Japan's Civil Code-Centered Legal Assistance to Asian Market Reform Countries

Normative Choices in the Reform Process

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I. INTRODUCTION

The Japanese Official Development Assistance (ODA) took a unique position in this historical phenomenon of legal technical assistance, what began in the mid-1990s, and maintained its attitude centering on the drafting and implementation of basic civil laws through its 20-year history: Vietnam

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1995, Civil Code; Vietnam 2005, Civil Code; Vietnam 2004, Civil Procedure Code: Vietnam 2015, Civil Code; Vietnam 2015, Civil Procedure Code; Cambodia 2006, Civil Code; Cambodia 2004, Civil Affairs Lawsuit Code; Laos 2017, Civil Code, among others. Also, since 2011, legal assistance has been provided for Myanmar, initially specializing in the support of commercial laws (such as corporate law, bankruptcy law, and securities trading law) but gradually reaching such basic areas as civil procedure law. There are pros and cons in the policy of Japan that has continued to provide support to fundamental codes that can be identified as the core of a country's civil normative order. There are criticisms that Japan's civil-oriented legal assistance does not directly benefit Japanese investors (e.g. 24 August 2017 edition of the Nihon Keizai Shimbun), and also the extreme of criticism that it is an export of the Japanese legal system based on economic intention.[1]

Motivated by the purpose of reconsidering the outcomes of Japan's legal assistance, this article will review the context of Civil Code reform in the "transition" countries after the collapse of the Soviet Union in 1991, with a focus on the changing relationship between economic law (or public regulation) and civil law (or private autonomy) along the historical path of socialist legal reforms. An inquiry will be made into the 1995 Russian Civil Code, which has led the legal reforms in the Asian market reform countries since the 1990s.

Second, the normative confrontation at the boundaries of civil, commercial and consumer laws will be investigated on selected issues of debate in Civil Code drafting. In Asian market reform countries, establishment of an integrated normative regime so as to get rid of "legal pluralism" has been a goal of law-making since independence from colonial rule. By establishing a civil code as an integrated source of norms, these countries will be able to achieve true independence from the remaining influence of colonial law. The civil code will also extend an integrated regime to coordinate individual laws in commercial spheres brought by the "legal transplants" of various international donors.

Whether Japan, as one of the donors of legal assistance, has attempted to direct the code drafting toward a certain policy orientation, or instead has provided mere technical support based on the policy choices already made by the recipient countries, is a question the author has no intention of answering due to a lack of any inside information regarding Japan's legal assistance. This chapter only intends to investigate the provisions of the codes which are the direct products of Japan's assistance projects in Vietnam, Cambodia and Laos, as well as to relate the result of interviews with

1 V. TAYLOR, New Markets, New Commodity: Japanese Legal Technical Assistance, Wisconsin Intl. L. J. 23 (2) (2005) 251–281.

those who took part in the drafting committees in these recipient countries, all done with the aim of identifying the policy direction so as to address the normative issues under debate. Target issues will be selected by a review of socialist law reforms (section II.), and focus will be placed on the standardization of general principles as the hierarchical bases of normative interpretation (section III.). Further addressed is the norm conflict between the protection of true will and the promotion of transactions (section IV.) as well as the norm conflict between consumer protection and the commercial customs in regards to breach of contract (section V.).

II. Legal Reforms in Transition Economies

1. Implications of Russian Civil Code

The trend of legal development in countries transitioning from socialism after the collapse of the Soviet Union provides one viewpoint for analysis of the Asian market reform countries, which are known for following the legal trends and reforms in post-cold war Russian as well as those of China.

The World Bank, European Bank for Reconstruction and Development (EBRD), and the United States Agency for International Development (USAID) developed legal technical assistance for transitioning countries immediately after the collapse of the Soviet Union in 1991. It is remarkable that the formation of the theory promoting "legal transplant" also occurred at this time, centered around American institutional economists. "Legal transplant" is originally a term in comparative law that suggests the inheritance of Roman law by Western countries,[2] but the contemporary notion of "legal transplant" is an argument promoting American law to the transition countries, with the neo-liberal legal orientation that features contractual freedom and ownership maximization.[3] This inclination is prominent in the "Legal Origin" theory promoted by the so-called LLSV group,[4] which is, however, arbitrary in its grouping of legal systems and inductive in reaching its conclusions. In particular, that it includes Russia and the other former socialist countries as well as the debt-burdened countries of Central and South Ameri-

2 A. Watson, Legal Transplants: An Approach to Comparative Law (Edinburgh 1974/1993) 74.

3 R. Posner, Creating a Legal Framework for Economic Development, World Bank Research Observer 13-1 (February 1998) 1–11; D. M. Trubek, The Rule of Law in Development Assistance: Past, Present, and Future, in: Trubek/Santos (eds.), The New Law and Economic Development: A Critical Appraisal (Cambridge 2006).

