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COMPLEXITY OF TRANSNATIONAL SOURCES

LA COMPLEXITÉ DES SOURCES TRANSNATIONALES

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COMPLEXITY OF TRANSNATIONAL SOURCES
JAPAN

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1. General Comments

It would be useful to make some general comments on the situation of Japan in respect of the fragmentation of law in general, before answering each question prepared by the General Reporter.

Compared to European countries, the fragmentation of law is not so material and has not caused serious problems in Japan. There are at least two reasons.

The first reason is that Japan does not belong to a regional framework such as the European Union. There is no international body which creates rules that the Japanese government has to accept automatically as binding. The lack of such regional framework makes the layer of norms, which may be applied in Japanese courts, relatively simple.

The second reason is that Japanese law clearly stipulates the priorities between different norms. In relation to international engagements, Article 98 of the Constitution says, "2. The treaties concluded by Japan and established laws of nations shall be faithfully observed." There is a consensus both in practice and in academic circles that treaties are superior to domestic laws, but inferior to the Constitution[1]. In relation to the priority of rules for commercial transactions, Article 1 of Commercial Code provides, "2. On commercial matters, when there is no provision in this

* Professor, Sophia University, Tokyo, Japan.

1 Kazuhiro Yoshikawa, Legal Effect of Treaties as Local Rules (written in Japanese: *Joyaku no Kokunai-ho-teki Koryoku*), in Makoto Oishi and Kenji Ishikawa (ed.), Issues of the Constitution (*Kempo no Soten*) (Yuhikaku, 2008), at 334. The dominant opinion is that "established laws of nations" mean the unwritten customary international law (Takashi Narushima, Established Laws of Nations (*Kakuritsusareta Kokusaihoki*), in Oishi and Ishikawa (ed.), Id. at 336).

Code, the trade custom shall be applied, and if there is no such trade custom, the Civil Code shall be applied." While there is a debate about the status of *lex mercatoria* as explained later, there is a consensus that, at least in the commercial field, trade customs, whether domestic or international, should be given priority to the Civil Code, even though they should be considered inferior to the Commercial Code[2].

Types of Dispute Resolution

It should be pointed out that there is a difference of rules on conflict laws depending on the types of dispute resolution. Relating to litigation in Japanese courts, it is a dominant opinion that only the laws of states could be governing laws and non-state laws could not be governing laws. For example, Article 7 of Act on General Rules for Application of Laws (*Ho no Tekiyo ni kansuru Tsusoku-Ho*)[3], the Japanese code on the conflict of laws, stipulates "the formation and effect of a juristic act shall be governed by the law of the place which was chosen by the party/parties at the time when the act was made." It is considered that the phrase "the law of the place" denies the applicability of other laws than state laws, because the word "place" can't be considered in relation to *lex mercatoria* or international laws[4]. On the other hand, in arbitration, laws other than state laws may be applied as governing laws. Article 36 of the Arbitration Law, which was enacted in 2004 following the UNCITRAL Model Arbitration Law, prescribes the applicable laws on substantive matters as follows[5]:

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law that are agreed by the parties as applicable to

[2] Mitsuo Kondo, Commercial Law (General rules and Commercial Transactions ; *Shoho Sosoku and Shokoi-ho*), 5th and revised ed. (Yuhikaku, 2008), at 15ff.

[3] The English translation of this Act is available in the Japanese Annual of International Law No. 50, at 87ff. (2007).

[4] Masato Dogauchi, Private International Law and Soft Law (*Kokusai Shiho to Soft Law*) in Akira Kotera and Masato Dogauchi (ed.), Soft Law on International Issues (*Kokusai Shakai to Soft Law*) (Yuhikaku, 2008) 171, at 183.

[5] The English translation of the Arbitration Law is available at the website of the Japanese Cabinet Office http://www.kantei.go.jp/foreign/policy/sihou/law032004_e.html .

the substance of the dispute. In such case, any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing an agreement, as provided in the preceding paragraph, the arbitral tribunal shall apply the substantive law of the State with which the civil dispute subject to the arbitral proceedings is most closely connected.

(3) Notwithstanding the provisions prescribed in the preceding two paragraphs, the arbitral tribunal shall decide *ex aequo et bono* only if the parties have expressly authorized it to do so.

