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Comparative Overview of Investor-State Dispute Resolution Mechanisms under the Trans Pacific Partnership and Japan's EPAs and BITs

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1. Introduction

On 4 February 2016, the Trans-Pacific Partnership ("TPP") was signed by representatives from the original participating nations including Japan. Various economic collaborative solutions and investment facilitation measures are laid down in the TPP, and one such measure is a scheme of provisions establishing an investor-state dispute settlement mechanism, in which disputes between a member state of the TPP and an investor from another member state with respect to issues arising from the foreign investor protection clauses of the TPP are to be referred to and resolved by arbitration instead of judicial court proceedings. This is known as investor-state dispute settlement (ISDS). On the other hand, Japan has signed and ratified a number of free trade / economic partnership agreements (EPAs) and bilateral investment treaties (BITs), and many of the existing EPAs and BITs to which Japan is a party contain investor-state dispute resolution clauses. Counterparties to those existing EPAs and BITs include the nations which are signatories to the TPP or expected to join in the near future. How and to what extent the new investor-state settlement regime under the TPP would replace, override or co-exist with the existing ISDS mechanisms under the EPAs and BITs is not yet clear, at least as a matter of practice. The purpose of this paper is to discuss certain notable differences between the respective investor-state dispute resolution systems under the TPP and Japan's existing EPAs and BITs with the aim of providing insights into the new investor-state dispute resolution system under the TPP as compared with the existing investor-state dispute resolution mechanisms under the existing EPAs and BITs.

2. ISDS Mechanisms in EPAs and BITs

To date, Japan is a signatory to 27 BITs and 21 EPAs, including the TPP. While there are numerous respects in which investor-state dispute resolution mechanisms differ from one EPA / BIT to the next, the principal points of divergence tend to lie in the following three areas:

a. The dispute resolution institutes and rules to be adopted for specific cases. The most common approach taken under the EPAs and BITs is for an investor to have an option to choose between the ICSID Rules[1], the ICSID Additional Facility Rules[2] and the UNCITRAL Rules[3].
b. The duration of the "cooling-off" period between the point in time when a dispute arises and the point in time when that dispute may be referred to the stipulated method of dispute resolution, during which period the parties are expected or required to engage in discussions over the issue in an attempt to resolve it amicably. This period ranges from zero to seven months.
c. Other restrictions on the scope, procedure and other features of the dispute resolution mechanism and the investor's ability to invoke it to seek remedies for an alleged violation of the investor protection measures under the applicable agreement.

It should be also noted that some EPAs, including those between Japan and Australia, do not have

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1 The Rules of Procedure for Arbitration Proceedings, stipulated by the International Center for Settlement of Investment Disputes ("ICSID") established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States dated 18 March 1965

2 The Additional Facility Rules of the International Center for Settlement of Investment Disputes

3 The Arbitration Rules of the United Nations Commission on International Trade Law dated 28 April 1876

investor-state dispute resolution clauses or have a dispute resolution mechanism that applies only to issues within a limited scope.

3. Overview of ISDS Mechanism under the TPP

Chapter 9 (Investment) and Chapter 28 (Dispute Resolution) of the TPP contains the provisions concerning dispute resolution. Chapter 28 provides for a mechanism for resolving disputes between the member states, which is modeled on the framework of trade dispute resolution in the World Trade Organization. Section B of the Chapter 9 provides for the investor-state dispute resolution mechanism.

Generally, the investor-state dispute resolution process set forth in the Chapter 9 of the TPP is comparable to the dispute resolution mechanisms found in the EPAs and BITs to which Japan is a signatory. For instance, the following provisions of the ISDS clauses of the TPP may be identified as having similar nature, scope and substance comparative to those under the existing agreements and treaties:

If an investment dispute arises between an investor and a member state, the parties are required to seek an agreed resolution through consultation and negotiation to be commenced by a written request for consultation delivered from the investor to the state[4].

If the dispute has not been resolved within six months of the receipt by the state of the said written request, the investor may seek adjudicative resolution by way of international arbitration on the ground of the respondent state's breach of an obligation under Section A of Chapter 9 of the TPP or of a specific investment authorization or agreement[5].

If an arbitration request has been submitted, the counterparty state may make a counterclaim in connection with the factual and legal basis of the claim advanced or make a claim by way of set-off[6].

