

## **ICCLP Annual Report 2006**

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#### **Publications**

## Visiting Professors

**Hong-Sik Cho**, Associate Professor, Seoul National University

(December 2005 – August 2006)

### *Profile:*

Associate Professor Cho was a district judge from 1989 to 1991 and an associate attorney at Lee & Ko from 1991 to 1992 after graduating from Seoul National University. He completed his LL.M and J.S.D degree at the University of California, Berkeley in 1993 and in 1995 respectively. He was appointed as a lecturer in 1997 and then an assistant professor in 1999 at College of Law, Seoul National University. He earned his current associate professorship in 2003. He also worked with the Korean government as a member of Regulatory Reform Subcommittee of Ministry of Environment of Korea. He is a member of Seoul Bar and New York State Bar. He specialises in administrative law. During his stay at the ICCLP, he gave a presentation entitled ‘A Lesson from the Recent Development of Korea's Environmental Law Regime: Are Public Awareness and Independent Courts the Key to Success of Environmental Enforcement?’ as part of a Comparative Law and Politics seminar. Professor Cho also contributed an article to *University of Tokyo Journal of Law and Politics* Vol. 4.

### *Major Publications:*

‘An Overview of Korean Environmental Law’, *Environmental Law*, 1999; ‘Law and Politics in Environmental Protection: A Case Study on Korea’, *Journal of Korean Law*, 2002; ‘Political Economy of Standing (I)’, *Seoul Law Journal* Vol. 46 no. 2 and no. 4, 2005; ‘Economics of Alternative Dispute Resolution: Focusing on “Environmental Dispute Adjustment Act”’, *Seoul Law Journal* Vol. 47 no. 1, 2006; ‘Political Economy of Korea's Environmental Protection’, *Rechtsreform in Deutschland und Korea im Vergleich*, Thomas Würtenberger (ed.), Berlin: Duncker & Humblot, 2006.

**Joachim Jens Hesse**, Professor, Free University of Berlin / Chairman of the International Institute for Comparative Government and European Policy

(April 2006, March 2007)

*Profile:*

After having studied at Free University of Berlin, University of Göttingen, and University of Kiel, Professor Hesse was obtained his Ph.D. from University of Köln in 1972. He has taught at University of Konstanz, University of Duisburg, German University of Administrative Sciences Speyer and University of Oxford. Professor Hesse earned his current professorship in 1996. He specialises in comparative politics. During his stay at the ICCLP, he gave presentations entitled ‘Public Administration at the Crossroads: NPM, “Governance”, or the Own Identity?’ and ‘One Size Fits All? Constitutional Change and Policy Adaptation in Comparative Perspective’ respectively. Professor Hesse was also invited to the class ‘Public Management’ and a workshop at the School of Public Policy a guest speaker. He contributed an article to the *University of Tokyo Journal of Law and Politics* Vol. 4.

*Major Publications:*

*Paradoxes in Public Sector Reform: An International Comparison*, co-ed., Berlin: Duncker & Humblot, 2003; *Das Regierungssystem der Bundesrepublik Deutschland*, co-authored with Thomas Ellwein, 2 vols., 9th ed., Berlin: De Gruyter, 2004; *Europa professionalisieren: Kompetenzordnung und institutionelle Reform im Rahmen der Europäischen Union*, co-authored with Florian Grotz, Berlin: Duncker & Humblot, 2005; *Vom Werden Europas: Der Europäische Verfassungsvertrag: Konventsarbeit, politische Konsensbildung, materielles Ergebnis*, Berlin: De Gruyter, 2006; *The Transition of the Public Sector: East Asia and the European Union Compared*, co-ed., Baden-Baden: Nomos, 2007.

**Anthony Grundy**

Partner, Head of Linklaters Tokyo

(May – July 2006)

*Profile:*

After studied at Oxford University, Professor Grundy worked as a Partner in Linklaters London, Tokyo, Hong Kong and Singapore. He has been a partner, head of

Linklaters Tokyo since 2000. Professor Grundy is a solicitor of the Supreme Court of England and Wales, and Hong Kong. He is also a special member of Dai-ichi Tokyo Bar Association. He specialises in Global Capital Market law. During his stay at the ICCLP he has lectured on financial law at the School of Law as a guest speaker.

*Publications:*

‘Kokusai shihonshijō eno nihon no sankā’, *Kokusai-bengoshi no 100nen 1897-1997*, Aoki • Christensen • Nomoto Houristujimusyo 1999; *English Law Disclosure Letters Memorandum* 2001; *Japanese CBs Memorandum* 2002; *Selling Restrictions and Filing Requirements Memorandum* 2003.

**Masato Ninomiya**, Professor, the University of São Paulo, Faculty of Law  
(December 2006 – February 2007)

*Profile:*

After studying at the Universities of São Paulo and Tokyo, Professor Ninomiya was appointed as an associate professor at the University of São Paulo and received his current professorship in 1986. He specialises in nationality law, private international law and problems related to *dekasegi*. During his stay at the ICCLP he has lectured on Ibero-American Law. He also contributed an article to *University of Tokyo Journal of Law and Politics* Vol. 4.

*Major Publications in Japanese:*

*Burajiruhō-yōsetsu: Hōrei-hanrei e no Aprōchi*, co-authored, Ajia-keizai Shuppankai, 1993; *Nippon-Brazil-ryōkoku ni okeru Nikkeijin no Rōdō to Seikatsu*, co-authored, Nikkan Rōdō Tsūshinsha, 1994; *Brazil Kaihatsuhō no Shosō*, co-editor and co-authored, Ajia-keizai Shuppankai, 1994; *Ponichi-Hōritsu-Yōgoshū: Glossario Portugues-Japones de termos juridicos*, co-authored, Yūhikaku, 2000; ‘Zainichi gaikokujin ni taisuru hōjōhō teikyō’ in *Jurisuto*, 2005; *Buraziru: Gijutsu-shido kara Seikatsu-Ibunka-taiken made* (Brazil: from training to experiences of life and culture), *Kagai Hito-zukuri Handbook* 27, Overseas Vocational Training Association, 2006.

### **Visitors from Overseas**

The ICCLP invited following two professors and a legal practitioner from overseas this year. They gave presentations as part of Comparative Law and Politics Seminars during their stay in Tokyo. (See pp. 10-22)

**Richard M. Alderman**, Professor, University of Houston Law Center

Term: 29 May 2006 – 18 June 2006

Research Area: Consumer Law

**Douglas G. Baird**, Professor, University of Chicago Law School

Term: 18 June 2006 – 25 June 2006

Research Area: Corporate Reorganization law, Contract Law

**Moritz Bälz**, Associate Lawyer, Freshfields Bruckhaus Deringer, Frankfurt

Term: 4 October 2006 – 1 November 2006

Research Area: Corporate Law

## **ICCLP Researcher**

### **Satoru Mori**

November 2006-

Mr. Mori studied in Ph.D. course at the Graduate School of Law and Politics, the University of Tokyo. He was appointed as ICCLP research scholar in April and then ICCLP researcher in November 2006. Mr. Mori is currently undertaking research on Anglo-American and Franco-American relations during the Vietnam War with a focus on the period between 1965 and 1968. His principal theoretical concerns are as follows: How does a superpower such as the United States attempt to mobilize support of those allies that do not spontaneously participate in a superpower-led coalition? If a superpower is inhibited from applying pressure on its allies, what are its strategies for maintaining alliance cohesion? Are non-troop-contributing allies able to exert influence on a superpower engaged in armed intervention? How can allies play the role of a mediator in a meaningful way? Do allies matter at all on the diplomatic front to a superpower that is engaged in intervention? Mr. Mori has investigated primary sources at diplomatic archives in the U.S., the U.K. and France. He plans to shed light on both structures and processes that drove the two bilateral relationships in order to address questions such as those mentioned above.

Mr. Mori holds a Ph.D. candidacy at the University of Tokyo's Graduate School of Law and Politics and is working on his Ph.D. dissertation. Prior to entering the doctoral program at the University of Tokyo in 2002, he served as a career diplomat at the Japanese Foreign Ministry between 1996 and 2001 where held posts at the Treaties Bureau, Middle Eastern Affairs Bureau and the Japanese Delegation to the OECD in Paris. He holds a Bachelor and a Master of Law degree from Kyoto University, and a LLM degree from Columbia University. He has received scholarship from the Research Institute for Peace and Security (2002-2004) and from the Matsushita International Foundation (2004-2005). He was also the research assistant for the University of Tokyo's COE Project "Invention of Policy Systems in Advanced

Countries” (2003-2006). He has published an English article on British policy towards the Vietnam War that appeared in *University of Tokyo Journal of Law and Politics* (volume 3, spring 2006 issue).

## **Comparative Law and Politics Symposium**

### **The 28th Comparative Law and Politics Symposium Convergence of Antitrust Rules among US, EU and Japan**

Date: 24 July 2006

Moderator: Yoshiaki Miyasako, Professor, the University of Tokyo

Introduction: Hideki Kanda, Professor, the University of Tokyo

Topic: Japanese Current Topics in Exclusionary  
Abuse and Leniency

Speaker: Tadashi Shiraishi, Professor, the  
University of Tokyo

Topic: European Competition Law: Procedural  
Rights and Questions of Leniency in the  
Light of the Community Case Law

Speaker: Josef Azizi, Honorable Judge, the Court  
of First Instance of the European  
Communities

Topic: Should Europe and Japan Become More  
Active in the Private Enforcement of  
Antitrust?

Speaker: Daniel Rubinfeld, Professor, the University of California, Berkeley

Topic: IP and Competition Law: Comparing Europe and the US

Speaker: Gérard Hertig, Professor, Swiss Federal Institute of Technology Zurich

Topic: Co-operation between U.S. and EU Competition Authorities in the Field of  
Cartels and Mergers

Speaker: Jacques Buhart, Partner, Herbert Smith, Brussels

Questions from the Floor

Venue: Suntory Hall

Language: English and Japanese



*Reception:* ANA Hotel Tokyo

\*Supported by the Tokyo Stock Exchange, Inc. and the Commercial Law Center. Inc.

## **Comparative Law and Politics Seminars**

### **[Seminars]**

**Date: 15 April 2006**

Speaker: Joachim Jens Hesse, Professor, the Free University of Berlin

Topic: Public Administration at the Crossroads: NPM, “Governance”, or the Own Identity?

Language: English

Moderator: Hideaki Shiroyama

**Date: 18 April 2006**

Speaker: Hong-Sik Cho, Associate Professor, Seoul National University College of Law / ICCLP Visiting Associate Professor

Topic: A Lesson from the Recent Development of Korea's Environmental Law Regime: Are Public Awareness and Independent Courts the Key to Success of Environmental Enforcement?