(4) Where there is a contract relating to the civil dispute subject to the arbitral proceedings, the arbitral tribunal shall decide in accordance with the terms of such contract and shall take into account the usages, if any, that may apply to the civil dispute.

It is understood that the phrase "rules of law" in Article 36(1) shows that, as far as parties agree, non-state rules may be applied in arbitration[6]. As such, there is a difference in the applicable rules between court cases and arbitrations.

In the area of investment treaty arbitration, there is a complexity of laws and proceedings that cannot be found in other areas. For example, in some cases, investors may commence more than one arbitration proceeding under different treaties for the same investment disputes and no mechanism, to coordinate such parallel proceedings, exists[7]. Also, there are cases where the adequate coordination between national and international laws, or the coordination between proceedings before state courts and international arbitration are difficult to achieve[8].

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[6] Tetsuo Morishita, Non-state Norms in International Commercial Transactions (*Kokusai Shotorihiki ni-okeru Hi-kokka-ho no Kino to Tekiyo*) in The Journal of International Law and Diplomacy (*Kokusaiho Gaiko Zassi*) Vol. 107, No. 1, 15, at 37ff. (2008)

[7] Tatsuya Nakamura, Control and Coordination of Parallel Proceedings (*Heikoteki Tetsuzuki no Kisei, Tyosei*), JCA Journal Vol. 56, No. 6, 4 (2009).

[8] Tetsuo Morishita, Some Issues on International Investment Arbitration: Umbrella Clause, Appeal Mechanism and Transparency (*Kokusai Toshi Chusai no Ronten to Kadai*), International Economic Law (*Nihon Kokusai Kezaiho Gakkai Nenpo*) No. 17, 153, at 156ff. (2008).

Soft Law

Finally, I would like to mention that the University of Tokyo, from 2003 to 2007[9], conducted a substantial research project on soft law, funded by the government, which has been called *Soft Law and the State-Market Relationship*[9]. In this project, a great deal of research on soft laws was performed from various aspects and many academics from various fields and universities participated. In this project, "Soft law refers to norms that, although not part of the formal law provided by the state and whose enforceability is not guaranteed in the courts, are perceived by both state and private parties as having some binding force and are, in fact, obeyed"[10]. The targets of this project are very broad, e.g. guidelines by government or non-governmental bodies, codes of conduct, principles and *lex mercatoria* in various areas of laws were the subject of examination. It is pointed out that soft law "plays a growing role in the modern business world and exerts influence on private party activities in commercial practice" and "a proper understanding of the roles and functions of soft law" is necessary "to undertake meaningful research on contemporary business law"[11]. The main purpose of this project is not to define soft laws, create an organized theory on soft laws or make some proposals on soft laws, but rather to make substantial legal studies from various aspects on soft laws, reflecting that the traditional legal studies in Japan have concentrated on hard laws and failed to make sufficient analysis on soft laws. As a result of this project, the database on soft laws in Japan and worldwide was made for public use, many discussion papers were published, 16 volumes of soft law journals were published and finally 5 books containing articles on soft laws by Japanese leading academics were published[12]. One of the 5

[9] The website of this project is at http://www.j.u-tokyo.ac.jp/coelaw/.

[10] See "Summary of the Project" by Nobuhiro Nakayama available at http://www.j.u-tokyo.ac.jp/coelaw/.

[11] Ibid.

[12] The titles of the 5 books are: "Theory of Soft Law" (*Soft Law no kiso riron*) edited by Tomotaka Fujita, "Soft Law on Regulation" (*Seifu Kisei to Soft Law*) edited by Minoru Nakazato, "Soft Law and Commerce" (*Shijo Torihiki to Soft Law*) edited by Hideki Kanda, "Soft Law and Intellectual Property" (*Chiteki Zaisan to Soft Law*) edited by Tetsuya Obuchi and "Soft Law on International

books contains 13 articles on the topic of "soft laws in international laws and private international law"(some of which are also quoted in this Report).

2. Answers to Questions

Question 1. Is the concern about fragmentation of international sources (regional v. universal conventions, codes of conduct and usages of the trade) expressed in your country? By whom (literature, case-law, executive branch of the State, professional association of the Bar)?