The investor is allowed to submit the claim to arbitration under the rules of any of the "usual suspect" alternatives, i.e., the ICSID Rules, the ICSID Additional Facility Rules and the UNCITRAL Rules, or any other arbitration institute or rules thereof if so agreed by the parties[7].

Claims under the TPP become time-barred when more than three and a half year have passed from the point in time where the claimant investor becomes aware of the breach and the damage[8].

Also, the procedural aspects of ISDS arbitration under the TPP follow the general trend of the prevailing ISDS arbitration practice, which include the rules on selection of arbitrators, conduct of arbitration procedure, governing law, experts, consolidation and awards and service of documents[9].

4. Notable Features of ISDS Mechanism under the TPP

a. The scope of the dispute resolution system under the TPP is broader than that in the existing EPAs and BITs. As briefly mentioned above, TPP's ISDS mechanism extends beyond the scope of alleged breaches by a member state of obligations under the investment chapter of the TPP[10], and includes disputes arising from alleged breaches by a member state of (i) an "investment authorization", which means an authorization granted by a foreign investment authority of a TPP member state in favor an investor from another TPP member state or an investment matter subject to the investment clauses of the TPP[11], or (ii) an "investment agreement", which means a written agreement between a central government authority of a TPP member state and an investor from another TPP member state creating a binding legal rights and obligations and being relied on by the investor in making the investment in question[12].

b. As noted, there is a potential risk of multiple conflicting and overlapping dispute resolution proceedings on the same subject matter under the TPP and other trade agreements or investment treaties entered into between the TPP member states. Such risk is addressed in the ISDS clauses of the TPP,

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4 Paragraphs 1 and 2 of Article 9.18 of the TPP Agreement. [In the following footnotes, all citations of Paragraphs and Articles refer to those of the TPP, unless otherwise noted specifically.]

5 Paragraph 1 of Article 9.19.

6 Paragraph 2 of Article 9.19.

7 Paragraph 4 of Article 9.19.

8 Paragraph 1 of Article 9.21. The statute periods under the existing EPAs and BITs vary but many of those fall under the range of 3 years more or less.

9 Articles 9.22 through 9.30. Note however that the conduct of arbitration provisions in Article 9.23 and the transparency rules of Article 23 contain certain innovations which are not seen in existing EPAs and BITs, as discussed Section 4 of in this paper.

10 Subparagraphs (a)(B), (a)(C), (b)(C) and (b)(D) of Paragraph 1 of Article 9.19.

11 See definition of "investment authorization" in Article 9.1.

12 See definition of "investment agreement" in Article 9.1.

such that a request for arbitration under the TPP must be accompanied by a written waiver of any right to initiate or continue any proceedings in any forum concerning the same subject matter[13].

c. Innovative ideas are introduced to and incorporated into the conduct of arbitration provisions of the TPP, as follows[14]:
   (i) Expedited procedure for preliminary objections. Tribunals are now expressly empowered to grant early dismissal of claims for which an award in favor of the claimant cannot be made or which manifestly do not have legal merit, if such objection is made as soon as possible after the constitution of the tribunal and no later than the date for the respondent's first memorial[15].
   (ii) Third party involvement. A non-disputing member state is allowed to present its view to the tribunal orally or in writing concerning the interpretation of the TPP. Also, if granted permission by the tribunal, a non-member person or entity having a significant interest in the proceedings is allowed to submit an *amicus curiae* opinion to the tribunal with respect to factual or legal issues within the scope of the dispute[16].
   (iii) Transparency. It is expressly stipulated in Article 9.24 that key documents produced, issued or submitted for the arbitration, including notices of arbitration, pleadings, memorials, briefs and other written submissions, minutes and transcripts of hearings, and orders, award and other decisions of the tribunal, must be shared with the non-disputing member states and then made available to the public. Also, all hearings are to be open to the public. Confidential information that is qualified as "protected information" as defined in the TPP will be kept confidential provided that it is properly identified as such in a timely manner by the relevant disputing party, and subject to the right of the other disputing party to challenge the assertion of confidentiality in relation to such information.
d. In an attempt to ensure the consistent application of the provisions of the TPP, a commission comprising of members from the TPP member states will be established and empowered to render binding decisions over issues on interpretation of the TPP provisions. The tribunal is required to make an award consistent with the commission's decisions[17].

5. Limitations to the ISDS measures in the TPP

While incorporating innovative ideas to enhance consistency and transparency of the ISDS proceedings, there are some reservations and restrictions.