Language: English

Modelator: Hisashi Koketsu

**Date: 27 April 2006**

Speaker: Charles Chiu, Senior Partner, Far East Law Offices, Taiwan

Topic: The Commercial Mediation and Arbitration under the Laws of Taiwan

Language: English

Moderator: Paul Ch'en

**Date: 18 May 2006**

Speaker: Merritt Fox, Michael E. Patterson Professor of Law, Columbia Law School

Topic: After Dura: Causation in Fraud-on-the-Market

Actions

Language: English

Moderator: Kichimoto Asaka

**Date: 9 June 2006**

Speaker: Richard M. Alderman, Professor, the University of Houston Law Center

Topic: Consumer Credit, Debt Collection and Identity Theft: A Look at the United States and a Prediction for Japan

Language: English

Moderator: Hisakazu Hirose

**【Report】**

First and foremost, I want to thank the International Center for Comparative Law and Politics for providing me with the opportunity to visit the University of Tokyo and make this presentation. My time here has been very rewarding, and I appreciate the opportunity to share my thoughts with others at this great University. My presentation dealt with the increasing use of consumer credit in the United States, some of the problems that have arisen in American due to a liberal policy supporting the extension of consumer credit, and a few thoughts regarding the possibility of Japan following a similar path.

The use of credit through the device known as the “credit card”<sup>1</sup> is a fairly recent

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<sup>1</sup> I am distinguishing between the various types of plastic used to purchase goods or services.

The various forms of plastic purchase cards are:

Debit cards, where the amount is instantly taken from account, such as an ATM or check cards; Stored value cards, where the card itself has value, reduced as spent, such as a Gift card or Payroll card; Charge cards, where the bill paid at end of month, such as American Express or Dinners Club [this is also what most Japanese consumer do through ikkai barai], and Credit cards, where only a minimum must be paid each month, such as Visa and MasterCard.

phenomenon in the United States. Although an American merchant first advertised consumer credit in 1730 and many stores offered their customers credit through the early 20<sup>th</sup> century, it was not until 1950 that the universal charge card was first introduced by Diners Club and American Express. These charge cards were quickly followed by credit cards that allowed consumers to pay all or just some of their balance each month. American consumers have embraced credit cards as few would have expected. To day, Americans annually charge more than \$1.75 billion to their credit cards. U.S. banks annual profit from credit cards is over \$30 billion, and Citigroup alone had net income of \$4 billion from credit cards.<sup>2</sup>

As I discussed more fully in my presentation, the increased use of credit cards in the United States throughout the latter part of the 20<sup>th</sup> century is not an irrational response by consumers. Credit cards offer substantial legal benefits not available when a consumer uses cash or a debit card.<sup>3</sup> Consumers are also encouraged to use credit cards by slick advertising and promotions, designed to lure consumers into “buying now and paying latter.” Because of recent decisions of the United States Supreme Court, and a financial infrastructure that allows prompt credit decisions, credit cards companies can quickly grant credit to consumers, and easily raise interest rates to

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<sup>2</sup> The increased use of consumer credit has had an accompanying effect on consumer spending. Since the 1970s, consumer spending in the US has gone from approximately 90% of disposable income to over 100%. American’s today actually spend more than they earn. In contrast, spending in Japan has long hovered in the low 80 percentiles.

<sup>3</sup> For example, under federal law, liability for a lost or stolen credit card is limited to \$50, and credit card customers have the right to dispute a charge for goods or services not received or received in a defective condition with the credit card company. Similar benefits do not exist for debit cards, and obviously not when cash is used. The law governing credit cards is the Fair Credit Billing Act, 15 U.S.C. 1666-1666j.

increase profitability. For many consumers who carry a “revolving balance,”<sup>4</sup> credit card interest rates are often between 25 and 30%.

The simplicity of applying for consumer credit and the ease of obtaining it have resulted in two problems for American consumers. First, an increase in abusive debt collection efforts, and, more recently, a proliferation in the crime of identity theft. As I discussed more fully, the problem of dealing with abusive debt collectors has been dealt with at the federal level through the enactment of the Fair Debt Collection Practices Act.<sup>5</sup> Although this law has not eliminated all problems, it has provided consumers with a remedy when a debt collector acts in a harassing, threatening, abusive, unfair or unconscionable manner. The problem of identity theft has not been as easy to deal with.

Identity theft, where a thief assumes the identity of the victim and receives credit in the victim’s name, is a pervasive problem that has only recently been dealt with through the enactment of new laws and public education. As I explained at my presentation, it is my belief, that identity theft is an out-growth of the readily available credit market in the United States, and could be prevented if creditors and consumers

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<sup>4</sup> In the United States, most consumers do not pay-off the balance on the credit card at the end of the month. Unlike the Japanese, over 65% of American credit card holders pay less than the total amount due each month and pay interest on the balance. This balance may be carried by the consumer for as long or as short a period as the consumer desires. In many cases, consumers pay a very small amount toward the balance on their bill and a very large rate of interest on the amount that is not paid. This process of electing to carry a balance is referred to as “revolving credit.” Using this type of credit is very expensive. For example, a consumer with a \$5,000 balance at 18% interest (an amount lower than most), who pays only the minimum amount each month, will take 45 years to pay-off the total and pay more than \$13,000 in interest.

<sup>5</sup> This law may be found at 15 U.S.C. §§1692a *et seq.*

were willing to be a little more cautious, and impose some short delays before the issuance of new credit. Today, identity theft is decreasing, but it remains a serious concern for most American consumers.

In the final part of my presentation, I discussed whether the American experience with credit cards and the related problems might be replicated in Japan. Today, the economic, political, and social climates of Japan do not appear favorable for a substantial increase in the use of true credit cards. Unlike Americans, most Japanese who have credit cards pay their balance off at the end of the month, and there is not the financial infrastructure necessary to support American-style high-cost revolving credit. My predication, however, is that circumstances in Japan may soon be more favorable for the introduction of a true American credit card system.

I suggest that Japanese banks may recognize the enormous financial gains to be realized through the increased use of credit cards, and may provide the impetus for the changes necessary to support an “American style” credit card system. With the creation of a more efficient financial infrastructure, increased interest rate caps, and a change in consumer attitude, (which I believe could be accomplished by a sophisticated advertising effort), Japanese consumers could soon find themselves using credit cards in a manner similar to their American counterparts. Such a system can be very beneficial to consumers, assuming steps are taken to prevent consumers from becoming “over-extended” and to eliminate potential identity theft. The following suggestions are made to help insure that the benefits of increased credit card use can be achieved without the problems seen in America:

- Greater regulation of credit card industry
- Regulation of debt collection activities
- Full chargeback rights for all unauthorized use
- Dispute rights for all charges
- Workable caps on interest rates *and fees*
- Free and frequent access to consumer credit reports

- Reporting of all major changes to credit report to Consumer

This is only a brief summary of my presentation. Please feel to contact me for any additional information, or for further discussion. The best way to contact me is by email, [alderman@uh.edu](mailto:alderman@uh.edu).

[Richard M. Alderman]

**Date: 21 June 2006**

Speaker: Douglas G. Baird, Professor,  
University of Chicago Law School

Topic: The New Face of Chapter 11

Language: English

Moderator: Hideki Kanda

**【Report】**

Traditional accounts of Chapter 11 make three assumptions about the financially distressed businesses that find themselves there: (1) the business has going-concern value (i.e., the value of the business as a whole is greater than the value of its various part sold separately); (2) the business has a capital structure that puts its creditors at odds with one another; and (3) the business cannot be sold as a going concern in the marketplace.

The 19<sup>th</sup> Century railroad is the archetype. The assets (iron rails; wood ties; terminals, bridges, and rolling stock) are being put to their highest value use. The right-hand rails are worth much less without the left-hand rails. Moreover, the 19<sup>th</sup> Century railroads were financed with bonds that granted creditors rights to seize specific assets and stretches of track in the event of default. One set of bondholders could, in theory, seize ten miles of track in the middle of nowhere, track that had little value standing alone, but which was nevertheless integral to maintaining the railroad as a going concern. Finally, the capital markets of the late 19<sup>th</sup> Century were too primitive to allow anyone to raise the millions needed to buy a railroad outright.

But one may question whether the railroad is the appropriate paradigm. In a service economy (and the United States is increasingly a service economy), less capital is specialized. The business consists of computers and desks. The most valuable assets leave each day at 5:00. Human capital is increasingly industry specific rather than firm specific. Moreover, as transaction costs go down, there is less need even for specialized assets to be inside the same firm. Specialized assets can be in different firms and joined with others when the occasion suits through contract. Little is lost when assets are sold off, because it is easy to bring them together again should the need arise.

The paradigm is much more the motion picture production company than the railroad. The same team can work together for years, but each new film is a different firm and a different network of contracts. A decline in the going-concern surplus as transaction costs fall is a natural corollary of Coase's *Nature of the Firm*. A business that sells shoes or textiles does not need its own manufacturing operation or distribution network. It takes specialized manufacturing equipment to build a jetliner, but the equipment does not need to be inside of one firm. A third of Boeing's newest jet—the 787 Dreamliner—is being built in Japan. Boeing itself is focusing on assembling parts made by others.

Moreover, there are more winner-take-all markets in the economy today, and those businesses that lose out in the competition may be the ones that are financially distressed. The specialized assets of these businesses may have little value. In a winner-take-all market, a business plan that is only just a little weaker than that of a competitor will fail. If a business plan fails, then there is little or no going-concern surplus associated with keeping the assets in their current configuration, not matter how specialized.

When the on-line grocer Webvan could not compete, its specialized warehouses had



no more value kept together than sold separately. Similarly, the Iridium satellite system, notwithstanding the billions of custom-designed equipment it contained, had hardly any value when, because of pervasive and cheap cell phones, its system of satellites could not provide competitive phone service.

Even when a financially distressed business has going-concern value in excess of its liquidation value, sales are often possible. Warren Buffet bought Fruit of the Loom in bankruptcy for \$800 million; a consortium bought Global Crossing for \$750 million. Indeed, Chapter 11 is increasingly the venue for an asset sale rather than a reorganization. Sales take place inside of Chapter 11 because of the difficulty of assuring the buyer of clean title outside. People do not pay a positive price to buy assets of an insolvent business only to discover that they have bought the liabilities as well. (Chapter 7 is nominally the liquidation chapter, but Chapter 11 is more flexible and the creditors retain more control than they would in Chapter 7 where a court-appointed trustee runs the case.)

Moreover, capital structures today are not the crazy quilt structures we saw in 19<sup>th</sup> Century railroads. Capital structures are designed with possibility of a later restructuring in mind, just as cars are now designed with the possibility of crashes. Large corporations sometimes use Chapter 11 merely to implement a deal that creditors negotiated among themselves outside of bankruptcy. Only the difficulties imposed by the Trust Indenture Act prevent the restructuring outside of bankruptcy.