4 R. La Porta/F. Lopez-De-Silanes/A. Shleifer/R. W. Vishny, Law and Finance, NBER Working Papers (1996) No. 5661; R. La Porta/F. Lopez-De-Silanes/A. Shleifer, The Economic Consequences of Legal Origins, NBER Working Papers (2007) No. 13608.

ca and Asia as being incorporated in the "French legal origin" is a surprising distortion. Using economic data as of 1993 – when Russia had just gone through a change of political system and the debt-burdened countries were at the lowest point of the economic crisis – induces the categorical conclusion that countries that inherited French law have lower economic performance than the countries that inherited Anglo-American law. Regardless of this academic flaw, the LLSV group's theory boasts remarkable influence and has become an obstacle to countries trying to advance the development of a continental law system centered around a Civil Code.

In the same mid-1990s, international organizations such as the World Bank and EBRD launched so-called "model laws" in key economic law areas such as secured transaction law, insolvency law, corporate governance and competition law, as well as "legal indicators" that evaluated the degree that these model laws had been introduced in the countries subject to reform.[5] The "Legal Indicators Survey" by the EBRD and "Report on the Standards and Codes" (ROSC) promoted by the World Bank and IMF are typical examples of such legal indicators. The contents of the model laws often overlapped with the above-mentioned LLSV group's tone, representing the neo-liberal route among the American laws.[6] The law reforms have also been linked with trade negotiations, such as WTO accession negotiations, FTAs (free trade agreements) and BITs (bilateral investment treaties).

In Russia, the 1990s was a turbulent period of legal development that was tossed about by pressure mechanisms, such as these model laws and legal indicators and WTO accession negotiations. The incoming pressure of the American model and the independent route of Russian law centered on a parliament conflicted, indicating a situation that could be described as a battlefield of legal reforms. The rapid introduction of the American model did occur with the enactment of a competition law and securities exchange law immediately after the collapse of the Soviet Union in 1991, a bankruptcy law and securities law in 1992, and a revision of the civil procedure law in 1995; however, a subsequent reversal has continued with the 1995 revision of competition law, a 1998 revision of securities law, a 1999 revision of bankruptcy law and enactment of a civil procedure law in 2002.

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5 WORLD BANK, Initiatives in Legal and Judicial Reform (World Bank 2001/2003).

6 Y. KANEKO, A Review of Model Law in the Context of Financial Crisis: Implications for Procedural Legitimacy and Substantial Fairness of Soft Laws, Journal of International Cooperation Studies 17-3 (Kōbe University 2009) 1–16; Y. KANEKO, An Asian Perspective on Law and Development, in*:* Symposium: The Future of Law and Development, Part III, 104 Nw. U. L. Rev. Colloquy (2009) 186; Y. KANEKO, Accompanying Legal Transformation: Japanese Involvement in Legal and Judicial Reform, in: Cordero (ed.), Legal Culture and Legal Transplants, Vol. I, International Academy of Comparative Law (2012).

In 1995, Part One of Russia's Civil Code was introduced into this whirlpool of rebounding revisions. This has been followed by Part Two of the Civil Code (details of debtor law) in 1996, Part Three (inheritance) in 2001, Part Four (intellectual property rights) in 2006 and revisions in 2013.

