trap. Let me now turn to the third model or the radical model.

Model III: Radical: Serious Reform of Contemporary International Law

The radical model proposes major reforms in the existing global world order. In this respect, it is in agreement with Model II on several counts. First, is its expression of solidarity with the poor and marginal groups. Second, is its critique of economic determinism, in particular its emphasis on the role of language in constituting social practices. Third, is its questioning of the representation of the idea of sovereignty as natural. Fourth, there is agreement that the techniques of modern international law tend to exclude the possibility of advancing a radical critique which extends the challenge to the paternity of the law.

However, the areas of disagreement with NAIL are several. At the sociological level the following may be mentioned:

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[27] Kennedy, op cit, p. 11.

[28] Kennedy, ibid, p. 2. Again he writes:

> We have progressed, so the story goes, from a few original truths scattered in a void, through the rationalization of philosophy, to the development of modern institutional machinery.

Ibid, p. 15.

[29] David Kennedy, "Receiving the International", *Connecticut Journal of International Law* vol. 10 (1994) pp. 1-26 at p. 25.

[30] David Kennedy, "The Move to Institutions", *Cardozo Law Review* vol. 8 (1987) p. 841; and David Kennedy "A New World Order: Yesterday, Today, and Tomorrow", *Transnational Journal of Law and Contemporary Problems* vol. 4 (1994) pp. 332-336.

First, contrary to its claims, material production is central to the organisation of global economic and social life. Therefore, simply reconstituting the linguistic relationship between law and politics, or which is the same – deconstruction, is unlikely to change much.

Second, the NAIL critique of sovereignty is ahistorical and misplaced. It does not ask the question as to what were the choices available to a post colonial state? It also neglects the fact that the revival of the pre-colonial state system in the wake of independence may have represented a thoroughly regressive step. The sovereignty as a trap thesis does not also take into account the history of those post colonial societies which departed from the liberal democratic model and paid the price for it viz., Allende's Chile. That is to say, European hegemony was sustained not through universalizing the modern nation-state but through preventing departure from the liberal democratic model, both at home and abroad. In brief, it is the character of the post colonial state which was problematic rather than its sovereign status.

Third, in contrast to NAIL the radical approach does not conceive resistance merely as local resistance at specific sites. For it the failure to recognise the significance of collective political responses to dominance and exploitation disarms people in the face of global strategies of hegemonic States. In this context the role of dominant States in the suppressing of democratic struggles in the third world is overlooked by NAIL.

Fourth, NAIL is unable to articulate alternatives. For example, what would the post-colonial non-development path that it recommends look like? Likewise, how are we to imagine the post nation-states system?

Where international law is concerned the radical model, as opposed to NAIL, affirms, first, that international legal rules matter and must be taken seriously. The inability of the third world states to change the rules of the game in their favour or prevent the arrival of rules deeply prejudiced against them is sufficient evidence of this. International law is therefore not simply a distinctive style of argumentation. It deeply affects the lives of ordinary peoples in the third world. To present it as a style is to privilege form over content. Instead, what is called for is a study of the mutual relationship and interaction between the elements of form and content.

Second, the radical model does not accept that indeterminacy is internal to the legal process and therefore all pervasive. Domination, in its view, is equally exercised through determinate rules of international law. In any case, the problem of indeterminacy is not a problem *internal* to the structure of international law but is a function of the social practices which constitute it. The crucial weakness of the indeterminacy thesis is that while it pretends to a radical critique it lends itself to supporting the status quo by not recognising that rules are not infinitely manipulable. [31]

Third, the radical approach does not reject altogether the narrative of progress. For to do so is to fail to differentiate distinct stages in the evolution of the international law (and in this they are very much like the realists[32]) and following from it is the danger of historical relativism. NAIL is, to put it differently, unmindful of what it means for third world peoples to have democratised colonial international law. It, therefore derides, for example, the principles of sovereignty and non-intervention.

Fourth, the radical approach notes that the neo-colonial international law which has assumed shape in the last decade has been premised on the retreat of the state. Be it the law of state immunity with its distinction between *jure imperii* and *jure gestionis* or the emerging law on foreign investment or the law on IPRs or the international commercial arbitration movement or human rights law and humanitarian intervention they manifest sovereignty in retreat. In the face of these developments to

[31] See in this regard Chimni, ibid, pp. 83ff.
[32] See B.S. Chimni, *International Law and World Order: A Critique of Contemporary Approches* (Sage, New Delhi, 1993) p. 45.

condemn the principle of sovereignty is to side with the powerful states against the weak.

I now turn to the positive agenda that the radical approach recommends in the world of international law.

First, in a world in which constraints on the transnational movement of capital are being removed, there is a need for international law rules that increase the responsibility of transnational corporate actor towards the people and environment of host states. There need to be clear legal duties imposed on transnational capital.

Second, as international institutions come to occupy centre-stage there must be greater transparency and accountability in their functioning.[33] The radical approach therefore calls for, among other things, the adoption of a convention or a declaration on the responsibility of international institutions.

Third, greater attention must be paid to economic social and cultural rights including the right to development. The 1986 Declaration on the Right to Development must be given concrete shape. States should be able to give priority to human rights over obligations that are assumed through international economic instruments.

Fourth, greater space must be created for independent self reliant development. In this respect, the public sector should not be forcibly dismantled through international monetary law. Hyper-mobile and marauding international finance capital should be reigned in. There should be no insistence on capital account convertibility.

Fifth, there is a need to ensure sustainable development that does not rule out development in third world countries.[34] Nor should environment protection laws be used to put in place measures of domestic protection against exports from third world countries.[35] In other words, market access to the goods of third world countries needs to be guaranteed.

Sixth, greater deference must be shown to national laws and institutions. There is a need to circumscribe growing international and extra-territorial jurisdiction that is not just and equitable in its content.

Seventh, the UN system should not be privatised. The role of corporate actors in the UN system should be limited. The UN should also lay greater stress on economic development of third world countries.

Eighth, national and international laws that seek to restrict voluntary and forced migration, in particular the right of the asylum-seeker to seek refuge, must be dismantled.[36]

Ninth, use of force should be proscribed. It may also be stressed here that the radical approach outrightly condemns terrorism and seeks the peaceful transformation of contemporary international law through a dialogic process. It also believes that unilateral armed humanitarian interventions should be prohibited. "Humanitarian intervention" should only be permitted under the auspices of the UN Security Council and that too in well defined and limited circumstances.[37]

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[33] See "Need for Transnational Transparency and Openness: Comment on Stiglitz" in Mathew Gibney ed., The Oxford Amnesty Lectures (forthcoming).

[34] B.S. Chimni, "Permanent Sovereignty over Natural Resources: Toward a Radical Interpretation", *Indian Journal of International Law*, vol. 38 (1998) pp. 208-217 at pp. 216-217.

[35] See B.S. Chimni "WTO and Environment: The *Shrimp-Turtle* and *EC-Hormone* cases", *Economic and Political Weekly*, June 2000; and B.S. Chimni "WTO and Environment: The Legitimization of Unilateral Trade Sanctions", *Economic and Political Weekly* January 12-18, 2002, pp. 133-140.

[36] See in this respect B.S. Chimni "The Geopolitics of Refugee Studies: A View from the South", *Journal of Refugee Studies* vol. 11, No. 4 (1998) pp. 350-374; and B.S. Chimni "Globalization, Humanitarianism and the Erosion of Refugee Protection", *Journal of Refugee Studies* vol. 13, no. 3 (2000) pp. 243-264.

[37] My own position is outlined in "The International Law of Humanitarian Intervention" in *State Sovereignty in the 21st*

Tenth, a re-distributive agenda needs to be given shape that recognises that the growing North-South divide cannot be rectified through the workings of the global market. The idea of international commodity agreements with price and income stabilisation mechanisms needs to be revisited.[38]

At the methodological level, the radical approach recommends the following:

First, the study of the impact of international laws on ordinary people must be a priority task. That is to say, we have to do international law as if people matter. For otherwise international law does not matter.

Second, there is a need to do transdisciplinary work which allows the deep structures of international law to be explored. There is a need in this regard to avoid the trap of over specialization in order to be able to map and reflect on larger developments in the field.

Third, it proposes a continuing critique of dominant Western history and theories of international law.[39] Simple criticism of particular regimes or empirical evidence does not suffice to displace dominant thinking. It is important to challenge and contest the underlying history and assumptions of status quo Western thinking.

Fourth, it calls for strategies to join hands with other fellow travellers in displacing the dominant western theories of international law. The radical approach sees as a natural ally the feminist approaches to international law whose critique is in many ways the same as that advanced by TWAIL I and TWAIL II. Its central argument that 'the absence of women in the development of international law has produced a narrow and inadequate jurisprudence that has, among other things, legitimated the unequal position of women around the world' is parallel to the TWAIL critique.[40] I believe that the broad objectives of the feminist approaches coincide with the goals of TWAIL. Like the feminist approaches to international law, TWAIL also seeks to 'offer ways of recasting the role of international law so that it can transform ideas about justice and order in the international community'.[41] It equally agrees with the feminist perspective that reconstruction 'requires rebuilding the basic concepts of international law'.[42] In one case to ensure that it does not 'support or reinforce the domination of men by women', and in the other to ensure that it does not support domination of their marginal and oppressed groups.[43]

IV Conclusion

International law has always legitimized the domination of the third world through sanctioning a legal process that undermines the capacity of its people to promote independent and self reliant development. It also displaces resistance and challenge to the contemporary international law through a network of doctrines that effectively preserve the status quo. In the first decades after independence the first generation of third world international law scholars (TWAIL I) sharply criticised the unjust and exploitative nature of modern international law. But they were often blind to the deep structures of domination embedded in the language of international law. TWAIL I therefore did not entirely appreciate the extent to which structures of domination survived in new forms in the post colonial period. TWAIL I

Century: Concept, Relevance and Limits (Institute for Defence Studies and Analyses, New Delhi, 2001) pp. 103-132; B.S. Chimni, "A New Humanitarian Council for Humanitarian Interventions?", *International Journal of Human Rights*, vol. 6, no. 1 (Spring 2002) pp. 103-112.

[38] See generally B.S. Chimni, *International Commodity Agreements: A Legal Study* (Croom Helm, London, 1987).

[39] See, for example, Antony Anghie, "Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law", *Harvard International Law Journal*, vol. 40 (1999) pp. 1-80.

[40] Hilary Charlesworth and Christine Chinkin, *The boundaries of international law: A feminist analysis* (Manchester University Press, Manchester, 2000) p. 1.

[41] Ibid, p. 20.

[42] Ibid, p. 61.

[43] Ibid.

was consequently too sanguine about the prospects of transforming contemporary international law to meet the needs of third world peoples. It was also still too much in awe and influence of Western scholarship to launch a frontal challenge to the international legal system and the scholarship which legitimized and sustained it.

TWAIL II, on the other hand, hopes to be irreverent in its critique of dominant Western scholarship. In contrast to TWAIL I, the liberal and the NAIL approaches, it is unsparing in its critique of contemporary international law and institutions to the extent it codifies the rights of transnational capital, in particular international finance capital, without placing a whole set of duties *vis-à-vis* third world peoples. It in particular hopes to examine from the standpoint of the interests of third world peoples three key institutions viz., WTO, IMF and the World Bank. It would also like to ensure that the concept of sustainable development is not hijacked by those forces which wish to freeze development in the third world while avoiding the historic and continuing first world responsibility in destroying the global environment. It also seeks to see that the language of human rights is not deployed to entrench private rights as against the idea of guaranteeing civil and political and social, economic and cultural life of peoples in both the third and the first worlds. In short, TWAIL II strives to transform international law in the era of globalization from being a language of oppression to a language of emancipation. It seeks to build on the pioneering work done by the authors of TWAIL I. In this process it will seek to build alliances with the feminist approaches which also seek to recast international law to meet the aspirations of oppressed women. It also hopes to cooperate with NAIL in displacing mainstream approaches to international law even while being forthright in critiquing its assumptions and thinking that do not promote the interests of third world peoples.

BETWEEN THE RULE OF LAW AND NATIONAL SECURITY: THE UK'S OPTIONAL CLAUSE AND THE ICJ : PACIFIC NUCLEAR TESTS AND JAPAN.

ANTHONY CARTY*

1. Critical legal studies attempt to show that all law, including international law, is in some sense political. This can mean a variety of things. A legal rule is somehow inevitably so ambiguous that it can be interpreted arbitrarily by a decision-maker to achieve a preferred end which is not effectively excluded by the norm. It has been noticed that such a view of critical legal studies adds nothing to the American realist school, which also chose to concentrate on the psychology or personality of the judge as the decisive, and irrational factor, in the law-making and law application process. However, deconstructionist technique has endeavoured to take theory beyond the realist school by stressing the inevitable lack of freedom of the decision-maker. He is caught within structures that lead him to an unfreedom of self-contradictory decision-making. The judge or other official vacillates between opposite possibilities and reveals a pattern of self-defeating decisions.

As such critical legal studies remain diagnostic. They offer an analytical framework within which to understand otherwise disparate legal materials, but only in a purely negative sense. The conclusion comes, that law is not an independent standard for behaviour which can serve a legitimised ordering function in society. In absolute terms such a legal philosophy can hardly be satisfying. It does not meet a human yearning for a just ordering of society which can reconcile the person to that society and allow a dynamic participation in it.

What this short article will suggest and attempt to illustrate is, in turn, a diagnosis of critical legal studies, as itself a disillusionment with the failure to live up to legal ideals, particularly in the Anglo-American world which is the home of this movement. While the study is mainly about the UK, the presence of the US is felt in a manner that is typical of UK diplomatic and international law practice. The case study that will follow should show how remarkably accurately the seemingly overly "theoretical", in the sense of abstract, framework of critical legal studies captures certain contradictions of Anglo-American behaviour in international relations. It is a widespread awareness of this in the legal academy that produces an approach to legal analysis that wants to go beyond functionalist arguments that the UK and the US are following and applying, automatically, rules of international law in their foreign policy. The apparent narrowness of this focus on UK and US practice is, in the author's view, justified by the apparent Anglo-American cultural, as well as military, hegemony globally, at least until the present. In this context, critical studies offer an internal critique, from within the hegemon, which endeavours to halt it by paralysing its self-image and its driving motivation.

At the same time the presentation endeavours to provide a way forward with a radical and new interpretation of the nature of international law. It does not look to law as a product of the will of the state as a corporate entity, expressed either in a treaty or in a customary form in relations with other states. Instead, it understands the state itself as a very seriously constraining cultural-institutional framework within which, primarily officials, but also others, such as academics, contest with one another the way forward for their country in relations with other countries. While existing national structures do not favour internationalist solutions, it should be clear from the presentation which will follow that the possibility is usually there for the conscientious and determined official or academic to rise above or break through the structures which encourage evasion and self-contradiction. In practice structures are no more than other persons with opposing interests and perspectives and close analysis of the internal workings of national structures can reveal just how far a conscientious individual can drive against the structures in which he operates.

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None of this is to gainsay the morally dramatic situation portrayed by critical legal studies. International law is at present confronted with an extremely serious moral vacuum. This is represented not simply by its manipulation through state officials, but, more systemically, through a general unwillingness to fashion a vision of international society which goes beyond a not merely narrow but also fundamentally confused sense of national interest which is proving increasingly dangerous for the international community.

2. The story of the Optional Clause UK acceptance of the jurisdiction of the International Court of Justice (ICJ), Pacific Nuclear tests and possible Japanese protests begins in the spring of 1957 and does not effectively end until after the signing of the Nuclear Test Ban Treaty in 1963. However, the archival material which provides the sole basis for this presentation intensifies for a much shorter period from the summer of 1957 until the autumn of 1958. The British begin by making a reservation to their acceptance of the Court's jurisdiction in April 1957 which allows them to exclude any matter which they consider, in their own judgement, to affect their national security. This is to exclude the possibility that the Japanese accept the jurisdiction of the Court to contest the legality of British Pacific Ocean nuclear tests on the ground that they intefer with the freedom of the High Seas. It is feared the Japanese could immediately obtain an interim injunction from the ICJ to constrain Britain from carrying out its tests.

What is almost exclusively in play is a troubled British self-identity as a country which wishes to see itself as committed to the rule of international law in the sense of independent and impartial adjudication of disputes. It is the inability of British elites to reconcile this image with its conduct towards the ICJ in the face of an imagined Japanese threat that leads to a remarkably resolute determination at the highest political level to restore British acceptance of the compulsory jurisdiction of the Court. This decisively progressive decision was attributable partially to the Legal Adviser in the Foreign Office, Sir Gerald Fitmaurice, but also to the Foreign Secretary, Selwyn Lloyd. However, it was flawed significantly by a caveat accompanying the removal of the reservation with respect to national security. The British insisted that the effect of the old reservation should continue retroactively so that the Japanese should be unable to bring any legal action in respect of losses incurred by nuclear tests during the time that the reservation had been in force. This move was primarily the responsibility of the Legal Adviser, who was, in turn, attempting to accommodate the very bullish resistance to any progressive change coming from the Attorney General, (Sir Reginald Manningham Buller). The significance of this figure in the story is shadowy. While he played the fiercely nationalist devil's advocate against progressive change, his actual weight within the Government circles was that he was regarded as the final legal authority, more authoritative than the Foreign Office Legal Adviser. Archival minutes repeatedly state that Ministers will not act unless they are satisfied that he has been consulted. This has the strange significance that despite the obvious fragility of international law as a system British political elites regard law as a generic term which includes international law without the latter having any distinctive character. The questions international law poses are legal and should be answered finally by the highest legal authority in the Government.

3. From the beginning of the crisis British behaviour is marked by a determination to anticipate as rapidly as possible any danger of Japanese recourse to the Court without admitting to the Japanese, or anyone else in public, that the reason for the new reservation was fear of Japanese action. A Foreign Office Telegram of 11 April 1957 to the British Embassy in Tokyo notes press reports supported by private information that Dr Matsushita, a university professor and personal representative of the Japanese Prime Minister, has been saying, on a visit to Britain, that Japan should bring Britain before the ICJ on a charge of violating the freedom of the high seas by holding nuclear tests in the Pacific. The Embassy is instructed "…on no account say anything to the Japanese authorities or show any sign of interest in these reports…" but ascertain what the Japanese Government are likely to do.[1] One day

[1] FO 371/129266, ZE212/245 These notes are not to be found in the Japanese files but in a newly logged series of files within the Atomic Eenergy (Nuclear Test) files of the Permanent Undersecretary of the Foreign Office.

later there followed a telegram to the UK Delegation at the UN requiring it to inform the Secretary General that the UK withdrew its acceptance of the compulsory jurisdiction of the ICJ. All publicity was to be avoided as long as possible. There was to be no discussion of the substance of the matter with the Secretary General and to ask him also to avoid all publicity apart from that deriving from the eventual circulation of the notice of withdrawal.[2] There followed a telegram from New York that the Secretary General had had second thoughts about keeping the letters to himself, that no statement to the Press would be issued, but that legal advice indicated there could not be undue delay circulating other states with notice of the withdrawal. Of course the notice of withdrawal was effective from the time it was made.[3]

The new acceptance of the jurisdiction of the ICJ, deposited on 18 April 1957 provided in its key parts that acceptance did not apply to any question which "in the opinion of the Government of the UK, affects the national security of the UK…"; where acceptance was only for the purposes of the dispute or where the acceptance was less than 12 months before the filing of the application to bring a dispute before the Court.[4]

Between the 12 and 18 April 1957 there were deliberations between the Secretary of State and the Foreign Office Legal Adviser about how to present the actins taken to the public. There was to be no statement but merely a presentation if there was public reaction. The argument was then to be that the UK wished to bring abut a more equitable situation whereby a country which had not otherwsie accepted the jurisdiction of the Court could bring a dispute to the Court against a country which had. Japan might be mentioned in the background briefing (off the record) in terms that it was rumoured to wish to bring the UK before the Court over forthcoming H-bomb tests. However, it was also stressed that it would in fact be better to avoid all reference to the Japanese as this "…ran the risk of exciting all the anti-bomb test people…" The Legal Adviser also commented, very significantly in the light of later events, that he was "not sure whether the Secretary of State will feel it necessary to take the matter to the Cabinet…" It might be sufficient to clear it with the Prime Minister and one or two other Ministers. The Ambassador to the UN, Sir Pierson Dixon thought the intrinsic importance of the matter and the interest it will attract in Parliament and among the public when it becomes public, was such that the Secretary of State would feel it preferable to bring the matter to Cabinet. However, he followed Fitzamurice's suggestion.[5]

At the same time the report back from the British Embassy in Tokyo was that there was little more to go on than Prof Matsushita's remarks, that Japan should present a resolution to the UN GA asking for the opinion of the ICJ as to the legality of closing part of the open seas for carrying out nuclear tests. The Ambassador's impression was that the Japanese would hesitate to go this far but that it was not easy to gage what might be in Mr Kishi's mind. The idea of action had been mooted but not pursued at the time of the Bikini tests by the Americans, but at that time Japan had not been a UN member. A period of waiting could be expected when Mr Kishi would assess reactions to Prof. Matsushita's proposal both in Japan and the US "while the more temperate of his legal advisers might well want time to consider the implications of such a move…" The Amabassador added that the attitude of the US Embassy "…suggests that the US may not be unwilling to consider steps to dissuade the Japanese from taking such action…"[6]

This overly secretive and virtually disingenuous approach of a small circle of British political and legal elites so wrongfooted the Government from the start that it never recovered the initiative within Britain once the storm of publicity broke, which began to happen about three months later in July 1957.

[2] FO 371/129266 Tel. No.1377.
[3] FO 371 129266 ZE 212/250.
[4] FO 371/129890 , UN 1641/57 The United Nations Department of the Foreign Office.
[5] ibid.
[6] FO 371/129266 ZE212/246.

