Idiosyncrasies of Japan and Asia towards the Harmonisation of Law

Comparison with Latin American States

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I. Regional Differences in the Harmonisation of Law

The "Japanese attitudes towards law", sometimes referred to as the "legal consciousness of the Japanese", is one of the most heatedly debated subjects in Japanese legal studies. It has often been claimed that the Japanese see the law and contracts differently from Westerners.[1] Various situations and issues have been focused on in the course of debates examining the claim over the "legal consciousness" thesis.

No one has addressed the harmonisation of private law in this context thus far. However, how Japan has engaged in this initiative, originating in the uniform law movements in late nineteenth century,[2] offers another avenue of debate on this subject. Because the uniform law instruments for global (as opposed to regional) harmonisation are equally available to all the states, it can easily be observed how open a state is in the reception of

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1 See L. NOTTAGE, The development of comparative law in Japan, in: Reimann / Zimmermann (eds.), The Oxford Handbook of Comparative Law (2nd ed, Oxford 2019) 201, 219–224.

2 For an overall review of the uniform law movements, see R. DAVID, The International Unification of Private Law, in: David *et al* (eds.), International Encyclopedia of Comparative Law, Vol. II (Tübingen 1971), ch. 5, paras. 327 et seq.

harmonised (uniform) law.[3] Furthermore, the benefits of harmonisation of law is usually found in overcoming the difficulties arising from the divergence of domestic law rules and the costs associated with determining another state's law. The case for the harmonisation of law formulated in such a manner is of universal relevance.[4] If significantly different attitudes towards the harmonisation of private law is still found in a certain state or among different regions, there must be cultural, institutional or historical reasons for it.

If it is found that the Japanese attitude towards harmonisation differs from that of European states, it must be questioned whether the observed attitudes are unique to Japan or common among Asian jurisdictions (1.). In doing so, and in assessing supposed Japanese or Asian idiosyncrasies, further comparisons with another non-European region, for example, Latin America, may be useful in identifying what is truly unique to Japan or Asia and what is in fact common among non-European regions (2.).

1. The Selective Approach of Japan and Asia Towards Uniform Law Instruments

a) Japan and uniform law

It must first be identified whether Japan's attitude to the harmonisation of law is in fact different from the "Western" or European states. As far as participation in the harmonisation works is concerned, there does not seem to be any difference. Rather, Japan was the first non-European state that proactively took part in the early uniform law activities. In 1904, Japan requested participation in the Hague Conference on Private International Law (hereinafter 'the Hague Conference') and was admitted as a member during its fourth session.[5] It was many years before the United States or even the United Kingdom joined the Hague Conference. Prior to that, the Japanese Maritime Law Association was established in 1901, and it joined the Comité Maritime International (CMI). It is no surprise that a state work-

3 Recently, the term "harmonisation of law" appear to be preferred to the traditional "unification of law." Correspondingly, "uniform law instruments" might better be replaced by the "harmonised legal instruments." In this article, however, these terms are used interchangeably.

4 See R. GOODE/H. KRONKE/E. MCKENDRICK (eds.), Transnational Commercial Law: Texts, Cases and Materials (2nd ed., Oxford 2015) 18–21.

5 M. DOGAUCHI, Historical Development of Japanese Private International Law, in: Basedow/Baum/Nishitani (eds.), Japanese and European Private International Law in Comparative Perspective (Tübingen 2008) 27, 37 n. 49. The memoir of the Japanese delegation's request for admission to the Hague Conference on International Private Law is published at *http://www.pilaj.jp/hague_materials/006_169_184.pdf*.

ing hard on (domestic) codification with the aim of amending the unequal treaties with the Western powers desired to participate in a project on unification among "civilised nations" *(bunmei koku).*

Later, when UNIDROIT (The International Institute for the Unification of Private Law) was established in 1926 as an auxiliary organ of the League of Nations, Japan played an important role as a permanent member of the League's Council. Japan's well-known diplomat Mineichiro Adachi was elected as one of the first members of the Governing Council of UNIDROIT. After the Second World War, Japan has maintained its seat in the United Nations Commission on International Trade Law (UNCITRAL) since the first term, from 1968, and up to the present without interruption.[6]

However, Japan seems more cautious about the reception of uniform law instruments.[7] It often takes many years to become a party to widely accepted uniform law conventions. For example, it acceded to the United Nations Convention on Contracts for the International Sale of Goods (CISG) in 2008, 28 years later than its adoption of 1980 and only after 73 other states had become parties.[8] Even though Japan is surrounded by sea and heavily relies on shipping in international trade, Japan ratified the Brussels Convention of 1924 (the Hague Rules) only in 1957 and its 1979 Protocol incorporating the Visby Rules with SDR amendments as late as in 1993.[9] Japan has not become a party to many conventions on private international law and procedural law, including the Taking of Evidence Convention of 1970.[10]

In order to conduct a precise evaluation of Japan's reception of uniform law instruments, the author has analysed the data.[11] 114 uniform law instruments (including nine model laws) for which an updated status is publicly reported have been considered. Categorising them by international organisations that sponsored the instruments, 19 are UNCITRAL instruments (including the

6 H. SONO, Going Forward with Uniform Private Law Treaties: A Study in Japan's Behavioral Pattern, Japanese Yearbook of International Law 60 (2017) 10, 15–16.