A characteristic of the current Russian Civil Code is its comprehensiveness, which integrates and does not distinguish boundaries between civil, commercial and consumer laws. It is clear that its position as providing the fundamental rules of private law extends over every aspect of the social space that has been shaken by the transition.[7] This comprehensiveness in the Civil Code may be understood as an intention to build a breakwater to protect the autonomous legal system from the incoming tide of the American model. At that time, the United States' corporate law support team was passionate about transplanting into Russia a comprehensive company law model with a strong flavor of charter autonomy and deregulation,[8] but this attempt was prevented by Part One of the 1995 Civil Code, which introduced its own corporate law provisions. As a result of the establishment of the 1998 Limited Liability Company Law via support from the United States, Russia's corporate law system took on a binary structure: the system for joint stock companies prescribed by the Civil Code, on one hand, incorporated a corporate governance system that included strengthening the power of general shareholders meetings and emphasizing stakeholders such as employees and creditors, while the 1998 Limited Liability Company Law which received US support prescribed a deregulated form of corporate governance; speculative foreign investors utilized only the latter. It would seem as if the legislative sovereignty of the country had been split and the social phenomenon of legal pluralism was caused by the intervention of external pressure.

In the midst of external pressure, the choice that Russian legislators connected to the hopes of overcoming the confusion of normality order was the re-establishment of the "Civil Code" which has been the forerunner of socialist legal reforms since the 1960s. The first Civil Code in 1922 of the New Economic Policy was substituted by the 1961 Civil Fundamental Principles as well as by each republican Civil Code such as the Russian Republican Civil Code in 1964 during the reform of the socialist law in the 1960s, where the dogmatic dualism of "economic contract" as a means of imple-

7 The Consumer Protection Law in 1992 explicitly mentions its subordinate relation to the Civil Code (Art. 1), mainly providing for compulsory provisions for consumer sales contracts.

8 B. BLACK/R. KRAAKMAN, A Self-Enforcing Model of Corporate Law, Harvard L. Rev. 109 (1996) 1911; H. HANSMANN/R. KRAAKMAN, The End of History for Corporate Law, Yale Law School Working Paper (2000) No. 235; Harvard Law School Discussion (2000) Paper No. 280.

menting the specialist production plan in state or collective sectors, on one hand, and "civil contract" as a means of consumer relations, on the other, was being overcome through a gradual increase of contractual autonomy. The Russian reformist "civil law" school demonstrated remarkable leadership in rescuing the normative confusion after the collapse of the Soviet Union by way of the drafting works of the 1995 Russian Civil Code.

2. Donor as a Side Runner: Civil Code Support by the Netherlands

A shadow-minded entity who supported this wish was the legal assistance team provided by the Leiden University of the Netherlands.[9]

At this time, the LLSV group mentioned above supported vigilance against the establishment of the Civil Code in Russia, done behind the backdrop of the allegation that the French law system carries lower economic performance than the common law system. It is possible to read the hostility to this assistance provided by Leiden University to Russia by the common law circle, given the tendency that Dutch law had been regarded as belonging to the French legal family, at the time the LLSV group wrote "Legal Origin" theory – all this despite the fact that the Netherlands had already abolished the 1938 Civil Code, which has been said to be a copy of the Napoleonic Civil Code, and introduced the Dutch Civil Code of 1992, adopting a deductive Pandectist form with the general rule at the apex, and adopted the concept of "juridical acts"*(Rechtsgeschäfte)* in Germany.

Rather, it is pointed out that a hybrid character that makes us feel the influence of British law is pointed out in the 1992 Dutch Civil Code, leaving a number of points that were regarded as comparative issues to the judicial interpretation to be developed in the case law based on the newly added general principles.[10] The reason why the Leiden University group supported the Russian Civil Code seemed to be not an intention of entering into a battle for law based on national flags, but a purely academic intention to contribute to the legislative process.[11]

The comprehensive characteristic of the Civil Code of 1995 of Russia was the influence of Dutch law. The Netherlands 1992 Civil Code had been

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9 F.J.M. FELDBRUGGE, The codification process of Russian civil law, in: Arnscheidt/Van Rooij/Otto (eds.), Law Making for Development: Exploration into the Theory and Practice of International Legislative Projects (Leiden 2008) 321; W. SNIJDERS, The Russian Experience: A Dutch perspective on legislative collaboration, in *ibid.*, 245.

10 A. S. HARTKAMP, Development of Private Law in the Netherlands: From the Viewpoint toward European Law, Journal of Civil and Commercial Law 109, No. 4–5 (1994) 623–660 (in Japanese).