4. Already in July 1957 the Secretary of State became deeply worried by a conversation with the former Labour Attorney General, Sir Hartley Shawcross about "April events". The main points are made at once. Parliament was not properly informed. Criticism has been voiced against the UK reservation by Judge Lauterpacht in the *Norwegian Loans Case.* An obligation the extent of which one interprets oneself is not an obligation. The weakness of Selwyn Lloyd's position is further that he is not even sure what happened in April, so that he immediately asks that the line should be: the April action "… was ad interim, that would make things easier for us…"[7]

The archival material concerning the intense discussions which follow are huge. There are many exchanges of letters between Fitzmaurice and Shawcross and between Fitzmaurice and the Conservative Attorney General, Manningham Buller. This is the first stage of discussion and debate before the Press and Parliament become openly engaged in conflict. As a former Labour Attorney General, Shawcross attempts to persuade those whom he treats as professional colleagues to abandon a course of behaviour which he believes will damage the international reputation of Britain. He is angered that he only becomes aware of what Britain has done through reading the judgement of the ICJ in the *Norwegian Loans Case*. Such a serious matter should have been brought before Parliament and its looks like deception that it has not been. This tactic of personal confrontation with Selwyn Lloyd is rather successful, since the latter, from this time on, wants to have the decision reversed and puts pressure on Fitzmaurice to bring Manningham Buller with him, this being considered enough to sway the rest of the Government, which had not been formally consulted. Issues of personal and national identity (i.e. reputation) are carrying the maximum weight in the decision-making.[8]

Fitzmaurice's standpoints in this debate appear interesting if one wishes to labour one of the most basic tenets of critical legal studies. Legal language, phraseology, concepts and institutions lend themselves to an almost infinite variety of interpretations depending on the political or other inclinations of the reader. As Legal Adviser he feels throughout that he has to defend actions already taken, against a competent adversary, Hartley Shawcross. However, he is also charged by Selwyn Lloyd with the task of getting Britain, and themselves out of a situation considered embarrassing. This leads Fitzmaurice, particularly in the course of his correspondence with the former and present Attorney Generals, to give opposite interpretations of some of the basic legal issues in dispute. Indeed, in technical or professional terms perhaps Fitzmaurice's virtuosity is one of the most interesting aspects of the dispute.

In order to preserve the chronology of the story it is proposed to deal firstly with the exchanges between Hartley Shawcross and Fitzmaurice in August and September 1957 and only later in the story consider those between Fitzmaurice and Manningham Buller. In between, the issue explodes on the public scene and the government is heavily attacked in the press, in Parliament and by public opinion, a more indefinable but ultimately decisive force where Britain's concern with eputation is at play.

The first legal issue was whether Parliament should have been consulted about the changes in April 1957. There was a so-called Ponsonby Rule that treaties and other international obligations should be laid before Parliament. Hartley Shawcross accepted that the main idea of the rule was to give Parliament the chance to block the ratification of a treaty so that where a legal instrument did not require ratification it might appear that Parliament did not need to know. However, he quotes from the end of Mr Ponsonby's declaration to Parliament on behalf of the then Labour Government, that in future the Government desired that "… Parliament should exercise supervision over agreements, commitments and understandings by which the nation may be bound in certain circumstances and which may involve international obligations of a serious character, although no signed and sealed document may exist…" Britain's decision to make a reservation to its acceptance of the compulsory jurisdiction of the ICJ in terms of its own subjective judgement of what is required by its national security is of a serious character. No other country has made such a reservation about national security

[7] FO 371/129892 UN1645/61.

[8] FO 371/129892 UN 1645/62 Notes to the Lord Chancellor from the Secretary of State.

and the decision of the Government seriously imperils Britain's reputation as a country committed to the international rule of law.[9] There is no indication that Hartley Shawcross was aware that the reason for the new reservation was the fear of Japanese litigation over Britain's nuclear testing.

Fitzmaurice was responsible for replying to Hartley Shawcross' s persistent criticism. He comments that one could probably argue endlessly about the exact purpose and scope of the Ponsonby declaration. "…It is differently viewed by different people, and probably by the same people at different times, according as they are in or out of office. I can only say, speaking from a very long and fairly direct experience of the working of the rule, that departmentally and irrespective of the political complexion of the government of the day, it has always been, and still is, regarded as a voluntary practice, and not as a constitutional convention – and moreover one which, even as a rule of practice, is not followed in any case where serious delay or inconvenience etc would be caused by doing so…"

Fitzmaurice goes on to consider the particular question of the status of acceptance of and reservations to the optional clause jurisdiction of the ICJ. Carefully distinguishing the question whether, apart from the Ponsonby Rule Parliament should have been consulted, Fitzmaurice insisted the rule itself, to which Hartly Shawcross was referring, definitely did not apply in this case. This is , he argues, broadly because the rule speaks of laying before Parliament for 21 days where ratification of an instrument is required, i.e. Parliament is informed before something happens, i.e. a ratification by the government. When an instrument is complete and operative immediately upon declaration there is nothing more to be done, although always eventually the matter is laid before Parliament as a white paper.

As for Ponsonby's reference to the notion of a serious obligation, Fitzmaurice offered to hazard a guess that what Ponsonby had in mind was the type of unwritten military agreement Britain had with France before World War I. He refers to understandings that might bind the nation to specific action in certain circumstances. Whether as a matter of policy Parliament should have been consulted is outside the province of the Legal Adviser to comment, but according to his understanding, Fitzmaurice believes the issue of consultation is a matter for the judgement of the government of the day. There might be consultation and there is a settled practice of it for "important treaties" such as NATO, the UN Charter etc.

An optional clause declaration "… is certainly not such a treaty in this sense though I agree it involves a commitment…." It is understandable that Parliament was consulted in 1929 when the obligation was first accepted as this was a novel and potentially far reaching commitment. Also if it was proposed to remove a reservation, materially enlarging the scope of a commitment it might be thought proper to consult Parliament. Where an obligation is being reduced the rule can hardly apply. It would mean Parliament had to be consulted every time an obligation was amended or terminated. No doubt Parliament would be consulted on a major political or commercial issue, e.g. leaving NATO or even to terminate wholly the acceptance of the jurisdiction of the ICJ. "…But the case of an alteration, in the nature of a reduction of our commitment, which might well be made somewhat ad hoc and not necessarily intended to be permanent, seems to me to be on a different footing…"[10]

The second legal issue was whether the automatic or subjective nature of the British reservation of national security had been negatively commented on by the ICJ, with the technical effect that Britain did not now have a proper acceptance of the jurisdiction of the ICJ in place, thereby further undermining its role as a country which supported the ICJ. A unilateral instrument is considered in Lauterpacht's and Guerrero's judgement to be contrary to the spirit and letter of the Statute. Britain's reservation may be seen as less sweeping than the American and French reservation of anything they themselves consider to be a matter of domestic jurisdiction, but the character of the reservation is the same and if it was not, then the intention of the government in making the reservation – to keep the ICJ out of any matter which Britain felt threatened its security – would not have been achieved. Hartley

[9] FO 371/129892 UN 1645/63 Letter from Hartley Shawcross to Selwyn Lloyd, 19 July 1957.
[10] FO 371/129894 UN 1645/93.

Shawcross said that it was this point which caused him the most anxiety about the government's conduct.

Fitzmaurice responded that Lauterpacht's view about the invalidity of optional clauses which contained automatic reservations was not shared by any other judge in the *Norwgian Loans Case*. Guerrero's view was not that the ICJ lacked jurisdiction because of the terms of a unilateral instrument, but that the unilateral reservation by France was invalid, so that the ICJ did have jurisdiction. There was nothing for Norway to invoke. As for the criticism of Lauterpacht, putting the British reservation together with the French and the American, Lauterpacht qualified his words with "and, perhaps, to some limited extent, the United Kingdom…" This expression meant, to the contrary, that he did not place the British reservation on national security in the same category as the reservations on domestic jurisdiction and that "…at the least he was expressing some doubt as to whether it had to be regarded as having the same effect as he attributed to these other reservations…" Lauterpacht must have meant that a domestic jurisdiction reservation is so wide as almost anything could come within it, while the same cannot be said of national security. The national security reservation also comes alongside similar matters such as war, hostilities etc.

The end of Fitzmaurice's treatment of this issue is rather revealing in terms of the archival record. The first version of his last sentence reads "In saying this, I am not expressing a personal view, but merely stating …etc." The final version reads, "In saying this, I am simply attempting to state what I conceive to be the point of the distinction that Lauterpacht seems to me to have had in mind…"[11]

5. It is not possible in the space of this short presentation to detail all the elements and stages in the development of this issue into a fullscale political crisis. Both Pierson Dixon, the British Ambassador at the UN, and Hartley Shawcross had been right that the question would become explosive if it came to the attention of the general British public. Several Labour members of Parliament started to ask persistent questions about British policy towards the ICJ. The Trade Unions and the British Council of Churches intervened. The Secretary of State was, perhaps surprisingly, especially offended by the charges of numerous United Nations Associations, essentially interested private citizens, who expressed strong concern about Britain's reputation as a country upholding the rule of law. However, politically most damaging was the criticism in the National Press, including the Times, the Spectator and the Economist. These organs forced the level of debate onto a different plane. They simply argued that Parliament had been deceived, that the Government obviously had something to hide.

The most bitter expression of this Press criticism, the final blow which convinced the Legal Adviser, Fitzmaurice, that action had to be taken to reverse policy, came with a letter published by The Times, from Norman Bentwick. On 10 February 1958, Bentwich stressed the damage to the rule of law and the judicial settlement of disputes. The automatic reservation cut to the root of this. Bentwich mentioned that the immediate motive of the reservation was believed to be Japan and the nuclear tests. He suggested that the width of the reservation made a dead letter of the acceptance of jurisdiction. Without considering the merits of the unwillingness to have the atomic bomb tests judged by the Court, the objective might be achieved by a specific reservation of that matter. Otherwise Britain risks the same fate as France in the *Norwegian Loans Case*, a product of its damaging attitude to the Court. Bentwich quoted Lauterpacht as authority for the proposition that automatic reservations such as the US, French and British cannot be the basis for the jurisdiction of the Court. He concludes "We have hitherto been champions of the rule of law among nations. By this last instrument we imperil our record. Fear is a bad guide to policy…"

This article provoked Fitzmaurice to write a long memorandum to Selwyn Lloyd the next day, saying the time had come to follow Bentwich's suggestion of a specific rather than a general reservation. It would now be generally clear that, in the absence of a test ban agreement, Britain would continue testing. As for the originally concealed concern about Japan, Fitzmaurice comments: "It must by now

[11] ibid.

in any case be pretty generally known or suspected that this was the immediate reason behind the reservation" Yet a great part of the sniping has not in fact come from the anti-test people but from the pro-International Court people…" Fitzmaurice was now ready to say to Selwyn Lloyd that he thought the arguments about the invalidity of the reservation had force. If the ICJ did not declare the entire declaration invalid they would quite possibly annul the reservation itself. In reply Selwyn Lloyd apologised to Fitzamurice for having delayed on this issue and authorised him to prepare a solution in consultation with the Attorney General.[12]

There followed, up till June 1958 a considerable correspondence between Fitzmaurice and the Attorney General, with occasional inquiries from Selwyn Lloyd as to why the matter was taking so long. It is only possible in the time and space available merely to summarize the essential aspects of this correspondence. Politically the power is now firmly delegated by the Secretary of State to his Foreign Office Legal Adviser. The latter has only to persuade the Attorney General. Although the latter had merely approved the form of words of the original reservation drafted by Fitzmaurice himself, he now proved impossible to be swayed by Fitzmaurice's arguments in favour of withdrawal of the reservation. The correspondence runs out effectively in June and it is only pressure from Fitzmaurice to Selwyn Lloyd in October, with an apparently hostile judgement of the ICJ pending, which leads the two to "hurry" the assent of the Attorney General.

The two features of the developing argument which will be highlighted are Fitzmaurice's complete about-turn on the legal quality of the original automatic reservation and the continuing complete refusal to give any ground to the Japanese in terms of the possible legal rights of the latter with respect to the testing and the possibility that they pursue their claim before the ICJ. The latter factor was to lead to the introduction of a "no retroactivity clause" when the automatic reservation was withdrawn in November 1958, to ensure that the Japanese brought no legal claims with respect to testing between April 1957 and November 1958. This decision was itself almost immediately seen as a mistake, which led to a prolonging of the agony about Britain's behaviour towards the ICJ, until the "no retroactivity clause" was itself withdrawn in late 1963, at a time when a test ban had been agreed and there appeared to be no risk at all of any Japanese litigation.

6. Fitzmaurice and Manningham Buller had agreed by June that they would remove the subjective element in the reservation and confine the national security concept to questions affecting nuclear experimentation and research. Fitzmaurice had wanted a reservation to cover defense purposes, thereby avoiding a specific reference to nuclear testing and Japan, but the Attorney General thought the ICJ might very well hold that testing in the Pacific was offensive and not a defensive measure necessary for Britain's national security. Hence they had agreed on specific reference to testing. However, writing in September Fitzmaurice noted this approach was thought not acceptable politically at the time (June) because there was talk of suspending all nuclear testing and such a reservation might "stir up the waters at this juncture".[13] Now it is all the more necessary at least to do something, since a nuclear test suspension is expected at the end of October, making the type of reservation envisaged all the more difficult. The inability to resolve these considerations was to lead to the decision to withdraw the reservation completely, but at the same time to insert a "no retroactivity clause".[14]

Japan itself accepted the jurisdiction of the ICJ on 15 September 1958, without reservation subject only "on condition of reciprocity". The effect of this was that after one year Japan would be able to bring an action against Britain for any matter not covered by a British reservation. When the national security reservation was completely withdrawn Japan would be able, in Fitzamurice's view, to raise the question of the legality of past tests. Hence "…if we withdraw the Reservation, (the national security reservation), such withdrawal would have to be expressed as only operative in respect of events occurring after the date of the withdrawal…"[15]

[12] FO 371/136939 UN 1645/5 11 February, 1 March 1958.
[13] FO 371/136940 UN1645/37A 4 September 1958, memorandum by Fitzamurice.
[14] ibid 2 October 1958, letter of Fitzamurice to Mannigham Buller.
[15] FO 371/136939 UN 1645/25 Fitzmaurice response to a minute of Mr Bentley, 22 October 1958.

In other words the primary concern to remove the stain of the automatic reservation to Britain's reputation as a country committed to supporting the ICJ was not to be an occasion for giving Japan any opportunity to bring Britain before the ICJ. This is all the more so because both Fitzmaurice and the Second Legal Adviser (Francis Vallet) thought the Japanese had a rather good case that testing did violate the freedom of the high seas.

So, on the one hand, the advice to be submitted to the Cabinet would be that the automatic reservation had been criticised in Britain so far as to cancel the professed acceptance of the Court's compulsory jurisdiction. The reservation had been specifically criticised by certain judges of the Court in the *Norwegian Loans Case*. The validity of the reservation was likely to be questioned in the *Interhandel Case* actually before the Court.[16] In a letter to the Attorney General on 25 October 1958 Fitzmaurice added "for your very confidential information" that the anticipated negative outcome in the case "is based on a very broad hint given me by Sir H. Lauterpacht, …which must, I think, be taken seriously…"

On the other hand, in the very same letter Fitzmaurice remarks that Japan has now accepted the compulsory jurisdiction of the Court and it can bring actions against the UK after one year. He goes on to refer to the Convention on the High Seas, in particular its Preamble, supposed to be declaratory of customary law, and Article 2 of the convention. He refers to the wording, that the freedoms of the High Seas should be exercised by all states "…with reasonable regard to the interests of other states in their exercise of the freedom of the high seas…" While Britain can argue that the very careful method of conducting the tests and the safeguards taken protect Britain under that clause, a case to the contrary could "be got on its legs so to speak…whether it actually succeeded in the long run or not…" The High Seas Convention also envisages compulsory jurisdiction, thereby rendering the more general automatic reservation of reduced importance.[17] Hence there is an obvious importance in having a "no retroactivity clause" to provide against Japanese action.

7. The national security clause was withdrawn on 18 November 1958, with the proviso of a "no retroactivity clause". The latter also quickly attracted very hostile public attention. It can provide the context for a more detailed consideration of the claims and arguments that the Japanese Government did address to the British. Eventually in 1963 the clause was withdrawn. There was a considerable delay that eventually only came to an end because the risk of a Japanese action before the ICJ was taken to have virtually disappeared. Throughout, the hesitation was due to the fear of Japanese action. However, the anguishing about whether and how far to run the risk of a Japanese action had to be weighed against the awareness that the government had not fully succeeded in restoring the reputation of Britain in the eyes of the general public.

Almost at once on 10 January 1959 the Spectator, already a protagonist against the government's policy, launched an attack on the Government's new reservation of 18 November 1958, saying that the "no retroactivity clause" amounted to a deception of Parliament and the public. The government had claimed the withdrawal of the reservation amounted to a fundamental change of policy, when in fact the "no retroactivity clause" left matters very much as they had been before. The phraseology used was very convoluted. That is, a reservation was made with respect to:

"Disputes concerning any question relating to or arising out of events occurring previous to the date of the present Declaration which had they been the subject of proceedings brought before the International Court of Justice, before that date, would have been excluded from its compulsory jurisdiction under the second part of the Reservation numbered (v) in the previous United Kingdom Declaration dated April 18, 1957…"

[16] FO 371/136940 Tel.8197, 18 November 1958.
[17] FO 371/136940 UN1645/37B letter of 23 October 1958. For Vallet's views see the next section.

Fitzmaurice worked out who had ghost-written the article in the Spectator and tried to deal specifically with the criticism that the statement made to Parliament by the government spokesman on 25 November 1958 had said merely that the offending automatic reservation (any question in the opinion of the Government affecting national security etc) was withdrawn, without warning about the "no retroactivity clause". The ministerial statement in the House of Commons had been a response to a question "planted" by a government MP in order to put the government in a good light and was actually misleading.[18]

Fitzmaurice tried to counter directly with the author of the Spectator article, (whom he was sure was none of the leading British international law figures, not Judge Lauterpacht, nor even Hartley Shawcross). There was no deception of Parliament, whatever the exchanges in the House. Members of Parliament could read the White Paper, with the full details, published within a few days of the government statement to Parliament. He argued that "…it is I think generally assumed that unless the contrary is stated, any steps taken to alter an existing situation relate to what is to happen in the future, and not to what happened in the past….It is normally retroactivity and not the absence of it which is regarded as requiring special explanation." There might be a question of deception if the intention had not been to publish the text of the Declaration almost immediately, but anyway there was no wish to mislead. The idea was "…to get out an announcement of the main fact at once and to follow it up as soon as possible with the text of the Declaration…" These statements of Fitzmaurice are quite simply contradicted by his own proposal of a response to another Parliamentary question should one be provoked by the Spectator article. The Minister was instructed by him to say, if there was a question, "Why was this withdrawal only made effective in respect of future disputes ?" – "Unless that had been done, the withdrawal would have had retroactive effect…"[19]

In fact the discussions between the Legal Adviser and the Attorney General over the "no retroactivity clause" show well how important it was for the Government to continue to protect itself against Japan, indeed the whole point of the original reservation. The Attorney General thought that, given the threat of a negative finding of the ICJ in the pending *Interhandel Case* …"it would be better for us if we have simply withdrawn the present reservation (since it would be of no effect) and run the risk of any proceedings in relation to past tests…"

However, the Legal Adviser was anxious not to encourage Japan in believing that Britain would consider there were any reasons in the past or the future that would justify the ICJ in deciding for the illegality of nuclear tests. A "no retroactivity clause" specifically in respect of past tests would imply that future tests might be attacked. It would imply that Britain was prepared to submit to the jurisdiction for future testing. If the whole reservation was withdrawn, Britain could say this was effective only from the date of it and did not relate to any matter having occurred before that date. So Fitzmaurice concluded that the best way to achieve the desired object, exclusion of Japanese litigation about nuclear testing, was to introduce the "no retroactivity clause" which, as before, without specific reference to nuclear testing, kept the offending automatic reservation in existence for the period in which the testing had occurred, viz April 1957-November 1958.[20]

These deliberations of Fitzmaurice have to be seen against the background that the legal view within the Foreign Office was that Britain's conduct in holding the tests was indefensible. The Japanese Foreign Ministry submitted a Note Verbale on 31 January 1958 effectively for the cost to Japanese merchant vessels and fishing vessels that had to make detours because of the closing of high seas. In April 1958 Vallet gave the legal advice that it would be difficult to justify causing a diversion from recognised sea routes nor should fishing vessels have to give up habitual fishing grounds. However, payment would be made ex gratia and a not ungenerous lump sum would enable Britain to "… avoid detailed discussion of particular claims on the basis of any principles or criteria. In this way we may

[18] FO 371/136940, UN 1645/41 and FO 371/145284, UN 1645/8.
[19] FO 371/145284 UN 1645/8.
[20] FO 371/136940 UN1645/37C letters of 30 October 1958 and 4 November 1958 from Manningham Buller and Fitzmaurice.

avoid establishing unfortunate precedents…"[21]

In September 1958 Vallet repeated his opinion much more categorically:

"There are no exact precedents for the nuclear tests conducted by the UK and USA over the high seas which give accurate guidance on the legal rules to be applied. It is, however, clear that there is no right to close areas of the high seas. While we have not purported to close such areas and, therefore, it could perhaps be argued that we have not unlawfully interfered with shipping, this is not a legal argument on which we wish to rely for the purpose of refusing compensation because, in the case of some future test, it might encourage the foolhardy to enter the danger zone and cause serious embarassment. In any case, the legal argument would not be watertight because it might well be maintained that, whatever the form of the warning, in the circumstances the risk of entering the zone was not one that could be reasonably run and, therefore , that the effect was substantially the same as closing large areas of the high seas…"[22]

8. The last stage in the story is just before Fitzmaurice left the Foreign Office for the ICJ at the end of 1960. On 28 October 1960 he asked to have the papers as soon as possible "…about getting rid of the last vestige of our own "automatic" reservation, a matter held up pending conclusion of our agreement with the Japanese about compensating them for damages caused by our nuclear testing. This is now concluded I believe…" The response (from Mr Uffen) was also to describe the matter as one of "ending "our" automatic reservation." However, it emerged that the issue of an ex gratia payment had not been resolved and it was reiterated that consistent policy, following Vallet's advice, was that "…it seems unwise to withdraw our reservation before the Japanese are committed to accept the offer we shall make, and thereby leave it open to them to take us to the International Court and argue that our nuclear tests in the Pacific were illegal. To avoid this risk, relatively slight though it is, I suggest that slight further delay is justifiable…"[23]

By February 1961 it was recognised that there was a further serious problem. The Americans were refusing to consider a similar Japanese claim to them, on the ground that recognition of such a claim would lead to an awkward precedent. Vallet's response was to favour going ahead and withdrawing the reservation in any case in the next months. However, by April the British had decided to bow to American pressure and not make any offer to the Japanese unless they themselves raised the matter again. Again the Foreign Office continued to agonize about the difficulty of reconciling British and American views on payments to the Japanese and the fact, taken to be recognized by all, including Fitzmaurice, that the "no retroactivity clause", introduced to prevent Japanese claims, seriously weakened Britain' position vis a vis the International Court. If the Japanese do approach Britain again, one view was that Britain would have to consider making an offer. "If, meanwhile, we withdraw the "no-retroactivity clause" we expose ourselves to the theoretical risk of an action by the Japanese Government…" Another view was that the Americans felt too strongly about the issue to be ignored. This was, apparently, because of a row with the Japanese over the "Fukuryu Marus".[24] Indeed so uncertain were the British as to how to proceed or to judge either the Japanese or the Americans, that a final minute expressed the fear that a Japan which swung to a neutralist position might well be tempted to go to the Court. Given such dangers the Americans should be pressed much harder to explain why they will not accommodate the Japanese.[25] With these exchanges the prospect of action of any kind seems to run into the sand for a whole two years.