7 See generally, SONO, *supra* note **Fehler! Textmarke nicht definiert.**.

8 H. SONO, Japan's Accession to and Implementation of the United Nations Convention on Contracts for the International Sale of Goods (CISG), Japanese Yearbook of International Law 53 (2010) 410.

9 SONO, *supra* note **Fehler! Textmarke nicht definiert.**) 27–28. On the overview of the maritime law codification, see S. KOZUKA, Maritime Law Codification in Japan: Elements considered and not considered, in: Nawrot/Pepłowska-Dąbrowska (eds.), Codification of Maritime Law: Challenges, possibilities and experience (Abingdon/New York 2020) 217.

10 T. FUJITA, When does Japan not conclude uniform private law conventions?, Japanese Yearbook of International Law 60 (2017) 59.

11 S. KOZUKA, The selective reception of uniform law in Asia, Japanese Yearbook of International Law 60 (2017) 86.

New York Convention, which is generally recognised as an UNCITRAL instrument although being adopted in 1958 before the establishment of UNCITRAL), 38 are the Hague Conference conventions, 13 are UNIDROIT conventions (including the Cape Town Convention and its Aircraft Protocol jointly sponsored with the International Civil Aviation Organization (ICAO)), 10 are CMI conventions (adopted by the Diplomatic Conference on Maritime Law), 18 are conventions under the auspices of the International Maritime Organization (IMO), 2 are conventions adopted jointly by the UNCTAD and IMO, and 14 are ICAO conventions (including the Warsaw Convention adopted by the International Conference on Private Air Law in 1929). Subsequently the author counted the number of receptions of these uniform law instruments by states. The term "reception" means either becoming a Contracting Party to a convention through ratification, acceptance, approval or accession,[12] or enacting a domestic law almost fully consistent with a model law. The status of "reception" is based on the information from the respective sponsoring organisations, published on their websites.[13] The data identifies 201 jurisdictions in 198 states,[14] including Faroe Islands, Hong Kong and Macau.[15] Canada, the US and other federal states are treated as a single jurisdiction, though there are cases where only some of their internal jurisdictions have implemented a uniform law instrument, in particular a model law.[16] The data was checked against latest developments in January 2017. Though the

12 Cf. Arts. 14 and 15 of the Vienna Convention on the Law of Treaties 1969.

13 The respective websites containing the information on the status of conventions are as follows: UNCITRAL: *http://www.uncitral.org/uncitral/en/uncitral_texts.html;* The Hague Conference: *https://www.hcch.net/en/instruments/status-charts;* UNIDROIT: *http://www.unidroit.org/* (the "Instruments" tab); CMI: *http://www.comitemaritime.org/Status-of-Ratification-of-Maritime-Conventions/0,2769,16932,00.html;* IMO: *http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx;* ICAO: *https://www.icao.int/secretariat/legal/Pages/TreatyCollection.aspx*.

14 The names of the surveyed states and jurisdictions are in Appendix B to KOZUKA, *supra* note **Fehler! Textmarke nicht definiert.**. Some of the states included are not members of the United Nations: the Cook Islands (member of IMO and ICAO), the Holy See (member of UNIDROIT and UNCTAD), Niue (which is a party to some IMO conventions), the State of Palestine (which has acceded to the New York Convention) and Kosovo (which has acceded to the Legalisation (apostille) Convention).

15 Faroe Islands, Hong Kong and Macau have associate member status of IMO.

16 For example, regarding the 1985 version of the Arbitration Model Law, all the provinces and territories in Canada have enacted legislation to implement it, while only California, Connecticut, Georgia, Illinois, Louisiana, Oregon and Texas have done so in the United States (and Florida has enacted a state law based on the 2006 version of the Model Law).

reception status has changed since then (including Japan's adoption of the Bunkers Convention and the Nairobi Wreck Removal Convention, to be effective in 2020[17]), for the sake of comparison no updating has been done.[18]

The outcome clearly shows Japan's selective approach to the reception of uniform law instruments. Among the 114 uniform law instruments, Japan's reception numbers only 24. This figure is significantly low as compared with the European states. France and the Netherlands have completed the largest number of receptions in the world, a total of 56. Italy and Switzerland follow with 50 receptions. By comparison, though the 24 receptions by Japan is in fact larger than the average of all the jurisdictions in the world (19.09), it is smaller than the average number of receptions by European jurisdictions, which is 31.02.

b) Japan and Asia concerning the selective reception of uniform law instruments

Japan's apparently selective reception of uniform law instruments, despite its active participation in their creation, is not so peculiar when compared with other Asian jurisdictions. On the one hand, major Asian jurisdictions are well represented at international organisations engaged in the unification and harmonisation of private law. As of 2017, 8 among 24 Asian states[19] were members to the Hague Conference, 6 were members of UNIDROIT and 13 had served at least once as a member of UNCITRAL. Major economies in the region, namely China, India, Japan and the Republic of Korea, were all present in these organisations, as well as in the Legal Committees of IMO and ICAO.[20]

On the other hand, these Asian jurisdictions are as selective as Japan in the reception of the adopted uniform law instruments. The average number

17 The signing of the two conventions have been approved by the Diet in 2019. The amendments to the Act on Ship's Civil Liability and Compensation for Oil Pollution (LCOP) that are needed to implement them will be fully in force on 1 October 2020.