This then is the challenge that we face in providing a coherent account of modern Chapter 11 in large cases. It provides a convenient forum for selling businesses as going concerns and implementing consensual workouts among creditors. While a legal system likely needs such mechanism and Chapter 11 serves this role in the United States, it is a justification far from the traditional one and other legal systems might well choose other mechanisms to sell distressed assets or implement workouts.

Only in 15% of large Chapter 11s is something other than a sale or confirming a prearranged plan involved. But we do not see traditional reorganizations here either. Instead, Chapter 11 is used because it provides a way to escape from the strictures of nonbankruptcy law. A business that wishes to escape from burdensome leases or collective bargaining obligations can find special rules in bankruptcy that come to their aid. Special bankruptcy-only rules explain retailer, automotive, and airline bankruptcies that do not involve sales or prearranged plans.

Having such bankruptcy-specific rules cannot itself justify Chapter 11. To the contrary, such rules are quite troubling. A bankruptcy-only rule invites forum-shopping. If the rule is not to the liking of the person who controls the bankruptcy filing (often the senior institutional lender), that person may well choose to avoid the bankruptcy forum altogether. This in turn may lead to less efficient liquidations or workouts, and the substantive policy will in any event be evaded. To implement a policy, it must be done pervasively in a fashion that cannot be evaded. Second, it is too easy to justify such bankruptcy-only rules in the name of “bankruptcy policy” without any articulation of what the policy in question is. To explain why landlords, retirees, or workers ought to have their rights scaled back to the benefit of those who invested in the enterprise, one should offer some justification other than “bankruptcy policy.”

[Douglas G. Baird]

**Date: 22 June 2006**

Speaker: Steven R. Ratner, Professor, the University of Michigan Law School

Topic: Renditions and Targeted Killings in “The Global War on Terror”: What Place for International Law?

Language: English

Moderator: Yuji Iwasawa

**Date: 27 June 2006**

Speaker: Chang-fa Lo, Dean, College of Law, National Taiwan University

Topic: WTO-Plus Issues of Regional Trade Agreements: An Analysis of “Plus”

and “Non-Plus” Aspects

Language: English

Moderator: Paul Ch'en

**Date: 6 July 2006**

Speaker: Mau-Sheng Lee, Vice Dean, College of Law,

National Taiwan University

Topic: Law and Juvenile Delinquency in Taiwan

Language: Japanese

Moderator: Paul Ch'en

**Date: 23 October 2006**

Speaker: Moritz Bälz, Associate Lawyer, Freshfields Bruckhaus Deringer, Frankfurt

Topic: The Competition among Corporate Forms within the European Union and the

German GmbH: The Reform of the German Law on Limited Liability

Companies

Language: German

Moderator: Hiroyuki Kansaku

**【Report】**

When the new Japanese Corporate Law entered into force on 1 March 2006, Japan's Law on Limited Liability Companies (*Yūgenkaisha-hō*) was abolished. The Japanese *yūgen kaisha*, which was introduced in 1938 and modelled on its German counterpart, had in practice never gained the same importance as the *GmbH* in Germany, which has long constituted the predominant legal form for small and medium sized enterprises and beyond.

Yet, even if the limited liability company in Germany is generally considered a success story, in recent years calls for a thorough reform have become more frequent.

One reason for this is that there are certain abusive practices of the present rules. More importantly, the corporate form of the German GmbH today is facing increased competition within the European Union. This is because a series of groundbreaking decisions by the European Court of Justice on the so-called freedom of establishment have paved the way for a rapidly increasing number of pseudo-foreign companies, which are operating mainly or even exclusively in Germany but organized in corporate forms of other member states, in particular in the form of the English “Limited”. These developments have prompted the Federal Ministry of Justice to issue a proposal on 29 May 2006 for the first major reform of the Law on Limited Liability Companies since 1980 (the “Proposal”). It is designed to prevent abuses of the GmbH and at the same time to strengthen its competitiveness as a corporate form. Even though on first glimpse the reforms in Japan and Germany may seem to move into opposite directions, the ultimate aim for both the Japanese and the German legislator remains the same, namely to stipulate a set of rules for close corporations reflecting the needs of a modern economy. Therefore, the most recent developments in Germany should also still be of interest to Japanese observers.

In order to combat abusive practices the Proposal stipulates various measures. Under German law the directors of a GmbH are obliged to monitor the financial situation of the company and to file for insolvency as soon as the company becomes overindebted or unable to meet its financial obligations. In the past, there have been cases, where in order to escape this obligation and any resulting liability, all directors were removed. In such a scenario pursuant to the Proposal the shareholders themselves will be obliged to file for insolvency. Furthermore, every company will have to record a valid business address in the Commercial Register where process can be served.

With regard to the objective to bolster the GmbH’s competitiveness, in particular compared to the English limited, the Proposal envisages the following steps: Firstly, the incorporation of a GmbH is to be accelerated. Among other things, it is proposed to reduce the statutory minimal capital from € 25,000 to € 10,000. Public licenses

required for certain businesses will no longer need to be filed with the Commercial Register on incorporation. Secondly, the transfer of shares in a GmbH shall be facilitated by introducing the possibility of a bona fide acquisition of shares from any shareholders, who has been registered in the shareholders list for the past three years. Thirdly, the rules on shareholder loans shall be simplified. Finally, the legal framework for up-stream loans, e.g., in the context of cash-pooling arrangements, which are currently complicated by arcane capital maintenance rules, shall be rationalized.

While some commentators have criticized the Proposal of stepping short of a more radical reform, overall the Proposal has received a warm welcome by German jurists. Therefore, it seems likely that the German law of limited liability companies will see some major improvements in the year 2007. Yet, whether the envisaged reform will prove enough to permanently secure the GmbH's position as the predominant corporate form in Germany remains to be seen.

[Moritz Bälz]

**Date: 15 January 2007**

Speaker: Robert S. Ross, Professor, Boston College

Topic: U.S. Policy towards Asia

Language: English

Moderator: Akio Takahara

**Date: 21 February 2007**

Speaker: Eivind Smith, Professor, University of Oslo

Topic: European Integration: The Norwegian Perspective

Language: English

Moderator: Yasuo Hasebe

**Date: 10 March 2007**

Speaker: Joachim Jens Hesse, Professor, the Free University of Berlin

Topic: One Size Fits All? Constitutional Change and Policy Adaptation in  
Comparative Perspective

Language: English

Moderator: Akira Morita

## **The School of Law Summer School**

### **Convergence of Antitrust Rules between US and EU**

The ICCLP has continued from last year to provide support for the ‘Transnational Law Programme’ at the School of Law and

The ICCLP cooperated in a number of areas including visits to the American law schools, arranging schedules and invitations, recruiting students, accounting, support for staff and participants during the summer school and conducting surveys.

Schedule: 25 to 30 July 2006

Venue: The Conference Center Kazusa Arc

Number of participants: 56 students include three students from Seoul National University, three graduate students from Beijing, two legal practitioners and four business people.

Teaching Staff: Josef Azizi, Judge, the Court of First Instance of the European Communities; Gérard Hertig, Professor, Swiss Federal Institute of Technology (ETH) Zurich; Jacques Buhart, Partner, Herbert Smith Brussels; Daniel L. Rubinfeld, Professor, University of California Berkeley; Toshiko Takenaka, Professor, Washington State University; Lisa C. Yano, Lawyer, Paul, Weiss, Rifkind, Wharton & Garrison LLP; Tadashi Shiraishi, Professor, University of Tokyo

Participants from the School of Law: Atsushi Yamaguchi, Dean of the School of Law; Yoshiaki Miyasako, ICCLP Professor

Secretariat: Yasuyo Sugimoto (ICCLP); Tomoko Niinaka, Masayuki Someya (ICCLP); Makiko Matsumura; Mina Sekiguchi

Topics: Introduction (Shiraishi); Institutions of the EU & Cartels, Abuse of dominant position & Merger control (Buhart); Organization, Competences and Functioning of the EU-Judiciary, Specific Questions of Legal Protection and Enforcement in European Competition Law (Azizi); Abusing Intellectual Property, IP Licensing Contracts (Hertig); Principles of US Contract Law (Yano); Antitrust Law and Economics (Rubinfeld); IP and Competition Policy (Takenaka)

### **Visiting Research Scholars of the Graduate School of Law and Politics**

The faculty members of the Graduate School of Law and Politics host a number of visiting research scholars each year. The Center helped to administer the visits of the following researchers this academic year.

**Jae-Kil Kim** Professor, Chungbuk National University

Term: April 2006 – March 2007

Research Area: Statute-based Taxation and economic Substance

**Young-Ha An** Professor, Sung Kyun Kwan University

Term: April 2006 – March 2007

Research Area: Study of the Influence of National Identity upon Succession Law in Korea and Japan

**Wei Wang** Lecturer, The Chinese Academy of Social Sciences

Term: April 2006 – March 2007

Research Area: The Sense of Honor of the Samurai Class

**Aurea C. Tanaka** JSPS Fellow / Lecturer, Trevisan College

Term: April 2006 – April 2007

Research Area: International Judicial Cooperation

**Li-Chun Zhang** Lecturer, Shandong University (Weihai)

Term: May 2006 – May 2007

Research Area: The Balance of Interests Theory in Japanese Civil Law

**Ran He** Professor, Changchun University of Science and Technology

Term: June 2006 – May 2007

Research Area: Comparative Study of the Legal Cultures of China and Japan



**Jeong-Hun Park** Associate Professor, Kyung-Hee University

Term: July 2006 – August 2006

Research Area: Urban Planning Law

**Ying-Chun Gong** Lecturer, China Foreign Affairs University

Term: August 2006 – September 2006

Research Area: Comparative Study of the Marine Policies of China and Japan

**Yun-Qi Zhang** Lecturer, Peking University

Term: September 2006 – August 2007

Research Area: Constitutionalism and Drafts of the Constitution in the Early Meiji Era

**Kwang-Dong Park** Lecturer, Konkuk University

Term: September 2006 – August 2007

Research Area: Study of the Amendment of the Real Estate Register Law

**Jun Huh** Professor, Chungbuk National University

Term: September 2006 – August 2007

Research Area: The Current State of Decentralization in Japan and related Issues

**Yong-Hwa Chung** Professor, Institute of National Learning, Yonsei University

Term: September 2006 – June 2007

Research Area: The Transformation of Sinocentrism in 19th century: A Comparative Study about Japan, China, and Korea

**Lauri Mälksoo** Assistant Professor, Tartu University

Term: October 2006 – September 2007

Research Area: History and Theory of International Law

**Xue-Mei Ma** Assistant Researcher, Institute of International Information

Term: October 2006 – September 2007

Research Area: The Influence of Change in the Diplomatic Policy Making  
Process of Japan upon Sino-Japan Relations