Most notably, the TPP expressly allows a member state to prevent or stop a claim for challenging tobacco control measures and denies a right of investor to resort to the ISDS provisions if the subject matter is tobacco control.

Also, the TPP provides for certain important exceptions to the investment protections under the investment chapter and thus effectively imposes substantial limitations on the scope of the matters subject to the ISDS mechanism.

a. TPP member states are allowed to disapply the national treatment and most favored nation treatment to certain non-conforming measures set out in a list and attached to the TPP as Schedule To Annex I.
b. TPP member states are allowed to adopt appropriate measures to ensure that investment activities are undertaken in a manner sensitive to environmental protection, health and welfare and other public interest objectives, to the extent that those measures are not inconsistent with the obligations under Section A of the investment chapter of the TPP.
c. TPP member states may deny the benefit of the investment chapter of the TPP to an investor from another TPP member state if the investor is owned or controlled by someone from a non-member state and has no substantial business activities in any TPP member state.

6. Conclusion

The investor-state dispute settlement provisions in the TPP are generally comparable to those in existing EPAs and BIT in terms of the basic framework, but innovative features are adopted in an attempt to prevent frivolous or groundless claims and to ensure

13 Subparagraph (b) of Paragraph 2 of Article 9.21.

14 Many of those innovative provisions are modeled on the 2012 Model Bilateral Investment Treaty of the United States.

15 Paragraph 4 of Article 9.23.

16 Paragraphs 2 and 3 of Article 9.23.

17 Paragraph 3 of Article 9.25, citing Article 27.2.2(f)

consistency and transparency. The substantive scope of the dispute resolution provision has been adjusted, expanding in some aspects and narrowing down in others, reflecting the multinational nature of the agreement, which requires a delicate balance to be drawn between the protection of investors' interests on the one hand, so as to facilitate cross-border investments among the member states, and the protection of public interests, especially in the areas of environmental protection and health care, on the other. In terms of the conduct of arbitration proceedings, more tools including case consolidation and early dismissal are made available to the tribunal that will be useful means of managing the process efficiently and properly, while the transparency of the proceedings and the contemplated introduction of the code of conduct rules for TPP investment arbitrators will heighten tribunals' accountability.

Catch the Global Headwinds: Japanese Students Encounter the International Arbitration Moot

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1. Japanese Students Meet Moot Arbitration

In this article I write about the Moot Arbitration based on my own experience of coaching Kobe University Team for more than ten years. My experiences have not always been positive. Also, throughout my experience the achievements of Japanese teams, including Kobe, especially from the viewpoint of score, have remained low.

The most successful international arbitration moot is the Annual Willem C. Vis International Commercial Arbitration Moot in Vienna and its sister moot called Vis East Moot in Hong Kong. Both competitions are held in spring every year and the same problem is used in both. These moots are operated according to virtually the same rules. Teams can choose to participate in both moots. Therefore, I use the words 'Vis Moot' to refer to both moots.

In spring 2007, Kobe University sent its first team to Vis Moot in Hong Kong. All but one of the team members were undergraduate law students and all were native Japanese speakers. At that time, the Chinese University of Hong Kong offered its campus in the city centre as the venue for the moot, which was located in the Bank of America Tower in central Hong Kong Island. In 2007, 46 teams participated from 14 countries. At that time, the moot competition consisted of a small, friendly community of students as well as arbitrators and coaches, who shared strong interests in International Commercial Arbitration. However, as the number of participating teams has increased year by year, to accommodate them, the venue has been moved to the campus of the City University of Hong Kong in Kowloon Peninsula.

In the twenty years since the first Vis Moot, the competition has grown impressively. Vis Moot originally started in 1994 in Vienna to promote UN texts concerning international commercial dispute resolutions, including CISG and the UNCITRAL Model Law on International Commercial Arbitration. In 1994, only 11 teams from 9 countries gathered in Vienna. In 2004, with the strong initiative of Ms. Louise Barrington, the first Vis East Moot Competition was held in Hong Kong, with the participation of 14 teams from 7 countries. In the spring of 2016, about 340 teams gathered in Vienna and more than 100 teams in Hong Kong.