18 The complete table containing the status of receptions for all the uniform law instruments is on the website of the Japan Branch of the International Law Association at *http://www.ilajapan.org/jyil/components/archive/vol60/table_kozuka.pdf*.

19 For the sake of the analysis in this article, Asia does not include the Middle East or the former Soviet Union states in Central Asia. The names of the 24 Asian states are listed in Appendix A to KOZUKA, *supra* note **Fehler! Textmarke nicht definiert.**.

20 The membership of the Hague Conference and UNIDROIT are published on the respective organisation's websites (*https://www.hcch.net/en/states/hcch-members* and *http://www.unidroit.org/about-unidroit/membership*). The past member states of UNCITRAL are listed in THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, A Guide to UNCITRAL: Basic facts about the United Nations Commission on International Trade Law (Vienna 2013) 37–41.

of receptions by Asian jurisdictions is 13.42. Among 26 Asian jurisdictions (of 24 states), the jurisdiction with the largest number of receptions is Hong Kong (30 receptions), followed by Macau (27), India (25), Japan (24), Singapore (24) and mainland China (23). Almost half (12) of all the Asian jurisdictions have made 10 or less receptions. It is striking that no Asian jurisdiction has a greater number of receptions than the average of European jurisdictions. Given that the high number of receptions by Hong Kong and Macau result partly from the succession when these territories were handed over to China, these could be considered anomalies in Asia. Excluding those two jurisdictions, the average number of receptions fall to 12.17.

While early participation in the uniform law activities is unique to Japan within Asia, the Japanese attitude towards uniform law, viewed from its reception, seems closer to that of its Asian neighbours than the European model. The days are long gone when Japan aspired to join the "civilised nations" through the uniform law project. One might say that the Japanese attitudes towards harmonisation is marked by the Asian legal culture. However, to avoid being trapped in an easy reference to the "Asian culture", it must first be asked just what the unique features of Asia are in its approach to uniform law. It is for this reason that we now turn to the data from Latin American jurisdictions.

2. Comparing Asia with Central and South America

a) The legal family

In terms of legal families, a large variety of families are found within the Asian region. As a result of inheriting the colonial legal system, there are some common law jurisdictions, such as India, Malaysia and Singapore, and some civil law jurisdictions, such as Indonesia. Japan is basically a civil law state, though its law was not transplanted as a comprehensive system from a single jurisdiction, instead having been eclectically adopted from various codes and legislation in the Western states. Such an independent legal system, in turn, influenced the law of the Republic of China before the Second World War (as now in force in Taiwan) as well as the law of the Republic of Korea. The People's Republic of China, when modernising its law in the last few decades, adopted the same eclectic approach of comparing and selecting from the various existing laws. There are even elements of the socialist regime, as in the People's Republic of China, Vietnam and, to some extent, India.[21] The coexistence of divergent legal systems within

21 India has implemented some socialistic regulations, such as imposing on banks the duty to devote a certain percentage of its loans to priority sectors (priority sector lending). See M. L. TANNAN, Tannan's Banking Law & Practice in India, Vol. 1

Asia closely resembles the situation in Europe, where the unification of law was needed to overcome the differences between the common law (English law), French law, German law and socialist law. According to the generally accepted theory, such diversity in legal systems may lead to larger interest in harmonisation efforts, as the expected benefits become larger.

In contrast, Central and South American states are marked by the common foundations of their legal systems. To start with, Latin America can largely be divided into two sub-regions: the Central and South American states on the American continent and the island states in the Caribbean. The former states, with a few exceptions, were the Spanish colonies during the sixteenth and seventeenth centuries and became independent in early nineteenth century. The foundation of the legal system in the Spanish colonies in the Americas was the contemporary Spanish law, which desperately needed modernisation.[22] Not least for this reason, the Napoleonic Codes had significant influence on the newly independent states in the nineteenth century.[23] The French Civil Code also had an impact on Brazil, which formed an independent empire in 1822 after the Portuguese king, who had fled from the invasion of Napoleon, returned to Lisbon.