11 SNIJDERS, *supra* note 8.

attracting attention as an attempt to unify private law, integrating all spheres of civil, commercial, consumer protection and labor law. In the French law, which was regarded as the mother law of the Dutch law in the past, the Civil Code and the Commercial Code are arranged side by side, while consumer law is externally attached. Although German law took consumer law into the Civil Code with the obligation law reform in 2002, it maintains the binary composition of the Civil Code and the Commercial Code. The 1942 Italian Civil Code takes an integration principle, but consumer law is externally attached. The trend of such normative pluralism of code systems implies that the civil norms of each country are still unable to get rid of historical constraints and move towards sustainable growth ideal, maintaining the binary structure of Civil Code (as modernist ideal) and Commercial Code (as merchandize practice). In a sense, the Civil Code is not self- sufficient as a basic law of private relation, and the capitalist market regime needs to be adjusted by the competition law that applies at the intersection of civil, commercial and consumer transactions.

Among them, the Russian law was an avant-garde attempt to reestablish the Civil Code as a self-sufficient source of basic norms.

3. Policy Implications of a Comprehensive Civil Code

But then, did Russia centralize the choice of norms to either civil, commercial or consumer law? The Russian Civil Code has no general principles, such as the principle of good faith, while Dutch law relies on a number of provisions, leaving room for flexible interpretation by the court. Perhaps Russia has inherited the socialist legitimacy, purporting to rule by the legislature that comprises the people's representatives, instead of turning to the judicial branch to create the law.

As previously mentioned, the socialist Civil Code has evolved in the interaction of "economic law" and "civil law," while these two axes have come closer to each other towards the realization of policy goals of the socialist plan within the framework of contractual autonomy. Points of debate include the contract, according to the plan (e.g. 1964 Russian Civil Code Art. 159), the principle of actual performance to implement the socialist plan (Art. 168), prohibition of unilateral termination (Art. 169), specific performance as the rule in contract infringement (Art. 218), the principle of full compensation having a function as indirect compulsion on contract performance according to the socialist plan (Art. 218), and the obligation of actual performance being maintained regardless of payment of compensation (Arts. 191, 221, also 1961 Civil Fundamental Principle Art. 36). The question is how these principles have changed their implications after the collapse of the planned economy.

The 1995 Russian Civil Code maintains the basic structure of strict performance by differentiating the concepts of imperfect tender and the impossibility, making it a rule for the former that the obligation of actual performance is not substituted by the payment of contractual damage unless specifically provided by the law or contract (Art. 396, sec. 1) and detailing the standards for contractual damage in imperfect tender in the general provisions on obligations (Arts. 393-406). Further, the specific provisions on sales contracts explicitly provide for remedies for imperfect tender based on the perfect tender rule (Art. 478), while providing separately for risk sharing rules in cases of force majeure (Arts. 459, 476). Particularly, the principle of actual performance is made a strict rule for consumer contracts (Art. 505), which is confirmed by the Consumer Protection Law (Art. 13, sec. 3). In other words, the Russian 1995 Civil Code maintained the basic legal designs which have been developed for the reform of "economic contracts" as an overly contractual intervention by compulsory legal provisions but it also contained a contemporary policy consideration as a remedy to contractual asymmetry, such as for consumer protection.

On the other hand, the Russian 1995 Civil Code maintains a stance of prioritizing the true will of contractual parties rather than the interests of bona fide third parties to the transaction, which had been a firm principle in the socialist Civil Code. It simply invalidates an expression of will in legal acts that is the result of fraud or compulsion, without considering the interests of bona fide third parties (Art. 179). It lacks the system of apparent representatives on unauthorized acts of agency to protect the interests of a bona fide third party (Art. 183). It recognizes the original ownership in loss of possession against the original owner's will (Art. 302), despite the principle of protection of a bona fide third party who trusted registration as evidence of ownership (Art. 223, sec.2). Even though such a stance seems a remnant of the specialist dogma, we cannot deny its contemporary reformist implications for policy-oriented intervention by compulsory provisions where done to correct contractual asymmetry in the interests of weaker parties such as consumers and small and medium enterprises.

Thus, the Russian Civil Code has interventionist provisions that were carried over from the tradition of socialist law, allowing room for public regulation of contractual autonomy, but such an interventionist tendency implies a chance of policy balancing at the intersection of normative conflicts.