There is a lot of academic literature regarding the fragmentation of international sources, but as far as this Reporter knows, no significant concern has been expressed by executive branches or practitioners. In this Reporter's view, it is because there has not been a serious problem of the fragmentation of international sources in Japan as mentioned above.

The concerns in the academic literature may be classified into three types:

(1) the traditional discussion about the applicability of non-state laws, such as *lex mercatoria,* as governing laws in the area of private international law,

(2) the discussion about the importance of *lex mercatoria*, trade practices and customs and the direct applicability of such non-state laws in the area of international business law, and

(3) the recent discussion of the importance of soft laws in the real world as mentioned above.

Applicability of non-state laws as governing laws under private international law

As briefly mentioned above, it is the dominant opinion in Japan, and also the practice in Japanese courts, that non-state laws cannot be governing laws. The reason raised by the academics which support such dominant opinion is as follows:

(i) the contents of non-state laws are vague and lack sufficient clarity,

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Issues" (*Kokusai Shakai to Soft Law*) edited by Akira Kotera and Masato Dogauchi.

(ii) non-state laws are piecemeal and they only cover a part of the problems to be solved,

(iii) the phrase "the law of the place" contained in the Japanese conflict of laws statute excludes other laws than state laws the statutes of conflict of law,

(iv) the application of non-state law may lead to the avoidance of states' mandatory laws which should otherwise be observed,

(v) it is difficult to distinguish the non-state laws which may be applied as governing laws and the non-state laws which may not be applied as governing laws[13].

There are some academics who support the applicability of non-state laws as governing laws. For example, Professor Naoshi Takasugi opines that CISG (his article was written before Japan's accession to CISG) and UNIDROIT Principles could be applied as governing laws, arguing that they have sufficient clarity and the issues which are not covered by these non-state laws may be covered by state laws if necessary[14]. Professor Shunichiro Nakano points out that the reasons raised by the dominant opinions, such as the lack of clarity or the avoidance of the mandatory laws, are not persuasive and that amendment of the code on the conflict of laws to allow parties to choose non-state laws as governing laws should be discussed[15]. This Reporter also publicized the view that the reasons argued by the dominant opinion are not persuasive in the current global economy, but argued that the litigation in courts, which are conducted under the strict rules of procedure, are less suitable to deal with non-state laws compared to arbitration, and

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[13] Horei Kenkyukai, Legal Issues for Amendment of Private International Law (*Horei no Minaoshi ni kansuru Syomondai*) (1) (Shojihomu, 2003), at 35.; Masato Dogauchi, supra note 4, at 183.

[14] Naoshi Takasugi, International Contract for Direct Investment and Private International Law: Clause "gel de droit" and Applicability of "lex mercatoria" (*Kokusai Kaihatu Keiyaku to Kokusai Shiho- Anteika Joko no Yukosei to Hikokkaho no Junkyoho Tekikakusei*) in Osaka Law Review (*Handai Hogaku*) Vol.52 Nos. 3.4, 1007, at 1021ff. (2002).

[15] Shunichiro Nakano, Applicability of Non-State Laws as Governing Laws-Lex mercatoria from the view point of Private International Law (*Hikokkaho no Junkyoho tekikakusei-Kokusai Shihoteki Sokumen kara mita Lex Mercatoria-*) CDAMS Discussion PaperNo. 04/6J (available at http://www.cdams.kobe-u.ac.jp/publications. htm) (2004), at 6ff.

that such unsuitability as well as the burden of judges to identify and apply non-state laws could be reasons not to allow the application of non-state laws in courts. If parties want to apply non-state laws, they may choose arbitration[16].

Lex mercatoria

A lot of literature on international business law stresses that non-state law plays very important roles in the area of international business law. For example, Professor Kenjiro Egashira points out that standard forms and uniform rules, prepared by non-governmental institutions such as the ICC, are one of the sources of international business law. Professor Egashira opines that these forms and uniform rules may not be regarded as "laws" because they become applicable only through the act of contractual parties (the use of such forms, or the incorporation of the uniform rules, by reference in the contract), but that they should be explained as a source of law considering that they play important roles in the real world[17]. Professor Ryoichi Yamada and Professor Hiroshi Sano explain that the subjects covered by INCOTERMS, UCP and standard forms are rarely regulated by the mandatory laws of states, so that these rules and forms play roles as uniform laws in reality [18]. Professor Yasushi Kinumaki argues that the traditional way of operating for conflict of laws which apply national laws (the original subjects of national laws are domestic transactions) to international transactions, faces limitation and that *lex mercatoria* developed by the parties of global business is playing the role as a system of uniform laws which should be applied to international business transactions[19]. On the other hand, Professor Noboru Kashiwagi argues that there has been no scientific research about the existence and content of *lex mercatoria* observed in the real