Despite the shared foundation inherited from Spanish (and Portuguese) law and the common influence of the French Civil Code, the national codification in this region took place rather independently. It is argued that the Latin American civil codes of the nineteenth century were characterised by the "secessionist" mind, after the independence from the Spanish *audiencias*.[24] They were also marked by the eclectic approach of making references to various preceding codes and laws (which coincidentally resembles the codification approach of Japan and China).[25] Still, there were mutual influences on the intellectual level. The Civil Code of Chile of 1857 was based on the work of a lawyer born in Caracas, Andrés Bello. The Code, having effect beyond the country's border, was adopted by such states as El Salvador, Ecuador and Colombia. It also became one of the sources that inspired the draft of an Argentine Civil Code by Vélez Sarsfield, which

(21st ed., Nagpur 2005) 631. See more generally, W. W. LOCKWOOD, "The Socialistic Society": India and Japan, Foreign Affairs 37 (1958) 117.

22 J. KLEINHEISTERKAMP, Development of comparative law in Latin America, in: Reimann/Zimmermann, *supra* note **Fehler! Textmarke nicht definiert.**, 252, 255.

23 A. PARISE, Harmonisation of Private Law in Latin America and the Emergence of Third-generation Codes, in: Momberg/Vogenauer (eds.), The Future of Contract Law in Latin America (London 2017) 29, at 33–35; A. M. GARRO, Unification and Harmonization of Private Law in Latin America, American Journal of Comparative Law 40 (1992) 587, at 604–607.

24 PARISE, *supra* note **Fehler! Textmarke nicht definiert.**, 33.

25 KLEINHEISTERKAMP, *supra* note **Fehler! Textmarke nicht definiert.**, 260–273.

entered into force in 1871. The Civil Code of Argentina, in turn, was adopted by Paraguay in 1876.[26]

On the other hand, many Caribbean island states gained their independence in the 1960s from the British Commonwealth and are common law jurisdictions. Other jurisdictions in the Caribbean include the overseas territories of France, autonomous countries within the Kingdom of the Netherlands and municipalities of the Kingdom of the Netherlands.[27]

All these indicate that the divergence among the Central and South American jurisdictions is smaller than that in Asia. One might, consequently, assume that there will be less enthusiasm for the unification of law among Latin American states than in Asia.

b) Receptions of uniform law instruments in Latin America

Using the same data on the uniform law instruments, the average number of receptions for Latin American states is 18.15. It is higher than the average of Asian jurisdictions (13.42) and close to the world's average (19.09). When divided into two sub-regions, the average for the Central and South American states is 19.10, while that for the Caribbean states is 16.69. The state with the largest number of receptions in the region is Mexico, which has made 34 receptions. It is followed by Argentina (31 receptions), Brazil and Ecuador (each 26 receptions) and Colombia (25 receptions). These numbers of receptions are only slightly larger than that of the top Asian jurisdictions, noted above. Therefore, the higher average of Latin America's receptions, as compared with Asia, is due to the tail end. While almost half (twelve) of all the Asian jurisdictions have made 10 or less receptions, in Latin America the equivalent states number only 4 (Dominica (10 receptions), Bolivia (9 receptions), Haiti (8 receptions) and Suriname (8 receptions)) among 35. As a result, the standard deviation for the Latin American states is 5.97 (6.57 for the Central and South American states and 2.83 for the Caribbean states), while the standard deviation for Asia is 8.10

Generally speaking, Latin American states are more open about the reception of uniform law instruments than Asia. This observation may seem puzzling if the benefits of unifying private law resides in eliminating the divergences among national laws, in particular the difference between the

26 PARISE, *supra* note **Fehler! Textmarke nicht definiert.**, 34–35; GARRO, *supra* note **Fehler! Textmarke nicht definiert.**, 606–607; KLEINHEISTERKAMP, *supra* note **Fehler! Textmarke nicht definiert.**, 263–271.

27 These jurisdictions cannot be a contracting party to uniform law treaties. Still, there is a project named OHADAC (Organisation pour l'Harmonisation du Droit des Affaires dans la Caraïbe), aiming to promulgate uniform law among Caribbean jurisdictions, including these non-independent islands.

common law and civil law. The data show that the opposite is true. It may imply that the interest in the harmonisation of law is driven not simply the expected benefit from eliminating the divergence among the adjacent jurisdictions. The possible factors that may influence are political as well as economic circumstances found in the historical background of the respective countries (1.). One must note that the aim behind the harmonisation of private law has itself changed over time, which may affect the future attitudes of states towards legal harmonisation (2.).

II. Analysis of the Determinants for the Attitudes Towards Harmonisation

1. Historical Backgrounds: Political and Economic Perspectives

a) The political implications of the region

A very unique experience of Latin American states is that they made several efforts towards the regional unification of law. The focus was primarily on private international law.[28] The first product of such efforts was the Treaty of Lima, adopted at the Congress of Lima in 1878.[29] The Treaty was based on the nationality principle, which Argentina and Uruguay did not find acceptable. The latter states called for another congress to discuss the unification of private international law. The Congress of Montevideo that took place as a result adopted the Treaties of Montevideo, consisting of eight treaties and a protocol, in 1889.[30] Among them was the Treaty on International Civil Law, which was based on the principle of domicile. These developments took place earlier than the constitution of the Hague Conference in Europe, but it was regionally limited and had no interest in, or aspiration to, global unification.