A related question is, then, how and by whom such a policy balancing can be implemented. In contrast to the Dutch Civil Code, which contains varieties of general principles as the basis of attaining flexibility of judicial interpretation for normative integration, the Russian 1995 Civil Code makes limited mention of general principles, as if rejecting judicial discretion.[12] The number of provisions under the code is remarkably many, as if

guiding the literal application of law by the judge.[13] A question is the dualism of civil and economic legal spheres as maintained in the Russian procedural law from the socialist era; this contrasting with the integrity of the Civil Code as a body of substantive law, where an economic arbitration court deals with disputes between economic entities under the Arbitration Procedural Code. Though the Civil Procedure Code applied in the ordinary court only assumes a civil case in a narrow sense, its unique procedural tradition is known as a social dispute resolution, where the court summons all stakeholders to a face-to-face relationship and through an advisory role guides the overall resolution of the dispute, giving effect to the judgment for all parties concerned. While the 1995 amendment of the Russian Civil Procedure Code accepted an American-style adversarial system, the 2002 Civil Procedure Code restored the original tradition of social dispute resolution by reinstating the judge's obligation to clarification as well as the obligation of ex officio collection of evidence.

The implication of setting the Russian Civil Code as the highest legislation of private law was not only symbolic of the unification of substantive norms, also potentially encompassing the extension of the ideal of social dispute resolution to the wider spheres of socio-economic phenomena, including consumer relations and SME disputes. Nevertheless, the question remains what adjustments will be possible at the intersection of norms, while avoiding dualization of the dispute resolution rules, especially when the judge's discretion of interpretation is narrow.

4. Civil Codes of Asian Market-Reform Countries and Japanese Support

Challenges embodied in the Russian Civil Code are likewise handed down to transition countries that follow Russian law. As in the transition countries in East Europe and Central Asia, codification works in socialist market reform countries in Asia, as seen in China's 1997 Contract Act, Vietnam 1995, 2005 and 2015 Civil Code, Cambodia 2008 Civil Code, Laos 2020 Civil Code, have shared the same question of structural choice.[14]

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12 The general principles of the Russian 1995 Civil Code refer to equity, contractual freedom, non-intervention in civil relation, civil remedies, and compliance with the laws (Arts. 1–3), while lacking any mention of such principles as good faith and prohibition of abuse of rights or the social order and good morals. There is merely reference to good faith and justice as the basis of interpretation of contractual terms (Art. 6, sec. 2).

13 For example, the number of provisions on contract under the Russian code amounts to 650, this contrasting 180 in the Japanese Civil Code.

14 Y. KANEKO, A Procedural Approach to Judicial Reform in Asia: Implications from Japanese Involvement in Vietnam, Columbia Journal of Asian Law 23-2 (2010) 315–

In particular, in Vietnam, the Commercial Code (1997 and 2005) coexists outside the Civil Code (1995, 2005 and 2015), as well as the 2010 Consumer Protection Law, the 2011 Labor Code, and the 2013 Land Code. It was the result of the concept of "economic contract" dominated by the directive plan of the Soviet era was extracted from the Civil Code as independent provisions in the Commercial Law. It may be thought that it was Vietnamese attention to the Russian conservative "economic law school" confronting the Russian "civil law school" attempting norm reunion through the Civil Code. However, in the process of the code revision of 2015, a policy was made to clearly establish the Civil Code as an abstract normative source, by dropping concrete specific provisions to lower-level legislation. In the 2015 Civil Code, the general provision of Article 1 of the 2005 Civil Code that set the range of application of the Civil Code was deleted, and even the term "civil" was deleted from the previous usage of the terms "civil contract" and "civil obligations". While such a policy highlighting the Civil Code as the highest norm for all spheres of private laws seemed to be a result of the involvement of Japanese support, it also tends to promote the diversification of norms and to make mutual coordination with fragmented subordinated laws difficult.