In January 1963 the Canadians called for a Commonwealth initiative to accept unconditionally the compulsory jurisdiction of the ICJ. A British reaction was that this went too far. However, one might

[21] FO 371/135573 ZE 212/40 Vallet minute of 8 April 1958.
[22] FO 371/135576 ZE 212/103 Vallet minute of 11 September 1958.
[23] FO 371/153563 UN1645/109 minutes from Uffen and Brooke Turner to Fitzmaurice 7 and 11 November 1960.
[24] ibid, minutes by Shepard and Hainsworth, 4 and 10 May 1961.
[25] ibid, minute of Burges Watson, 13 July 1961.

consider the withdrawal of what was called the reservation concerning the nuclear tests of 1957.[26] Until July there were no further developments. At that point it was speculated that the test ban treaty would leave the Japanese less interested in establishing precedents over claims for tests. It had only been intended to offer one fifth of what the Japanese asked (£11,000 instead of £52,000) and to offer this now might appear mean, while it might appear just as mean of the Japanese to go to Court for the rest, if Britain removed its reservation. The solution was seen as offering the Japanese the lesser sum if they approached the British, but not to allow this to delay any further the withdrawal of the reservation. The compelling reason for the latter course was that it had been agreed at the beginning of 1961 that: "The reason for the withdrawal of this reservation was that it went a long way towards making nonsense of our previous withdrawal of our "automatic reservation" against which so much criticism had been directed…"[27] Consistent with British policy throughout, the primary consideration behind "the withdrawal of one or more of our reservations" was that it added weight to "… our policy to urge more use of the International Court…"[28]

Following Vallet's advice a final memorandum was prepared in November 1963 to coincide with the meeting of the UN General Assembly. It stated that the broad formulation of the 1958 reservation had been to conceal its real purpose. The reservation provoked criticism as going a long way towards destroying the effect of abandoning the original reservation "…the real purpose of which was similarly to protect ourselves against claims arising out of nuclear testing." The 1958 reservation is therefore open to all the objections to that of 1957: doubtful validity, a negative reciprocity and defeating the policy of upholding the rule of the law. The latter principle should only give way to reservations of "…matters of vital interest…"

This last point shows the ambiguity of the British position until the end. The British had not tried to resolve the compensation issue with the Japanese because of American opposition. Six years had past since the tests and the Japanese appeared to have given up hope of bringing a bilateral claim. If they did they could be offered the ex gratia payment, which would make it look as if recourse to the Court by the Japanese was merely a way of trying to increase the offer of compensation. So fear of Japanese ICJ recourse was definitely no longer a consideration. The difference between November 1963 and late 1961 was that, then,

"…in view of the possibility at that time that we might be driven to resume nuclear testing, the moment was not propitious for the removal of the reservation. …With the conclusion of a partial Test Ban Treaty, the objection raised in 1961…has lost all validity….In this we and other Western countries have an opportunity…to resist Communist attacks upon existing concepts of international law…"[29]

9. Conclusion This presentation attempts to take further some of the basic themes of critical international legal studies by going beyond doctrinal argument about supposedly necessary structures of law or legal argument. It does appear that the authority of international law, and particularly the rule of law in the settlement of disputes, carries great weight within government and foreign policy institutions in Britain. However, debate is very much a function of the continuing self-construction of British identity, of which adherence to the rule of law is one aspect. A cultural anthropology of approaches to law and diplomacy also reveals a strong tendency to wish to avoid open conflict through the concealing of intentions even in matters of a purely technical legal character. An equally strong feature of the anthropology of British institutional reasoning is to see decision-making as an attempt to leave open policy contradictions and to procrastinate until time allows the contradictions to resolve themselves – as happened in this eventuality.

It is difficult to resist the overall impression that law is dominated by the political in the very specific sense that national interest dominates. This does not cloud the technical legal competence of officials

[26] FO 371/172622 UN 1647/1 minute by Miers, 30 January 1963.
[27] ibid, minute by Miers 31 December 1962, and Gibbs, 26 July 1963.
[28] ibid, The Legl Adviser, Vallet, 2 January 1963.
[29] ibid, minute by Wearing, 7 November 1963.

within the British administration. They are perfectly aware of the force of arguments against their interests. Within the administration they may themselves employ these arguments at the very same time as they use opposing arguments – which they do not feel to carry any real weight – against opponents outside the administration. This does very much provide grounds for arguing – against some versions of critical legal studies – that legal reasoning, as a branch of ethical reasoning, has a definite objective character, which is merely distorted by institutional pressures and interests, themselves primarily of a cultural character. It follows, therefore, that there is no a priori, or epistemic difficulty in the way of legal and related officials asserting the integrity of their own competences against institutional pressures and prejudices, provided that they do not themselves quite simply share the prejudices and join in applying the pressures.

THE INTERNATIONAL CENTER FOR COMPARATIVE LAW AND POLITICS AND INTERNATIONAL ACADEMIC EXCHANGE: A TENTH ANNIVERSARY RETROSPECTIVE

WADA KEIKO

Introduction

The International Center for Comparative Law and Politics celebrates its tenth anniversary at the end of March 2003. The Center's official inception date was 1 April 1993 but preliminary operations to promote the international academic exchange activities of the Graduate School of Law and Politics had begun within the Faculty of Law on 1 January 1990. The purpose of this article is to look back over the development of international academic exchange within the Faculty of Law and the Graduate School of Law and Politics and the genesis and progress of the ICCLP, with particular reference to the *University of Tokyo Faculty of Law Biennial Research Report* [1] ("the Biennial Research Report") and the *International Center for Comparative Law and Politics External Evaluation Report* [2].

In the first edition of the Biennial Research Report, there was a chapter called "Overseas Exchange". Accordingly, a record remains from 1969 onwards both of visits abroad by staff from the Faculty of Law, whether long or short term, as well as of foreign guests of the Faculty. Further, there is a list of foreign research students, as well as foreign students undertaking masters and doctoral coursework here. In 1984 the Ministry of Education (now the Ministry of Education, Culture, Sports, Science and Technology) began to encourage universities to accept foreign students under then Prime Minister Nakasone Yasuhiro's "100,000 Foreign Students Plan", and the number of foreign research students and those taking masters and doctoral subjects within the Graduate School of Law and Politics has increased vastly since the start of the 1990s.[3]

The personal networks resulting from the mutual flow of researchers being a foundation stone of international academic exchange, one index of the progress of that exchange is the simple number of researchers traveling in each direction. Another fundamental of international academic exchange is the creation of a place for exchange, and thus another indicator of the growth of that exchange is the number of research seminars and lectures presented here by foreign visitors. Below, by comparing these figures from 1969 onwards, the path leading to the current day activities of the ICCLP can be followed.

1.Foreign Research Visits

For the purposes of the statistics in the Biennial Research Report, foreign research visits are classified as "short-term" (less than one month), "medium-term" (one to three months) or "long-term" (more than three months). In the two-year period 1969-70, four faculty members went on long-term visits, two went on medium-term visits, and 11 went on short-term visits. Some five years later, in the period 1975-76, the number of faculty members who went on foreign research visits had doubled, and the number of short-term visits had tripled. The background to this growth was the development of the Japanese economy; as Japanese industry expanded abroad in the late 1970s and the number of businessmen sent on overseas assignments vastly increased, so too did the number of foreign academic temporary appointments and attendance at overseas academic conferences. However, in relation to long-term visits, in terms of the actual number of visits there has been almost no change between 1971 and 2000. The reason for this can be found in the difficulty in balancing lecturing commitments at home and the funding parameters of bodies such as the Ministry of Education and the Japan Society for the Promotion of Science for longer foreign stays. This is why the remarkable increase in foreign trips over 30 years has been mainly in the numbers of short-term visitors and visits.

[1] *Tokyo daigaku hogakubu kenkyu · kyoiku nenpo* (published every second year beginning in November 1971).
[2] *Tokyo daigaku daigakuin hogaku seijigaku kenkyuka fuzoku hikaku hosei kokusai senta gaibu hyoka hokokusho* (November 2001).
[3] The promotion of international student exchange is not one of the stated objectives of the ICCLP, so this aspect of international academic exchange will not be mentioned further in this article.

The number of faculty members making short-term visits abroad in 1969-70 was 11, making 24 trips. By the late 1970s the number of faculty members had doubled and the number of trips increased by 1.5 times. The numbers continued to increase in the 1980s. By 1989-90, the number of faculty members was 42 (an increase of roughly 4 times since 1969-70) and the number of trips 109 (an increase of roughly 4½ times). It can be supposed that this large change in international exchange in the university context is at least partly the result of globalisation and the bubble economy experienced by Japan at the time.

As if to ride this sudden wave of international exchange, the ICCLP began its activities in January 1990 as an organ within the Faculty of Law. The Center was conceived in a situation where the scope of international academic exchange was compelled to change from the level of interpersonal exchange to the inter-faculty level. After that, the number of short-term visits and visitors increased further, and the figures for the 1993-94 period after the ICCLP was formally established show 56 visitors (164 trips) and by 1999-2000 there was a further increase to 65 visitors (279 trips).

2.Guests from Abroad

The above sets out the situation for our faculty members when travelling abroad. What was the situation for those invited to the Faculty of Law or the Graduate School of Law and Politics?

2.1Invited Research Scholars

Only one foreign scholar was a "long-term" resident at the Faculty of Law in 1969-70. From that time until 1990, the number fluctuated between zero and two. The structure of the residence was that the foreign scholar was invited by an individual member of our faculty in order to engage in joint research. From the 1989-90 periods onwards, it became possible to invite four or five foreign scholars. The reason for this increase was the new possibility of making them Visiting Professors of the Center itself. For instance, long-term visitors before 1988 were funded by the Fulbright Foundation or the Japan Society for the Promotion of Science, but in 1988 the Nomura Foundation endowed a chair in the law of securities exchange and foreign scholars were invited to fill the position from 1989. That endowment continued for five years, until 1993, when the subject of the endowed chair was changed to the law of international capital markets and it was attached to the ICCLP, which had commenced its formal operations. As a result, it became possible to invite foreign scholars within the relevant field on a recurrent basis. At the same time, the foreign scholars funded by the Ministry of Education came to be attached to the ICCLP as Visiting Professors. Thus the foreign scholars who had been invited under the auspices of the Fulbright Foundation or the Japan Society for the Promotion of Science before 1988 could now be accommodated as Visiting Professors of the Graduate School of Law and Politics. With this explanation, the statistics reveal that in real terms the number of long-term stays attributable to the Faculty or Graduate School before 1988 was zero. The change in the method of inviting foreign scholars tells of the necessity for systematic international academic exchange, as opposed to the pre-existing *ad hoc* personal system of invitations.

The pressing need for change in academic exchange can be seen even more clearly from the rapid increase in figures for "short-term" foreign visitors. In 1969-70 there were two such guests, none for the next four years, six in 1975-76, then a sudden increase to 23 in 1977-78. This impressive figure set in train a trend that was beyond compare with what had come before. In combination with the increase in numbers of our faculty members travelling abroad through the late 1970s, by the late 1980s the demand was for a systematised structure was such that the establishment of a "Preparatory Committee for an International Center for Comparative Law and Comparative Politics" was no surprise. This development is pointed to in the tenth edition of the Biennial Research Report (published in October 1989) under the heading "I. General Outlook for the Faculty" and the sub-heading "Movements within the Faculty". Building No.4 having been completed in March 1987, thus finally giving the Faculty adequate physical space, the Biennial Research Report states that the focus had shifted from infrastructure to systemic change. The Biennial Research Report refers to the further promotion of international exchange and the need for systemic changes in order to realise it. The Preparatory

Committee was established as a direct result. The then Dean of the Faculty, Professor (now Emeritus Professor) Shindo Koji, wrote of the pressing wave of international academic exchange in the introduction to that edition of the Biennial Research Report:

> "The fact that the section titled Overseas Exchange has grown from 3½ pages in the first edition of the Biennial Research Report to 15 pages in the current edition speaks accurately of the huge tectonic movement that we are in fact experiencing, even though our research and teaching activities sometimes seem so conservative and unchanging."

2.2 Visiting Research Scholars

Visiting Research Scholars[4] were received by the Faculty of Law until 1997 and then by the Graduate School of Law and Politics. One of our faculty members acts as host for each, to facilitate research in their chosen field. ICCLP provides assistance as the gateway for this scheme. The number of Visiting Research Scholars began to increase from the late 1970s. By the late 1980s there were 20 over a two-year period. This reached a peak of 40 in 1991-92, settling down to about 30 in the two-year periods thereafter. At present there are three rooms set aside for Visiting Research Scholars, but in recent years problems of overcrowding are starting to emerge. Another aspect of change in the system is that originally most Visiting Research Scholars had some personal connection with a faculty member here, however, recently there is an increasing number of persons who apply through a governmental body or aid organisation. For instance, the Korean Supreme Court has posted one judge here as a Visiting Research Scholar each year. The judges conduct research at the Japanese Supreme Court and Judicial Training Institute, while at the same time deepening the links between both practitioners and researchers in Korea and Japan by attending study groups at the Graduate School of Law and Politics. The importance placed on the system of Visiting Research Scholars by the Graduate School of Law and Politics is evident both from the working rule that candidates must be approved by the professorial board and also from the pure numbers compared to other universities. The number of Visiting Research Scholars since 1990 totals almost 200.

3. A Place for Research and Academic Exchange

The "tectonic movement" to which Professor Shindo referred in the tenth edition of the Biennial Research Report manifested itself in a zeal for the establishment of an international center. Due to the strong initiative of the next Dean, Professor (now Emeritus Professor) Ishii Shiro, three years after the laying of its foundations the ICCLP commenced operation in April 1993 with Professor Nishio Masaru (the Director of the Graduate School of Law and Politics) as its acting Director. It was thus that the Center commenced on its path, focusing on systemic international academic exchange and with human networks as its key concept.

The number of study groups led by invited foreign scholars saw a sudden increase to 23 in 1977-78, and further grew over the subsequent decade to 32 in 1987-88. The study groups were gradually overtaken by other structures as ICCLP Forums (July 1991), ICCLP Seminars (May 1994) and ICCLP Symposiums (November 1996) took form. The difference between the three is partly in scale and partly in mode; ICCLP Symposiums are normally on a larger scale, with multiple speakers and commentators; ICCLP Seminars and Forums usually have one speaker and one moderator, the Seminar being in the style of a lecture and the Forum being less formal and including discussion. As of September 2002, there have been a total of approximately 250 ICCLP Seminars, Forums and Symposiums, plus 10 international symposiums (three of them overseas). When one looks at these figures, one realises the number of papers that have been delivered by scholars, both Japanese and foreign, over the past 10 years.

The speakers at ICCLP Symposiums, Seminars and Forums are usually invited foreign guests of the Center such as ICCLP visiting professors or Visiting Research Scholars of the Faculty, but also foreign scholars visiting other universities and institutions. We also hear from Japanese speakers, whether

[4] Known as Foreign Visiting Research Scholars before June 1988.

from institutions here or abroad. The participants are usually other researchers and graduate students within the Graduate School of Law and Politics and the University of Tokyo generally, but depending on the topic we have been able to grant access to a wider range of scholars and practitioners.

4. The Emergence of the Internet and Its Effects on International Academic Exchange

In the introduction to the twelfth edition of the Biennial Research Report, the Dean, Professor (now Emeritus Professor) Nishio Masaru, pointed to the sudden changes faced by the Faculty of Law and the Graduate School of Law and Politics since 1991, including the growth in staff numbers, the rapid increase in the variety of graduate coursework subjects offered, and the development of international exchange. The accelerating development of the internet in the late 1990s was a great spur to the pace of international academic exchange. In 1993, the Faculty of Law established LPnet (the Law and Politics network), corresponding to the UTnet (University of Tokyo network) used across the university generally. By virtue of LPnet it became possible to use Japanese and international databases and construct new ones, thus striving for the utilization of new research methods, but what is more significant is the increased facility of international communication over the internet.

It was 1996 that the *Internet White Book* edited by the Japan Internet Association was published for the first time,[5] announcing the arrival of the internet age in Japan. The 1996 *Internet White Book* states (p.175) that "the growth of the internet can be measured by the number of connected host computers", and goes on to demonstrate the huge expansion through 1994 and 1995 by the use of such figures.

Japan's connection to the global internet began in January 1985 with the connection of JUNET to the UUCP network used in America and Europe. At that time one exchanged emails by connecting to the public telephone grid (p. 116). Looking now at the rapid increase in the number of overseas visitors and the number of visits, and the impressive growth in the numbers of visitors from foreign institutions and visiting researchers, one can see that the arrival of the big wave in international exchange coincided with the arrival of the internet that supported it.

In December 1996 we hosted our second ICCLP Symposium. Titled "Internet and Print Media in the United States and Japan: The Impact of Developments in Information and Communications", it sparked considerable discussion. When one professor from our faculty began his comments by stating that he did not use email himself, tittering laughter was heard around the Symposium venue.

When considering the role of the internet in international academic exchange, the definition of globalisation as "time and space compression" comes to mind. In contributing to the compression of time and space, it is clear that development of the internet also contributes to advances in international academic exchange. For instance, when I took up my position at the Center, although email addresses were in place they were not used for work related functions. It was only some three months later, in November 1994, that the Center began to use the email. At the time, our communications with overseas were conducted mostly by fax and—leaving aside urgent communications by telephone—by post. Important mail was sent by EMS (international express mail). Compared to today, our overseas communications occurred at a most relaxed pace. Foreign countries were physically and conceptually remote. Time zones bore heavily on our communication efforts. I remember more than once having to stay up half the night during a business trip so that I could ring home during some emergency.

However, the conversion from fax to email occurred at a frightening rate, and was completed in one year. The Macintosh desktop computer which the Center acquired in November 1994 survived this conversion, but one PC became effectively redundant and two others, operated with function keys and having Unix-based email software, were difficult to use. (They could not cope with attachments, and if you did not press Enter after typing in a certain number of characters the program would freeze. This seems hard to believe now.) Email communication with overseas became the norm only after the emergence of Windows. ICCLP staff now had three desktop computers at our disposal. By 1998, each

[5] Nihon intanetto kyokai, *Intanetto hakusho* (annual).

staff member had a notebook PC, connected to the internet. From about this time, the Center's international academic exchange activities flourished in terms of both quality and quantity. This was all because of the internet.

In February 1998, the number of internet users in Japan exceeded 10 million (1998 *Internet White Book*, p. 6); one year later, the number exceeded 15 million (1999 *Internet White Book*, p. 4). The number of internet host sites worldwide was approaching 30 million in January 1998 (1998 *Internet White Book*, p. 6); one year later, the number had passed 43 million (1999 *Internet White Book*, p. 161).

The day-to-day activities of ICCLP were caught up in this vortex called the internet.

Today, email is an absolute essential for foreign researchers staying at ICCLP. Before their arrival, we use email to make all the preliminary arrangements. As we exchange emails with these researchers, over days and weeks we develop a kind of intimacy with them and form an image of them.

What is most significant is that the communication is instantaneous with email, and replies come quickly. It is not just our arrangements with visiting researchers that have changed. The mode of editing our publications such as *ICCLP Review* has changed beyond recognition. We are now used to manuscripts being sent as email attachments. The editing process is markedly quicker and more accurate. In particular, it is possible to have the manuscript submitted on the appointed day no matter where the author may happen to be. Translations into English can be requested from persons living abroad. The editing process thus proceeds by the interflow of email attachments. Further, the internet and email lived up to their full potential in recent times with the recent experience of organising an international conference. Without email, I have no doubt that the Anglo-Japanese Academy project in Sheffield in September 2001 could not have been realised with the limited staff, time and funds available for the project. Although there is the added stress of being pursued by email wherever you go, when you think of the stress of waiting for replies, there is no doubt that the contribution of the new information technologies to international academic exchange is truly great.

Conclusion

Above I have reflected on the progress of the Center through the past decade, by reference to the development of international academic exchange at the Faculty of Law and the Graduate School of Law and Politics and the emergence of the internet. The late 1990s saw the pressure of a great wave of international academic exchange, encapsulated in the keywords "globalisation" and "information technology". The ICCLP was propelled by the force of this wave, and has endeavoured for the past ten years to create a locus for international academic exchange activities. The results of those endeavours can be seen in the figures of our faculty members who have visited abroad; the numbers of Visiting Research Scholars; the mutual secondments under our formalised exchange relationships with other institutions; the appointment of ICCLP Research Scholars; our Symposiums, Seminars and Forums; and our publications. However, what is more important than the pure figures is the human network constructed through the activities of the Center. By hosting visitors from abroad, not only our own scholars but also our administrative staff and students are able to have a wide range of experiences. The foreign researchers too each have their own experiences, which accumulate and tie in to future networking. The process of building a strong and stable network cannot be expressed in figures. Through the activity of international academic exchange, I have been able to encounter many people and benefit from their co-operation and support. It has been possible to achieve a wide ranging network, overcoming the boundaries between the disciplines of law and politics and the boundaries between researchers and practitioners. This immeasurable phenomenon forms the foundation for international academic exchange. This is the fruit of the ICCLP's decade's work. This is what we want to treasure into the future.

[*translated by Peter Neustupný*]

Graph 1: Changes in the Numbers of Foreign Research Visits and People Involved (by Length of Stay).
Graph 2: Changes in the Numbers of Research Scholars from Abroad.
Graph 3: Changes in the Numbers of Registered Foreign Students/Foreign Research Students.
Graph 4: Changes in the Numbers of International Academic Meetings.
Source: First (September 1971) to sixteenth (October 2001) editions of *the University of Tokyo Faculty of Law Biennial Research Report*.