These regional efforts, in fact, followed the regional efforts to establish the international legal order that was original to the region.[31] The efforts

28 As an overview, E. G. Lorenzen, The Pan-American Code of Private International Law, Tulane Law Review 4 (1930) 499; Garro, *supra* note **Fehler! Textmarke nicht definiert.**, 589–591.

29 The Treaty of Lima was ratified only by Peru and never entered into force. See A. Delić, The Birth of Modern Private International Law: The Treaties of Montevideo (1889, amended 1940), *http://opil.ouplaw.com/page/Treaties-Montevideo.*

30 The First Treaties of Montevideo were ratified by Argentina, Bolivia, Paraguay, Peru and Uruguay. Some of the Treaties have also been acceded to by Colombia and Ecuador. Delić, *supra* note **Fehler! Textmarke nicht definiert.**.

31 A. Nakai, *Shūken kokka taikei to kokusai kihan wo meguru chi'ikiteki kōsō: 19-seiki laten amerika no hōteki chi'iki shugi* [Regional System of States and Alternative International Norms: "Legal" Pan-Americanism of Latin America in the 19th Century], Kokusai Seiji 189 (2017) 65. On the public international law aspect of the

originated in the concept of "derecho público americano" as expressed by the independence leader Simon Bolívar. Beginning with the Congress of Panama in 1826, the Latin American states held several congresses with the aim of concluding treaties to guarantee the independence of the American states against foreign interference, especially from the European powers. After a few decades of attempting in vain to conclude an effective treaty, the states turned to regional unification of private international law.

The regional efforts continued in the twentieth century, leading to a series of Pan-American Conferences. Then, a commission of jurists to work on public and private international law issues was introduced. Based on the commission's work, the sixth Pan-American Conference approved the Bustamante Code in 1928.[32] The Ibero-American, as opposed to the Pan-American, initiative also continued,[33] leading to the second Montevideo Congress held between 1939 and 1940. Eight treaties and a protocol to update the first Montevideo Treaties were produced at this Congress.[34] After the Second World War, the Organization of American States was formed, and it has worked on the unification of private international law – aspiring to create harmony with the private international law rules of the United States – through the International Conference of Private International Law (CIDIP).[35] This historical background may be relevant in interpreting the relatively small number of receptions of uniform law instruments in Latin America. Among other reasons, the success of the Bustamante Code may have eliminated the need for the private international law conventions of the Hague Conference.

The long-time experience with regionalism in Latin America is a significant difference from Asia. After all, there has been no comparable movements towards a regional legal order in Asia. At the Paris Peace Conference in 1919, Japan did raise the issue of racial equality and tried to stipulate it

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American regionalism, see M. INGULSTAD/L. Lixinski, Pan-American exceptionalism: Regional international law as a challenge to international institutions, in: Jackson/O'Malley (eds.), The Institution of International Order: From the League of Nations to the United Nations (Milton 2018) 65.

32 LORENZEN, *supra* note **Fehler! Textmarke nicht definiert.**, 500–501. The Bustamante Code has been ratified by Brazil, Bolivia, Chile, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Venezuela. See *http://www.oas.org/juridico/english/sigs/a-31.html*.

33 On this point, see KLEINHEISTERKAMP, *supra* note **Fehler! Textmarke nicht definiert.**, 276

34 The Second Treaties of Montevideo have been ratified by Argentina (only some of the Treaties), Paraguay and Uruguay; DELIĆ, *supra* note **Fehler! Textmarke nicht definiert.**.

35 C. M. VÁSQUEZ, Regionalism versus Globalism: a View from the Americas, Uniform Law Review (2003) 63.

in the Covenant of the League of Nations.[36] However, Japan had no regional ally, other than the Republic of China, though China did support the Japanese proposal despite conflicts with Japan over many problems.

Even after the Second World War and Asian states' independence, the absence of movements toward the regional unification of law has been conspicuous. Unlike the European Bank for Reconstruction and Development (EBRD), which produced the Model Law on Secured Transactions,[37] and the World Bank's promulgation of principles for the same purpose,[38] the Asian Development Bank (ADB) has not drafted any legal instrument.[39] This was despite the fact that many Asian states went through periods of law reform, especially in areas related to finance in the 1990s, either to enable a former socialist regime to transition to the market system or to address the Asian financial crisis that severely hit some economies in the region toward the end of the decade.

There have reportedly been sporadic ideas on regional legal unification. The best known among them is the project for the Principles of Asian Contract Law (PACL). There is also a project on the Asian Principles of Private International Law (APPIL).[40] However, none of these efforts ultimately gained political momentum.[41]

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36 N. SHIMAZU, The Japanese attempt to secure racial equality in 1919, Japan Forum 1 (1989) 93; V. NIQUET, One Hundred Years after the Paris Peace Conference: A Welcomed Change in Mutual Perceptions, Japan Review 3 (2019) 4.