For example, with regard to the contract infringement rule, the 2015 Civil Code has established a Pandect deductive structure by introducing an abstract concept of "civil acts" (equivalent to the "judical acts") in the general principles in Part I, and also places the rules on defects of will (mistakes, frauds, obsessions, etc.) as the general principles applicable to such "civil acts" (Arts. 127 to 138); and then it deductively applies these rules on defects of wills to Part III on the general rules of obligations and contracts (Art. 410). Defective rules of the Vietnamese Civil Code clearly follow the tradition of the socialist Civil Code, emphasizing the integrity to the will, and find contracts with a defect of will simply invalid: in cases of mistake, the contract is invalid unless there is an explicit agreement to amend in accordance with the intention of the parties, without differentiating the mistakes on fundamental factors of contract and on motivations; similarly, fraud and compulsion make a contract simply invalid. The relief is a restoration of the original situation (Art. 131). However, in the 2010 Consumer Protection Law (Arts. 10 to 11) that was placed in the outer frame of the Civil Code, remedies for defects of will, such as fraud and compulsion, are regarded as civil damage compensation incidental to administrative and

358; Y. KANEKO, An Alternative Way of Harmonizing Ownership with Customary Rights: Japanese Approach to Cambodian Land Reform, Journal of International Cooperation Studies 18-2 (Kōbe University 2010) 1–21; KANEKO, supra note **Fehler! Textmarke nicht definiert.**.

criminal penalties: which is a remedy led by an administrative intervention, a deviation from the traditional civil approach of finding a defective contract "invalid" and restoring the original state. As another example, while the provisions on the sales contract in the Civil Code prescribe three choices of remedies for an incomplete performance of a contract, namely, repair and exchange, acceptance with claims for damages, and cancellation (Arts. 437–445), the 2005 Commercial Law (Arts. 39–41) put in the outer frame of the Civil Code maintains actual performance as the rule, while allowing damage compensation only incidentally on the basis of buyer's good faith. In other words, even though the Civil Code assumes the autonomous rule of private contractual ordering, the Consumer Protection Law and the Commercial Law are based on administrative oversight which make them reminiscent of the "economic contract" field of the socialist planning era. Although the Civil Code provides for the general principles as the highest norms of the private law order, there is a limit to the spatial range of its application.

The limit of the highest normality of civil law in Vietnam is more prominent in the area of procedural law. Following the Russian approach of a dual court system separately maintaining the civil and the economic courts, Vietnam also had the civil procedure law and the economic case disposition ordinance originally parallel. Although they were unified according to the 2004 Civil Procedure Law, the "civil department" and the "economic department" are still divided within the court.

Further noteworthy is the impact of Japan's legal technical assistance. In parallel with Russia supported by the Leiden University team, Vietnam, Cambodia and Laos drafted the Civil Code with the assistance of a Japanese scholars' team sponsored by the Japan International Cooperation Agency (JICA) and the Ministry of Justice of Japan. A notable difference between these two drafting works is the incorporation of general principles (such as good faith and public order and morals) that are reminiscent of the Pandectist style in the Civil Codes drafted under Japanese assistance, with an implication to rely on judicial interpretation to elaborate these principles by accumulating case law. The politburo of the Vietnamese communist party issued resolutions No. 48 and No.49 in 2005, explicitly referring to the binding effect of judicial precedents, which has materialized in the 2015 Civil Procedure Code (Art. 45, sec. 2) and was further elaborated by a series of decisions by the Supreme People's Court.[15] However, in reality, the principle of social-

15 Resolution of Justice Committee of the Supreme People's Court No.3 in 2015, etc. However, most of the cases selected as the precedents by the Supreme People's Court are technical detailing of court procedures (e.g. Decision No.4/2012/NQ-HDTP) without touching on debated substantive issues.

ist legitimacy that do not permit the creation of law by justice seems to have been maintained in Vietnam and Laos. In Vietnam, the 2014 revised Civil Procedure Code clearly states the *stare decisis* effect of a cassation judgement of the Supreme People's Court, but visible changes have not yet occurred as regards the formation of judicial interpretation – with the exception of a limited numbers of resolutions at the judicial council of the Supreme People's Court, without addressing the interpretation of substantive law.