Appendix 1: Chronology of the ICCLP.

Graph 1 Changes in the Numbers of Foreign Research Visits and People Involved (by Length of Stay)

Length of Stay \ Year		1969-70	71-72	73-74	75-76	77-78	79-80	81-82	83-84	85-86	87-88	89-90	91-92	93-94	95-96	97-98	99-2000
Less than 1 Month	Number of People	11	14	13	20	19	24	28	29	23	30	42	47	56	54	62	65
	Number of Visits	24	25	19	33	37	44	44	60	57	65	109	121	164	182	214	279
1- 3 Months	Number of People	2	3	3	7	8	7	6	8	5	10	9	13	6	13	11	2
	Number of Visits	2	3	3	7	10	7	7	10	6	10	10	16	7	14	14	2
More than 3 Months	Number of People	4	8	11	8	11	8	10	9	9	7	7	11	8	11	8	7
	Number of Visits	5	8	13	8	11	8	10	9	9	7	7	11	8	11	8	8

Graph 2 Changes in the Numbers of Research Scholars from Abroad

Year	1969-70	71-72	73-74	75-76	77-78	79-80	81-82	83-84	85-86	87-88	89-90	91-92	93-94	95-96	97-98	99-2000
Invited Research Scholars (Less than 1Month)	2	0	0	6	23	13	12	12	11	8	26	29	31	16	18	13
Invited Research Scholars (1- 3 Months)	1	0	0	1	3	2	1	5	2	1	1	2	6	8	8	9
Invited Research Scholars (More than 3 Months)	1	0	2	0	2	0	1	3	1	2	5	5	4	4	3	5
Visiting Research Scholars of the Faculty	2	7	11	8	17	18	15	18	25	22	34	40	34	33	26	32
ICCLP Research Scholars											3	6	5	4	5	3

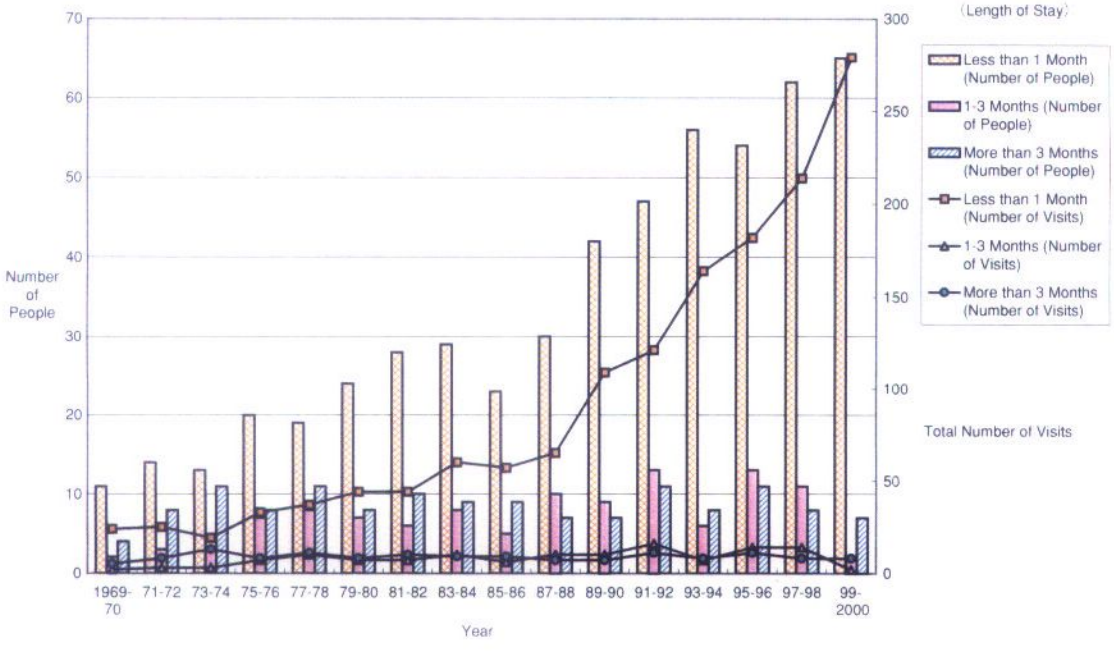
Graph 3 Changes in the Numbers of Registered Foreign Students / Foreign Research Students

Year	1969-70	71-72	73-74	75-76	77-78	79-80	81-82	83-84	85-86	87-88	89-90	91-92	93-94	95-96	97-98	99-2000
Doctoral Course	17	19	12	10	8	6	4	3	4	3	8	11	14	21	23	18
Master's Course	5	5	1	1	1	2	1	1	7	11	11	12	11	8	3	4
Professional Education Course												4	11	14	14	22
Foreign Research Students	14	36	43	37	37	32	30	35	41	37	37	53	64	53	67	68

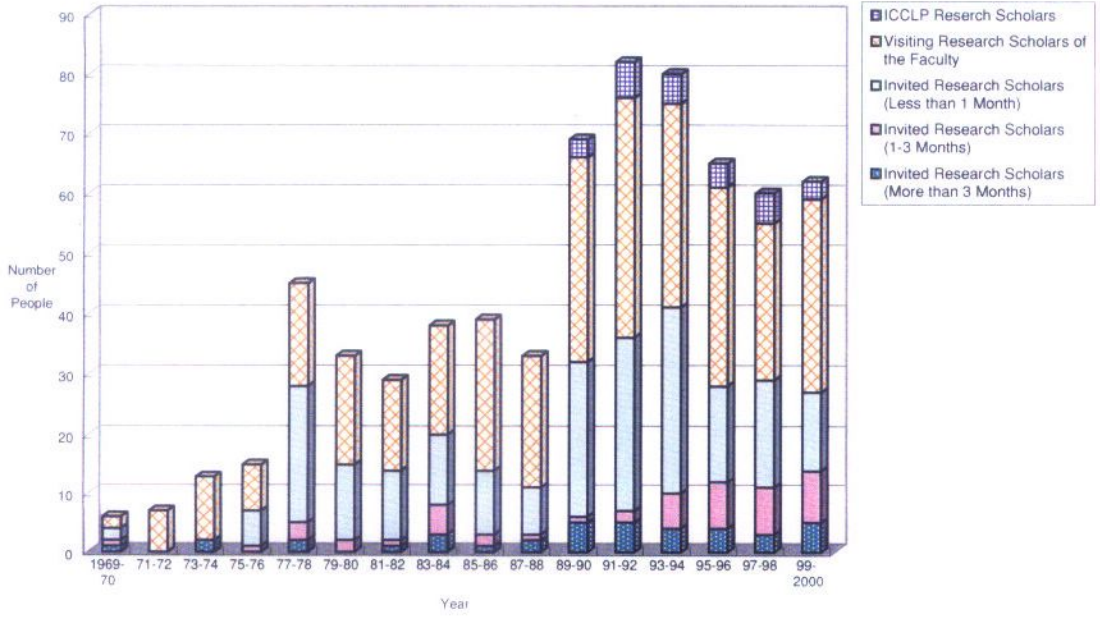
Graph 4 Changes in the Numbers of International Academic Meetings

Year	1969-70	71-72	73-74	75-76	77-78	79-80	81-82	83-84	85-86	87-88	89-90	91-92	93-94	95-96	97-98	99-2000
Study Groups	2	0	0	6	23	15	13	19	9	32	28	39	8	4	9	5
Lectures and Symposiums													6	2	4	2
ICCLP Seminars													13	31	29	30
ICCLP Forums												22	18	29	26	17

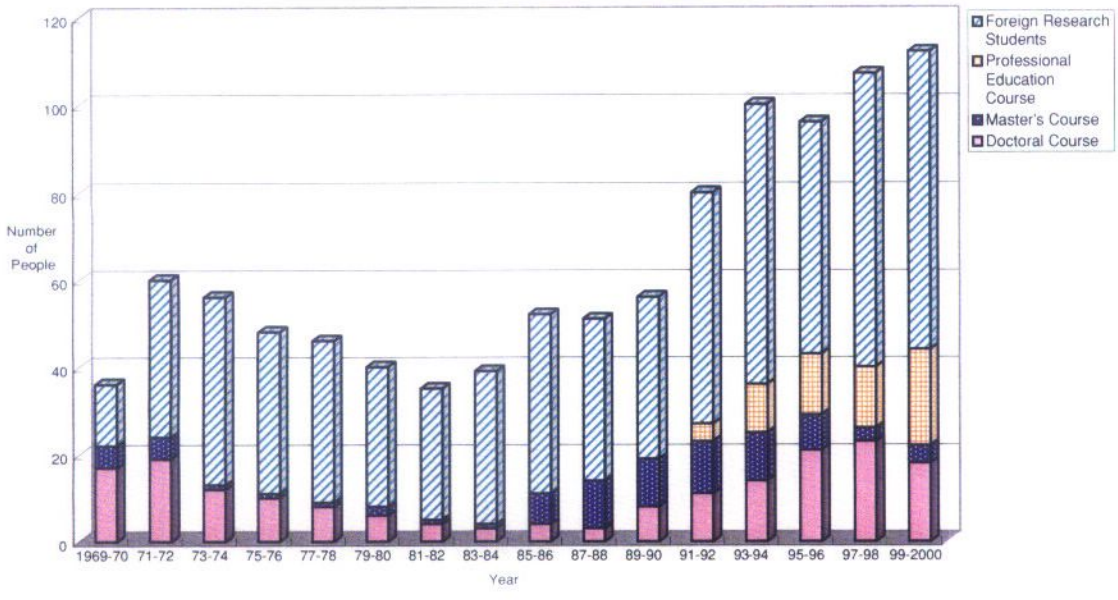
Graph 1 Changes in the Numbers of Foreign Research Visits and People Involved (by Length of Stay)



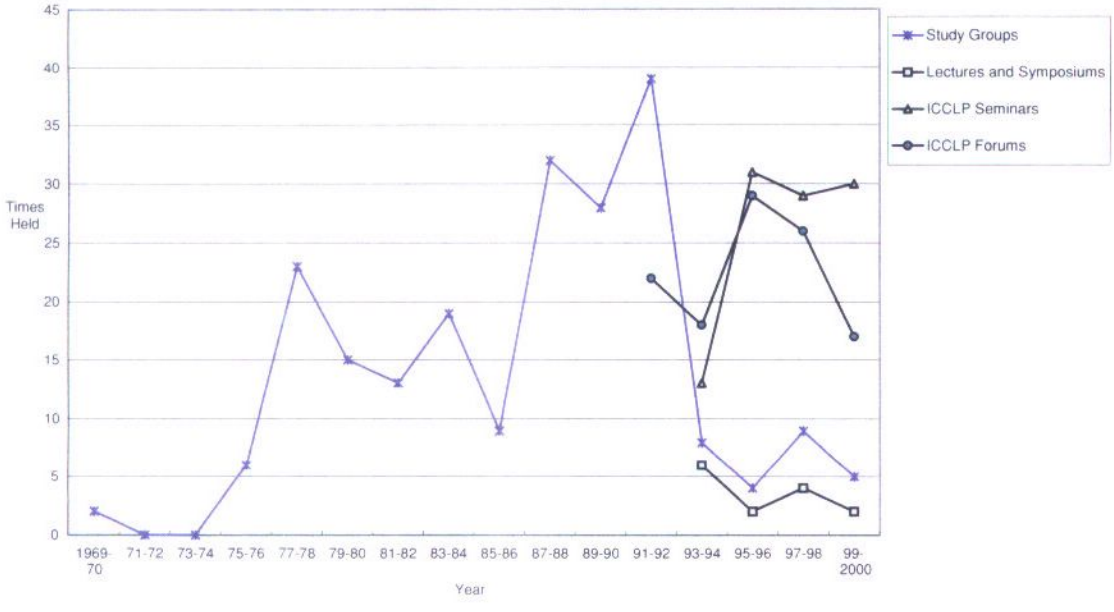
Graph 2 Changes in the Numbers of Research Scholars from Abroad



Graph 3 Changes in the Numbers Registered as Foreign Students / Foreign Research Students



Graph 4 Changes in the Numbers of International Academic Meetings



Appendix 1

Chronology of the ICCLP

Academic Year 1988-89

August	A working group concerning "the Comparative Law and International Politics Center" was established.

Academic Year 1989-90

April	Under the name "the International Center for Multinational Law and Politics", a preparatory group was set up and preparations for establishment were initiated.
November	Sherill A. Leonard was appointed as ICCLP Research Scholar.
December	Under the name "the International Center for Multinational Law and Politics, Faculty of Law, the University of Tokyo", while preparations for establishment continued, the governing rules and regulations for the Center, the management group and the research scholarship system were decided.
January	"the International Center for Comparative Law and Politics" was established as an informal organization within the Faculty of Law.

Academic Year 1990-91

August	In cooperation with the sponsors of the Congress of the International Academy of Comparative Law, the Center supported "The XIIIth International Congress of Comparative Law Conference" held in Montreal, Canada.
October	Filip G. O. Ameloot and Taniguchi Naomi were appointed as ICCLP Research Scholars.

Academic Year 1991-92

April	W. Temple Jorden was appointed as ICCLP Research Scholar.
May	*Japanese Reports for the XIIIth International Congress of Comparative Law* (Montreal, 19-24 August) was published as ICCLP Publications No. 1.
July	The first Comparative Law and Politics Forum was held.
September	Assisted the International Association of Legal Science in the preparation and administration of the Tokyo Conference on "The Social Role of the Legal Profession".
March	Eric A. Feldman was appointed as ICCLP Research Scholar.

Academic Year 1992-93

April	Kathryn A. Heraty, Wada Mikihiko and Bernd R. Mayer were appointed as ICCLP Research Scholars.
May-July	Three professors from the University of Michigan Law School were invited to give speeches at the graduate school.
October	John F. Hoffman was appointed as ICCLP Research Scholar.
November	Provided assistance in holding a symposium on the theme, "Dutch and Japanese Laws Compared".
February	*The Social Role of the Legal Profession* (Proceedings of the International Colloquium of the International Association of Legal Science, 3-6 September 1991) was published as ICCLP Publications No. 2.
March	*Proceedings of the Symposium: Dutch and Japanese Laws Compared 9-10 November 1992* was published as ICCLP Publications No. 3.

Academic Year 1993-94

April	The International Center for Comparative Law and Politics, Graduate School of Law and Politics was officially established. Margaret M. Dupree was appointed as ICCLP Research Scholar.
May-July	Three professors from the University of Michigan Law School were invited to give speeches at the graduate school.
May-March	Cheryl A. Leonard, Lecturer of Gakushuin University, was invited as Visiting

	Associate Professor at the Center.
August	Bibliography of books on law and politics in Japan, compiled, written in English, and entitled "Selected Bibliography: Japanese Law, Politics and Society" was published.
October-March	Professor Gerald P. McAlin was invited as ICCLP Visiting Professor. Béatrice Jalzot was appointed as ICCLP Research Scholar.
November	Held a study meeting entitled "Hague International Private Law ".
December-January	Professor Jack Greenberg from the School of Law at Columbia University was invited as Visiting Professor.
January	Angelika A. Gruber was appointed as ICCLP Research Scholar.
April 1993-March 1994	7 Comparative Law and Politics Forums were held.

Academic Year 1994-95

April	Dimitri R. Vanoverbeke was appointed as ICCLP Research Scholar. Professor Heinz-Dieter Assmann from the University of Tübingen was invited as ICCLP Visiting Professor.
April-June	Professor Dan Henderson from the University of California was invited as ICCLP Visiting Professor.
May	Supported the Japan Conference of the Henri Capitan Society and the Japanese/French Joint Research Center. The first Comparative Law and Politics Seminar was held.
May-June	Comparative Law and Politics Special Seminar, given by Professor Dan F. Henderson of Hastings College of Law, the University of California, was held.
May-July	Three professors from the University of Michigan Law School were invited to give lectures at the graduate school.
July-August	Supported "The XIVth International Congress of Comparative Law Conference", held in Athens, Greece.
September	Matthias Voss was appointed as ICCLP Research Scholar.
September-November	Professor Glenn Hook from the University of Sheffield was invited as ICCLP Visiting Professor.
October-December	Professor Anthony H. Angelo from Victoria University of Wellington (New Zealand) was invited as ICCLP Visiting Professor. Three professors from the University of Columbia Law School were invited to give speeches at the graduate school.
February	Professor Malcolm D. H. Smith from the University of Melbourne was invited as Visiting Professor. *ICCLP Newsletter* No.1 was published.
March	*Japanese Reports for the XVIth International Congress of Comparative Law (Athens, 31 July-6 August 1994)* was published as ICCLP Publications No. 4.
April 1994-March 1995	12 Comparative Law and Politics Seminars and 12 Comparative Law and Politics Forums were held.

Academic Year 1995-96

April	Program started to support faculty members in giving lectures abroad.
April-July	Professor Kim Hack Ro from Pusan University was invited as ICCLP Visiting Professor.
May-June	Professor Adam Roberts from the University of Oxford was invited as ICCLP Visiting Professor.
May-July	Three professors from the University of Michigan Law School were invited to give lectures at the graduate school.
July	Started to invite Japanese Visiting Professors/Associate Professors. Yamane Masabumi from the Bank of Tokyo was invited as Japanese Visiting Professor. Adachi Nobiru from the Ministry of Finance was invited as Japanese Visiting Associate Professor.
August	Supported the 31st Conference on International Legal Sociology.
August-February	Professor Kim Kon Suk from the University of Seoul was invited as ICCLP

	Visiting Professor.
September	One professor from the faculty visited Michigan Law School to give lectures.
October-December	Professor Malcolm D. H. Smith from the University of Melbourne was invited as ICCLP visiting professor.
	Three professors from the University of Columbia Law School were invited to give lectures at the graduate school.
November-January	Professor Masato Ninomiya from the University of São Paulo was invited as ICCLP Visiting Professor.
March	Professor Glenn Hook from the University of Sheffield was invited as a Visiting Professor.
April 1995-March 1996	15 Comparative Law and Politics Seminars and 13 Comparative Law and Politics Forums were held.

Academic Year 1996-97

April	Peter Neustpný and Li Zhe Yu were appointed as ICCLP Research Scholars.
	ICCLP Newsletter No. 2 (in Japanese) and *ICCLP Newsletter* No. 1 (in English) were published.
	The Center's brochure was issued in Japanese and English.
April-July	Professor Koh Sann Ryong from the University of Sun Kyun Kwan was invited to teach as a Visiting Professor at the Center.
	Professor Thomas Weigend from the University of Cologne was invited as ICCLP Visiting Professor.
April-June	Three professors from the University of Michigan Law School were invited to give lectures at the graduate school.
July	*ICCLP Newsletter* No. 3 was published in Japanese and English.
	Supported a study meeting on Japanese-Korean Civil Law.
July-August	Professor Francis M. Rosenbluth from the University of Yale was invited as ICCLP Visiting Professor.
September	Professor Bruce M. Russett from the University of Yale was invited as ICCLP Visiting Professor.
	Hugo Dobson was appointed as ICCLP Research Scholar.
October	ICCLP staff member attended a study abroad fair held in Sydney.
October-February	Veronica Taylor, Lecturer at the University of Melbourne, was invited as ICCLP Visiting Professor.
October-November	Professor Gerald Hertig from the University of Technology at Zurich was invited as ICCLP Visiting Professor.
	Three professors from the University of Columbia Law School were invited to give lectures at the graduate school.
November	*ICCLP Newsletter* No. 4 was published in Japanese and English.
	The first Comparative Law and Politics Symposium was held.
December	The second Comparative Law and Politics Symposium was held.
January	The ICCLP website (English version) was launched.
March	*ICCLP Newsletter* No. 5 was published in Japanese and English.
April 1996-March 1997	16 Comparative Law and Politics Seminars and 14 Comparative Law and Politics Forums were held.

Academic Year 1997-98

April	Richard Small was appointed as ICCLP Research Scholar.
	One associate professor from the faculty visited Columbia Law School.
April-May	Professor Gerald R. de Groot from the University of Limburg was invited as ICCLP Visiting Professor.
April-July	Professor Masato Ninomiya from the University of São Paulo was invited as ICCLP Visiting Professor.
May	Professor Tamar Frankel from the University of Boston was invited as ICCLP Visiting Professor.
May-July	Three professors from the University of Michigan Law School were invited to give lectures at the graduate school.

June-July	Professor Lloyd R. Cohen from George Mason University was invited as ICCLP Visiting Professor.
July	Yoshida Shinichi from Asahi Shinbun and Kiyokawa Yutaka from the Ministry of Foreign Affairs were invited as Japanese Visiting Professors. Professor Joseph Hoffman from the University of Indiana was invited as ICCLP Visiting Professor. The third Comparative Law and Politics Symposium was held.
September	*ICCLP Newsletter* No. 6 was published in Japanese and English.
October	Jürgen Reichert was appointed as ICCLP Research Scholar.
October-December	Three professors from Columbia Law School were invited to give lectures at the graduate school.
November	Promotional video was produced to introduce the activities of the Center at the exhibition for the University of Tokyo's 120th anniversary.
November-January	Professor Bernard Rudden from the University of Oxford was invited as ICCLP Visiting Professor.
February	The fourth Comparative Law and Politics Symposium was held.
February-March	Professor Carl Schneider from the University of Michigan was invited as ICCLP Visiting Professor.
March	*ICCLP Review* Vol. 1, No. 1 was published in Japanese and English.
April 1997-March 1998	15 Comparative Law and Politics Seminars and 19 Comparative Law and Politics Forums were held.

Academic Year 1998-99

April	One professor from the faculty visited Columbia Law School to give lectures. James D. Malcolm was appointed as ICCLP Research Scholar.
June-July	Professor Michal Sewerynski from the University of Lodz was invited as ICCLP Visiting Professor. Three professors from Michigan Law School were invited to give lectures at the graduate school.
July-August	Supported the 15th International Conference on Comparative Law.
August	Held "Japan-Brazil Comparative Law Symposia" in São Paulo to celebrate the 5th anniversary of the Center, co-sponsored with the University of São Paulo.
September	*ICCLP Review* Vol. 1, No. 2 was published in Japanese and English. Professor Daniel Foote from the University of Washington was invited for one year as ICCLP Visiting Professor.
September-March	Professor Kwang Sam Moon from the University of Pusan was invited as ICCLP Visiting Professor.
November	The fifth Comparative Law and Politics Symposium was held to celebrate the fifth anniversary of the Center at the Sanjo Kaikan on the university campus. Promotional video produced in English to introduce the activities of the Center.
November-December	Professor Glenn Hook from the University of Sheffield was invited as ICCLP Visiting Professor.
March	*ICCLP Review* Vol. 2, No. 1 was published in Japanese and English. One professor from the faculty visited Columbia Law School and another professor and associate professor visited Michigan Law School to give lectures.
April 1998-March 1999	18 Comparative Law and Politics Seminars and 19 Comparative Law and Politics Forums were held.