[16] Morishita, supra note 6, at 35ff.
[17] Akira Takakuwa and Kenjiro Egashira (ed.), International Trade Law (*Kokusai Torihiki Ho*) 2nd ed. (Seirin Shoin, 1993), at 17ff.
[18] Ryoichi Yamada and Hiroshi Sano, International Business Law (*Kokusai Torihiki Ho*) 3rd edition (Yuhikaku, 2006), at 22ff.
[19] Yasushi Kinumaki, International Business Laws (*Kokusai Torihiki Ho- Keiyaku no Rule wo Motomete-*) revised version (Dobunkan Shuppan, 2009), at 39ff.

world and that practitioners feel *lex mercatoria* is vague and not reliable[20].

Soft Laws

Professor Kashiwagi examined whether various non-state rules could be classified as soft laws using the definition: "the norms that, although not part of the formal law provided by the state and whose enforceability is not guaranteed in the courts, are perceived by both state and private parties as having some binding force and are, in fact, obeyed"[21]. According to Professor Kashiwagi's analysis, only very limited rules are qualified as soft laws. For example, he argues that UNIDROIT Principles cannot be regarded as soft laws because practitioners do not think they have binding force[22]. This Reporter wrote that binding force should not be considered as an essential element of soft laws at least in the area of international commercial contracts, because most contract rules are not mandatory laws and may be modified by the parties. Rather, in the field of international contract where party autonomy is prevailing, the role of the soft laws is to provide some globally recognized standards, or principles, that parties may use if they agree . The flexibility of such rules could be one of the values of such rules[23].

Question 2. Which proposals have been put forward in your legal system to cope with the problem, and by whom?

The Reporter cannot find any specific proposals in Japan which have been put forward to deal with the problem at this stage.

In the Reporter's opinion, there is a significant variety in the nature and usage of non-state norms. It is important to use these norms flexibly and, in such manners as most appropriately fit with

[20] Toshimitsu Kitagawa and Noboru Kashiwagi, International Business Law (*Kokusai Torihiki Ho*) 2nd edition (Yuhikaku, 2005), at 29.
[21] Noboru Kashiwagi, Soft Law in International Transactions (*Kokusai Torihiki ni kansuru Soft Law*), Soft Law Journal (*Soft Law Kenkyu*) No. 4, at 43 (2005).
[22] Kashiwagi, Id., at 49.
[23] Tetsuo Morishita, International Contracts and Soft Law (*Kokusai Keiyaku to Soft Law*) in Akira Kotera and Masato Dogauchi (ed.), Soft Law on International Issues (*Kokusai Shakai to Soft Law*) (Yuhikaku, 2008) 193, at 210 ff.

their content, circumstances and parties' intent. Very general questions such as: "could non-state norms be applied as governing laws?" is not productive, because it overlooks the variety of the norms. At the same time, it is not correct to stick to the application of non-state norms as governing laws. Especially, in the area of contract laws where party autonomy is widely recognized. It should be understood that there is not much difference in result depending on whether non-state norms are applied as governing laws, referred to as trade usage, or incorporated in contracts. How to deal with non-state laws should depend on the area and the types of each rule.

Question 3 Has the executive power in your country kept a strict monitoring of all international engagements which were undertaken and made use of clauses of exemption/reservation (to preserve previous international engagements) when signing new instruments?

Under the Constitution, only the cabinet has the power to conclude treaties. With the assistance of the Ministry of Foreign Affairs, the cabinet controls the process of our international engagements.

Article 73 of the Constitution provides as follows:

> *"The Cabinet, in addition to other general administrative functions, shall perform the following functions:*
> …
> *(3) Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet."*

Regarding the "circumstances" that require the approval of the Diet, if a treaty relates to legal rights and obligations of citizens, requires a financial burden or has political importance, such treaty must be approved by the Diet[24].