2. Globalization of Legal Education

According to the Vis Moot website (https://vismoot.pace.edu/site/about-the-moot), the goal of Vis Moot is 'to foster the study of international commercial law and arbitration for resolution of international business disputes through its application to a concrete problem of a client and to train law leaders of tomorrow in methods of alternative dispute resolution.' This vision is recognized by lawyers all over the world. In my opinion, the globalization of legal education has been substantially accelerated by the success of Vis Moot.

There were several forerunners of the international

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moot competition for law students in the world such as Jessup Moot Court Competition (started in 1960). However, these were concerning public international law, which is a small area in the field of legal practice even today. On the other hand, the International Commercial Arbitration deals with disputes concerning international business generally. Even though the practice of international commercial arbitration is fairly new, many law students are attracted by it because more law students are interested in international business. Especially, in the case of Japan, mainly based on the civil law tradition, many law students become not only lawyers but also civil servants and business persons in Japanese companies that deal with international business transactions.

As Japan became one of the contracting states of CISG in 2008, Vis Moot has been attracting the interest of more students in Japan. For example, in the new National Uniform Examination for Judiciary, which was introduced with the new Law School System for the US-style degree of JD, the problem often requires the students to apply CISG. Also, the influence of CISG on the latest revision of the Japanese Civil Code is significant. Also, as to the procedural laws concerning International Arbitration, we are beginning to share a more harmonized legal environment because of the success of the New York Convention and UNCITRAL Model Law on International Commercial Arbitration, both of which are also accepted in the legal system of Japan. There are various kinds of information concerning these rules and laws such as books, several online databases of case law and other materials provided via the Internet. For the students, video recordings of the arguments in Vis Moot are now available on various websites including YouTube.

3. Structure of Vis Moot

In my opinion, together with the basic concept of Vis Moot, the liberal and open structure of the Moot competition has contributed to the rapid development of Vis Moot. Vis Moot is open to all law students who would like to take part. All they have to do is to organize and register a team and pay the registration fee. In the case of Vis East Moot in 2016, the registration fee was USD1.100 per team.

The problem is issued on the website of Vis Moot in the beginning of October each year and everyone can download and read it. The problem is usually called a 'bundle.' It is a collection of important documents such as a Statement of Claim, Response, Procedural Orders and other procedural documents, and Exhibits handed in by the Parties. In the problem, the detailed schedule of the oral hearing has already been fixed. It can be found in Procedural Order No.1 issued by the arbitral tribunal.

Before going to the oral hearing scheduled in Hong Kong or Vienna, each team has to submit two Memoranda of about 50 pages. In December, they have to submit the Memorandum for Claimant and, in January, the Memorandum for Respondent. All the teams have to follow the format prescribed in the rules, which is largely the same as that used in real practice. It takes the students a substantial amount of time to research and write up the Memoranda. They also have to learn how to use word processing software to make the formal documents for international arbitration.

After completing two written submissions, the teams have to prepare for the oral presentation for the hearing in Hong Kong or Vienna. Vis Moot does not have a regional round. Instead, the teams for Vis Moot usually take part in practice moots, which are usually called Pre-Moots. The existence of Pre-Moots is also a feature of Vis Moot. Pre-Moots are organized in many places in the world by various organs such as arbitration institutions, law firms, universities, academic societies etc. In Japan, an academic society named AIBT (Academy for International Business Transaction) in cooperation with JCAA and JAA organize a Pre-Moot in February or March every year. Through this process, the students can learn oral presentation skills as well as how to construct sound legal arguments.

In Pre-Moots, the roles of arbitrators are usually played by practicing lawyers and legal academics in the region. Some of the Pre-Moots are already very large and the participation of foreign teams is becoming usual. Japanese teams are also active in participating in Pre-Moots held in foreign countries. Sometimes, Pre-Moots are combined with conferences or workshops, from which the students can learn about international arbitration within a wider context.

Pre-Moots are also for the arbitrators to learn how to

organize the arguments. As the problems are complex, it is not easy to prepare for the oral hearing in a short time. So, through the participation in Pre-Moots, the arbitrators have the opportunity to prepare for the moots in Hong Kong or Vienna.

When arriving in Hong Kong or Vienna, most of the teams have already experienced arguing in Pre-Moots. Also, most of the arbitrators in Vis Moot already have some experience in instructing students in Pre-Moots. So, both are ready to start high-level arguments from the beginning. In other words, a team that has no experience in participating in a Pre-Moot will find it difficult to catch up with the arguments of other teams. Also, for arbitrators without substantial preparation, it is difficult to follow the arguments presented by the teams.