Academic Year 1999-2000

April	Gregory C. Ellis was appointed as ICCLP Researcher. One professor from the faculty visited Columbia Law School to give lectures.
May	Professor Benedict W. Kingsbury from New York University was invited as ICCLP Visiting Professor.
May-June	Two professors from Columbia Law School were invited to give lectures at the graduate school.

June	*Relatorio do Simposio de Direito Comparado Brasil-Japao was published in* Japanese and Portuguese.
	Richard Small was appointed as ICCLP Researcher.
June-July	Professor Don Price was invited as ICCLP Visiting Professor.
July	Ishizuka Masahiko and Nakamura Koichi were invited as Japanese Visiting Professors.
	The 100th Anniversary Comparative Law and Politics Forum was held.
September	*ICCLP Review* Vol. 2, No. 2 was published in Japanese and English.
September-March	Professor Jorg Fisch from the University of Zurich was invited as ICCLP Visiting Professor.
September-October	Associate Professor Sylvie Strudel from the Institute of Political Studies at Lille was invited as ICCLP Visiting Associate Professor.
November	*Proceedings of the 5th Anniversary Comparative Law and Politics Symposium* was published.
November-February	Professor Ninomiya Masato from the University of São Paulo was invited as ICCLP Visiting Professor.
December	The sixth Comparative Law and Politics Symposium was held.
February	Hikaku Hosei Kenkyu Series No.1 *Loan Participation* (in Japanese) and No. 2 *Kaihatsu Tojokoku no Ruiseki-saimu to Ho* (in Japanese) were published.
February-March	One professor from the faculty visited Columbia Law School, and another professor and one associate professor visited Michigan Law School to give lectures.
March	*ICCLP Review* Vol. 3, No. 1 was published in Japanese and English.
April 1999-March 2000	13 Comparative Law and Politics Seminars and 8 Comparative Law and Politics Forums were held.

Academic Year 2000-01

April	Kang Gwang-Soo was appointed as ICCLP Researcher.
	One professor from the faculty visited Columbia Law School to give lectures.
April-September	Former Associate Director Veronica Taylor from the Asian Law Center, University of Melbourne was invited as ICCLP Visiting Professor.
May-July	Two professors from Michigan Law School and two professors from Columbia Law School were invited to give lectures at the graduate school.
June-July	Professor V. S. Mani from the University of Jawaharlal Nehru was invited as ICCLP Visiting Professor.
July	Otaki Toshiyuki from the Japan Safe Driving Center was invited as Japanese Visiting Professor.
August	Preparatory meeting for Anglo-Japanese Academy project was held at Sheffield University.
September	*ICCLP Review* Vol. 3, No. 2 was published in Japanese and English.
September-October	Professor Don C. Price from the University of California, Davis, was invited as ICCLP Visiting Professor.
September-March	Christopher W. Hughes, Senior Lecturer at the University of Warwick, was invited as ICCLP Visiting Associate Professor.
October	Research Fellow Bruno Palier from Center for the Study of French Political Life was invited as ICCLP Associate Visiting Professor.
November-December	Professor Brigitte Stern from the University of Paris I was invited as ICCLP Visiting Professor.
December	The seventh Comparative Law and Politics Symposium was held.
January-February	Professor Thomas Meyer from the University of Dortmund was invited as ICCLP Visiting Professor.
March	One professor from the faculty visited Columbia Law School and one associate professor visited Michigan Law School to give lectures.
	ICCLP Review Vol. 4, No. 1 was published in Japanese and English.
	Professor Lee Chang-Hee was invited for one year as ICCLP Visiting Professor.
April 2000-March 2001	17 Comparative Law and Politics Seminars and 9 Comparative Law and

	Politics Forums were held.
Academic Year 2001-02	
April	Walter Hutchinson was appointed as ICCLP Research Scholar.
May-July	One professor from Michigan Law School and two professors from Columbia Law School were invited to give lectures at the graduate school.
June	An external evaluation of the Center was held from 5-7 June.
June-July	Professor Adam Roberts of the University of Oxford was invited as ICCLP Visiting Professor.
July	Takasaki Hideo from the Ministry of Justice as Japanese was invited as Visiting Professor.
September	Anglo-Japanese Academy was held in the UK from 3-9 September, co-sponsored with Sheffield University. *ICCLP Review* Vol. 4, No. 2 was published in Japanese and English.
October	One professor fom Columbia Law School was invited to give lectures speeches at the graduate school.
October-November	Dr Anne Muxel from CEVIPOF was invited as ICCLP Visiting Professor.
November	Published *Gaibu-hyoka Hokokusho* (Report of external evaluation).
November-February	Professor Masato Ninomiya was invited as ICCLP Visiting Professor.
March	*Anglo-Japanese Academy Proceedings* was published. *ICCLP Review* Vol. 5, No. 1 was published in Japanese and English. One professor from the faculty visited Columbia Law School to give lectures.
April 2001-March 2002	19 Comparative Law and Politics Seminars and 5 Comparative Law and Politics Forums held.
Academic Year 2002-03	
April	One associate professor from the faculty visited Columbia Law School to give lectures. Aurea C. Tanaka was appointed and Walter Hutchinson was re-appointed as ICCLP Research Scholars.
May	Oshima Makiko was appointed as ICCLP Research Scholar.
May-August	Professor Antony Anghie was invited from the University of Utah as ICCLP Visiting Professor.
June	Hikaku Hosei Kenkyu Series No. 3 *Chiho Seifu no Zaisei Jichi to Zaisei To sei: Nichibei Hikaku-ron* published in Japanese.
June-July	Professor B.S. Chimni from Jawaharlal Nehru University invited as ICCLP Visiting Professor.
July	Osaki Sadakazu, Director of Nomura Research Institute, invited as Japanese Visiting Associate Professor.
September	The second Japan-Brazil Symposium entitled "International Symposium on Comparative Law and Brazilian Workers in Japan" was held in Brazil, co-sponsored with the University of São Paulo and others.
September-October	Professor Anthony Carty from the University of Derby was invited as ICCLP Visiting Professor.
October-November	Dr Jacques Capdevielle from CEVIPOF was invited as ICCLP Visiting Professor.
April 2002-October 2002	11 Comparative Law and Politics Seminars and 1 Comparative Law and Politics Forum were held.

[Source: *ICCLP External Evaluation Report.*]

Part II

Visiting Professors at the ICCLP

Antony Anghie (Professor, College of Law, the University of Utah)
(May - August 2002)
Profile:
After having studied at Monash University and Harvard Law School, Professor Anghie was appointed as a teaching fellow in the Department of Government at Harvard University in 1992. In 1995 he earned an associate professorship at the University of Utah and was awarded his current professorship in 2000. Professor Anghie specialises in international law. During his stay at the ICCLP, he gave a presentation as part of a Comparative Law and Politics Seminar entitled 'Colonialism and the Birth of International Institutions' and contributed an article to this edition of the *ICCLP Review*.

Publications:
Legal Visions of the 21st Century: Essays in Honour of Judge Christopher Weeramantry, (co-ed. with Garry Sturgess), Kluwer Law International Publishers 791pp; principal author of Preface (1998).
"Finding the Peripheries: Sovereignty and Colonialism in Nineteenth Century International Law", 40 (1) *Harv. INt'l.L.J.*, 1-81 (1999).
"Time Present and Time Past: Globalization, International Financial Institutions and the Third World", 32 (2) *New York University Journal of International Law and Politics* 243 (2000).

B. S. Chimni (Scholl Professor of International Studies, Jawaharlal Nehru University)
(June - July 2002)
Profile:
After having studied at Panjab University, the University of Bombay, and Jawaharlal Nehru University, Professor Chimni was appointed as an assistant professor and an associate professor at Jawaharlal Nehru University in 1985 and in 1990 respectively. In 1999, he attained his current professorship of international law at the University. During his one-month stay at the ICCLP, he gave a presentation in the Comparative Law and Politics Seminar entitled 'Towards a Radical Third World Approach to Contemporary International Law' as a joint speaker with Professor Anghie. He also contributed an article to this edition of the *ICCLP Review*.

Publications:
International Law and World Order: A Critique of Contemporary Approaches, (Sage, New Delhi, 1993).
International Refugee Law: A Reader (Sage, New Delhi, 2000).

Anthony J. Carty (Professor, University of Derby)
(September - October 2002)
Profile:
After having studied at Queen's University in Belfast, the University of London and Jesus College, Cambridge, Professor Carty was appointed as a Research Fellow at the Max Planck Institute in Heidelberg. He earned his current professorship at the University of Derby in 1994 after teaching international law at the Universities of Edinburgh and Glasgow. During his one-month stay at the ICCLP he gave a presentation at the Comparative Law and Politics Seminar entitled 'Critical International Legal Studies and Contradictions in National Identity'. He also contributed an article to this edition of the *ICCLP Review*.

Publications:
The Decay of International Law, (Manchester University Press, 1986).
Was Ireland Conquered? International Law and the Irish Question (Pluto Press, 1996).
Sir Gerald Fitzmaurice and the World Crisis: A Legal Adviser in the Foreign Office 1932-1945 (Co-authored, Kluwer Law International, 2000).

Jacques Capdevielle (FNSP Research Director of CEVIPOF)
(October - November 2002)
Profile:
After having studied at the University of Paris Assas and the Institute of Political Science Paris, Dr Capdevielle was appointed as a researcher at Fondation Nationale des Sciences Politiques (FNSP) of Centre d'Étude de la Vie Politique Française (CEVIPOF) in 1985, attaining his research directorship in 1991. During his one month stay he gave two Comparative Law and Politic Seminars entitled 'French Understanding of Public Services Confronted with the European Commission's Policy' and 'French Elections: What Next?'.

Publications:
Le fétichisme du patrimoine. Essai sur un fondement de la classe moyenne française, (Presses de Science Po, 1986).
Petits boulots et grand marché européen. Le travail démobilisé (co-authored, Presses de Science Po, 1990).
Modernité du corporatisme (Presses de Science Po, 2001).

ICCLP Research Scholars

Aurea C. Tanaka (b. 1972)
After obtaining a bachelor's degree in law at the University of São Paulo, she entered the Ph.D. course at the same university to continue her research on comparative law and private international law. She visited Japan in October 1999 as a Foreign Research Student of the Law Faculty, and thereafter was appointed as ICCLP Research Scholar in April 2002. She is currently completing her doctoral thesis entitled "Divorce in Japanese and Brazilian Legal Systems".

Oshima Makiko (b.1971)
After completing the master's course in law, she enrolled in the Ph.D. course at the Law Faculty of the University of Tokyo. In October 1997 she was awarded a Fulbright Scholarship to study at the Law Center of Georgetown University. Whilst at Georgetown University she was awarded a LL.M. and thereafter returned to Tokyo in order to begin work towards a Ph.D. in the field of public international law. The theme of her doctoral thesis is regulatory principles governing high seas fisheries.

International Symposium on Comparative Law and Brazilian Workers in Japan

26 - 29 August: Faculty of Law, the University of São Paulo
29 - 31 August: Crystal Palace Hotel, Londrina

Organised by**:** Brazil-Japan Institute of Comparative Law (IDCBJ); Faculty of Law, the University of São Paulo (FADUSP); Law School, State University of Londrina (UEL); International Center for Comparative Law and Politics (ICCLP), Faculty of Law, the University of Tokyo; Faculty of Law, Keio University; Center for Information and Support of the Worker Abroad (CIATE)

Supported by**:** Health, Labour and Welfare Ministry of Japan; Japan Foundation; VARIG Airlines S/A; Blue Tree Towers

Programme

August 26 17:00 to 21:00
Opening Ceremony
Speech by Eduardo Marchi, Ikeda Tadashi and Paulo Renato de Souza
Special presentations by Professor Mori Seiichi, Director, Faculty of Law, Keio University; Mr Misawa Takashi, Counselor of the Health, Labour and Welfare Minister of Japan; Mr Kitawaki Yasuyuki, Hamamatsu Mayor; Prof. Ishii Ryoichi, President of the Teachers and School Employees Labour Union, Hyogo Prefecture

27 August
9:00 to 10:30
Panel 1 – *Labour Conditions and Social Security*
Moderator: Dr Kiyoshi Harada, Attorney-at-law
Speakers: Dr Ishikawa Etsuo, President of the Foreign Citizens Council of Hamamatsu; Sérgio Branco, M.D., Neurosurgeon; Dr Ricardo Shoiti Komatsu, Director, Marília Faculty of Medicine

10:45 to 12:15
Panel 2 – *Family Law. Judicial Cooperation between Brazil and Japan*
Moderator: Dr. Tuyoci Ohara (Attorney-at-law at Consulate General of Japan in São Paulo)
Speakers: Aurea Christine Tanaka, Ph.D. Student, the University of São Paulo, ICCLP Research Scholar; Professor Dogauchi Masato, the University of Tokyo; Dr Caetano Lagrasta Neto, Judge, Court of Justice of São Paulo State; Dr Ricardo Sasaki, Consultant of CIATE, Professor, Faculty of Law of Mackenzie, UNIP and FAAP Universities

17:00 to 19:00
1st Session – *Legal Aspects of the Labour Relations*
Moderator: Dr. Nelson Hanada, Judge, Court of Justice of São Paulo State
Speakers: Professor Tezuka Kazuaki, Chiba University; Professor Ikeda Masao, Keio University; Professor Walküre Lopes Ribeiro da Silva, the University of São Paulo

19:15 to 21:15
2nd Session – *Social Security Issues*
Moderator: Maria Edileuza Fontenele Reis, Deputy Consul-General of Brazil in Rome
Speakers: Professor Oizumi Hiroko, Kawasaki University of Medical Care; Professor Ozaki Masatoshi, Tsu City College; Professor Marcus Orione Gonçalves Correia, the University of São

Paulo

28 August
9:00 to 10:30
Panel 1 – *Education and Delinquency of Brazilians in Japan*
Moderator: Dr Isidoro Yamanaka, Consultant, Centro de Integração Tecnológica do Paraná
Speakers: Professor Reimei Yoshioka, Counselor, CIATE; Mrs Kyoko Nakagawa, Psychologist; Mrs Laura Keiko Okamura, Social Assistant; Mr Murohashi Tsuyoshi, Supervisor, Juvenile Training Center, Niigata

10:45 to 12:15
Panel 2 – *Activities of Organizations for the Support of the Brazilian Worker in Japan*
Moderator: Professor Lili Kawamura (UNICAMP)
Speakers: Dr Masato Ninomiya, President, CIATE; Mr Kiyoharu Miike, Coordinator of the Dekasegi Project, Brazilian; Association of Dekasegi; Dr Décio Nakagawa, Psychiatrist, Member of Yasuragui Home, Counselor, CIATE; Mrs Leda Shimabukuro, President, Nikkei Group of Human Promotion / Tadaima; Mr Suzuki Yasuyuki, President, Mutual Aid Fund for the Latin-American Workers in Japan

17:00 to 19:00
1st Session – *Delinquency Aspects of the Brazilians in Japan*
Moderator: Dr Jo Tatsumi, Judge, Court of Justice of São Paulo State
Speakers: Professor Miyazawa Koichi, Keio University (paper); Mr Murohashi Tsuyoshi, Supervisor, Juvenile Training Center, Niigata; Professor Ivette Senise Ferreira, the University of São Paulo

19:15 to 21:15
2nd Sesssion – *Education of the Brazilian Children in Japan*
Moderator: Professor Newton Silveira, the University of São Paulo
Speakers: Professor Nishikawa Rieko, Keio University; Professor Evando Neiva, Rede Pitágoras; Professor Benedito Vilela Garcia, Escola Brasileira de Hamamatsu; Professor Masato Ninomiya, the University of São Paulo

29 August
9:00 to 11:00
1st Session – *The Future of the Brazilian Migration Movement towards Japan*
Moderator: Mr. Shigeaki Ueki
Speakers: Professor Horisaka Kotaro, Sofia University; Professor Akihiro Ikeda, the University of São Paulo; Minister Edmundo Fujita, General Director, Asia and Oceania Department, Ministry of Foreign Affairs; Professor Susumu Miyao, Director, Japanese-Brazilian Study Center

11:15 to 13:00
Presentation of Conclusions and Proposals
Moderator: Professor Kazuo Watanabe, the University of São Paulo

Closing Ceremony

29 August (Londrina)
Opening Ceremony
Speech by Professor Claudete Canesin, Coordinator, Civil Law and Civil Procedure Law Department
Special presentations by: Professor Ichiro Kitamura, the University of Tokyo; Professor Tezuka Kazuaki, Chiba University; Dr José Hipólito da Silva Xavier, President, Brazilian Bar Association,

Paraná Section

30 August
9:00 to 12:00
Panel - *Education and Delinquency of Brazilians in Japan*
Moderator: Professor Estela Okabayaski Fuzii, Director, Japanese Culture Study Center, UEL
Speakers: Dr Décio Nakagawa, Psychiatrist, Member of Yasuragui Home, Counselor, CIATE; Mr Murohashi Tsuyoshi, Supervisor, Juvenile Training Center, Niigata; Mrs Laura Keiko Okamura, Social Assistant

19:00 to 20:20
1st Session – *Adaptation and Reinsertion in the labour market*
Moderator: Professor Adiloar Franco Zemuner, Coordinator, Private Law Department
Speakers: Professor Kasai Yasunori, Niigata University; Dr Kiyoshi Ishitani, Attorney-at-law, Consulate-General of Japan in Paraná; Professor Luzia Yamashita Deliberador, Journalism Department, UEL

20:30 to 22:00
2nd Session – *The flexibilization of labour work force in Japan and Brazil*
Moderator: Mr Kencho Yamada, President, Paraná ASEBEX
Speakers: Professor Ohno Yukio, Niigata University; Dr Marco Antonio Gonçalves Valle, Ph.D. Student, Social and Legal Sciences, UEL

31 August
9:00 to 12:00
1st Session – *Migration Movement of Brazilians towards Japan*
Moderator: Dr Shudo Yasunaga, Director, Escola Modelo de Maringá
Speakers: Professor Horisaka Kotaro, Sofia University; Professor Akihiro Ikeda, the University of São Paulo; Dr Zuud Sakakihara, Judge, Curitiba

13:00 to 16:00
2nd Session – *Organizations for the Support of the Brazilian Worker in Japan*
Moderator: Professor Masato Ninomiya, President, CIATE; the University of São Paulo
Speakers: Mr Suzuki Yasuyuki, President, Mutual Aid Fund for the Latin-American Workers in Japan; Organizations for the Support of Dekasegi in Curitiba, Maringá and Londrina; Representatives of the Nikkei Community and Local Organizations of Paraná State

Presentation of Conclusions and Proposals
Moderator: Dr. Kentaro Takahara (Attorney-at-law)

Closing Ceremony

Report: Impressions of the Concert
by Aurea C. Tanaka

1. The concert
I recently helped Professors Kazuo Watanabe and Masato Ninomiya coordinate the organization of the *International Symposium on Comparative Law: Brazilian Workers in Japan*. When thinking about how to describe this experience one image came to mind: that of a conductor harmonically conducting his orchestra, every note in its place, the performers beautifully playing the music.

Maybe this image sprang to mind because a concert performed by an orchestra presupposes the firm guidance of the conductor and that seemed to me to be the roles that Professors Kazuo Watanabe and Masato Ninomiya played during the preparations for the symposium. The image also evokes harmony and perfection, which I hoped would be the feeling among the audience, because attending a concert is only a matter of sitting and enjoying, whereas the presentations are preceded by hours of practice, rehearsals and intensive work.

As for the symposium, our practice and rehearsals took place in Professors Kazuo Watanabe and Masato Ninomiya's offices. The first served for the weekly meetings of the organizing committee and the second was where the decisions were enacted. Viviane Otsubo and Akiyo Shimamura were of enormous help during all stages of the conference. Indeed, I can affirm that without them the symposium would not have been as successful.

2. The symposium
At first, as a symposium on comparative law suggests, there was to be an academic meeting of professors from Brazil and Japan, invited to give lectures about their own expertise concerning the legal system of their countries.

However, taking into consideration the large number of Brazilian workers living in Japan, nowadays the third largest group of foreigners in that country, Professors Kazuo Watanabe and Masato Ninomiya thought that it was important to discuss problems concerning the Brazilian community living in Japan. As a matter of fact, both professors were involved in a symposium held at the Brazilian Society of Japanese Culture in 1991, whose theme concerned the *dekasegi*1 phenomenon and their problems.

One of the ultimate conclusions of the conference was the proposal for the creation of an organization designed to help the Brazilian community living in Japan. In addition, a change in Article 206 of the Brazilian Criminal Code was argued for in order to make it a crime to defraud anyone for the purposes of employment.2

These two conclusions were put into effect some time later, with the foundation of the Center for Information and Support of the Worker Abroad (CIATE), a non-profit organization, whose main goal is to serve as a public manpower agency, in other words, a place where Brazilians intending to go to Japan to work can search for jobs without using "brokers". In addition, the Brazilian Congress approved and made possible a legislative amendment to the Brazilian Criminal Code, Article 206.

This experience, added to the will to do something concrete to help improve the living conditions of Brazilians in Japan, inspired Professors Kazuo Watanabe and Masato Ninomiya to chose as the symposium's theme, *Brazilian Workers in Japan*. They were encouraged by a conversation with the

1 According to *Kenkyusha's New Japanese-English Dictionary*, "dekasegi suru" means to work away from home; stay in another province [country] for work. Originally used to refer to those workers who, during harsh winters, went looking for jobs in other places, nowadays it is widely used in reference to the *Nikkeijin*, mainly South American descendants of Japanese immigrants, who started coming to Japan during the 1990s.
2 See Masato Ninomiya, *Dekasegi: gensho ni kansuru shimpojumu hokokusho*, São Paulo, 1993.