As shown above, it could be said that the engagement of international treaties are under strict monitoring by the Cabinet and the Diet.

[24] Takane Sugihara, Lectures on International Law (*Kokusaihogaku Kogi*) (Yuhikaku, 2008), at 128.

Question 4. Has the judiciary in your country provided special training for judges to increase their ease and proficiency in dealing with sources of law which were not generated in their legal system?

The Supreme Court of Japan, which is in charge of personnel matters regarding judges, sends dozens of relatively younger judges to study abroad. Such experience of studying abroad helps the judges to deal with sources of law which are not generated in Japan. However, it should be pointed out that there is no other training system which is available to judges to increase their proficiency in dealing with laws other than Japanese laws. Unfortunately, in the Reporter's opinion, it should be admitted that some judges do not have sufficient ability to deal with cases containing the issues relating to conflict of laws and foreign laws.

In order to improve the judge's capability to deal with foreign laws, the administrative office of the Supreme Court may give some assistance for the research of foreign laws to each judge when necessary. Some academics have pointed out that an institution which would have a good ability to help judges to research foreign laws, and the global framework of nations to cooperate with such research should be established[25]. No such institution, or global framework, has existed in relation to Japan.

It should be pointed out that the Japanese government considered it necessary to strengthen the proficiency of judicial professionals in dealing with transnational cases. The Justice Reform Council, which was set up in the cabinet office to design judicial reforms in Japan, published its recommendations in 2001[26] and many of its proposals were implemented thereafter. In these recommendations, some proposals were made to respond to the globalisation [27]:

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[25] Akira Mikazuki, Application of Foreign Law and Courts (*Gaikokuho no Tekiyo to Saibansyo*) in Takao Sawaki and Yoshimitsu Aoyama (ed.), Theory of International Civil Procedure (*Kokusai Minjisosyoho no Riron*) (Yuhikaku, 1987) 239, at 280. In this article, Prof. Mikazuki introduced the Max Pranc Institute as a good example.

[26] The English version of the recommendations is available at http://www.kantei.go.jp/foreign/policy/sihou/singikai/990612_e.html.

[27] Chapter 2, Part 3, 1 of the Recommendation.

"-In order to respond to the increasing number of international civil cases, the civil justice system should be further reinforced and speeded up, beginning with strengthening of comprehensive response to cases related to intellectual property.

-The arbitration system (including international commercial arbitration) should be coordinated quickly, paying heed to international trends."

As these recommendations show, arbitration is considered as an option to increase the proficiency of the Japanese legal system to deal with international cases. In addition, the new system of law schools, which was set up in 2004 following the above recommendations, was expected to play some role to increase the proficiency of legal professionals to deal with transnational legal matters. Unfortunately, Japanese law schools have tended to pay more attention to teach basic laws and techniques to pass the bar exam, because the passing rate of the bar exam is limited to about 20-30% and law schools are in severe competition to get a higher passing rate.

Question 5 Does the fact that in some countries a specialized judicial institution deals with international commercial cases affect the functioning of justice under this profile? Would you assess the records of these judicial institutions as an improvement?

In Japan, there is no specialized judicial institution that deals with international commercial cases.

Under the Japanese Court Law, all proceedings in Japanese courts shall be conducted in Japanese language. All documents, including foreign laws, cases and expert opinions, which may be necessary to identify foreign laws, as well as transactional documents such as contracts, need to be translated into Japanese language before they are submitted to Japanese courts. This causes increased costs to parties and delays proceedings. Also, in the process of translation, there may be the risk that the translation does not reflect the correct meaning of the original documents. In the Reporter's opinion, Japan should consider setting up a special division of the court where cases could be heard in English.

The necessity of such special division is forwarded by Japan's accession of the CISG. Article 7 of the CISG provides: "(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade". For example, the UNCITRAL Court Digest for Article 7 says: "The mandate imposed by article 7(1) to regard the need to promote uniform application of the Convention has been construed to require fora interpreting the CISG to take into account foreign decisions that have applied the Convention. In one case, a court cited 40 foreign court decisions and arbitral awards. Two decisions have each cited two foreign cases, and several cases have cited a single foreign decision. More recently, a court referred to 37 foreign court decisions and arbitral awards."[28] Many foreign cases on the CISG are available in English. Most Japanese academics consider that judges, not parties, are obliged to find laws and to research cases by themselves. If so, when Japanese judges apply CISG, judges need good English ability to research foreign cases. Since it is difficult to require all judges to have such English ability, it could be an idea to set up a special department of the courts in future[29].