III. General Provisions as the Basis of Interpretation

In considering the question of whether the normative conflicts under the Civil Code are solved through the administrative discretion, through detailed standardization of legislation or though judicial interpretation, a key to compromise, the focus will be the general provisions under the code, which guides the integrated application of norms. General principles are often given at the beginning of the Civil Code as the fundamental norms binding the entire body of the code, particularly in a Pandectist-style code featuring a hierarchical structure of norms to be interpreted in a deductive way. The initial stance of Civil Code drafting in the Asian market reform countries was to entrust the legislature to elaborate the details of subordinating legislation, which seemed to be a stance of following the Russian 1995 Civil Code which repeatedly emphasized the obligation of civil actors to be bound by state laws and regulations (Arts. 1–3). But gradually, perhaps in response to the Japanese involvement in the drafting process, the drafting stance has shifted to streamlining the general principles under the Civil Codes in an expectation of entrusting the judiciary to incrementally develop case law to identify the normative content of such general principles through the accumulation of individual dispute resolution led by the parties. At the same time, the drafters seem to aim at a standardization of such general principles within the code itself.

1. Vietnam

While Book One (General Provisions) of the 2005 Civil Code of Vietnam used to include a long list of general principles consisting of ten clauses (Arts. 4–13), the present 2015 Civil Code (Art. 3) has reduced this list to only five items. The deleted items included the obligation of civil actors to follow laws and regulations, as well as the obligation to follow public order and good morals, while the reason for deletion was explained as removing

the possible basis of public intervention in contractual freedom,[16] which is a deviation from the aforementioned stance of socialist civil codes. The deletion also included the encouragement of flexible dispute resolution through the traditional culture of conciliation.

The remaining items in the list are the principles of equality, freedom of contract, good faith, national and public interests, and civil liabilities. A certain effort of the drafters to standardize such inherently abstract principles is recognized in some provisions, such as the explicit reference to governmental organizations as a civil actor (Arts. 97–100), which was meant to manifest the principle of "equality" in the bargaining position between parties.[17] The principle of "good faith" was also the target of such standardization as a guiding principle to concretize the various aspects of civil transactions.[18]

As for the basis for interpreting vague laws and contracts, the 2015 Civil Code of Vietnam (Arts. 5–6) provides for analogy based on customs and the sense of justice, following the stance of the Russian Civil Code (Art. 6). However, the Vietnam 2015 Civil Code (Art. 121) further details the basis of such interpretation in the general provisions on "civil transactions", which is the equivalent of "juridical acts" *(Rechtsgeschäft)*, setting the priority of the true will of the parties, the purpose of the civil transaction, and the local custom in the place of conclusion of the civil transaction. A remarkable change to the original clause in the 2005 Civil Code (Art. 126) is the deletion of the reference to the "literal wording," and the inclusion of the "purpose" instead. Further, in the general provisions for contracts, the basis of contractual interpretation is detailed such that the true will should be prioritized over the wording, as well as should be the benefits of parties, the nature of the contract, local customs, and the interests of the party in the weaker bargaining position (Art. 404).

Thus, an obvious tendency of the Vietnam 2015 Civil Code is to reduce the legislative guidance on private relations so as to place more importance upon contractual freedom, while shifting the mode of guidance on such

16 This finding is the result of the author's interview of 25 October 2017 with Prof. NGUYEN Hong Hai, the drafter of Vietnam 2015 Civil Code.

17 See Footnote 13 at H. H. NGUYEN, A Study on the Civil Code Revision: The 2015 Civil Code of Vietnam, in: Kaneko (ed.), Civil Law Reforms in Post-Colonial Asia. Beyond Western Capitalism (Singapore 2019) 85–100.

18 See Footnote 25 at NGUYEN, *supra* note **FEHLER! TEXTMARKE NICHT DEFINIERT.**, which refers to some examples of such standardization, including the prior notice requirement in foreclosure of mortgages (Art. 300), the obligation of the creditor to mitigate the damage in the causal link (Art. 362, Art. 585 sec. 5, etc.), *clausula rebus sic stantibus*, or changes of circumstances in the general provisions on contract (Art. 400).

contractual freedom from the legislative/administrative mode to the judicial mode, by standardizing the general principles as the basis of judicial interpretation of contracts. Such a shift in contractual intervention is in other words a shift from the state of supervision on contractual relation to the autonomous mode of contractual realization by the parties at the court, which seems to be the product of Japan's involvement.