Japanese Ambassador to Brazil, Mr. Takashi Ikeda, who seemed to be receptive to proposals and willing to discuss the problems.

Then, in order to prepare for the conference and begin the discussion about some of the issues affecting the Brazilian community in Japan, the professors thought it was important, prior to the symposium, to hold a public debate so as to bring together as many interested people as possible, not only those from a legal background.

For this purpose, five round-table meetings were arranged, in which experts were invited to address the following topics: education, juvenile delinquency, criminality, health, social security, labour law, family law and judicial cooperation. The same topics would later become the main panels of the symposium.

The general idea for the symposium was to have morning and evening sessions: the morning sessions for debates between the experts and the audience, and the evening sessions for lectures in comparative law. This was the model implemented and followed by the organizers of the Londrina session, another conference with the same theme, right after the São Paulo conference.

Although the opinion of a member of the audience might be more reliable, I would dare to say that the symposium achieved its goals. Not only was there lively discussion on a broad range of issues, but also the attendance at the São Paulo conference was beyond expectation, with over a thousand participants.

The conclusions of the symposium were summarized in a document entitled "São Paulo Declaration", which, following the example of the "Hamamatsu Declaration", 3 puts forward principles and recommendations regarding the topics discussed in order to guide future policies or legislative amendments.

Right after the symposium, in a meeting held at CIATE, commissions were established to examine the possibilities of implementing the conclusions. I hope that their goals can be achieved and also that the dialogue between the two countries can continue the tradition of friendship and concern for the human links that connect Brazil and Japan, namely the Japanese immigrants from the past and their Brazilian descendants today.

3. The trip back to Brazil

After one year and a half without going back to the country where I grew up, it was with great satisfaction that I was informed by Keiko Wada that I had to go to Brazil in order to help the organization of the symposium. It would be a business trip, but I would be able to meet my family, which made me very happy.

I was supposed to travel to Brazil on early July, right after the euphoria of Brazil winning the 2002 World Cup. As I was living in Japan, I was lucky enough to be able to buy tickets to the semi-final and final games for Professor Masato Ninomiya and myself. We had so much fun and, of course, since we had to cheer as loud as we could for the Brazilian team, we were voiceless after the games.

But from the moment I arrived in Brazil, I felt the mood was different after the World Cup. Suddenly we had something to be proud of again, despite Brazil's current economic recession. And I felt the same mood among the Brazilians in Japan, regardless of the challenges they face every day.

Of course, this amazing victory should not blind or prevent us from seeing how much has yet to be done, but it is undeniable that the World Cup was a moment of joy, freedom and finding in ourselves what links us most with our own country.

3 The citizens of the thirteen Japanese cities with the highest concentration of foreign workers presented this declaration in Hamamatsu, Japan in October 2001.

I was rendered speechless and in awe of an entire stadium full of the colors of the Brazilian team. That is because there were not only Brazilians but also many Japanese fans that cheered for Brazil and wore our colors.

I was happy to notice that some of the World Cup fever gripped Japan too: fans everywhere were glued to their television sets. In parts of Tokyo and in other big cities in Japan, I watched an otherwise normally reserved people take to the streets in wild jubilation. I have never seen anything like that in Japan before and actually I was very surprised when I went to Shibuya on the night Japan beat Tunisia and was able to see hundreds of people wearing the national team's t-shirt, screaming "Nippon", proud of themselves and their country.

Anyway, it was one of those lifetime experiences. And after having witnessed all that in person, it was good to return to Brazil. Actually, the first words I heard from Helena, a friend of mine who was waiting for me at the airport, as soon as the airplane's door opened were that she still could not believe that she saw Professor Ninomiya and me on the television screen during the closing ceremony of the World Cup.

4. Rio de Janeiro

At first, the symposium was to be held in São Paulo and Rio de Janeiro. São Paulo was primarily chosen because of the strong ties between the Faculties of Law of the Universities of São Paulo, Tokyo and Keio. But as Rio de Janeiro, for various reasons, did not work out as the second venue for the symposium, the schedule in Rio was limited to refreshment prior to the working period that followed. Rio was the starting point of the trip to Brazil for some of the guest speakers, while others chose to go directly to São Paulo because of their busy agenda in Japan.

The first one to arrive in Rio de Janeiro was Professor Kazuaki Tezuka, from the University of Chiba, and his wife. He kindly agreed to give a lecture at the Consulate of Japan in Rio de Janeiro about the working conditions of the Brazilians in Japan. They spent two days in Rio with only one day for sightseeing, but they were able to see an everyday scene in Brazil: someone stealing a wristwatch in the busy traffic of Rio. Though astonished by this experience, their cheerfulness and disposition to travel around Brazil did not lessen at all.

After some days, seven people were to arrive in Rio: Professor Ichiro Kitamura from the University of Tokyo and his wife, Professor Seiichi Mori, Dean of the Faculty of Law of Keio University, Professors Masao Ikeda and Rieko Nishikawa also from Keio University and Professors Yasunori Kasai and Yukio Ohno from the University of Niigata.

A delay on Professor Nishikawa's flight from Washington D.C. to Miami prevented her from arriving on the same day as all the others and unfortunately she missed the sightseeing in Rio. I hope I can make up for this by showing her Rio some other time in the future.

I can guess how tiring it was for the professors to board the sightseeing minibus after such a long journey, and I was impressed by their high spirits and effort to seize the opportunity of being in Rio, taste different foods, and visit everywhere.

We visited the tourist places in Rio of course, but we also did something not included in the schedule there: stopping at Leme, right after Copacabana, to drink coconut juice while sitting on the beach. I thought the sightseeing would only be complete if we did that, after all, my idea of going to a tropical country includes exactly this scene: at the beach, drinking some exotic cocktail, or else coconut juice.

Soon the two days in Rio were over and we had to fly to São Paulo, where a busy schedule awaited us. The captain of the aircraft that took us there seemed to be flying the plane without a care in the world as if it were his own car, rather than an airplane full of passengers., but our landing in São Paulo went

as smoothly as our days in Rio.

5. São Paulo

A dinner party was scheduled for the Sunday evening we arrived in São Paulo from Rio. At that time, almost all the guest speakers had arrived from Japan earlier in that day, like Professor Masato Dogauchi from the University of Tokyo, Professor Hiroko Oizumi from Kawasaki University of Medical Care, Mr. Takashi Misawa, Counselor of the Ministry of Health, Labour and Social Welfare of Japan, and Mr. Yasuyuki Kitawaki, Mayor of Hamamatsu, the city with the largest number of Brazilians in Japan.

Mr. Yasuyuki Suzuki, President of the Mutual Aid Fund for Latin American Workers in Japan had also arrived the day before. Professors Kotaro Horisaka and Masatoshi Ozaki had been in São Paulo for some days and Mr. Tsuyoshi Murohashi and his wife joined the group the next day.

The dinner party was a chance to meet old friends, not only for the professors themselves, but also for me. Many people, directly or indirectly involved with the exchange between Brazil and Japan and whose contribution for the symposium had been vital, were there. We were also honored by the attendance of the former Dean of the Faculty of Law of University of São Paulo, Professor Ivette Senise Ferreira, who generously attended all the symposium sessions and represented the Dean of the Faculty of Law, Professor Eduardo César Silveira Vita Marchi, when he could not be there. Maria Edileuza Fontenele Reis, former Deputy Consul-General in Tokyo from 1996 to 2001 was also there. While she was serving in Tokyo she wrote a book, *Brazilians in Japan: The Human Tie of the Bilateral Relationship*, whose second edition was launched during the symposium.

On the next day, we visited the São Paulo State Court of Justice (Tribunal de Justiça do Estado de São Paulo), where its President, Judge Sérgio Augusto Nigro Conceição, received the professors. The meeting was productive and the President of the Court of Justice heard about the problems of the service of process to Japan, in other words, notifying the defendant of a suit involving parties residing in Japan. When the defendant resides abroad there is a special procedure and specific conditions for the notification because it presupposes the cooperation of two different judicial powers. When the notifications are sent to Japan, most of them are returned to Brazil due to imperfections in their contents, the misuse of some words, and many other reasons. The President of the Court promised to study the matter and attempt to speed up the procedure by issuing specific instructions directed to judges referring to the service of process to Japan.

In the afternoon, the professors visited the Museum of the Faculty of Law of University of São Paulo and its other facilities. After that, journalists were awaiting them at a press conference, before the opening ceremony of the symposium.

The opening ceremony was formal, mainly because of the impressive atmosphere of the Noble Hall of the Faculty of Law. The Japanese Ambassador to Brazil and the Brazilian Ministry of Education attended the ceremony as representatives of their governments. Their greetings sounded positive, enhancing the friendly relationship between the two countries and also demonstrating the concern about the situation of Brazilians in Japan.

A chorus of Brazilian-Japanese ladies greeted the Japanese visitors and the audience as well, singing some Brazilian and Japanese music. Among the most memorable ones were the song “Akatonbo” and a short Japanese samba, in other words, a samba whose lyrics were in Japanese.

The next days were all dedicated to the symposium, punctuated by some meetings during lunch time, two of them worthy of mention: one led by the General Consulate of Japan in São Paulo and the other one by the Brazilian Society of Japanese Beneficence Santa Cruz. These were opportunities to meet the Japanese Ambassador to Brazil, the Consul-General of Japan in São Paulo and members of São Paulo’s *nikkei* community.

The closing session of the Symposium in São Paulo lasted longer than anyone expected due to the interest in the debate and suggestions made to improve the "São Paulo Declaration". After the end of the closing ceremony we headed directly to the airport, as we were a little bit late, to catch our departing flight to Londrina.

6. Londrina

The flight was scheduled to leave São Paulo at 4:30 p.m. It was almost 6 o'clock and we were still in São Paulo, waiting for the announcement of the flight. I called Professor Masato Ninomiya's office to ask the secretary to contact Professor Estela Fuzii and tell her that the flight was delayed. But another surprise was waiting for us. The airport in Londrina was closed because of the rain and lack of visibility so we landed in Maringá, the closest airport in the area. We took a bus then to Londrina and we only arrived there after 10 o'clock at night.

The committee in Londrina had wisely canceled the opening ceremony scheduled for that evening and transferred it to the afternoon of the next day, so the group went out for dinner after their arrival.

The symposium carried on into the next day, although unfortunately the attendance was smaller than in São Paulo. However, those who were there certainly benefited from the lectures and the discussion.

Professors Kazuo Watanabe, Masato Ninomiya, Akihiro Ikeda, Kotaro Horisaka, Reimei Yoshioka, Mr. Yasuyuki Suzuki, Isidoro Yamanaka and Dr. Décio Nakagawa, Ms. Viviane Otsubo and Akiyo Shimamura stayed in Londrina for the closing session of the symposium where the Londrina participants ratified the "São Paulo Declaration", although making some amendments and observations.

The rest of us, Professors Kitamura and his wife, Professor Tezuka and his wife, Professors Kasai, Ohno and myself, went back to São Paulo, from where they took a flight to Foz do Iguaçu. Mrs. Tereza Kamogawa accompanied them during this refreshing break after all of the hard work, as I was not able to go.

7. Tchau

It was time to go back to Japan for the professors that traveled to Foz do Iguaçu. Some of the group had already gone at the end of the São Paulo session, except for Professor Horisaka and Ozaki, who went to Porto Alegre, together with Professor Ninomiya, for a conference at the Federal University of Rio Grande do Sul.

I must confess that it was hard to co-ordinate the schedule of almost twenty people and gather them together to go everywhere. But the professors were always co-operative and amiable in helping us in this task. And also, the wives of the members of the Brazil-Japan Institute of Comparative Law, mainly Taeko Ohara, Sonia Ninomiya and Elizabeth Yoshida, took great care of the professors' wives, for which I am more than grateful.

I would also like to extend thanks to Mrs. Tereza Kamogawa, who besides going to Foz do Iguaçu, also took Professor Kitamura and his wife to visit a shrine in Arujá, approximately one hour from São Paulo.

As for the organization of the symposium, besides Viviane Otsubo and Akiyo Shimamura, I would like to mention the cooperation of the members of the Brazil-Japan Institute of Comparative Law, Dr. Tuyoci Ohara, Dr. Kiyoshi Harada, Dr. Samuel Yoshida, Professor Newton Silveira, Dr. Nelson Hanada, Dr. Morinobu Hijo and that of Professor Akihiro Ikeda, Dr. Décio Nakagawa, Dr. Caetano Lagrasta Neto, Professors Reimei Yoshioka, Ricardo Sasaki and Mr. Isidoro Yamanaka. I may have forgotten one or two names, for which I deeply apologize.

And finally, I would like to emphasize the important role played by our conductors, Professors Kazuo Watanabe and Masato Ninomiya, of the concert that took place in Brazil. Thanks to them the music was able to be performed one more time. Thank you very much.

Now looking back on this experience, I am amazed what everyone was able to accomplish. And yet, the symposium is not over. The proceedings will soon be published but not until all of the professors submit their final papers and the ICCLP staff finishes the final proofreading.

Well, see you at the next concert! Tchau!

[October 2002]

Declaration of São Paulo and Londrina

Foreword

After a number of preparatory meetings, five round-tables and a "Forum of Dekasegi Statements", the participants of the International Symposium on Comparative Law: Brazilian Workers in Japan, promoted by the Brazil-Japan Institute of Comparative Law, debated in depth, from August 26 to 29, 2002 in the city of São Paulo, São Paulo State, and from August 29 to 31, 2002 in the city of Londrina, Paraná State, the main themes concerning Brazilian workers in Japan and those who had returned to Brazil.

The issues that received particular attention in this Symposium were, among others: labour conditions, social security, Family Law, children's education, delinquency among Brazilian youths in Japan, organizations supporting workers, the future of the migratory movement and judicial cooperation.

Among the numerous conclusions reached, the participants wished to point out that, in spite of the diversity in current issues, the migratory movement of Brazilian workers, with the exception of Japanese immigration to Brazil, represents the most significant event of the one-hundred-year relationship between the Brazilian and Japanese governments and their people. The perception has been greatly strengthened that this migratory movement will be, favoured by several factors, if not of a permanent character, then longer-lasting than was initially expected. According to official estimates, some 265,000 Brazilians are currently living in Japan, while roughly 140,000 have returned to Brazil, which means a movement of over 400,000 people in a period of a little more than fifteen years. A greater understanding of the Japanese people and their cultural values is surely being assimilated by these people who, during their stay in Japan, in some manner are presenting Brazilian culture and the Brazilian way of life to the Japanese, thereby resulting in greater mutual knowledge and strengthening of the friendly ties between the two populations.

Concerning the issues under discussion, the participants of the Symposium reached the following conclusions, listed below thematically and published hereby as **"Declaration of São Paulo and Londrina":**

1. Labour Conditions

1. It was confirmed that the hiring of foreign workers through intermediate, manpower companies still predominates, thereby resulting in job instability, loss of salaries and lack of social security coverage.

2. It is desirable that, in the first instance and as the norm, every contract be agreed directly with the company where the work is performed.

3. Should a direct contract not be possible, it is desirable to have an amendment of the Japanese law so as: a) to establish stricter criteria regarding the establishment and functioning of intermediate companies; b) to establish the subsidiary responsibility of the company where the work is performed regarding labour and social security rights; c) to ensure better supervision and strict punishment by the competent authorities of companies responsible for not complying with workers' labour and social security rights.

2. Social Security

1. The existence of a large number of Brazilian workers without social security coverage, including health, unemployment and accident insurance in the workplace, was confirmed. This results in countless difficulties and problems for these Brazilian workers in Japan.

2. Another problem is, on the one hand, the disregard of the law on the part of employers, and, on the other hand, the workers' lack of awareness of the fundamental importance of affiliation to the social security system.

3. The efficient supervision of employers by the competent authorities, with strict punishment of

infractors, is absolutely necessary.

4. The adoption of a system whereby the employee is automatically affiliated to the social security system by the simple existence of a labour contract is desirable.

5. The ratification of a social security agreement between the two countries, respecting the reciprocity principle, is desirable, so as to make possible the utilization of the social security contributions already paid by workers, with the aim of ensuring the future of those returning to their country of origin.

6. In view of the difficulties faced by Brazilians in acquiring medical and hospital assistance due to the inability to communicate, which might result in errors in diagnosis and treatment, the designation of regional hospitals according to their expertise is desirable, but equally so is the provision of mental health services as well as interpreters and multilingual professionals.

3. Education

1. It was confirmed that thousands of school-age youths are not enrolled in schools due to problems in adapting to the system and an insufficient number of Brazilian schools—a situation affecting not only the youths in question but also Japanese society due to the social consequences this truancy may have, with immediate or future ramifications for Brazilian society.

2. It was recognized that education is a fundamental right of both nationals and foreigners.

3. In the particular case of Brazilians resident in Japan: a) it is necessary to accept that a number of those planning to return to Brazil should have the freedom to choose between Brazilian and Japanese educational systems; b) the principle of universal access to Brazilian education should be ensured, whilst also seeking the necessary means to reduce the cost of education, either by subsidizing fees or granting scholarships, taking advantage of spare vacancies in Japanese schools, forming cooperatives, participating in civil society through various organizations, etc.; c) to enforce the duty of parents to ensure their children receive a formal education, either under the Brazilian or Japanese educational system, it is desirable that an agreement is concluded between the two countries for the adoption of a mechanism to oversee the compliance of this duty. For example, the renewal of a visa could be dependent upon proof of compliance with this duty, or else by means of verification conducted upon the updating of the foreigner's registration certificate (*gaikokujin toroku*).

4. On the other hand, it is necessary to establish urgently a support program for students returning to Brazil to resume their studies, in order to address all the problems they may encounter, such as adaptation, culture shock, the need for additional lessons in Portuguese, etc.

4. Family Law and Judicial Cooperation

1. Brazilian workers and their families in Japan face various problems related to Family Law due to the differences in legislation between Japan and Brazil, such as matrimonial formalities, property rights, maintenance obligation, dissolution of marriages, nationality of their children, etc.

2. Since many of these problems can be solved, it is desirable: a) to adopt administrative or judicial measures; b) to conclude bilateral cooperation agreements; c) to ratify existing multilateral conventions.

5. Delinquency among Brazilian Youths

1. The increase in cases of juvenile delinquency among Brazilian children in Japan is an issue of great concern. It is imperative that parents become aware of the gravity of this phenomenon and the complexity of the causes, those worthy of mention include, among others, the break-up of families, truancy, as well as the problems arising from not having assimilated Japanese language and culture, which makes social integration and adaptation to the new environment difficult.

2. In the process of both identifying violators and evaluating the recovery of Brazilian youths in Japanese correctional institutions, there is a need for qualified interpreters and more effective family support and, as regards the eventual release of these youths, there is a need for concerted support from institutions in the local community.

6. Organizations Supporting Brazilian Workers in Japan and Those Returning to Brazil

1. The participants in the Symposium recognized the importance of the role played by support organizations in providing information, guidance and assistance to both Brazilian workers in Japan and those returning to Brazil, addressing their needs, difficulties and problems often in the absence or insufficiency of official measures and solutions.

2. It is desirable that the governments of both countries, companies and other non-government organizations extend greater recognition and support to the activities of these organizations, and coordinate their activities, so that there is no unnecessary duplication, and their more important activities are reinforced.

7. Hamamatsu Declaration

In addition, the participants declared that they are completely in agreement with the contents of the "Hamamatsu Declaration", issued in October 2001, by the inhabitants of the Japanese cities that host the largest number of foreign workers.

SãoPaulo, 26 August 2002
Londrina, 31 August 2002

The Michigan-Columbia Exchange Project

As part of the Michigan-Columbia Project, the Center has hosted professors from Michigan Law School and Columbia Law School to participate in the post-graduate lecture series "An Introduction to American Law". Visitors this spring included Professors Arthur W. Murphy and Andrzej Rapaczynski from Columbia Law School, and Professors James C. Hathaway and Roderick M. Hills Jr. from Michigan Law School. In addition, Associate Professor Matsubara Kentaro of the University of Tokyo visited Columbia Law School in April 2002.

Arthur W. Murphy, Joseph Solomon Professor Emeritus in Wills, Trust, and Estates, Columbia Law School

Research Area: Product Liability, Administrative Law, Trust and Estates

Major Publications: LEGAL METHOD: CASES AND TEXT MATERIALS (with Harry W. Jones and John M. Kernochan, Foundation Press 1980).
CASES AND MATERIALS ON GRATUITOUS TRANSFERS, WILLS, INTESTATE SUCCESSION, TRUSTS, GIFTS, FUTURE INTERESTS AND ESTATE AND GIFT TAXATION (3rd ed. with Elias Clark and Louis Lusky, West Pub. Co. 1985).

Andrzej Rapaczynski, Professor of Law, Columbia Law School

Research Area: Corporate Governance

Major Publications: CORPORATE GOVERNANCE IN CENTRAL EUROPE AND RUSSIA (edited with Roman Frydman and Cheryl Gray, Central European University Press 1996).
The Role of the State and the Market in Establishing Property Rights, 10(2) JOURNAL OF ECONOMIC PERSPECTIVES (1996).

James C. Hathaway, Professor of Law, Michigan Law School

Research Area: International Refugee Law

Major Publications: *International Refugee Law: The Michigan Guidelines on the Internal Protection Alternative*, 21(1) MICHIGAN JOURNAL OF INTERNATIONAL LAW 131 (1999).
Framing Refugee Protection in the New World Disorder (with C. Harvey), 34(2) CORNELL INTERNATIONAL LAW JOURNAL (2001).
THE CHANGING NATURE OF PERSECUTION (forthcoming).

Roderick M. Hills Jr., Professor of Law, Michigan Law School

Research Area: Comparative Federalism, Land Use, Local Government Law

Major Publications: *State Authority in Germany and the United States* (with Daniel Halberstam), THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE (March 2001).
Poverty, Residency, and Federalism: States' Duty of Impartiality toward Newcomers, SUPREME COURT REVIEW 277 (1999).

Three Weeks at Columbia Law School
by Matsubara Kentaro

Alas, it *was* only three weeks. What could I possibly have to say, especially in view of the talk given to us by Professor Murphy (the peculiar combination of a Japanese deference to one's elders and an upbringing amid British formalities makes it singularly difficult for me to refer to my venerable "exchange counterpart" by his first name) shortly after my return, titled "40 years at Columbia Law School"?

