

Report on the Overseas Internship Programme

I. Abstract

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(Rome, Italy)

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Theme to be involved : Contract farming

II. Missions achieved

Contract farming

UNIDROIT's 'Contract farming' is a project in which that institute and FAO will propose collaboratively a more universal 'legal guide' in order to provide a criteria to decide what is the 'fair' contract for all the parties concluding one relating to the contract farming.

'Contract farming' is, in general, defined as 'a form of supply chain governance adopted by firms to secure access to agricultural products, raw materials and supplies meeting desired quality, quantity, location and timing specifications, whereby the conditions of exchange are specifically set among transaction partners by some form of legally enforceable, binding agreement. The specifications can be more or less detailed, covering provisions regarding production technology, price discovery, risk sharing and other product and transaction attributes.' (Zero Draft of the future UNIDROIT/FAO Legal Guide on Contract Farming, Introduction, p. 3)

As we see, the general concept of the 'Contract farming' is based prerequisite on the multi-party involvement in spite of the traditional bilateral model of agricultural production contract. Thus the legal guide has to be conscious of the multi-dimensional relationships among more than 2 parties.

Another point of the said future legal guide is its 'universality'. This legal guide in progress will be adapted universally, i.e. regardless of the number, character or other elements of the contracting parties.

Enforceability is also one of the focusing points of this legal guide because this legal guide must regulate every stage of a life of contract, including one party's breach or the termination.

Specialized missions to be involved

First, I was engaged in the research on Asian situations of plant variety protection in order to clarify which acts possibly realized in Contract farming could be appreciated as an infringement of others' IP rights in Asian countries.

Second, according to the proposition of Ms. Frédérique MESTRE, professional staff at UNIDROIT, I worked on the revision of the draft legal guide itself in the light of IP law (especially to prevent *ex-ante* IP-related conflicts).

Research on Plant Variety Protection

The first theme I was involved in was the Asian situation on plant variety protection.

I chose this theme because Ms. MESTRE and Ms. Wenyi FU, my colleague and assistant professor at Kunming University, asked me to be engaged in researching which act could be regarded as a breach of intellectual property rights, especially the rights on new varieties. Ms. FU advised me to restrict my research object to the Indian law on plant variety protection, which has a *sui generis* system of protection other than the International Convention for the Protection of New Varieties of Plants (1961, called 'UPOV').

According to Ms. FU's advice, I undertook the research on the Indian system to protect plant varieties. On this job, I completed a working résumé in which I introduced many recent topics in Japan and some remarkable points of the Indian 'Protection of Plant Variety and Farmers' Rights Act, 2001'. It was a very interesting job because India has a *sui generis* protection system, which provides farmers' rights as somewhat stronger limitations onto the breeder's exclusive right than the commonly legislated limitations like reusing seeds on his/her own property (Japanese PVP and Seed Act, art. 20 (2)), and also Japan has many attractive examples that are not so known globally (e.g. Protection of the species of strawberry by breeder's right and/or registered trademark).

But I gradually felt that it was not sufficient to do the research only on the Indian situation in the light of the objective of this project. So I proceeded to make a comparative table that introduced the features of Asian national IP laws (especially breeders' rights and plant patent right) that are possibly related to Contract farming. It was a very heavy stuff because of several reasons : I researched each Asian countries (except ones of the Middle East), the IP law database published by World Intellectual Property Organization (WIPO) did not completely follow every

revision of national law, and also some countries does not provide an English translation of their national IP laws.

Ms. MESTRE kindly appreciated much my two reports and the efficiency on my two sorts of work.

Revision of the draft legal guide

As I mentioned above, this project has 3 major features : multilateralism, universality and enforceability. Therefore, the IP strategy of this project inevitably becomes multi-dimensional and complicated, though it's very important to force every party to respect the other parties' or third parties' IP rights. But only few clauses have been attached to the draft legal guide and their contents was totally insufficient in the light of IP laws because specialists on contract law were mainly engaged in this project.

Ms. MESTRE kindly found and appreciated Ms. FU's and my IP background and asked us to collaborate on the IP-related revision of the draft legal guide.

Thus, we started to work together on it. The draft has 70-80 pages per chapter (we are in charge of 2 chapters) so it takes not so short time to grab its structure and go through the somewhat IP-related paragraphs. In revising it, what Pr. Shiroyama taught me about licensing contracts at the School of Law helped me much. At this work, each of us had different opinions on a discussing point, so we took long time to discuss on it and we sometimes added respectively her/my own opinion to the draft. This experience of discussion occurred from the difference of legal cultures and the shortage of my knowledge about comparative IP law now stimulate me to learn more about the national IP laws all over the world.

Here I want to say thank you wholeheartedly to Ms. FU, who helped me much and took her time to discuss with me in dealing with her own work.

III. My experience and opinion

About UNIDROIT

What I was most surprised was the compact office of the secretary of UNIDROIT. Before I decided to join this internship, I thought UNIDROIT has very large body because its influence on the world of contract law seems to be so strong. But in reality it has around 20 staffs and 15 interns to make its great results.

Also, I felt the 'really' global mindset, which shall be indispensable for now or the near future. At UNIDROIT, we chatted mainly in 3 languages : English, French and Italian. We always chose the language in which the talking parties can

communicate with each other most fluently and more comfortably. Languages are not the summit to reach nor the goal to be global, but the media to talk with larger number of people, in other words, the prerequisite to join into the international community. I recommend my followers to learn not only English but also other European languages than English. If so, you will see broader world in this internship.

Furthermore, in reflecting the recent economic crises, many of my colleagues do not hesitate to hunt a job in foreign countries. We possibly feel less divided by the frontier in the Schengen area but I thought that we should not be stuck on our nationality even out of the Schengen area and think more freely about where to live and work. If we can communicate in the language of a community, we could be certainly accepted as a member of that community. The premise of nationality is not global. We have to think what is important to identify a member of community.

I owe my really global experience to UNIDROIT, the G-COE and my colleagues at UNIDROIT.



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About Italy

Italy gave me many great experiences.

First of all, she has so many cultural heritages, including the tradition of her food and wine. As you see, I'm strongly interested in intellectual property, so I was very glad to feel the ambiance of the mother land of intellectual property (in fact, many treaties relating to intellectual property are concluded or modified in Rome) and also I felt much the importance to touch and love the original as a well-known attorney in copyright law talked to me.

Moreover, I felt Italian people were very nice and humane. When I returned to Tokyo, I felt many Japanese people were largely depressed. It could certainly come from relational stress, too crowded commuter trains or long-lasting economic depression. Nevertheless, I think it comes potentially but mainly from the unreasonable attitudes of ordinary people. In Italy, I felt much de-stressed and great warmth of quotidian acts. I hope wholeheartedly Japanese people will be reasonable in the near future.

Finally, in relation to the 'really' global attitude, she taught me the importance to have the somewhat 'common sense' on European culture. Having not vast but some knowledge, that's enough. In order to be close to European colleagues, I felt some knowledge on Western art, literature or European wines was very helpful to make our conversation much more comfortable to each of us. So I recommend my followers to learn a little about it.

Acknowledgement

I'm convinced that it will be the greatest experience to change my life. I fortunately experienced it by the grace of the G-COE Business Law-Comparative Law and Politics Center, Faculty of Law, University of Tokyo, and all my friends encountered in my trip, especially my colleagues. I want to say great thank you to every of you. Thank you very much, wholeheartedly !