Generally speaking, Vis Moot has been successful in promoting the globalization of legal education. It has established a wonderful forum for students who are studying law all over the world. The experience of meeting, arguing and sharing one week together in Hong Kong or Vienna is invaluable for them. It is also useful for the arbitrators and coaches to get to know each other and exchange opinions concerning legal education and other matters. Now, various conferences concerning international arbitration are organized during the period of Vis Moot. Also, law firms and other institutions organize various social events for the arbitrators and coaches.

The understanding of international arbitrations as well as the rules and laws concerning them are widely promoted by Vis Moot. The problems of Vis Moot always deal with new topics and controversial legal problems. So, researching and thinking over the problems are always challenging for the students, and it provides very good practical and theoretical training.

However, the problems are often very difficult even for the arbitrators. So, to analyze the problems, students often have to rely on the opinions of coaches and other advisors. If the team hopes to acquire good results in the competition, there is the temptation to ask for more support than the rules approve.

Pre-Moots are useful for the students to practice before going to Hong Kong or Vienna. During the process of Pre-Moots, most of the difficult legal issues as well as tricky facts, which many may overlook, become clear. If one of the participating teams finds good solutions or innovative arguments, these are soon known to all of the participating teams. So, in this environment, most of the good ideas are taken by other teams very easily. This has a strong impact on the evaluation by the arbitrators. When all the teams, after having some experience of Pre-Moots, come to Hong Kong or Vienna, most of the difficult points of the problem become clear and many of the good ideas are shared by many teams. In this context, the arbitrators are not so much impressed by the contents of the good arguments, because they are not sure whether the team developed the arguments based on their own efforts or they just picked up the arguments made by other teams in the Pre-Moots. Instead, the arbitrators naturally tend to evaluate the oral presentation skills more than the contents of arguments. This sometimes seems to have a bad influence on the students. They care more about their oral presentation skills than the quality and soundness of their argument itself.

However, it is unreasonable to expect Vis Moot to be perfect in every respect. Compared with the innovation of legal education brought about by Vis Moot, these are limited problems. But, in my opinion, some measures should be taken to improve it.

4. Participation of Japanese Universities

4.1 Motivating Students

About 10 universities in Japan have the experience of sending their teams to Vis Moot in Hong Kong or Vienna. Compared with the number of universities that provide legal education, this number is still small. However, it is not easy to increase this number in a short time, because sending teams to Vis Moot every year is not easy.

Managing the motivation of the students is one of the most difficult problems that the coaches of Japanese teams encounter. Sometimes, it is very difficult to find students who would like to join in the mooting. Once committed, the students have to spend substantial time and energy in preparation. So, it is natural that most students hesitate to take part even if they are very interested. Nevertheless, if students who have already taken part in Vis Moot explain the importance of their experience and how to prepare for Vis Moot based on their own experience, this may re-assure

fresh students sufficiently to become involved in the preparation.

These days, there is another difficult issue. The students have to pay for their own traveling costs. As participation in Pre-Moots is becoming an essential part of Vis Moot, the students have to pay more. To motivate the students, I have to try to clarify the matter of money as early as possible. Securing financial support from university funds or from other organs is becoming a very important issue for participating in Vis Moot.

After starting the team, there are other obstacles. For Vis Moot, the team has to work together for more than five months onward from October. They tend to lose their initial momentum. In particular, after handing in the Memorandum for Respondent in January, the examination period of the end of the second academic term starts soon in Japan. So, I always try to organize a practice oral argument by a foreign arbitration lawyer as an instructor soon after the submission of the Memorandum for Respondent. So far, it has worked well. One of the most difficult things for Japanese students is to imagine the oral argument in a concrete manner because they still do not know the procedures of international arbitration. So, making an oral presentation before a foreign lawyer who has experience of real international arbitration will help them understand what they are expected to do in the oral hearing.

4.2 Facing the Language Barrier

Despite the enormous efforts by the students, the Japanese teams have remained in the bottom ranks over the last ten years (or, in the 'forth quartile' according to the expression of score issued by Vis East). In my opinion, this is caused largely by the language barrier between English and Japanese. From the viewpoint of oral communication, the barrier seems to be particularly high. It seems almost impossible to change the situation if the team members are mostly native Japanese speakers.