**Jens Meierhenrich** Assistant Professor, Harvard University

Term: October 2006 – January 2007

Research Area: International Military Tribunal for the Far East

**Alexander R. M. Schellong** Research Fellow, Harvard University

Term: October 2006 - January 2007

Research Area: eGovernment, Citizen Relationship Management

**Hyun-Joon Kim** Associate Professor, Yeungnam University

Term: January 2007 – February 2007

Research Area: Administrative Litigation Law of Japan

**Ying-Hsin Tsai** Assistant Professor, National Taiwan University

Term: January 2007 – February 2007

Research Area: The regulation of Classification of Shares under the Corporate  
Law of Japan

**Chao-Chun Lin** Assistant Professor, National University of Kaohsiung

Term: January 2007 – February 2007

Research Area: Study of the Judge Appointment System of Japan

**Cheol-Hyun Jeong** Associate Professor, Yonsei University

Term: March 2007 – February 2008

Research Area: Comparative Cultural Policy

**Jung-Hwa Han** Prosecutor, Suwon District Prosecutor Office

Term: December 2006 – December 2007

Research Area: Information Disclosure and Clarification of Procedure in Criminal  
Litigation Law

**Ji-Chul Kim** Judge, Seoul Central District Court

Term: March 2007 – February 2008

Research Area: Civil Litigation Law of Japan

## Visiting Professors

### **Christopher W. Hughes**

Principal Research Fellow, Centre for the Study of Globalisation and Regionalisation (CSGR) / Reader in International Politics, Department of Politics and International Studies, University of Warwick

(April - May 2006)

#### *Profile:*

Dr Hughes has studied at the University of Oxford, the University of Rochester in USA and the University of Sheffield. He obtained his PhD in international relations at the University of Sheffield in 1997. Dr Hughes was appointed as a research associate of the Institute for Peace Science at Hiroshima University in 1997 and then a senior research fellow at the CSGR in 1998, and has worked as Deputy Director at the center since 2002. He earned his current readership in 2005. During his stay at the faculty, Dr Hughes gave a presentation entitled 'The East Asian Community and Free Trade Agreements: Is it Possible to Build New Regionalism Through Bilateralism?' as part of a Politics and Mass Media Seminar and contributed a short article to *University of Tokyo Journal of Law and Politics* Vol.4.

#### *Main Publications:*

*Japan's Security Agenda: Military, Economic and Environmental Dimensions*, Lynne Rienner Publishers, 2004; *Japan's Re-emergence as a 'Normal' Military Power?*, Oxford University Press, 2004; *New Regionalisms in the Global Political Economy*, co-ed., Routledge 2002, 2nd ed., 2005; *Japan's International Relations: Politics, Economics and Security*, co-author, Routledge, 2001; *Japan's Economic Power and Security: Japan and North Korea*, Routledge, 1999.

### **Hugo Dobson**

Senior Lecturer, School of East Asian Studies, University of Sheffield

(September 2006 - January 2007)

\* September-November 2006 ICCLP Visiting Professor

*Profile:*

After having studied at the University of Leeds and the University of London (SOAS), Dr Dobson obtained his PhD in Japanese Studies at the University of Sheffield in 1998. He was awarded ICCLP scholarship as a research fellow in 1997 and then appointed as an ICCLP researcher at the University of Tokyo. Dr Dobson was appointed as a lecturer in the International Relations of East Asia in the Department of Politics and International Relations at the University of Kent at Canterbury in 1998 and in the School of East Asian Studies at the University of Sheffield in 2001. He earned his current senior lectureship and was appointed as Sub-Dean of the Faculty of Social Sciences in 2005. He specialises in Japan's international relations. During his stay at the faculty, he gave a presentation entitled 'The G8 and Global Governance: "Where are the Women?"' as part of Politics and Mass Media Seminar co-sponsored by the ICCLP and lectured in the class 'politics and mass media' at the School of Public Policy as a guest speaker. Dr Dobson also contributed a short article to the *University of Tokyo Journal of Law and Politics* Vol.4.

*Main publications:*

*The Group of 7/8*, London: Routledge 2006; *Japan and the G7/8, 1975-2002*, London: RoutledgeCurzon, 2004; *Britain and Japan in the Contemporary World: Responses to Common Issues*, co-editor, London: RoutledgeCurzon, 2003; *Japan and United Nations Peacekeeping: New Pressures, New Responses*, London: RoutledgeCurzon, 2003; *Japan's International Relations: Politics, Economics and Security*, co-author, 1st ed. 2001 and 2nd ed. 2005, London: Routledge; *Japan and Global Governance*, co-editor, London: RoutledgeCurzon, forthcoming (2007).

### **Visitors from Overseas**

**Dr Jacques Capdevielle**, Research Director, CEVIPOF (Research Centre of Politics, Sciences Po)

Term: 26 October - 9 November 2006

Research Area: Globalisation and French politics

**Jung-Bock Lee**, Professor, Department of Political Science, College of Social Sciences, Seoul National University

Term: 15-19 January 2007

Research Area: Korean politics, Japanese politics

## **‘Politics and Mass Media’ Seminars**

**Date: 10 May 2006**

Speaker: Christopher W. Hughes, Reader, University of Warwick / Visiting Professor of Endowed Chair in ‘Politics and Mass Media’

Topic: The East Asian Community and Free Trade Agreements: Is it Possible to Build New Regionalism Through Bilateralism?

Chair: Susumu Takahashi

### **【Report】**

This seminar addressed the trend of the move towards the creation of bilateral free trade agreements (BFTA) in the East Asia region, and the question of how far they are complementary or compatible with attempts to construct regional-wide multilateral frameworks in the post-Cold War period, and especially the impact on proposals for an East Asian Community (EAC). The ‘orthodox’ view, prevalent amongst many government policy-makers and academics in the region, is that BFTAs reinforce attempts to create ‘new regionalism’ in East Asia; the latter characterised by openness and inclusivity, multilateralism, and cooperation amongst states of various capabilities through the mediation of the smaller powers—the EAC being an archetype of this type of regional formation. The ‘orthodoxy’ argues that BFTAs are not a retreat from multilateralism, but in fact a ‘stepping stone’ towards enhanced multilateralism and new regionalism constructed upon bilateralism. Japan has sought to use BFTAs as a means to construct a ‘multi-tiered’ trade strategy, which envisions the signing of individual bilateral Economic Partnership Agreements (EPA) with ASEAN states, and then consolidating these into one Japan-ASEAN Comprehensive Economic Partnership (CEP). The US has argued that BFTAs and with ASEAN states will create a process of ‘competitive liberalisation’ that will push forward multilateralism at the APEC and WTO levels. Meanwhile, the ASEAN states themselves see BFTAs as a means to invert the traditional ‘hub-and-spokes’ power relations in the region, and convert ASEAN into the central hub for regional multilateral interaction.

This talk set out to raise important questions about the theoretical and empirical foundations of the 'orthodoxy's assertions. It is noteworthy, that despite its confident claims, the 'orthodoxy's is not grounded by any wider historical or theoretical perspectives. Hence, this talk aimed to begin to test the 'orthodoxy's' wider assumptions by extracting from the historical and theoretical literature a set of conditions which explain whether bilateralism is a viable route to construct multilateralism, and whether it allows for the creation of new regionalist-type power outcomes. The talk examined the historical record of the interaction of bilateralism and multilateralism in the pre-war and post-war periods and found that the question of compatibility was an open one: in the post-war period the trend towards bilateralism had actually undercut multilateralism and produced the very opposite of new regionalist outcomes; in the post-war period multilateralism and bilateralism had displayed greater compatibility. In order to try to close this question, the talk then moved to look at the theoretical literature which might produce a set of conditions that could be tested for in the contemporary period to explain the likely compatibility of bilateralism and multilateralism. The literature indicates that these key conditions are: states' commitment to relative over absolute gains, the presence of benign hegemony or hegemonic supporters, normative commitments to multilateralism as an ultimate goal for international stability, the absence of domestic rent-seeking interests, and technical trade conditions such as MFN.

The talk then proceeded to ask whether these conditions were in fact prevalent in East Asia. Its conclusions were that, at present, the conditions appeared, in fact, to be absent. The region is characterised by realist power economic and security calculations, a weak normative commitment to multilateralism, domestic rent seeking, and a lack of technical multilateral triggers. Consequently, at present it appears that BFTAs may actually serve to reinforce power asymmetries and to undercut the goals of the EAC.

[Christopher W. Hughes]

**Date: 7 July 2006**



Speaker: Yves Schmeil, Professor, Institute of Political Studies Grenoble

Topic: Power and Mass Media in France

Chair: Susumu Takahashi

### **【Report】**

Since the end of the 19<sup>th</sup> century, the press in France is a counter-power: from the Dreyfus Affair to the present the executive, legislative, and judiciary affairs are ignited by political journalists, or politically engaged intellectuals writing columns in daily newspapers (now reading them on the air). The media are alternatively or simultaneously serving the opposition *to* the government, or the opposition *within* the government. Several factors help explain this French ‘exceptionalism’: an enduring process of continuous centralization; the disproportionate place of Paris as the sole decision centre in most fields; a continuous enrolment in the very schools and universities that also graduate governmental, bureaucratic, local, and financial rulers (the ‘Sciences Po’ network); membership in the same social groups where ‘dining out together’ is a lifestyle. Each of these factors contribute to an empowerment of journalists in France to which no other country can compare.

However, the daily press is not as powerful as it used to be until 1965, when TV shows boosted charismatic political leaders contesting the monopoly of power accruing to the World War 2 ‘Resistance’ generation. Although cinema-in particular, the intellectualised version known as the ‘new wave’ and its legacy among second generation migrants who are making politically and socially sensitive films-is still enjoying an advantageous position in France, watching movies in a downtown theatre may be sooner or later a bygone. Generalist radios are also loosing ground to musical channels. Furthermore, media people are increasingly complaining about their loosing control over politics, as evidenced by several indicators: little and decreasing circulation of the daily newspapers (world rank: 31<sup>st</sup>, with 167 copies per inhabitant-compared to Japan, 2d, at 647-down by 1.17% in 2004 from 2003); a growing number of popular critics against journalism as a profession and its limited achievements, noteworthy in TV circles with a dedication to the image detrimental to

the comment; a severe judgment from without their community about repeated mistakes of judgments, not to speak of mere inventions in presenting and commenting the ‘facts’; finally, a new competition with the Internet which benefits from a more interactive appeal and gains momentum year after year. These new trends are severe and have dramatic consequences for the media.

When democracy is turning more participatory, when citizens are losing confidence in their elites—be they political or journalistic—the media cannot enjoy any more as they did in the past an implicit delegation of power from their public. Admittedly, the way citizens are informed about scandals, abuses, misconceptions in public or foreign policy making still depends on the media, and are framed by them; but the public is now distrusting newsmakers because of their alleged collusion with governments. Actually, a majority of the respondents to recent surveys display a deeply anchored tendency to keep doubting about press ‘truths’, whatever their origin (newspapers, magazines, radio or TV channels). As predicted by some political scientists, citizens are less elite-directed than they used to be, and their demand for a do it yourself type of media, with its freely accessible blogs and its indefinite resources in individual browsing. This, of course, is conducive to a loss in power over politics.