Besides, it wasn't just Columbia Law School I was trying to take in. This was my first visit to the United States since childhood, and I did go through some of the usual surprises experienced by someone first arriving on American shores, either from the Atlantic or the Pacific. Having been educated in an environment where the standard reply to the enquiry "how are you?" was "just about surviving", and an entirely acceptable answer to the greeting "good morning" would take the form of "that's what you think", the overwhelming "positive-ness" of everyday dialogue ("I'm Great. And you?" "Excellent") took a certain amount of getting used to. Alternatively, the number of perfectly decent-looking Szechuanese or Cantonese restaurants offering "Sushi Every Day" as their draw was certainly an eye-opener for this Japanese who had been impressed in the past by the supreme self-confidence on the part of the Chinese concerning their cuisine. On the latter point, however, I should have remembered from my research how the Chinese in my case-studies would pragmatically make use of any law, regulation or tradition, be it Chinese custom, Japanese or British colonial law, in order to get ahead of each other in their family feuds.

I had looked forward to this trip for a number of reasons. First of all, my field of research, which involves traditional Chinese legal institutions and their modern transformations through interaction with "western" legal systems, has drawn a great deal of insight from research that came out of Columbia –not just from the Law School, but also the departments of history and anthropology– over the years. The prospect of meeting and discussing with the leading specialists there over a period of time was enough to make me take this exchange professorship without thinking twice. Secondly, as most readers of the *ICCLP Review* will know, Japanese legal education is currently undergoing a process of major reform, which is to include the establishment of American-style, graduate-level law schools. With lingering doubts about the efficacy of such reform plans, this was going to be my opportunity to see how a law school really did work, through taking part in its teaching.

My three weeks did not disappoint me on either count. The discussions I was able to have with some fellow scholars are developing into a couple of new long-term research projects for me. I had an excellent group of students, who not only tolerated, but appeared to take an active interest in, what must have seemed a rather unusual series of lectures for a "Japanese law" course. I just hope that my ramblings on the comparisons that could be made between Japanese and Chinese legal traditions, interactions between the two legal cultures in the processes of modernisation, and the historiographical problems inherent in such enquiries, did not seem completely futile.

I had another reason to look forward to going on this exchange, and this for me signified American hegemony in the contemporary world more than anything else. A disturbingly high percentage of my closest friends had, one by one, based themselves in the vicinity of New York. Their origins were scattered over London, Kobe, Chicago, Beijing and Natal. I had met none of them in the US, and they had all been to university outside the States. Moreover, none of them had ever shown any real enthusiasm for living or working in America (especially the one from Chicago). Considering these factors, their very presence was a true testament to the opportunities this country was capable of offering.

My friends had varying accounts of how life had changed after the terrorist attacks of last year, and given the diversity of their personal interests and political orientations, this was not surprising. However, their descriptions as to how the American flag had come to adorn pretty much every other

shop window and street corner, brought my mind back, in a roundabout way, to the current reforms in Japan's legal education.

The psychological effect of the sight of the national flag flying everywhere you turn must vary. To a moderately historically minded Japanese, it could very often be one of discomfort, reminding one of his/her own country in World War II. This is especially the case when the flags imply unity against an enemy. Perhaps the comparison seems unfair. Indeed, the political contexts are completely different, and some of the motives at work may be diametrically opposite. But a government-initiated boost in nationalistic pride, the prevailing political language of "good" and "evil", the intolerance of any form of criticism toward the political leaders on the grounds that this was not the time for such internal division, these are factors that do ring warning bells. While it takes courage to fight for one's country, it takes another type of courage to stand against prevailing opinion, especially when the prevailing opinion is backed by military force. (I am immediately reminded of a story Prof. Adam Roberts –no stranger to the ICCLP, and this time sheer habit prevents me from calling him Professor Sir Adam– once told me, about meeting Sir Isaiah Berlin on the street in Oxford one day, waiting for a bus. Prof. Roberts, being Prof. Roberts, casually asked Sir Isaiah "Are there any universal norms?" The answer that came –related to me with what I thought was an inspired attempt at an impression– was: "No, there are no universal norms. The only universal value, is courage." I am not entirely sure how this fits in with Sir Isaiah's famous conception of pluralism, but the story does influence my reading of his works when I go through them with my first-year undergraduates.) In the case of wartime Japan, only a minimal number of intellectuals could show such courage.

The Law Faculty of the University of Tokyo was one of the very few liberal strongholds in wartime Japan, which could actually function close to the heart of the establishment. This did not necessarily mean that all, or even a majority of, its members were critical of the establishment. However, there was a community of scholars within which opposing views could be discussed with a certain degree of freedom, and to have preserved such an environment throughout the thirties and the war years –especially when there was actual danger of the Law Faculty itself becoming a target of terrorism initiated by extremists within the army– was no mean feat. The culmination of such a tradition came at the end of the war, when a group of seven professors risked their lives initiating a movement to bring the war to an early end.

Such a tradition had much to do with the fact that the Law Faculty, established in the early stages of modernisation, was not conceived as an institution aimed solely at vocational training for the legal profession. It was established more as a school to train the human resources that could take charge of the institutional aspects of a modern state. This context nurtured the strong tradition whereby members of the faculty would be involved, in various capacities, in the governance of modern Japan. The dialogue among scholars in law and politics concerning public affairs was from the start a fundamental part of life at the Law Faculty. Moreover, this dialogue appears to be one of the factors comprising the strength of both legal and political studies in this faculty. If the current reform is to mean the end of such a tradition, it would be a great loss.

Nevertheless, one thing I did see in the three weeks at Columbia was that a vibrant community of scholars committed to discussing diverse ideas, with an involvement and interest in public affairs, was something that could be achieved in a "Law School". There are many people I would like to thank in allowing me to see (and to some extent, participate in) that community, but I will here mention two in particular. Curtis Milhaupt, who gave me the opportunity to talk to his students, and also actively took part in my talks. And Amanda Maurer, whose kind help, which included the loan of a Zagat restaurant guide on arrival, enlightening me on 20th century Russian literature over cups of coffee, and finally sending me back the books I had used for my lectures, was absolutely invaluable. If another opportunity of spending any length of time there arises, I would certainly jump at it.

[November 2002]

Childhood Memories and My Experience in Japan
by Aurea C. Tanaka

Like most children, the first words I said when I started speaking were "Mom" and "Dad". The only difference was that it was in Portuguese, my mother tongue. But amazingly, one of the first songs I learned was that one that begins like this: "*Ai shichatta no yo, lalalala; Ai shichatta no yo lalalala…*". It was not a children's song in Portuguese, but one of the many Japanese songs that my parents, uncle and aunt used to listen to on our weekend trips.

After that, of course, I learned all those children's songs in Japanese: "*Haru ga kita, haru ga kita, doko ni kita…*", "*Otete tsunaide…*" and so on. My childhood was full of Japanese words, and in my innocence, I thought they belonged to my mother tongue.

I remember one day at school, around the beginning of winter, I made this comment to my friend: "The winter is coming and it is cold because last night I had to sleep with my *mofu.*" As she stared at me, her eyes reflecting her incomprehension at what I had said, I thought: "Well, maybe she does not have any *mofu* at her house." I was 7 or 8. I talked about this episode with my Mom and then she told me that the Portuguese word for *mofu* was *cobertor* (blanket in English).

Thus I started realizing that there were many Japanese words in our daily conversation at home; I always had to keep in mind that a typical Brazilian child might not understand what I was talking about. These kinds of episodes unmistakably highlighted my early contact with the Japanese language, as well as my unique education, enriched with what I call "Japanese things".

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My maternal grandparents went to Brazil in the early 1930s. Before that, they were living on a small Japanese island called Madarashima in Saga Prefecture. At that time, they had already had five children and my elder aunt asked my Grand-Dad whether they could move to a warmer climate as she did not enjoy the cold winters in Japan. In fact, she had heard about Japanese who were immigrating to a country called Brazil. And so, they decided to go as well.

During the same decade, the '30s, my Dad's father went to Brazil. He was eighteen years old and as he had already decided to go to Brazil, he started taking Portuguese classes at Sophia University and adopted the Catholic religion.

They made their trip to Brazil in one of the several ships that took immigrants to that far tropical land.

Oliveira Lima, the first Ambassador of Brazil to Japan, while still traveling by ship from Naples, Italy, to Yokohama, Japan, started taking notes about his impressions, which resulted in the book "In Japan: Impressions of the Land and the People". He compared his 40-day journey to that described in a book he was reading, which was a diary of a trip from Lisbon to India, a trip occasioned by many deaths caused by the lack of medicine, poor hygiene and the oppressive heat. Ambassador Lima remarked that it was with a selfish pleasure that he noticed his ship was clean, the doctor was idle owing to lack of patients and the ten stops previously scheduled were punctual.

I wonder about my Grandparents' trip to Brazil in a ship. And more than that, I wonder what they would say about my trip to Japan, which lasted only a little more than 22 hours in an airplane?

I brought up these reminiscences of my family history in order to express my feelings about being in Japan. These feelings and the unique blend of cultural experiences which nurtured them are evoked by my sense of the "old mixed with the new." There is a place in Tokyo, among many, where we are able to notice this mixture of old and new: Meiji Jingu Shrine. If one stands directly in front of the shrine, and looks up at the roof on the right side, it is possible to see one of the skyscrapers in Shinjuku. This

is a picture of the past and the present, the medieval superimposed on the background of the modern – much the way I see myself.

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I grew up with the image of my Grandparents as being typically Japanese. I know now that my perception was not quite accurate, as they had had to adapt themselves to the Brazilian environment and culture. They represented an old Japan, the Japan they knew until they had left. And somehow, this is the Japan I have inside me.

When I invited Professor Ninomiya, my Brazilian advisor, to visit Komaba, the place where he lived for almost ten years of his life, he said that he might come someday. His reluctance is due to his knowledge that everything in Komaba has changed and the buildings where he used to live have been replaced.

There is a Brazilian writer, Rubem Alves, who says that memories are everything our hearts tasted and loved. We keep them in a special place in our hearts. They remain steadfast, serene and as time goes by we are sometimes naïve to believe that reality might remain unchanged like our memories.

As Professor Ninomiya does not want to see how much the place he lived for several years has changed, I guess that if my Grandparents came to Japan, they might experience feelings of joy and sadness at the same time. They might feel joy noticing that the living conditions have improved a lot, compared to the beginning of the last century… And perhaps a bit of sadness upon discovering that their memories, and everything that provided a context for them, might be found only in their hearts.

Would my Grandparents be shocked if I took them for a walk in Shibuya, a neighborhood popular with the young Japanese? Probably. I live in the 21st century and even now when I go there, I find myself still surprised with the fashion and behavior of the new Japanese generation. This is not the Japan my Grandparents knew and this is not the Japan I saw more than ten years ago, when I came here for the very first time.

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I wonder if the challenges I have been experiencing in my daily life have some relation to the image of Japan I have inside me? Because I grew up with an old image of Japan, I sometimes find it difficult to identify with how the Japanese people have changed in the wake of all that has happened since the Second World War. I am not Japanese, but I look like one. In my attempt to fulfill expectations, I sometimes freeze when speaking Japanese, afraid of making mistakes and of not speaking or behaving like a Japanese would. I find myself feeling like a *gaijin*.

What happened to that small world filled with "Japanese things" I had in me?

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It is amazing how the spoken language is related to physical appearance. Some Americans and Europeans I know, who speak Japanese fluently, feel upset because although they know the language, Japanese people sometimes insist on speaking English with them. It took me a long time to realize that this is part of their sense of politeness and of being kind to foreigners. Even knowing this, it is still hard to forgive that lady who, more than ten years ago, answered me with a "yes" when I placed an order in Japanese in a restaurant in Tokyo. I thought my Japanese was so bad that she could not avoid speaking in English with me.

But it is not only in Japan that people expect me to speak Japanese. This happens in Brazil too. I remember that when I went to Salvador, an enchanting historical city located at the northeast part of Brazil, a shop attendant started talking to me with gestures. He thought I was Japanese. I kept quiet because I did not want him to stop the crazy-looking gestures he was frantically doing in order to make himself understandable - I thought this scene was hilarious and could not contain my amusement. But then, I could not stop thinking that I had no outwardly visible physical traits that might have identified me as Brazilian.

A Japanese face and a Brazilian soul?… Maybe more than only a Brazilian soul, since I feel somehow that I have held onto those "Japanese things". What makes me Brazilian and what makes me Japanese? I would like to think that I am both. My Brazilian side prevents me from being Japanese and my Japanese side does not allow me to be a typical Brazilian. This is a paradox that I will live with for the rest of my life.

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I would not think about these things so deeply if I had come to Japan only for a short duration. But as I am living and studying here, these thoughts bloom naturally in my daily life and contact with Japanese people. They make me think about what it was like for my Grandparents living in a land that was not theirs; trying to communicate in a language they did not know. Did they feel Brazilian people were cold and that Brazil would never be their homeland?

When we move to another country, we lose everything that is familiar to us. Our sensitivity becomes more acute and until we get used to the new life, it takes time to become acclimatized. It is natural to find everything dry, the people cold, and the culture different.

Until the moment we are able to discern what is beyond the language barrier, *namely* the culture, we might not be able to feel comfortable anywhere. This is part of the challenge of "letting in" a foreign culture, much like prying opening a very heavy door or window to let in sunlight. If we block the sunshine, we will always live in the dark, feel cold and will never be able to grow. The task is to evoke our child-like sense of wonder and appetite for adventure, so we can discover a whole new world when we open that window to the sun, letting in the type of enlightenment that warms our hearts and minds, helping us perceive things through various perspectives.

And as we cast our own range of light and colors onto the new places we inhabit, and as we ourselves are transformed by the colors that are reflected back upon us, we will be able to find what we at first thought was not there: the warmth of familiar places and people. And then we begin the process of collecting precious memories in our hearts all over again.

[June 2002]

Football and Politics
by Hugo Dobson

So, another World Cup is over. The jointly hosted Japan-Korea World Cup was characterized by surprise and shock, lacked a truly classic game, and yet the best team rightly won. Once again England returned home earlier than hoped for after having failed to realize the ambitions of the nation. Since 1966 (the one and only occasion that England won the World Cup, for those who are blissfully ignorant) this has been a regular disappointment that most English people have come to live with every four years (assuming that the team actually qualifies for the tournament in the first place). Being English, we face up to our shortcomings with stiff upper lips and then begin to concoct a series of excuses ranging from the bounciness of the ball to the climate and food of the host country. Very rarely do the players come in for criticism. Rather, they are portrayed as brave bulldogs cruelly defeated by one of the stronger nations in some underhand fashion, usually a penalty shoot-out. Probably only in England could missing a penalty and thereby sealing the fate of the national team be re-interpreted as an act of heroism and bravery. However, this time the team that returned from Japan was subject to a relatively mild level of criticism. Yes, England had gone out to one of the stronger teams, Brazil, after having led for the first half. Yes, England was undone by what was regarded cruelly as a 'freak' free kick. But, the team performed quite meekly in most of its games only managing to draw with Sweden and Nigeria and demonstrating no ability to come back against Brazil after relinquishing the lead. The England fans and players only had the victory over old rivals Argentina as consolation and are already making plans for the 2004 European championship in Portugal and the 2006 World Cup in Germany.

Recently and for a variety of reasons I have found myself beginning to combine some of my academic and non-academic interests. Two years ago I came to Japan to research the political use of postage stamps as propaganda. This summer I penned an essay on depictions of Japan in the American cartoon series *The Simpsons*. Thus, in these circumstances, to opine upon the relationship between politics and football appears like the only right thing to do. It may also distract me from dwelling upon England's performance in the recent World Cup.

Sport is an activity that is meant to be divorced from the state and, in the Olympic spirit, international competitions and tournaments are intended to bring peoples together. One only has to think of the almost apocryphal Christmas Day football match of 1914 on the trenches of northern France where British and German soldiers laid down their arms and conducted the first unofficial international football match between the two nations (history records that the Germans won 3-2, probably by a hotly disputed penalty thereby setting the tone for the rest of the century). Equally, FIFA's logic in awarding the 2002 World Cup to both Japan and South Korea was to foster good relations between two nations with a tradition of mistrust and animosity. However, often it has appeared that sport has been a victim, or worse a tool, of political rivalry. Probably the most well-known and dramatic example of politics and football colliding with each other is the Latin American 'Football War' between Honduras and El Salvador of July 1969. Although rooted in a number of more important socio-political and economic causes, the catalyst for this conflict was the qualifying match for the 1970 Mexican World Cup in San Salvador between the two nations where the Honduran flag and national anthem were insulted by opposing fans and trouble broke out on the terraces. A few days later diplomatic relations were broken off and the following month military operations began. Although lasting only a week or so, this conflict resulted in over 2,000 casualties.

Two nations going to war is probably the worst-case scenario. However, a number of other surprising examples of politics and sport proving to be a dangerous cocktail can be mentioned. When Holland beat the favourites and their old rivals, Germany, on Bavarian soil in the semi-final of the European championship of 1988, tensions boiled over and the fighting between players was captured on television including most memorably Frank Rijkard twice spitting in Rudi Voller's carefully coiffured perm. The celebrations back in Holland rivaled the celebrations of Holland's liberation from German occupation during the Second World War and in actual fact it was this history that fuelled the resentment between the two nations. Yet, it is not only national rivalries that matter. Religious rivalries

between Catholics and Protestants have been mirrored in footballing rivalries most notably and violently between the Scottish clubs Glasgow Celtic and Glasgow Rangers. However, lesser known religious rivalries also exist between Manchester and Liverpool's clubs.

Governments often take a keen interest in football—maybe not surprising considering the financial benefits and increase in national prestige if the national team succeeds. To this end, governments have used carrot and stick tactics to encourage their sides. On the one hand, they have provided incentives. South Korean players were exempted from national service for reaching the semi-finals of the recent World Cup. North Korean players were presented with material rewards after beating Italy in the 1966 English World Cup. On the other hand, governments have also readily doled out punishment. In 1997 rumours and accusations circulated that Saddam Hussein's son, Uday, in his capacity as president of Iraq's football federation had sanctioned the torture of Iraqi players for losing a World Cup qualifying game to Kazakhstan. Equally non-governmental actors are often entangled in football. Nike, the multi-billion dollar sportswear company, was accused of trying to influence Brazilian team selection in the final of the 1998 French World Cup to ensure that the star player and centerpiece of its advertising campaigns, Ronaldo, appeared in the final despite suffering a seizure on the morning of the game. Southeast Asian gambling cartels have sought to rig English premier league games. My own side, Newcastle, beat Liverpool 3-0 in a game where it was suspected that the Liverpool goalkeeper was receiving bribes to throw the game (I still maintain that Newcastle's fluency of passing and striking ability won the game). Equally, but employing more extreme methods, Latin American drugs cartels have sought to rig football games and influence team selection. These activities turned to tragedy when the highly touted Colombian national team returned home from the 1994 US World Cup having lost to Romania and the US. During the latter game Colombia's defender Andres Escobar experienced every defender's nightmare and was unlucky enough to score an own goal that determined Colombia's defeat and numerous gambling losses. What followed beggars belief but almost a week after returning home, Escobar was shot and killed in his hometown.

The great Liverpool manager Bill Shankly is famed for saying 'Some people believe that football is a matter of life and death. I'm very disappointed with that attitude. I can assure you it is much, much more important than that'. Famed for his acerbic wit, Shankly's words have probably been quoted so many times that they have lost any of their intended original meaning. Obviously nobody would try to suggest (especially to the Escobar family) that football is more important than life and death. However, it is clear that football is more than just a game and rather reflects the political systems and societies in which we live.

[October 2002]

The Role of the Football in British Films
by Wada Keiko

Whilst watching the 2002 Korea-Japan World Cup on television, I was struck by the beauty of the expressions on the faces of the players. During the camera's close-ups, both control and exhilaration were expressed on the faces of the players of both teams, and there in the middle of it all was a brand-new football. The colours and design of the official ball of the World Cup gave a very different impression from the kind of ball to which we are accustomed with its black and white, hexagonal, patchwork design. Every time I see this new ball, the image that springs to mind is not that of a brand-new, spotless ball, rather it is the muddied football that I have seen in films.

Contemporary British films first attracted attention in Japan in the second half of the 1990s. Up until that time, with the exception of James Bond films, British films were mostly represented by costume dramas based on historical events or literary works, or by the highly individual work of directors like Peter Greenaway and Derek Jarman, and got little exposure. Even today it would be an exaggeration to say that video shops in Japan are able to boast a comprehensive collection of British films. However, over these last few years a surprising number of British films have come to be screened in Japan, especially in art-house cinemas.

The penetrating depictions of British society in the work of Ken Loach were first shown in Japan in February 1994 at the 'Theatre 300' in Sengoku, Tokyo with the screening of 'Raining Stones' and 'Riff Raff'. Thereafter, in June 1996 at Ciné Vivant in Roppongi (a cinema that has since closed), a festival of nearly all of Ken Loach's films opened and went on to tour the main cities of Japan. Since then, due to films such as Danny Boyle's *Trainspotting*, Michael Winterbottom's *Welcome to Sarajevo* and Mike Leigh's *Secrets and Lies*, British films have come to be widely talked about. But probably out of all of these films, Peter Cattaneo's 1997 film *The Full Monty* is the one that most people across the world will have seen.

It is impossible to separate British films that depict the working class from the subject of football. Films such as Maria Giese's 1996 film *When Saturday Comes* and Mark Herman's 2000 film *Purely Belter* have directly taken football up as their main theme and depicted both the football itself and the game being played at the professional, amateur and schoolyard levels.