37 The European Bank for Reconstruction and Development, Model Law on Secured Transactions (1994).

38 The World Bank, Principles and Guidelines for Effective Insolvency and Creditor Rights Systems (2001), replaced by the World Bank, Principles for Effective Insolvency and Creditor/debtor Regimes (2015).

39 S. HUBER, Transnationales Kreditsicherungsrecht, Rabels Zeitschrift für ausländisches und internationales Privatrecht 81 (2017) 77, 94.

40 W. CHEN/G. GOLDSTEIN, The Asian Principles of Private International Law: objectives, contents, structure and selected topics on choice of law, Journal of Private International Law 13 (2017) 411; M. UEMATSU, APPIL (Asian Principles of Private International Law) and its Perspective Regarding International Jurisdiction, Ritsumeikan Law Review 37 (2019) 35.

41 See R. MICHAELS, Preamble I, in: Vogenauer (ed.), Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC) (2nd ed., Oxford 2015) 31, 99, para. 155. On PACL, Y.-C. SU, 'Codification of Civil Law in East Asia – A General Report in: Wang (ed.) Codification in East Asia (Cham 2014) 181, 194; S. HAN, Principles of Asian Contract Law: An Endeavor of Regional Harmonization of Contract Law in East Asia, Villanova Law Review 58 (2013) 589; N. KANAYAMA, PACL (Principles of Asian Civil Law), in: Moore (ed.), Mélanges Jean-Louis Baudouin (Cowansville/Québec 2012) 995; ID., PACL (Principles of Asian Contract Law), in: Jaluzot (ed.), Droit japonais, droit français: Quel dialogue? (Geneva/Zurich 2014) 185.

b) Economic integration after the Second World War

In contrast to the absence of legal regionalism, the economic ties have been close within the Asian region, and the regional integration of markets is taking shape in Asia. Prior to the Second World War, intra-regional trade in Asia grew rapidly, even under the colonial system. Asia also developed ever stronger ties with the United States economically. Singapore was the primary port to handle products for export, the most important being the rubber shipped from the Malaya and Dutch East India to the US. It also served as the hub of products for local consumption, such as rice from Thailand to be consumed by workers on the rubber plantations. The labour force moved mainly from southern China to the Southeast Asia.[42] The textile industry of Japan grew by increasing exports to the US and Southeast Asian markets, while importing cotton from the US, and gradually shifted its production to China, while the local textile industry also burgeoned in China.[43] All these developments in economic ties, however, did not give rise to arguments for eliminating the differences in law, notwithstanding that the relevant legal systems were in fact diverse. More recently there has emerged a production network for electronic products in East and Southeast Asia. Components are produced in various production sites scattered over the region and then assembled at one place (most typically in mainland China) to be exported all over the world.[44] As a more institutional development, ASEAN (Association of Southeast Asian Nations), which now consists of ten countries in South East Asia,[45] has established the ASEAN Economic Community (AEC) in 2015. It is moving toward the creation of

42 K. SUGIHARA, Patterns of Chinese Emigration to Southeast Asia, 1869–1939, in: Sugihara (ed.), Japan, China, and the Growth of the Asian International Economy, 1850–1949, Vol. 1 (Oxford 2005) 244.

43 N. KAGOTANI, Japan's Commercial Penetration of South and Southeast Asia and the Cotton Trade Negotiations in the 1930s: Maintaining Relations between Japan, British India and the Dutch East Indies, in: Akita/White (eds.), The International Order of Asia in the 1930s and 1950s (Farnham et al. 2010) 179.

44 See M. S. MANGER, The Economic Logic of Asian Preferential Trade Agreements: The Role of Intra-Industry Trade, Journal of East Asian Studies 14 (2008) 151; I. HAN/K. OH/J. YOO, Changes in Competitiveness of LCD Industry of East Asia: from Bamboo Capitalism to Water Lily, International Telecommunications Policy Review 19(1) (2012) 15; M. ANDO/F. KIMURA, Expanding fragmentation of production in East Asia and domestic operations: Further evidence from Japanese manufacturing firms, Journal of International Commerce, Economics and Policy 4 (2013) 1; W. THORBEKE, Understanding the Flow of Electronic Parts and Components in East Asia, RIETI Discussion Paper Series 16-E-072 (2016).

45 The current Member States of ASEAN are: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

an integrated market according to the AEC Blueprint 2025.[46] These economic incidents of integration, however, have not given momentum to harmonisation of private law.