Nonetheless, despite their objectively decreasing influence on news consumers and the growing control of the freshly established ‘Conseil Supérieur de l’Audiovisuel’ on their statements, French journalists still monopolize the political agenda. In a gloomy media world this surprising success is due to an early political socialization as left-wingers (mostly Trotskyists of various persuasions), and ‘cultural liberals’ (i.e., social democrats and baby boomers who had their first experience of politics in the sixties, when most issues were radical-like civil rights, decolonisation, feminism, etc.). Nowadays, both groups are informally merging with Academics who stop doing scientific research to take part in the public debate. These three components are a sort of ‘neo-corporatist’ cast, with a solid commitment to solidarity, and an ideological dedication to ‘the people’—albeit under several guises: the anarchist, the populist, the

socialist, and the revolutionary components of the political community are very different from each other. Will they all resist evenly the recent transformation of informed citizens into news consumers, buying entertainment and information according to their wishes, and economic means, in a world where market shares overcome moral commitments to the ‘public service’? It is too early to answer this question, but the challenge is surely more pressing than ever.

[Christopher W. Hughes based on the summary provided by Yves Schmeil]

**Date: 20 July 2006**

Speaker: Harold L. Wilensky, Professor Emeritus, University of California, Berkeley

Topic: Political Economy, Public Policy, and Performance: Explaining Differences in the Wellbeing of People in Nineteen Rich Democracies

Chair: Junko Kato

**Date: 7 November 2006**

Speaker: Dr Jacques Capdevielle, Research Director, CEVIPOF (Research Centre of Politics, Sciences Po)

Topic: The Coming French Presidential Election and the Media

Chairs: Susumu Takahashi; Toru Yoshida, Associate Professor, Hokkaido University

**【Report】**

This presentation was based upon survey data compiled by CEVIPOF in March 2006 and targeting 5,600 people, which is an unusual scale in France. Similar survey data will be collected on three consecutive occasions up to and including Spring 2007 and its aim is to clarify the different agendas for the upcoming French presidential election.

The overall political atmosphere in France is one of pessimism in recent years: more than 70 per cent of the respondents feel that their children will have a worse life in the future, and 70 per cent have lost confidence in domestic politics. However, this trend need not be interpreted as the ‘de-politicization’ of the French, since the younger generation expressed considerable interest in political matters.

As regards the relationship between politics and the media, especially television, the Internet and print media, it was confirmed that the younger generation make as much use of newspapers as they do of the Internet. It was also made clear that interest in politics is proportional to educational level and professional status. Housewives and people who have little interest in political life tend to rely mostly on television in order to collect information on politics.

The 2007 presidential election is the first election to be so heavily dominated by the candidates' personalities and images. Although the various media outlets have not attempted to blur the conventional left-right cleavage, they have still played a crucial role in presenting the candidates' images. The two main candidates, Ségolène Royale (Socialist Party) and Nicolas Sarkozy (UMP), have made considerable use of television and the Internet in their election campaigns. Royal has competently used her media image to emphasize 'newness' and advocate participative democracy; Sarkozy has evoked a 'break with the past' in an authoritative manner. However, both have used the image of themselves as marginalized persons inside their own party and have bypassed these parties in order to appeal directly to public opinion.

Television and newspapers are two forms of media that compete against each other in their functions. As regards the role of the Internet in politics, it was argued that it has little potential to structurally alter the conventional media. The characteristic of the internet is that it has a 'cascade effect', namely it has a strong mediating function in mobilizing public opinion.

The distinction between different television news programs is also worth citing. People on the right of the political spectrum in France prefer TF1 (a private channel) evening news, and those who support the left prefer France 2 (a public channel). This is partly due to the fact that TF1 is more responsive to ratings and the audience's preferences. However, both of their influence upon voting behaviour is marginal.

No presidential election in French history has been so exposed to media politics and the crucial role played by the candidates' personal images as this upcoming election. If these findings point towards a possible Americanization of French political life, it is indeed a worrying phenomenon.

Questions from the floor focused upon the appropriateness of the issues over which this election is being fought, in addition to how the French perceive the fact that Royale is a woman. Discussion also highlighted differences with the situation in Japan and how the various forms of the internet (homepages, blogs and communities) have different impacts.

[Toru Yoshida]

**Date: 27 November 2006**

Speaker: Hugo Dobson, Senior Lecturer, School of East Asian Studies, University of Sheffield / Visiting Associate Professor at the ICCLP & of Endowed Chair in 'Politics and Mass Media'

Topic: The G8 and Global Governance: 'Where are the Women?'

Chair: Yuka Motoda, Associate Professor, Hokkaido University

**【Report】**

Professor Cynthia Enloe of Clark University in the US once asked the question 'where are the women' in the study and practice of international relations? In this seminar, Dr Hugo Dobson of the University of Sheffield in the UK attempted to answer this question with particular reference to the summit meetings of the Group of Eight (G8) countries.

Throughout its history, the meetings of the G8 have been dominated by men at almost all levels of activity. More concretely, since its creation in 1975 only three women have ever participated in the annual meetings of the G8 presidents, prime ministers and chancellors: UK Prime Minister Margaret Thatcher, a long-term summit

participant who attended twelve summit meetings between 1979 and 1990; Canadian Prime Minister Kim Campbell, who was in power for less than five months and as a result attended only one summit in 1993; and German Chancellor Angela Merkel, who attended her first summit in 2006 at St Petersburg and will host the 2007 Heiligendamm Summit in Germany.

At the other levels of regular G8 activity - the meetings of finance and foreign ministers - the absence of women is equally notable. Dr Dobson reported that in total 101 foreign ministers have attended the G8 summit since 1975 but only nine of these ministers have been women. As regards finance ministers, no woman has ever participated in their meetings. Finally, as regards the leaders' personal assistants (or 'sherpas' as they are known), 111 sherpas have guided their leaders to the top of the summit but only five of them have been women.

This raises a number of related questions. Do the absence of women and the dominance of men within the G8 influence the topics that are placed on the summit leaders' agenda, the style of discussion and the subsequent outcomes? In other words, is the G8 a site of 'hegemonic masculinity' in international politics that propagates a highly masculinized way of conducting international politics? Dr Dobson explained that this is one interpretation and the inclusion of more women in the future could change the agenda and processes of the G8. It may not be very long before we find out as the 2009 G8 summit in Italy could see Chancellor Merkel, President Ségolène Royal and President Hillary Rodham Clinton in attendance, almost an equal number of women to men. However, Dr Dobson stressed the way in which the G8 functions more as an informal think-tank than formal institution of global governance. This has created a unique forum that has been capable, even when dominated by men, of promoting initiatives that encourage the mainstreaming of gender issues in an iterative fashion ever since the 1996 Lyon Summit.

Dr Dobson also highlighted a role in which women have been practically dominant at

the G8 summit over its thirty-two year history: as the wives of the G8 leaders. The wives of the G8 leaders often accompany their husbands to the G8 summit and the host country always makes every effort to organize a number of media-friendly events for them to attend whilst their husbands are engaged in summit negotiations. These social programmes can include visits to cultural centres and charities, as well as accompanying their husbands to official dinners and receptions. However, do these seemingly trivial events matter in the study of global governance? If we recall that one of the defining characteristic of the G8 is as a forum that aims to foster informality and intimacy between the leaders, then the role of the wives is empowered in creating an atmosphere conducive to successful diplomacy. Thanks to the work of scholars like Tania Domett, Cynthia Enloe and Katie Hickman, this kind of consensual 'soft power' is beginning to be accorded greater attention.

By way of a conclusion, Dr Dobson speculated about how these issues might relate to the Japanese prime minister's wife. No tradition of a 'first lady' exists in Japanese politics and yet the G8 presents a forum where such a role is thrust upon a possibly reluctant Japanese prime minister's wife. Abe Akie, the wife of the current Japanese prime minister, presents an interesting case of a Japanese 'first lady' with a higher profile than the norm. In the Q&A session, attention turned to the utility of the terms 'hegemonic masculinity' and 'gender mainstreaming' in addition to the participation of male spouses and the extent to which the wives of G8 leaders are obliged to participate in these ceremonies.

[Hugo Dobson]

**Date: 16 January 2007**

Speaker: Jung-Bock Lee, Professor, College of Social Sciences, Seoul National University

Topic: The Outline of Political Changes in Korea and Political Science

Chair: Hiroshi Watanabe

**Date: 18 January 2007**

Speaker: Jung -Bock Lee, Professor, College of Social Sciences, Seoul National University

Topic: South Korean Democracy: Characteristics and Issues

Chair: Hiroshi Watanabe

### **Special Lecture**

Title: 'Germany's International Responsibility: Overview and Perspectives'

Speaker: Dr Franz Josef Jung, German Minister of Defence

Chair: Professor Susumu Takahashi

Venue: No.4 Building, 8F Conference Room

Supported by: Embassy of the Federal Republic of Germany; Asahi Shimbun; Deutscher Akademischer Austauschdienst Tokyo (DAAD Tokyo)

(\*This lecture was canceled because of Dr Jung's cancellation of visit to Asian countries.)



## **The Medusa Project Sapporo**

‘Managing “the Medusa”’: U.S.-Japan Security Relationship in Comparative  
Perspective’

**Date: 29-31 August 2006**

Venue: Enreiso Meeting Room, Hokkaido University / 36 Sky Banquet Room, JR  
Tower Hotel Nikko Sapporo

Sponsored by: Endowed Chair in ‘Politics and Mass Media’, Graduate School of Law  
and Politics, University of Tokyo

Co-sponsored by: Advanced Institute for Law and Politics, Hokkaido University

Supported by: Egusa Foundation; Nomura Foundation for Academic Promotion

### **Programme**

Tuesday, 29 August <Workshop Part I>

Venue: Enreiso Meeting Room 1

9:30 - Introduction to the Medusa Project and Its Objectives

Christopher Hughes, Reader, University of Warwick

Ellis Krauss, Professor, University of California San Diego

11:00 - Session 1: *Alliances in Theoretical and Regional Context*

Chair: Christopher Hughes

- Alliances in Comparative Perspective: The US, Japan and Germany

Speaker: Thomas Berger, Associate Professor, Boston University

Title: ‘High Noon on the Global Commons: America, its Allies and the Changing  
Consensus on World Order’

- The US-Japan Alliance and Multilateralism Compared in East Asia and Europe

Speaker: Takehiko Yamamoto, Professor, Waseda University

Title: ‘Multilateral Choice of Japanese Grand Strategy in Northeast Asia: Beyond  
Bilateralism?’