Question 6. Is there a difference in attitude towards transnational sources among administrative courts (where they exist), courts dealing with civil law matters, criminal law and commercial courts in your country?

There is no separation of courts depending on cases to be heard in Japan. In any case, the attitude towards transnational sources would depend on each judge, but not on courts. Judges who have had the experience to study abroad or to study foreign laws and conflict of laws in law schools may have more familiarity to deal with transnational sources of laws.

[28] http://www.cisg.law.pace.edu/cisg/text/digest-art-07.html#a.
[29] Morishita, supra note 6, at 42ff.

Question 7 Do you think that the efficiency of judges in dealing with cases raising complex interaction of sources may be affected by the fact that the judge himself/herself has to find the applicable law (iura novit curia) in opposition to the situation in which the parties themselves have to plead and prove the law to the court?

Japanese law does not have express provisions as to whether judges have to find the applicable law, or parties have to prove it. The dominant opinion, however, considers that it is the judges' role to find the applicable law and that they have to interpret such applicable laws in the same manner as applied in the country of the applicable law[30]. In the practice of transnational cases in Japanese courts, attorneys of the parties make research and submit documents or expert opinions that identify the content of the applicable laws[31]. Such practice shows that in many cases parties are in a better position than judges to make sufficient research of laws other than Japanese laws. However, it should be pointed out that if parties are obliged to prove the applicable law, parties who do not have sufficient budgets to make a thorough research of foreign laws could have a disadvantage. In order to achieve a fair balance between parties, it should be considered that the research of the applicable law should be the judges' role and judges may get the voluntary assistance of the parties to promote the efficiency of the procedure[32].

Question 8. Are there detectable common strategies that the judges seem to use to elude complexity (e.g. by the presumption that the foreign law is the same as the local law/by a presumed waiver of foreign sources if the party has not pleaded their applicability immediately)?

There is no evidence on the practice of judges, but some academics point out that judges tend to avoid application of

[30] Kazunori Ishiguro, International Civil Litigation in Japan *Kokusai Minjifunso Shori no Shinso*), 215ff. (Nihon Hyoron Sha, 1992), at 213ff.; Mikazuki, *supra* note 19, at 243ff.; Takao Sawaki & Masato Dogauchi, Introduction to Private International Law (*Kokusai Shiho Nyumon*), 6th edition (Yuhikaku, 2006), at 55ff.
[31] Takao Sawaki & Masato Dogauchi, Id., at 55ff.
[32] This is the dominant position of Japanese academics. See, Sawaki , Dogauchi, Id., at 56.

foreign laws because the application of Japanese law makes the handling of the case easier. There are at least two ways to do so.

The first way is to ignore the rule of the conflict of laws and simply apply Japanese laws. We may find many cases which involve international aspects but the judgment doesn't have any word about the private international law. Theoretically, according to the dominant opinion of Japanese academics, since the conflict of laws are mandatory, judges have to apply conflict of laws and the applicable laws determined as a result of the application of the conflict of laws even when parties do not plead the applicability of foreign laws. However, in practice, judges do not apply foreign laws unless parties raise the issue of conflict of laws.

The second way is to apply conflict of laws in such manner to result in the conclusion that the applicable law is the Japanese law, for example by concluding that there was implied choice of parties to make Japanese laws as the governing laws of the contract. An academic argues that there has been such tendency in Japanese court practices and that, to continue such practice, in the process of the amendment of Japanese private international law, judges opposed the proposal to limit the parties' choices only in the case where such choices are demonstrated "with reasonable certainty" as in European Rome I regulation[33].

Question 9 Is it possible to measure the efficiency of courts in dealing with such issues?

It is difficult to measure the efficiency of the courts in dealing with foreign laws, because there is no public record regarding how Japanese courts deal with such issues.

[33] Yoshihisa Hayakawa, General Rules on Contract in the New Private International Law of Japan (*Tsusokuho niokeru Keiyaku Junkyoho*), Japanese Yearbook of Private International Law No. 9, 2, at 7ff.