Ken Loach's 1969 film *Kes* starts with a scene that signifies the young hero of the film's isolation and alienation from school by showing the miserable time he spends playing football there. The hero of Hettie MacDonald's 1996 film *Beautiful Thing* (unreleased in Japan) runs away from playing football at school and goes home. The film develops from this opening scene of renunciation of a traditionally and symbolically male sport into a homosexual rejection of a violent masculinity. The hero in Michael Winterbottom's film of the same year *Go Now* has to drop out of the local amateur football team after he realizes that he is becoming debilitated by multiple sclerosis. Ken Loach's 1998 film *My Name is Joe* begins with the hero of the story having conquered alcoholism and managing the local amateur football team. In Michael Winterbottom's 1999 film *Wonderland*, the child of a divorced couple spends his weekends with his father going to watch their favourite football team. However, when their team loses, the enjoyable time they had spent together is spoiled. In *The Full Monty* the heroes, who are unemployed steel factory workers, form a football team. During the Thatcher administration of the 1980s, policies favouring the freedom of the market and traditional family values were promoted. However, these policies also led to high unemployment rates and an increasing divide between rich and poor. As a result, traditional relationships between men and women and families, although promoted by Thatcherism, began to break down. The disparity between the idealism of neo-liberalism and its policies brought about changes in relationships, which are depicted in a number of ways (heterosexual, homosexual, parental, familial) in *The Full Monty*. Women and wives employed on a part-time basis as supermarket assistants break up the traditionally male-dominated society; women begin to pursue men and create spaces where only they can enter—in other words, a male strip club; and as a final attempt to make some money the unemployed men decide to take the stage and become

male strippers themselves. Whilst practicing their dance steps, football demonstrates its influence over them. They reach a point where they are unable to co-ordinate their dance steps and make any progress, however, this is overcome once they realize that the movements in football and dancing are the same thing. Once they realize this, their attitudes become positive and dancing and football are connected in this way.

Football is a symbol in films of the strength of fraternity within the British working class. In contrast, the ball itself is used to symbolize solitude. *Trainspotting* tells the story of a group of Scottish teenagers in Edinburgh who spend their days avoiding work, taking drugs and getting into fights. The hero of the film decides to quit drugs and sort his life out by moving to London and finds a job as an estate agent. He returns to the flat of his friend, who has died of an overdose, and finds only a football rolling around on the floor. From previous scenes we know that this is the ball that the group of friends, unable to escape their world of drugs, used to play with.

In order to play football a man need friends. But when friends move on and the man is left alone, unable to go outside and kick a ball, both his mind and body begin to weaken. He retreats to his room and plays with the ball by himself, but his strength to move the ball ebbs, and he dies. The ball found by the hero of the film in the empty room expresses in a single message on the screen his friend's lonely death.

Some time ago in Japan playing catch for men was part of the father-son relationship and probably symbolic of the first departure from maternal relations. In contrast, whilst watching British films it appears that the symbolism of this kind of relationship differs depending on class. Although today football has transcended class and permeates every level of British society, male relationships revolve around cricket for the middle classes and football for the working classes. The working classes have identified football as symbolic of, and scampering after the ball together as the basis for conducting, these relationships. For them this expresses the strength of male friendship in a steadily disappearing male-dominated society. In British films of the 1990s it seems that in the vast majority of scenes the game of football depicts the interplay between men and their friendships. Therefore, a scene with a solitary football suggests the collapse of these relationships. The scene in *Trainspotting* with a single ball in an empty room is the one with the greatest impact in conveying the meaning of a lonely death.

These were my thoughts when I saw the ball that was used in the World Cup with its intricate design, but in a different way there is another change. The new ball with its novel design overturns the traditional image of the ball and suggests something about society. In the 1996 Atlanta Olympics women's football was first recognized as an official event and no longer just a sport for men. In a society in which masculinity is in retreat and female toughness is evident it can be expected that in British films the meaning of both football as a sport and the football itself will change. This is what struck me when I saw the new ball at the beginning of each game.

[June 2002, *Translated by Hugo Dobson*]

Comparative Law and Politics Seminars & Forums

Held at the University of Tokyo, Graduate School of Law and Politics, April 2002-October 2002.

[Seminars]

The 125th Comparative Law and Politics Seminar? 19 April 2002
Speaker: Professor James C. Hathaway, University of Michigan Law School
Topic: Refugee Law is Not Immigration Law
Language: English
Moderator: Professor Terao Yoshiko
*Co-organized with Anglo-American Common Law Study Meeting

The 126th Comparative Law and Politics Seminar? 7 May 2002
Speaker: Professor Andrzej Rapaczynski, Columbia Law School
Topic: Does Ownership Matter?: The Impact of Ownership on Corporate Performance
Language: English
Moderator: Associate Professor Asaka Kichimoto
*Co-organized with Anglo-American Common Law Study Meeting

The 127th Comparative Law and Politics Seminar? 23 May 2002
Speaker: Professor Chang Dal-Joong, Seoul National University
Topic: Korean Democratization in Comparative Perspective
Language: Lecture in English without translation, Discussion in Japanese and Korean with translation
Moderator: Professor Fujiwara Kiichi
*Co-organized with Seminar of Comparative Politics, the University of Tokyo Graduate School of Law & Politics, Seminar of Political History, the University of Tokyo Graduate School of Law & Politics, Association for Contemporary Korean Studies in Japan

The 128th Comparative Law and Politics Seminar? 25 May 2002
Speaker: Professor Chang Dal-Joong, Seoul National University
Topic: Sunshine Policy and North-South Korean Relations
Language: Lecture in English without translation, Discussion in Japanese and Korean with translation
Moderator: Professor Shiokawa Nobuaki
*Co-organized with Seminar of Comparative Politics, the University of Tokyo Graduate School of Law & Politics, Seminar of Political History, the University of Tokyo Graduate School of Law & Politics, Association for Contemporary Korean Studies in Japan

The 129th Comparative Law and Politics Seminar? 14 June 2002
Speaker: Associate Professor Ilhyung Lee, University of Missouri School of Law
Topic: The Study of Dispute Resolution Methods in the U.S. Law Schools
Language: English
Moderator: Professor Higuchi Norio
*Co-organized with Anglo-American Common Law Study Meeting

The 130th Comparative Law and Politics Seminar? 19 June 2002
Speaker: Professor Roderick Hills Jr., The University of Michigan Law School
Topic: Affordable Housing and Local Democracy: How Can We Get the Benefits of Popular Participation without Exclusionary Zoning?
Language: English
Moderator: Professor Terao Yoshiko
*Co-organized with Anglo-American Common Law Study Meeting

The 131st Comparative Law and Politics Seminar? 6 July 2002
Speakers
& Topics: Professor Antony Anghie, The University of Utah, ICCLP Visiting Professor
"Colonialism and the Birth of International Institutions: Sovereignty and the Mandate System of the League of Nations"
Professor B.S. Chimni, Jawaharlal Nehru University, ICCLP Visiting Professor
"Towards a Radical Third World Approach to Contemporary International Law"
Language: English (with summary in Japanese)
Moderator: Professor Onuma Yasuaki
*Co-organized with the University of Tokyo International Law Seminar

The 132nd Comparative Law and Politics Seminar? 9 September 2002
Speaker: Ms Jill Callahan Dennis, Lawyer, Director of AHIMA (American Health Information Management Association)
Topic: Health Care Information Privacy Rule in the U.S.
Language: English
Moderator: Professor Higuchi Norio
*Co-organized with Anglo-American Common Law Study Meeting

The 133rd Comparative Law and Politics Seminar? 13 September 2002
Speaker: Professor Anthony Carty, University of Derby, ICCLP Visiting Professor
Topic: Critical International Legal Studies and Contradictions in National Identity. The Competing Claims of National Security and the Rule of Law: The UK Reservations to its Acceptance of the Optional Clause Jurisdiction of the ICJ in 1957 and the Fear of Japanese Litigation against the UK over its Nuclear Testing.
Language: English (with summary in Japanese)
Moderator: Professor Nakatani Kazuhiro
*Co-organized with the University of Tokyo International Law Seminar

The 134th Comparative Law and Politics Seminar? 3 October 2002
Speaker: Professor Marc Rodwin Suffolk University Law School, Visiting Research Scholar of Graduate School of Law and Politics, the University of Tokyo
Topic: Physician's Conflict of Interest
Language: English
Moderator: Professor Higuchi Norio
*Co-organized with Anglo-American Common Law Study Meeting

The 135th Comparative Law and Politics Seminar? 16 October 2002
Speaker: Professor Jacques Capdevielle, Research Director at the CEVIPOF (Center for the Study of French Political life) - FNSP (France), ICCLP Visiting Professor
Topic: Les services publics "à la française" à l'épreuve de la construction européenne (French Understanding of Public Services Confronted with the European Commission Policy)
Language: French (with Japanese interpretation by Associate Professor Nakayama Yohei)
Moderator: Professor Kitamura Ichiro
*Co-organized with the European Law Seminar and Franco-Japanese Society of Political Science

[Forum]

The 118th Comparative Law and Politics Forum? 20 May 2002
Speaker: Professor Emeritus Arthur W. Murphy, Columbia Law School
Topic: Fourty Years at Columbia Law School
Language: English
Moderator: Professor Kashiwagi Noboru
*Co-organized with Anglo-American Common Law Study Meeting

The 131st Comparative Law and Politics Seminar-6 July 2002

Professor Antony Anghie

Colonialism and the Birth of International Institutions: Sovereignty and the Mandate System of the League of Nations

This particular paper develops the thesis that colonialism was central to the formation of international law, and sovereignty doctrine in particular, by exploring the way in which international law addressed colonial problems in the period between the First and Second World Wars. It focuses on the novel task undertaken by the League of Nations, the first universal international institution, the task of developing self-government in certain colonial territories with a view towards eventually making some of those territories independent sovereign states. This radical project was to be undertaken by the Mandate System of the League of Nations. The paper explores the relationship between two unprecedented developments in international law, the project of creating sovereignty out of colonial territories, and the establishment of the international institutions entrusted to bring about this transformation. The broad argument is that an examination of the Mandate System reveals issues of enduring theoretical and practical significance about sovereignty, international institutions, and the management of relations between European and non-European peoples. In particular, an examination of the Mandate System reveals the development of new technologies used for the purpose of managing non-European peoples and creating neo-colonial relations which serve to ensure that non-European states, while acquiring formal sovereignty remained economically subordinated to the developed states. Seen in this way, the successors of the Mandate System are the World Bank and the International Monetary Fund, which play an extraordinarily intrusive and often damaging role in the political and economic affairs of developing countries. An examination of this history helps us understand the unique character of third world sovereignty.

Discussion:
The discussion focused on a number of questions was raised about the mandate system. Was the mandate system simply a disguise for colonialism? Was it useful to employ the term `sovereignty' to describe non-European forms of rule and governance? Was the mandate system effective in achieving its ends as an international institution? Was the concept of self-determination of any use in furthering the interests of non-European peoples. There was also discussion arising from the links between this paper and Professor Chimni's paper.

[Antony Anghie]

The 131st Comparative Law and Politics Seminar– 6 July 2002

Professor B.S. Chimni

Towards a Radical Third World Approach to Contemporary International Law

In a Seminar held in Tokyo University on July 6 2002 organized by the International Center for Comparative Law and Politics and the University of Tokyo International Law Seminar the paper "Towards a Radical Third World Approach to Contemporary International Law" was presented. The paper outlines a radical third world approach to contemporary international law. In articulating the radical approach to contemporary international law the paper proceeds in the following way: First, it identifies the principal features, strengths and weaknesses of the third world approach to international law (TWAIL) in the first decades after decolonization (TWAIL I). The idea being to distinguish the radical approach (or TWAIL II) from TWAIL I. Second, the paper considers, albeit briefly, two alternative visions of reform of the present international legal order viz., the neo-liberal and the more critical "new approaches to international law" (NAIL). While the neo-liberal approach seeks to legitimize and sustain the current global capitalist order, NAIL deconstructs it in order to expose its hegemonic strategies and content. Both these approaches are articulated in the west but have adherents in the third world. The paper then contrasts these two models of reform with the radical model. The objective of the exercise is to spell out some of the methodological and sociological assumptions

which inform the radical approach to contemporary international law.

In the course of the discussions after the paper was presented a number of issues were raised with respect to it. Questions were *inter alia* asked as to how it differed from the approach outlined by TWAIL I, the responsibility of the third world countries themselves for the problems that these countries were confronted with, the meaning of neo-colonialism, and the the question of indeterminacy of international law, a proposition central to NAIL.

On the other hand, participants felt that it was important to appreciate the approach of third world countries to contemporary international law. In this regard the question was raised as to whether the radical approach accepted to go along with other critical approaches. It was emphasized in response that the radical approach wished to join hands with all those individuals and approaches that were critical of the redistributive consequences of the present international legal order. In this respect certain similarities between the radical approach and the feminist approaches to international law was stressed.

[B.S. Chimni]

The 126th Comparative Law and Politics Seminar - 7 May 2002
Professor Andrzej Rapaczynski
Does Ownership Matter?: The Impact of Ownership on Corporate Performance

Professor Rapaczynski has held a series of lectures on corporate governance for undergraduate and graduate students as one part of the Columbia/Michigan exchange project. In addition, he held this ICCLP seminar highlighting the impact private ownership has had on corporate performance, based on the empirical study of transition economies in Central Europe (Czech Republic, Hungary and Poland). This study is published by Roman Frydman, Cheryl Gray, Marek Hessel & Andrzej Rapaczynski, under the title "When Does Privatization Work?: The Impact of Private Ownership on Corporate Performance in the Transition Economies" (1999 Quarterly Journal of Economics 1153).

He suggested, first, that the concept of privatization, as interpreted by some representative (average) firms, obscures important cross-sectional variations, since the performance effects of ownership transformations vary significantly depending on the type of owners to whom control is given during the privatization process. Indeed, the post-privatization performance of companies controlled by certain types of owners is not significantly different from that of state firms along any one of the parameters he measured (the growth rate of revenue, employment, labor productivity, and costs per unit of output), while the performance of companies controlled by other types of owners is in some respects significantly superior to that of both state firms and the remaining privatized businesses.

In particular, his findings show that in the context of Central Europe, privatization has no beneficial effect on any performance measure in the case of firms controlled by insider owners (managers or employees), and conversely, that it has a very pronounced effect on firms with outsider owners.

Secondly, his study indicates that in those cases in which privatization is effective, its effect is very different depending on the examined performance measure. In particular, he showed that while the effect of privatization on revenue performance is very pronounced for certain types of owners, there is no significant effect of any type of ownership change on cost reduction. He hypothesized that the difference is related to the way in which ownership affects attitudes towards risks and uncertainty, and that such influence on attitudes is of substantial importance in understanding the role of ownership in corporate performance.

[Asaka Kichimoto]

The 118th Comparative Law and Politics Forum—20 May 2002

Professor Arthur W. Murphy

Forty Years at Columbia Law School

Professor Arthur W. Murphy, Joseph Solomon Professor Emeritus in Wills, Trusts and Estates at Columbia Law School, graduated from Columbia in 1948 but stayed on for one year as a teaching fellow. After an absence of fourteen years, he returned in 1963 to join the faculty. Professor Murphy described in great detail and based upon considerable personal experience the way in which Columbia Law School has changed over the past forty or more years. He began by mentioning the situation in the immediate post-Second World War period: Harvard, Yale and Columbia dominated the teaching of law whilst this period also saw a boom in legal education with the larger numbers of entrants to law school thanks to the G.I. Bill of Rights, which expanded opportunity by granting free tuition to returnees from the war.

After this postwar boom, the student body generally declined in strength and only improved in the 1970s. Columbia suffered during the 1960s and many of the faculty—one of the best in the world at the time—retired and little planning had been made to replace them. Also, newer institutions like Stanford Law School headhunted a number of Columbia professors. Although many top-level professors remained, Columbia was still suffering from an image problem. 1968 was the year of student unrest and Columbia became a battleground. The Law School was not affected as badly as other departments but the faculty still found itself divided over whether to support the students and was consequently distracted from conducting research. At this time Professor Murphy considered returning to legal practice due to the pressures of student unrest and crisis management but remained due to a number of reasons—one being an upcoming sabbatical.

In the 1970s New York as a city was in financial trouble and the day-to-day running of several of its services almost collapsed. Naturally this affected Columbia and other universities located in New York. However, the faculty remained united thanks to the strong direction of the Deans at the time and the Law School was able to overcome this difficult period and look forward to the remainder of the twentieth century, which were much better times for Columbia. There was much rebuilding on the university campus, including the Law School, its offices and facilities. This continues apace and currently the classrooms and dormitories are in the process of being newly constructed or renovated.

The biggest change, however, has been in the student body. On the one hand, the behaviour of students has changed. These days second- and third-year students are required to undertake community activities on a *pro bono* basis and this gives them valuable exposure to public interest involvement. In addition, an increasingly high number of students is graduating with a large amount of debt to shoulder. Not surprisingly students are often tempted into accepting highly paid, Wall Street jobs to pay off this debt; however, in contrast at Columbia if students enter into a public interest activity they may qualify for a loan waiver. Students are also more likely to enter work experience programmes with law firms during their vacations, a phenomenon that often warps students' expectations and attitudes. As a result of these specific changes and general trends, the curriculum has changed considerably and is currently under review.

On the other hand, the make-up and the size of the student body have also changed dramatically. For entry to the next academic year there have already been over 8,000 applications—the highest number in Columbia Law School's history. In contrast, when Professor Murphy first started teaching the student body was much smaller and more homogenous; for example, in 1968 few women and no minorities were admitted to Columbia, a similar state of affairs to when Professor Murphy was a student himself. However, currently fifteen to twenty percent of students are African-American or Hispanic American. Asian students are also well-represented, having previously been few in number and include, in the broadest sense, Asians of Chinese, Indian, Japanese and Korean origin. Today the classes are totally mixed; as regards some minorities, there have been deliberate, conscious attempts to recruit these students. In the case of Asian students it is more the case that students are now more

comfortable and amenable to studying law, in contrast to the traditional emphasis placed on the pure sciences. In a class of thirty, which Professor Murphy currently teaches, ten or more are of second-generation, East Asian origin.

In 1963 in a class of 300, there were twenty or so women and these women had to be extremely determined as there was little chance of finding work after graduation and they were often berated for taking a law school place away from a man. Professor Murphy and his first wife were contemporaries at law school and he knows all too well the difficulties that women encountered at this time. Now over half of the class entering its first year consists of women coming to law school for the same reasons as men and experiencing little difference in the kind of career they can look forward to after graduation. The teaching profession has also opened up to penetration by women. The first woman, Professor Ruth Ginsberg, was appointed in the 1970s and since that time it has become much easier for women to follow an academic career.

Professor Murphy also mentioned how the world of law practices has changed specifically in terms of women's career opportunities, chances of promotion and reproductive rights; but also generally in terms of size, loyalties, dismissal, workload and financial compensation. Professor Murphy illustrated all of these points with numerous personal anecdotes and fielded a number of questions on subjects including changes specific to Columbia Law School and generic to all US universities, the role of the Dean, and faculty-student relations.

[Hugo Dobson]

Visiting Research Scholars of the Graduate School of Law and Politics
April 2002? October 2002

Choi Kwang-Pil, Assistant Research Professor, Asiatic Research Center Korea University
Term: April 2002 – March 2003
Research Area: Reception of Modern Western Political Thought in Meiji Japan
Host: Professor Watanabe Hiroshi

Kwak Kwan-Kun, Lecturer, Konkuk University
Term: April 2002 – March 2003
Research Area: A Comparative Study on the Securities Regulation in Korea and Japan
Host: Professor Egashira Kenjiro

Papp Tekla, Associate Professor, University of Szeged
Term: April 2002 – June 2002
Research Area: The Principles and the Developement of Japanese Company Law
Host: Professor Yamashita Tomonobu

Kanno Satomi, Associate Professor, University of Ryukyu
Term: April 2002 – March 2003
Research Area: The Consumed Okinawa: Explication of the Structure and the Genealogy Creating the Double Image of Tragedy and Paradise, or Exoticism and Nostalgia
Host: Professor Watanabe Hiroshi

Yang Chun-Chi, Associate Professor, Hsuan Chuang University
Term: June 2002 – September 2002
Research Area: The Influence of Japanese Electoral Reform on Politics in the '90s
Host: Professor Kitaoka Shinichi

Robert Leflar, Professor, University of Arkansas
Term: June 2002 – August 2002
Research Area: Comparison of Japanese and American Strategies for Preventing Medical Error
Host: Professor Higuchi Norio

Lee Seok-Woo, Visiting Professor, Transnational Law and Business University
Term: July 2002 – June 2003
Research Area: International Law and the Resolution of Territorial Disputes over Islands in East Asia
Host: Professor Okuwaki Naoya

Huh Jun, Professor, Chungbuk National University
Term: July 2002 – June 2003
Research Area: Information Law: A Comparative Study on Japanese Constitutional System and Judicial Review
Host: Professor Hasebe Yasuo

Curtis Milhaupt, Professor, Columbia University
Term: August 2002 – December 2002
Research Area: Law and Transformation of East Asia
Host: Professor Kanda Hideki

Suh Geo-Suk, Professor, Chonbuk National University
Term: August 2002
Research Area: Organaized Crime
Host: Professor Nishida Noriyuki

Hugo Dobson, Lecturer, University of Sheffield
Term: August 2002 – September 2002
Research Area: Japan and G8
Host: Professor Takahashi Susumu

Liu Mingxiang, Professor, Wuhan University
Term: August 2002 – February 2003
Research Area: Comparative Research on the Crime of Violating Personal Rights
Host: Professor Nishida Noriyuki

Marc Rodwin, Professor, Suffolk University
Term: September 2002 – December 2002
Research Area: Comparative Health Law: Japan, France and U.S.
Host: Professor Higuchi Norio

Kim Sung-Tae, Professor, Yonsei University
Term: September 2002 – August 2003
Research Area: Recent Development in Company Laws (A Comparative Study)
Host: Professor Egashira Kenjiro

Yoem Gyoo-Seok, Lecturer, Kyoungpook National University
Term: September 2002 – August 2003
Research Area: The Theory of Civil Law in Japan; A Comparative Study with Korea
Host: Professor Nomi Yoshihisa

Jérôme Bourgon, Researcher, Centre National de la Recherche Scientifique
Term: September 2002 – June 2003
Research Area: Customs, Customary Law and Civil Law
Host: Professor Matsubara Kentaro

Han Tieying, Researcher, The China Academy of Social Sciences
Term: September 2002 – November 2002
Research Area: Japanese Modern Political History
Host: Professor Kitaoka Shinich

Patrick Köllner, Senior Research Fellow, Institute of Asian Affairs (Hamburg)
Term: October 2002 – November 2002
Research Area: Comparative Party Politics
Host: Professor Fujiwara Kiichi

Zhang Xiaoxia, Judge, Beijin No.1 Intermediate People's Court
Term: October 2002 – October 2003
Research Area: Intellectual Property Law
Host: Professor Nomi Yoshihisa

Chen Ying Fang, Associate Professor, East China National University
Term: October 2002 – November 2002
Research Area: Memory of War in China and Japan
Host: Professor Fujiwara Kiichi

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