14:00 - Session 2 : *Alliance Responses to New Threats and New US Global Strategy*

Chair: Ellis Krauss

- US-Japan and US-Europe Alliance Responses to the ‘War on Terror’

Speaker: David Leheny, Associate Professor, University of Wisconsin

Title: ‘Acting in Alliance: Japanese and European Counterterrorism in the U.S.

“War on Terror”

- US Bases Issues and Alliances in Japan and Europe

Speaker: Takafumi Ohtomo, Research Associate, University of Tsukuba

Title: ‘US Military Bases and Force Realignments in Japan’

16:00 - Session 3: *Alliances, Strategy and Technology*

Chair: Hugo Dobson, Senior Lecturer, University of Sheffield

- Defence Production in US-Japan and US-UK/Europe Alliance Relations

Speaker: Ron Matthews, Professor, Cranfield University

Title: ‘Defence Industrialisation: Comparative Evaluation of US Relationships with

Japan and Europe’

- Ballistic Missile Defence in US-Japan and US-UK/Europe Alliance Relations

Speaker: Christopher Hughes

Title: ‘In Too Deep? Ballistic Missile Defence and US-Japan and US-UK Alliances

Compared’

18:30 - Reception

Words of Welcome: Susumu Takahashi, Professor, University of Tokyo

Wednesday, 30 August <Workshop Part II>

Venue: Enreiso Meeting Room 1, Hokkaido University

9:00- Session 4: *Alliances Compared*

Chair: Thomas Berger

- US-Japan and US-Germany Alliance Developments Compared

Speaker: Hartwig Hummel, Professor, Dusseldorf University

Title: ‘Uneasy Marriages: US-Japan and US-Germany Security Alliances

Compared’

- US-Japan and US-South Korea Alliance Developments Compared

Speaker: Hideki Kan, Professor, Seinan Jo Gakuin University

Title: 'US-Japan and US-ROK Alliances Developments Compared'

11:00- Open Discussion of General Conclusions and Cross-Paper Themes

Chairs: Christopher Hughes, Ellis Krauss

- Open Discussion of General Conclusion and Cross-Paper Themes
- Where do We Go from Here?
- Publication Plans and Preparations

Thursday, 31 August

Venue: JR Tower Hotel Nikko Sapporo 36F Sky Banquet Room 'Hoshi'

9:30- <Workshop Part III>

Chairs: Christopher Hughes, Ellis Krauss

- Workshop Part I & II Finding Report
- Q & A

Venue: JR Tower Hotel Nikko Sapporo 36F Sky Banquet Room 'Taiyo'

International Symposium 'Managing the US Superpower: US-Japan and US-Europe Alliances Compared'

13:30- : Open

14:00- 15:00

Introduction: Susumu Takahashi

Session 1: 'How Can Japan and Europe Manage US Alliance Dilemmas?'

Chair: Yuka Motoda, Associate Professor, Hokkaido University

Speakers: Ellis Krauss, Christopher Hughes, Thomas Berger, Takehiko Yamamoto, David Leheny, Takafumi Ohtomo, Ron Matthews, Hideki Kan, Hartwig Hummel

Summary Translation: Satoru Mori, ICCLP Researcher, University of Tokyo

15:10-16:10

Session 2: 'The US-Japan Alliances Ties, the Mass Media, and Okinawa'

Chair: Susumu Takahashi

Speakers: Tomohiro Yara, Editor, Okinawa Times; Yasuo Muramatsu, Director, Asahi Shimbun Research Center

Summary Translation: Hugo Dobson

16:30-17:30

Session 3: ‘The Future of US-Japan and US-Europe Alliance Ties and the International System?’

Chair: Susumu Takahashi; Ken Endo, Professor, Hokkaido University

Speakers/Discussants: Thomas Berger; Christopher Hughes; Hideki Kan; Hartwig Hummel; David Leheny; Ron Matthews; Takafumi Ohtomo, Takehiko Yamamoto; Tomohiro Yara

18:00- 20:00

Reception

Words: Jiro Yamaguchi, Professor, Hokkaido University; Yoshiaki Miyasako, ICCLP Professor, University of Tokyo

M.C.: Toru Yoshida

### **Participants**

Susumu Takahashi, Professor, Graduate School of Law and Politics, University of Tokyo; Jiro Yamaguchi, Professor, Graduate School of Law, Hokkaido University; Ken Endo, Professor, Hokkaido University; Christopher Hughes, Principal Research Fellow, Centre for Study of Globalisation and Regionalisation (CSGR)/ Reader, School of Politics and International Studies, University of Warwick; Ellis Krauss, Professor, Graduate School of International Relations and Pacific Studies, University of California San Diego; Thomas U. Berger, Associate Professor, Department of International Relations, Boston University; Hartwig Hummel, Professor, Institute for Social Sciences, Heinrich-Heine University of Dusseldorf; Hideki Kan, Professor, Department of Humanities, Seinan Jo Gakuin University/Emeritus Professor, Kyusyu University; David Leheny, Associate Professor, Department of Political Science, University of Wisconsin Madison; Ron Matthews, Professor, Royal Military College

of Science, Cranfield University; Takafumi Ohtomo, Research Associate, Graduate School of Humanities and Social Sciences, University of Tsukuba, Takehiko Yamamoto, Professor, Graduate School of Political Science, Waseda University; Tomohiro Yara, Editor, Okinawa Times; Yasuo Muramatsu, Director, Asahi Shimbun Research Center/COE Professor, University of Tokyo; Masaki Tanigudhi, Associate Professor, Graduate School of Law and Politics, University of Tokyo; Hugo Dobson, Senior Lecturer, School of East Asian Studies, University of Sheffield; Yuka Motoda, Associate Professor, Sustainability Governance Project, Creative Research Initiative “Sousei”, Hokkaido University; Toru Yoshida, Associate Professor, Graduate School of Law, Hokkaido University; Teruyoshi Shibata, Public Policy Cooperative Fellow, Hokkaido University; Satoru Mori, ICCLP Researcher, Graduate School of Law and Politics, University of Tokyo; Hiroki Yasui, Associate Professor, Graduate School of Law, Kobe University; Hajime Kidera, Lecturer, Faculty of Law, Hokkai Gakuen University; Shunsuke Sato, COE Research Fellow, Japan Society for the Promotion of Science(JSPS)/PhD candidate, Graduate School of Law and Politics; Noriyuki Wakisaka, Editor, Asahi Shimbun, Go Kawasaki, Journalist, Asahi Shimbun; Yoshiaki Miyasako, Professor, Graduate School of Law and Politics, University of Tokyo; Midori Tanaka, Research Assistant, Grant-in-Aid Creative Scientific Research Project, Advanced Institute for Law and Politics, Hokkaido University; Keiko Wada, ICCLP Co-ordinator, Graduate School of Law and Politics, University of Tokyo

## **Report on the Medusa Project**

Toru Yoshida

School of Law, Hokkaido University

A workshop and symposium were held in Sapporo from 29 to 31 August 2006 as part of the 'Medusa Project' and organized under the sponsorship of the Endowed Chair in 'Politics and Mass Media (Asahi Shimbun)', and the joint auspices of the collaborative research project entitled 'Comparative Research into Changes in Governance in an Age of Globalization' based in the Advanced Institute for Law and Politics in the Graduate School of Law at Hokkaido University, and the International Comparative Center for Comparative Law and Politics (ICCLP) in the Graduate School of Law and Politics at the University of Tokyo. Since the first preparatory meeting in Tokyo in August 2005, the plans for this year's event steadily came to take shape and the project will continue beyond 2006 with another workshop and plans for publication.

### *Introduction*

Since entering the post-Cold War period, alliance relationships with the US at their centre have been forced to change with reference to both international affairs and the domestic politics of each country. Within this context, the 'Medusa Project' takes the US-Japan alliance in comparison as its core theme and intends to conduct systematic and integrated research on chiefly the US-Japan alliance. Issues explored within this research include, but are not limited to, military and security affairs with the intention of providing interrelated comparisons of the strategies adopted by alliance countries in Asia and Europe. In addition, whilst emphasizing the influence of each country's domestic system on international affairs, the project also attempts to bring into consideration in a systematic fashion issues such as political elites, party politics and domestic politics. Finally, by way of a comparison of alliance relations, the project aims to clarify the ways in which US-Japan relations are similar to, or different from, other countries' relations with the US and the reasons behind this. (More information

can be found by referring to the article entitled 'The Medusa Project: Preparation for the Medusa Conference in Sapporo' in the *ICCLP Annual Report 2005*). In other words, the 'Medusa Project' aims to carve out a new field of research on comparative alliance relations.

For reasons made clear above, not only US and Japanese participants but Europeans were asked to take part. Dr Christopher Hughes of Warwick University in the UK and Professor Ellis Krauss of University of California San Diego took the lead in this project and in total there were sixteen participants from Japan, three from both the US and the UK, and one from Germany. It was noteworthy that scholars in a range of fields such as security studies, terrorism, comparative politics and Japanese politics were joined by journalists from the *Asahi Shimbun* and *Okinawa Times* in both the workshop and symposium.

#### *Presentations and Discussion*

The 2006 project took the shape of a two-day closed workshop consisting of five panels held at Hokkaido University, followed by an additional meeting for the workshop and an international symposium on the third day at a hotel in the centre of Sapporo that was open to the public.

On 29 August, the first day, the project leaders Dr Hughes and Professor Krauss provided an overview of the 'Medusa Project' and an explanation of the planned research for the benefit of the participants. Having established a common understanding of the relevant issues, discussion took place based on the papers presented. The first day's sessions and themes were as follows:

##### Session 1

Theme: Alliances in Theoretical and Regional Context

Thomas Berger (Boston University, US) 'High Noon on the Global Commons: America, its Allies and the Changing Consensus on World Order'.

Current US diplomacy is the successor of the strategy of the second half of the 1990s and, after the experiences of 9.11 and the Iraq War, resembles that of the 1950s; in other words, the development of a maximalist strategy and consequent reconsiderations.

Takehiko Yamamoto (Waseda University, Japan) ‘Multilateral Choice of Japanese Grand Strategy in Northeast Asia: Beyond Bilateralism?’.

On the one hand, it is felt that the Koizumi administration did not attempt to make adequate use of the latent multilateral diplomacy in Asia. On the other hand, it is felt that the US-Japan alliance should promote the basis of a multilateral security community in Asia.

## Session 2

Theme: Alliance Responses to New Threats and New US Global Strategy

David Leheny (Wisconsin University, US) ‘Acting in Alliance: Japanese and European Counterterrorism in the US “War on Terror”’.

The US has transformed terrorism from an issue into an enemy, as it did in the past with Communism. Alliance relations have not been totally changed by the ‘War on Terror’ but Japan and Europe continue to adopt different strategies.

Takafumi Ohtomo (Tsukuba University, Japan) ‘US Military Bases and Force Realignments in Japan’.