Latin American states initiated attempts for economic integration much earlier than Asia. The idea of regional economic integration started with the essay by Dr. Prebisch in 1950.[47] Current entities working towards this aim include ALADI (Asociación Latinoamericana de Integración), which in 1981 evolved from LAFTA (Latin American Free Trade Association); SICA (Sistema de la Integración Centroamericana), which in 1993 evolved from ODECA (Organización de Estados Centroamericanos); CAN (Communidad Andina), which developed from the Andean Pact as the sub-group of LAFTA in 1996; and since 1973 CARICOM (Caribbean Community). Independent of these initiatives and with an early origin, Mercosur, consisting of Brazil, Argentina, Uruguay and Paraguay, was established in 1995 by the Ouro Preto Treaty of 1994. Venezuela joined Mercosur in 2006, but it has been suspended since 2017. However, these economic integrations have achieved only limited success and, probably for that reason, have not led to significant legal harmonisation.

Thus, economic integration has not resulted in legal harmonisation either in Asia or in Latin America. The reason is not identical, though. While Asian jurisdictions are experienced in generating economic ties without harmonising private law, Latin American states have suffered from the lack of success in economic integration itself.

The future is yet to be seen. The negotiations over the Trans-Pacific Partnership (TPP) led to the successful conclusion of the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) among 11 states on the Pacific Rim, notwithstanding the later withdrawal of the United States from the original TPP.[48] Through this Partnership, Asian members are brought together with Latin American states that have experiences in the regional harmonisation of law. On the other hand, somewhat overlapping with the Latin American members of the CPTPP, Mexico, Colombia, Peru and Chile launched in 2011 new regional initiatives under what has been dubbed the Pacific Alliance (PA). With many observer states in the Asian-Pacific region, including Australia, China, India, Indonesia, Japan and Korea, the Alliance has the potential to provide members with access to already

46 ASEAN Economic Community Blueprint 2025 (The ASEAN Secretariat 2015).

47 R. PREBISCH, The economic development of Latin America and its principal problems, E/CN.12/89/REV.1 (1950).

48 The signatories to the CPTPP are: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

well-established economic zones in the Asian-Pacific area. These developments might bring about new momentum for legal harmonisation.

2. The Outlook for the Future

a) Theoretical shift in the role of legal harmonisation

So far, this article has addressed the harmonisation of private law only. In fact, uniform law in the late nineteenth to the twentieth century was conceived as an extension of the domestic law of that era, which was the nation state's law.[49] Codification was a significant step in nation-building, and the civil code, among other items, was considered the foundation of society, as the well-known phrase "*constitution civile*" indicated.

This assumption, however, no longer holds with the recent uniform law instruments.[50] Behind these recent reforms lies the "instrumentalist" view of (private) law. The idea, in fact, came from a Peruvian economist, Dr. de Soto, who argued that the law forms part of the institutional setting of business activities.[51]

Based on such an instrumentalist view, law reform has come to be regarded as a tool for regulatory reform. Of importance now is the mode of legal transfer, which either aims to improve the effective achievement of a policy goal, sometimes suggesting the reform of the goal itself,[52] or, alternatively, advances the de-contextualised principles of the relevant law, which can be transplanted and re-contextualised in the recipient jurisdiction. Such a shift in the nature of uniform law instruments is reflected in the recent focus on the law and development by UNIDROIT and UNCITRAL.[53]

If states are selective in the reception of uniform law instruments, the selection may be affected by such an instrumentalist view. In this regard, it is noted that there are some extremely popular uniform law instruments, which enjoy a large number of receptions by the jurisdictions around the

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49 J. H. DALHUISEN, Dalhuisen on Transnational Comparative, Commercial, Financial and Trade Law, Vol. 1 (7th ed., Oxford et al. 2019) 7.

50 See S. KOZUKA, The Bifurcated World of Uniform Law: The Uniform Law of 'Islands' and of 'The Ocean', in: UNIDROIT (ed.), Eppur si muove: The Age of Uniform Law – Essays in honour of Michael Joachim Bonell to celebrate his 70th birthday Vol. 1 (Rome 2016) 333.

51 H. DE SOTO, The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else (London 2000) 18–21.

52 M. SIEMS, Bringing in Foreign Ideas: The Quest for "Better Law" in Implicit Comparative Law, Journal of Comparative Law 9 (2014) 119.

53 S. KOZUKA, Do we need harmonisation for everything? The possibilities and limits of harmonising finance law, in: Akseli/Linarelli (eds.), The Future of Commercial Law: Ways Forward for Change and Reform (Oxford 2020) 55, 58.

world. They are the New York Convention (158 receptions), the Warsaw Convention (154) and its Hague Protocol (138), the CLC Protocol of 1992 (139), the Montreal Convention of 1999 (122), the Fund Convention's Protocol of 1992 (115), the Legalisation (Apostille) Convention (112), the Child Abduction Convention (96), the Intercountry Adoption Convention (95), the Geneva Convention on the Recognition of Rights in Aircraft (87), the Guadalajara Convention (87), the CISG (85) and the Bunkers Convention (85). The author calls these 13 instruments the "must have" uniform laws. If a state wishes to serve as a full-fledged entity in its foreign relations, it cannot fail to become a party to most of these.

b) Policy priorities in the reception of uniform law instruments

To the extent private law (including uniform private law) is considered as a tool of economic policy, the selection of non-"must have" instruments may reveal the state's policy priorities. In Asia, among the most popular instruments are the Arbitration Model Law (16), the E-Commerce Model Law (15 receptions) and the Cape Town Convention along with its Aircraft Protocol (each 10).