As far as the contents of the arguments are concerned, many Japanese teams share the impression that it is not so difficult to reach the same level as the top teams. In fact, there were several Japanese teams whose Memoranda received honorable mentions.

The reason for this poor achievement in the oral arguments, at least from the viewpoint of score, is not easy to analyze. As far as the preparation is concerned, most Japanese teams have opportunities to have instructions from foreign arbitration lawyers. Also, most of them can use basic materials for researching the legal issues of the problem. So, Japanese teams seem to have a reasonable educational environment.

There are some possible reasons behind the poor results of the Japanese teams. One reason is the difference in the selection procedure of team members. In many universities in foreign countries, they select team members according to the internal selection procedure within each university. As a result, the number of speakers of most of the teams who come to Hong Kong or Vienna is usually very small. The arguments are conducted by two or three students. On the other hand, the Japanese team tends to give more students the opportunity to argue in Vis Moot. There may be seven or eight speakers in one Japanese university team. Another possible reason is the age of the speakers. The members of Japanese teams often include many undergraduate law students (in the second or third year). Nowadays, many of the team members who come to Vis Moot are postgraduate students. For example, all the team members of the USA law schools are postgraduate students.

English is becoming the common second language for people all over the world. A basic English education is widely provided almost everywhere. As a result, more and more people are able to communicate in English and, for most people, English is not a difficult language. However, ironically, it is becoming evident that, for Japanese native speakers, English oral skills are very difficult to acquire. We have to analyse and understand the reasons for this difficulty. When I started mooting, I thought it would be easier to overcome the language barrier. However, it is not that easy. I have been trying hard to analyze this problem. Through my experience, I suppose that it is because of the radical difference of the sounds used and the large divide between the grammatical constructions in English and Japanese.

Despite our clear realization of this serious problem, we have failed to tackle it for a very long time. As far as reading and writing are concerned, English educa-

tion in Japan has been narrowly functioning. Students who would like to learn more from legal books written in English try to read them with the support of legal academics at the level of postgraduate education. Several decades ago, the level of English education varied from country to country. So, the Japanese were not the only ones to suffer from the language barrier of English. TOEFL scores of Japanese students were not noticeably bad compared with those from other foreign countries whose mother tongues were not English.

However, we are now facing another big challenge as to English. More and more information is distributed in the form of oral English through various forms of media that connect people globally. We get updated news through the Internet as audio recordings or movies. The situation will accelerate as English is taught as a second language to increasing numbers of people in the world.

The Japanese students were shocked to encounter this very high language barrier. Even worse, they did not realize their situation before, because Japanese native speakers more or less stay at the same level. After taking part in moot arbitration and arguing with foreign teams, for the first time in the life they realize that their English oral skills are greatly inferior to those of other non-native speakers of English. Actually, no one in foreign countries would believe that we spend almost as much time learning the English language as we do the Japanese language in our secondary education of six years!

Nevertheless, I found that taking part in Vis Moot is by far the most efficient measure for Japanese students to improve their English oral skills. So, through the experience of mooting, I believe that we will be able to find out more about how to improve our oral English education.

5. Importance of Vis Moot for Japanese Students

Law is becoming a very important tool for constructing sound and productive business relationships in a cross-border manner. Law is comparable to a programming language for building well-structured and precise relationships between persons efficiently. In other words, law is a sort of language that facilitates cross-border communication on a different level. This is why lawyers are relevant for the globalization of business relationships. Fortunately, most legal systems in the world share the traditions of Civil Law or Common Law. Despite the differences between these traditions, both of them share very basic similarities derived from the common cultural background of western societies and share the same basic structures.

But, if law is a sort of language, it should enable communication between lawyers in various countries, and Vis Moot now provides a very good platform for developing this capacity. From this viewpoint, Japanese students are getting enormous benefit. They can enjoy communicating with foreign law students by using the grammar of law. I think that it is the ultimate reason why many Japanese students of law enjoy participating in Vis Moot, even if they have problems with their English oral skills. So, I believe that it is very important for our future lawyers to continue to participate in Vis Moot. Of course, it is a pity that they have to encounter such a high language barrier as well as the insensitive undervaluation of their efforts by foreign arbitrators. This unfairness should be adjusted by the fair observation of the special language barrier which the native speakers of particular languages such as Japanese are encountering in their efforts to speak English. However, precisely because of this barrier, Japanese law students gain more from their experience of participating in Vis Moot!

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