Japan faces today the dilemma of entrapment in the US-Japan Alliance or abandonment. The issue of US forces stationed in Japan and their realignment can be evaluated from this perspective. It seems that a balance in the strategy of strengthening the US-Japan alliance will be sought whilst continuing to limit any commitment to the absolute minimum.

## Session 3: Alliances, Strategy and Technology

Ron Matthews (Cranfield University, UK) ‘Defence Industrialisation: Comparative



Evaluation of US Relationships with Japan and Europe’.

It is possible to regard defence capability as a ‘defence ecosystem’ that resembles a living organism and responds to the external environment. If Japan's defence functions are evaluated in this way, the period since the 1990s points to continuing efficiency and a shift to a model of technological/economic nationalism alongside qualitative changes to the US-Japan alliance.

Christopher Hughes (Warwick University, UK) ‘In Too Deep? Ballistic Missile Defence and US-Japan and US-UK Alliances Compared’.

As the introduction of BMD invites an increase in military and technological dependence, Japan's original strategy towards the US has been exposed to numerous problems. As a result, the danger of Japan becoming entrapped in US regional and global strategies has increased and it will be forced to reconsider its strategy.

Session 4: Alliances Compared

Hartwig Hummel (Dusseldorf University, Germany) ‘Uneasy Marriages: US-Japan and US-Germany Security Alliances Compared’.

Germany and Japan have not changed their original positions towards their alliances with the US as a result of the US ‘War on Terror’. Both countries continue to maintain their positions as civilian powers and this will serve to complement, rather than change, alliance relations.

Hideki Kan (Seinan Jo Gakuin University and Emeritus Professor of Kyushu University, Japan) ‘US-Japan and US-ROK Alliances Developments Compared’.

In order to ease the risks associated with the US-Japan Alliance, it is necessary to strike a balance between bilateralism, which takes into account the development of multilateralism in East Asia, regionalism and internationalism. Related to this point, the problem of war memories is acting as an obstacle to the development of regional security cooperation and it is necessary to find a solution through

mutual rapprochement.

As can be inferred from the above summaries, the comparative viewpoints of US researchers were that the 'War on Terror' is a continuation of sorts of past US diplomacy, whereas UK researchers paid greater attention to the aspect of change in the US-Japanese alliance. In contrast, Japanese researchers raised the questions of how Japan can handle changes in the US and build relations with Asian countries. However, mostly everyone was in agreement that whilst closely observing changes and continuity in the US-Japan Alliance, the room for manoeuvre in Japan's diplomatic options is limited.

Further summary of the findings was provided based on the thorough Q&A sessions and each presenter's analysis and outlook. Common issues that spanned the papers and possible tentative conclusions were discussed, in addition to publication plans and the future direction of the 'Medusa Project'. On the 31 August, the third and last day, there was a chance for the paper presenters to revise their findings on the basis of the other sessions and tease out any possible conclusions. The future direction of the project was also decided. Finally, discussion returned to the future direction of US domestic politics and foreign policy, the political orientation of each ally of the US and the importance of their roles, and the various kinds of tactical options and political capital that could be gained by each country in its relations with the US.

### *The Symposium*

In the afternoon of the same day at the JR Tower Hotel Nikko Sapporo, an international symposium sponsored by the Endowed Chair in Politics and Mass Media was held. The title of the symposium was 'Managing the US Superpower: US-Japan and US-Europe Alliances Compared'. It was structured in three parts and open to the public. In the first part of the symposium, Dr Hughes and Professor Krauss provided an all-encompassing presentation that highlighted the general features of both the US-Japanese Alliance and the US-European alliances and then explained the

dilemmas with which Japan, the UK and Germany must grapple as a result of being allied with the US superpower, and the significance of comparing these particular cases. Using this information as a basis, various points were highlighted such as changes in US strategy and how these were reflected in alliance relations (Berger), the quest for an East Asian community (Yamamoto), qualitative changes in policy on terrorism (Leheny), the balance in dealing with alliance dilemmas (Ohtomo), the issue of high costs in the defence industry (Matthews), the bias towards bilateralism in Japan's diplomacy and the need for reconsideration (Kan), and differences in Germany and Japan's alliances with the US (Hummel).

In the second part of the symposium Tomohiro Yara, an editorial writer at the *Okinawa Times*, discussed the issue of US bases in Okinawa through a comparison with US bases in Italy. In addition, Yasuo Muramatsu, Director of the Asahi Shimbun Research Center, explored US-Japan alliance relations from the perspective of public opinion and postwar democracy in Japan. In the final part of the symposium, US-Japan and US-Europe alliance relations in the context of the connection between world politics and each country's particular situation were commented upon by each presenter. Issues explored included the narrow space in which Japanese diplomacy is conducted as a result of ideological conservatism and predictions of the next US presidential elections.

After the symposium a reception was held at which speeches were made by Professor Yoshiaki Miyasako of the International Centre for Comparative Law and Politics at the University of Tokyo and Professor Jiro Yamaguchi of the School of Law at Hokkaido University. This project and symposium attracted considerable attention and was attended by about sixty people thanks to an announcement at the Hokkaido Government Press Club in June. Furthermore, the *Asahi Shimbun* carried an article entitled 'Increasing dependence binds Japan: Symposium on the US-Japan Alliance' on 7 September that included interviews with several of the presenters. An English translation was published on 25 September.

This three-day workshop and symposium took over a year to plan and realise and there is no doubt that it was an extremely multifaceted and stimulating event. Over thirty people contributed to the organisation of the event. It was undoubtedly thanks to these people's efforts, but also the climate of Hokkaido and the participants' determination that an intellectual atmosphere was created in which open-minded and highly perceptive opinions could be exchanged. Finally, we greatly appreciate kind advice of Associate Professor Ryosuke Amiya-Nakada of Meiji Gakuin University and are deeply grateful to the Asahi Shimbun, Hokkaido Shimbun, Nomura Foundation and Egusa Foundation, without whose support this project would not have come into being.

[Translated by Hugo Dobson]

## *Article*

### **‘One year after the formation of Merkel's Grand Coalition: Is German Politics still in “deadlock”?’**

Hiroki Yasui

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#### **1. “Germany in Deadlock”**

It seemed that Germany was in a troublesome deadlock situation in the summer of 2005 (Yasui, 2005a: 1). Germany faced many problems such as the economic hardship in the eastern region, the failure to adjust to globalisation, its aging society, and massive long-term unemployment. In spite of the “reform jam”, Gerhard Schröder’s centre-left government tried to overcome its economic and fiscal crisis by a reform package named “Agenda 2010” (Yasui, 2005c and 2006a). But the German voters were so dissatisfied with the reduction of welfare benefits that they punished the ruling coalition parties in a series of state (*Land*) parliament elections. In May 2005, after the last state government of the centre-left coalition was defeated in the election, Schröder decided to dissolve the *Bundestag*, which is the lower house of the German legislative body, and call a general election (Yasui, 2005b).

But the general election didn’t bring a clear-cut settlement. Since the opinion poll data seemed to assure the electoral victory of the so-called “black-yellow” centre-right opposition parties of the Christian Democrats (CDU/CSU) and the Liberals (FDP), they condemned the Schröder government for its lukewarm attitude to the much-needed reform and made an aggressive neo-liberal manifesto that advocated deregulation of labour market, mitigation of progressive taxation and the introduction of a flat-rate health insurance premium. On the other hand, the so-called “red-green” centre-left ruling coalition parties of the Social Democrats (SPD) and the Greens learned from the rapid decline of popularity ratings after the “Agenda 2010” reform. They valued the notion of social justice in their electoral platforms, and denounced

the “black-yellow” manifestos as “socially cold politics”. In addition to these two political camps, the Left Party, which was the successor of the former Communist Party in East Germany, received a certain degree of support from the people in the east, claiming that the both the “black-yellow” and the “red-green” were “neo-liberal”. These three political camps competed with each other in the electoral campaign. At the beginning, the “black-yellow” camp had a definite lead over the “red-green”. But its “socially cold” manifestos harmed such lead. The difference of the approval rating between the CDU/CSU and the SPD was 15 percentage points in May, but it shrank to only one percentage point at the general election on 18 September. Neither the “black-yellow” nor the “red-green” won a majority. Therefore, in order to make a stable government based on the majority of the *Bundestag*, it became necessary to reshuffle the conventional framework of political camps and find a novel arrangement of coalition framework. But this demanded the art of politics. Policy distance between the SPD and the FDP in economic issues was so great as to make forming a coalition impossible. The Greens and the CDU/CSU had conflicted with each other severely for years over socio-cultural issues. Though the policy distance between the “red-green” and the Left Party was relatively less, the negative legacy of dictatorship in the former GDR prevented forming a federal government including the Left Party. Consequently, a grand coalition of the CDU/CSU and the SPD was the most feasible coalition formation, and Angela Merkel, the leader of the CDU, became the first female German Chancellor on 22 November 2005. However, though it was the most feasible coalition, the electoral platforms of the CDU/CSU and of the SPD differed vastly. Not only commentators but also even politicians who formed the coalition agreement regarded this grand coalition as “a loveless marriage”. Some commentators expressed fears of instability and stalemate of the grand coalition government (Yasui, 2006b).

Now we have observed the experience of the Merkel government for more than one year. Has the grand coalition government under Merkel’s Chancellorship succeeded in overcoming the “deadlock” situation or not?

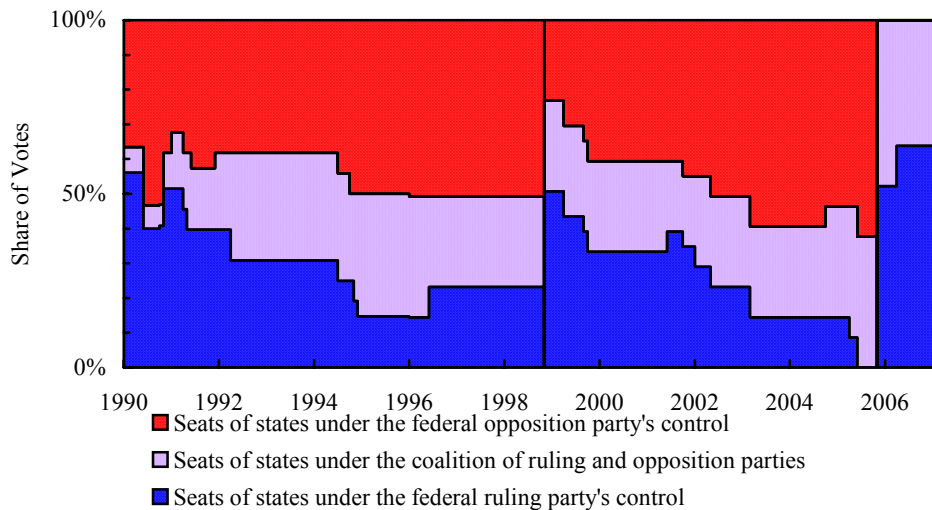
## **2. From Divided Government to Unified Government**

A lot of “veto points” (Tsebelis, 2002) in the governing system brought a political “deadlock” to Germany in the 1990s. In the German political system, the most important “veto point” is found in the *Bundesrat*, the upper house of the German legislative body, in which each state government casts its votes en bloc. And since the state governments are formed under a parliamentary system, if the federal governing parties were defeated in the state parliament elections, they would lose the majority in the *Bundesrat* and a divided government would emerge.