Interestingly, Japan marks a different preference from its Asian neighbours in this respect. The Arbitration Model Law of 1985 has been implemented by enacting the Arbitration Act in 2001,[54] but reception has been done with neither the E-Commerce Model Law nor the Cape Town Convention and its Aircraft Protocol. Such a pattern is similar to European states. In Europe, while the Arbitration Model Law (either the 1985 or the 2006 version) has attracted 28 receptions, the Cape Town Convention and its Aircraft Protocol enjoy 14 receptions, and the E-commerce Model Law counts only 5 receptions. Likely, Japan and (Continental) Europe share a scepticism about the instrumentalist view of private law.[55]

Turning one's eyes to Latin America, the most popular non-"must-have" instrument among the Central and South American states is the 1995 Cultural Property Convention of UNIDROIT (11 receptions among 19 states). It is followed by the E-commerce Model Law and the 1952 Rome Convention on Surface Damages caused by aircraft (each 10 receptions). The 1975 Montreal Protocols to the Warsaw Convention are also popular, with 9 receptions for Protocols No.1 and No.2 and 7 receptions for Protocol No. 4.

54 L. NOTTAGE, Japan's New Arbitration Law: Domestication Reinforcing Internationalisation?, International Arbitration Law Review 7 (2004) 54.

55 As regards the irrelevance of policy in the recent contract law reform, see S. KOZUKA/L. NOTTAGE, Policy and Politics in Contract Law Reform in Japan, in: Adams/Heirbaut (eds.), The Method and Culture of Comparative Law (Oxford 2014) 235.

Some maritime law conventions also appear to enjoy a good number of receptions, such as the Collision Convention (8 receptions) and the Hague Protocol (each 7 receptions). The data show that the Central and South American states have their own focus, namely cultural property law and air law. Given that the American continent is huge and that Central and South American states rely on air transport to be connected to big markets, namely the United States and Europe, their policy priorities on air law are understandable. The strong interest in the Cultural Property Convention may be related to the historical emphasis on the American regime of international law vis-à-vis the European rules. Both are different from the Japanese and Asian policy focus, which is reflected in those uniform law instruments that the latter selects for reception.

The Caribbean states seem to have far different priorities. Maritime law conventions, such as the 1910 Collision Convention, the1910 Salvage Convention, the 1924 Brussels Convention (the Hague Rules), the 1992 CLC Protocol and the 1992 Fund Protocol (each 11 receptions), as well as the 1952 Arrest Convention (9 receptions), the 1952 Civil Jurisdictions Convention, the 1976 LLMC and the Bunkers Convention (each 7 receptions), enjoy a large number of receptions among 13 states in this region. The number of receptions of these instruments is comparable to those of the New York Convention and the Legalisation Convention (10 receptions for each), two of the most popular uniform law instruments in the world. It marks a sharp contrast with the lack of interest in other uniform laws, including air law (only 6 receptions for the Warsaw Convention and 5 receptions for the 1999 Montreal Convention). This may partly be due to the fact that several Caribbean islands are known as the open registries for vessels.[56] These states receive almost all the maritime law conventions (instruments produced by the CMI and IMO). For other states in this region, the reception of many maritime law conventions may be the result of treaty succession at the time of independence from the British Commonwealth.

CONCLUSIONS

The data shows that Japan is indeed different from European jurisdictions in the pattern of reception of uniform law instruments. Still, it also differs from its Asian neighbours in the lack of interest in instruments having the

56 As of the end of 2015, the Bahamas was the seventh largest ship registry in terms of gross tonnage. Antigua and Barbuda ranked 27th, St. Vincent and the Grenadines ranked 44th and St. Kitts and Navies 67th. However, the number of receptions cannot be explained by that fact alone, as not all the states in the region are open registry states.

aim of law reform, which are popular in Asia. The Hague Conference's private international law conventions do not receive much attention from either Japan or Asia in general. The observation might look similar to Latin American states, but probably for different reasons, given that the latter have successfully adopted the Bustamante Code in the region. Generally speaking, Asian jurisdictions, except for Japan, seem to be comfortable with the instrumentalist view of private law. However, the policy priorities of Latin American states in the cultural property and air law in Central and South America, as well as in the maritime law conventions among the Caribbean states, are not shared by Asian jurisdictions (or by Japan).

The lesson is much less interesting than the data itself. The reality is too complicated to be explained by any one of the historical, cultural or economic elements. Multiple factors contribute to the divergent patterns observed. That being said, one thing seems clear. The claim that the differences between civil law and common law will motivate states towards legal harmonisation – for the sake of avoiding research costs and coordinating with another state's law – is too optimistic, if not simplistic. There is ample room for comparative law studies to make contributions.