This once-theoretical scenario was realised after the 1990s, following the centre-right “black-yellow” bloc’s loss of its longstanding predominance over the left parties. Figure 1 illustrates the share of votes in the *Bundesrat* from January 1990 to February 2007, and shows that the opposition parties had controlled a majority of votes in the *Bundesrat* for 98 months, while the federal governing parties held a majority for only 18 months.

The formation of the grand coalition resolved this problem. Since every state government includes either the CDU/CSU or the SPD, no vote in the *Bundesrat* is under the exclusive control of the opposition parties. Instead, the share of votes under the exclusive control of the governing parties increased drastically from 0 per cent to 52.2 per cent. After the governing parties won the three state parliament elections in March 2006, their share of the votes was raised to 63.8 per cent. It extinguished the risk of opposition party blockade in the *Bundesrat* in the legislative process.

Figure 1. Share of Votes in the Bundesrat (Jan. 1990 – Feb. 2007)



(Source: Schindler, 1999: 2440-6; Feldkamp, 2005: 581f.; press materials)

### 3. Restraining the Conflict between the Two Major Parties

Nevertheless, while divided government was averted, if the CDU/CSU and the SPD were to have continued their policy disputes as before, the policy-making in the grand coalition would have fallen into deadlock. However, they succeeded in restraining policy conflicts among themselves to a certain degree. In order to explain this change, we can draw upon Amiya's analytical framework about the relationship between a party's participation in government and its change of attitude towards the act of compromise. He points out that when a party participates in a government, it tends to tolerate an unfavourable compromise since it can gain a good reputation from the voters through the early passage of bills. On the contrary, when a party is out of power, it tends to take an uncompromising attitude even to a bill that brings a more favourable outcome than before, since such a compromise would benefit the ruling parties (Amiya, 2004: 77f.). During the governments of Helmut Kohl and Schröder, the CDU/CSU and the SPD were divided, being the government and the opposition



respectively. So, whether the CDU/CSU or the SPD, the opposition party of the time would take a hard-line stance against the reform proposals of the government and contribute to the “reform jam”. In contrast, when both parties participated in the Merkel government, their interests were immediately aligned in the passage of the reform bills. Such a change made a compromise between them more feasible than before.

As a result, after the formation of the grand coalition, some attempts at reform that had been stalled due to the policy disputes between the CDU/CSU and the SPD were again set in motion. We can see three results of that movement. The first is the reform of the federal system. This reform aimed to reduce the “veto”-like power of the *Bundesrat* through the separation and reorganisation of the competitive jurisdictions between the federal government and the state governments. The Schröder government tried this reform once in 2004, but it failed due to the struggle for the right to manage the universities. In contrast, even though it provoked a lot of political controversy, renewed negotiation in the Merkel government ultimately achieved a compromise. After the passage of the reform bills in September 2006, the grand coalition started the negotiation of the “second phase” of federal system reform. This included reform of the fiscal redistribution scheme that operates between the federation and the states, and which seems more politically contentious and difficult than the “first phase”.

The second is health care reform. In the 2005 general election campaign, the CDU/CSU and the SPD presented highly contrasting manifestos on this issue. The CDU/CSU proposed that the charging of health insurance premiums be changed from the existing proportional-to-salary system to a flat-rate system, which had a kind of regressive and neo-liberal character. On the other hand, the SPD promised an equality-oriented reform that included the unification of health insurance systems that had been regionally and occupationally diversified, and the change of its financial base from premium to tax. If using the Esping-Andersen’s “three worlds of capitalism” model (Esping-Andersen, 1999), we can see the CDU/CSU’s proposal as

an effort to change the German “conservative” type of welfare system to the more “liberal” one. And the SPD’s can be regarded as an attempt at enhancement of the “social democratic” character in the German welfare system. Their policy orientations were fundamentally different. However, the Federal Health Minister Ulla Schmidt (SPD) made efforts to find a compromise, and finally succeeded. Its essential features were as follows; 1) the centralised Health Fund (*Gesundheitsfonds*) would be established, which would pool the premium revenues of all public insurers, as well as governmental subsidy, and allocate the medical care expenditure to each insurer in proportion to the number of the insureds; 2) though the insurer were allowed to charge an additional premium to the insureds if the allocated fund were short on the actual expenditure, the insureds were allowed to move to other insurers. It’s true that this compromise faced criticism. Some experts feared an increase in the bureaucratic cost of the huge Health Fund. Some high-income states complained about the money transfer to the low-income states through the centralised Health Fund. Nevertheless, each ruling party could find and praise their “own” political achievements in this compromise. The CDU/CSU proudly declared “the strengthening of market mechanism” in the health system, while the SPD acclaimed “the first step to the unified and tax-financed health insurance system”.

The third achievement of the grand coalition has been the progress towards fiscal stability. During the general election campaign in 2005, the SPD had fiercely attacked the CDU/CSU’s platform, which insisted on a rise in the rate of value-added tax. But the Social Democrats accepted this increase in the VAT rate in exchange for a more progressive income tax structure. Furthermore, all ruling parties agreed to raise the age of pension-eligibility from 65 years old to 67 years old in order to stabilise pension financing. In addition to these efforts for fiscal stabilisation, with the help of the export increase due to the world economic expansion and of the domestic consumption increase due to the FIFA World Cup 2006 in Germany, the German government received more annual tax revenue than expected and succeeded in

keeping its fiscal deficit below three per cent of GDP<sup>1</sup>.

#### **4. Intra-party Confrontation and Fragile Leadership**

As observed above, the Merkel government has overcome constitutional obstacles in the *Bundesrat* and achieved some policy compromises. German politics seems to be loosening its longstanding “deadlock”. However, the grand coalition has not, in fact, been so stable. Rank-and-file members of both parties have felt dissatisfied with policy compromises that prioritised the smooth management of government rather than the principles of their respective original policies. Additionally, the grand coalition’s reduced share of the vote in the last general election prompted grievances to be held against the party’s leadership, especially within the CDU/CSU. Such frustration sometimes led to leadership crisis or policy dispute within the parties, and caused concern for the unity of the grand coalition.

Yet after the election it was the SPD that saw its leadership change, as one leader resigned after another. After Ex-Chancellor Schröder retired from politics, Franz Müntefering resigned as Party Leader of the SPD over a defeat in the election of the Party Secretary General. Matthias Platzeck took over the leadership, and he had difficulty obtaining a consensus for the basic concept of the new party program for restructuring the welfare state. In addition to that, the last-minute coalition talks about the federal system reforms overwhelmed him. He suffered from psychogenic hearing loss, and resigned after 143 days in office. In his farewell speech, Platzeck attributed his resignation solely to a health problem, but, he said later that the destabilisation of the party was another reason (*Frankfurter Allgemeinen Sonntagszeitung*, 31. Dec. 2006). The third Party Leader after the general election was Kurt Beck. Since winning the state parliament’s election in Rheinland Pfalz on 26 March 2006, his leadership has been relatively stable. Meanwhile, the number of party member declined rapidly.

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<sup>1</sup> In the Stability and Growth Pact that was concluded in 1997, Euro zone members were obligated to keep their annual budget deficit within three per cent of gross domestic product.

The SPD is about to lose its status as the biggest party in (West) Germany since the Second World War.

Also in the CDU/CSU, frustration in the rank-and-file membership caused inner struggles after the general election. But such struggles within the CDU and the CSU contrasted in the way they led -- or did not lead -- to leadership change. The CDU's leadership experienced a kind of "success" story. After the general election, two groups in the CDU began to quarrel over the means to regain the popular support. One group insisted that the CDU should sharpen its neo-liberal profile. Another group advocated paying more respect to the "social" character in the party's platform. Rank-and-file frustration at the disappointing election result was vented in this dispute. But the CDU's Party Leader Merkel refrained from active participation in this dispute and kept a wait-and-see attitude. This strategy has worked well to date. While her potential rivals have blemished each other's reputations and weakened their relative influence<sup>2</sup>, Merkel has refrained from causing harm and had not come to harm, successfully keeping her post of the Party Leader and the Federal Chancellor. Nevertheless, it cannot be denied that it is questionable whether this strategy of "defending the leadership through refraining from invoking the leadership" is sustainable for the long term.

On the other hand, the CSU, which is a sister party of the CDU in Bavaria, met with a serious leadership crisis. Edmund Stoiber, who was the Party Leader of the CSU since 1995 and the Minister President of Bavaria since 1993, once agreed to join the Merkel Cabinet at the coalition talks. This motion triggered a harsh power struggle for the

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<sup>2</sup> In the Party Congress held at Dresden in November 2006, three Deputy Leaders who considered the rank-and-file's frustrations quarrelled about the extension of the unemployment benefit period. This conflict harmed their reputations. Though they could secure majority in the confidence vote for Deputy Leaders, their share of votes recorded a reduction of about 20 percentage points.

position of his successor. However, Stoiber was not satisfied with the post and jurisdiction that Merkel presented, and he declared unilaterally that he revoked his former agreement and remained in Bavaria as its Minister President. Among the party cadres, this “zigzag” motion caused frustration, which would explode a year later. At the end of 2006, Stoiber responded aggressively but arrogantly to the revelation of a scandalous undercover investigation of a dissident, conducted by his staff. Though he expected full support from the party cadres, the CSU Parliamentary Group in the Bavarian state parliament refrained from showing the complete trust to him. Stoiber tried to persuade the Parliamentary Group but failed. In January 2007, he declared that he gave up his re-election of the Party Leader in the next Party Congress and would resign from the Bavarian Minister President at the end of next September. While Merkel succeeded in securing her position by taking a wait-and-see attitude to the intra-party dispute, Stoiber went on an offensive and lost his position of the Party Leader and the Minister President. These developments show that a subtle jockeying is needed for a leader of conservative party that has a characteristic of cadre party.

## **5. Concluding Remarks**

As we have observed, the grand coalition government has on one hand brought some policy achievements. From without Germany's borders, Globalisation and European integration have demanded economic structural adjustment, while its aging society has produced endogenous pressure for structural reform of the welfare system. In the face of these challenges, the grand coalition has achieved some reforms. On the other hand, these reforms have led to discontent and frustration among the voters and party rank-and-file members, making the leadership of the ruling parties in the grand coalition more vulnerable. But from this very same leadership base, vulnerable as it may be, the grand coalition must mitigate such discontent and frustration. It can be said that the future of the grand coalition depends on its handling of the balance between external demands for reform and the internal need to mitigate discontent.

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