However, the outcome of this shift cannot be tested until the capacity of the judiciary is improved, so as to allow a logical interpretation of general principles to accumulate in the integrated regime of case law. Also, there remains the trend of subsidiary legislation, such as commercial and consumer protection laws, continue to function as the basis of administrative intervention in contractual freedom, even if the Civil Code makes much of the autonomous mode guided by the role of the judiciary.

2. Cambodia

Cambodia's Civil Code is a product of Japanese assistance in the drafting work occurring over four years (1999–2003), which was adopted in 2008 and entered into force at the end of 2011. It consists of eight chapters (general provisions, persons, property rights, obligations, contract and tort, secured credits, relatives, inheritance), with general provisions at the start of each of the eight chapters. While such a hierarchical structure of general provisions, as well as the separation of real property rights and obligations reminds us of a Pandectist system, its general provisions only contain five simple provisions, and it lacks the concept of "juridical acts". Detailed explanations of technical terms, which could have been defined as elements of a "juridical act" (such as the expression of will, terms, defects in will, invalid expressions of will, voidable expressions of will, agency) are all given in the general provisions on the obligations.

The general provisions in Book One include the principles of human dignity and equality (Art. 2), private autonomy (Art. 3), prohibition of abuse of rights (Art. 4), and good faith. These general provisions are in principle applied to all spheres of the Civil Code, except property law and family law, where special legislation can be excluded from the application of these general provisions (Art. 1).

Given the scarcity of normative provisions as well as the relaxed hierarchical order which tends to conclude within each Part, the hurdle seems to be lowered by the Civil Code drafters for the convenience of local judges making their first attempt at judicial interpretation of the Code.

3. Laos

Since of the end of 2017, the draft Civil Code had been considered before the people's national assembly in Laos and was enacted in December 2018. However, certain fundamental changes occurred to its content before the promulgation as of May 2020, whose detail is unknown to the author. Instead, references in this section will be made to the commentaries given by the Japanese team that assisted in the drafting of the code, based on the 2015 version of the draft Civil Code.[19] A simplified method of codification was chosen to consolidate the existing laws in the private spheres (such as the 2003 Land Law, the 2005 Secured Credit Law, the 2005 Inheritance Law, and the 2008 Law on Contract and Out-of-Contract Obligations) with general provisions put at the top of the entire draft code and the code consisting of a total of nine chapters (general provisions, persons, family, property and ownership, contractual obligations, secured credits, tort, inheritance, final provisions). Among the total of 615 articles, 112 have simply been transplanted from the existing provisions, 251 contain some modification from the original provisions, and 252 are newly introduced provisions. While the structure of the draft code recalls the *institutiones* style, it also incorporates some characteristics of the Pandectist system by placing general provisions at the top of each chapter, as separately provided for property (Book 4 and Book 6) and obligations (Book 5). The Japanese assisting team has described the draft as a hybrid model.[20]

Accordingly, the bases of judicial interpretation are given in a hierarchical order of norms such that Book 1 provides for the general principles for "judicial acts", which are transformed from the original 2008 Law on Contract and Out-of-Contract Obligations (Art. 5) with certain modifications. Such general principles include the principles of voluntary agreements, equality, good faith, observance of law and customs. Further, the draft code (Art. 16) provides for legality of purpose, voluntariness, capacity to act, and legality of forms as the requirements of a "judicial act" – borrowed from the original 2008 Law on Contract and Out-of-Contract Obligations (Art. 10) – and further detailing the elements of each requirement (draft Arts. 17, 18). The draft (Art. 390) is expected to further detail the basis of contractual interpretation in the general provisions in the Book on Obligations.

Although the Japanese assistance team was of the view that these general provisions are not the normative basis for judicial interpretation in a strict

19 H. MATSUO, Civil Code Drafting in Laos and Legal Assistance – Property, Ownership, and Security Interests, Comparative Law Studies 77 (2015) 137–144 (in Japanese).

20 MATSUO, *supra* note **Fehler! Textmarke nicht definiert.**, 109.

sense (Okawa 2015),[21] the attempt at a hierarchical order of norms as well as the efforts at standardization of their elements appearing in the draft code are good enough evidence of the intention of Lao drafters to entrust the integrated implementation of the code to the initiative of the parties and the judiciary.

IV. Protection of True Will vs. Promotion of Transactions

If the path as of the socialist civil code reform was an attempt of the integration of civil relations in a narrow sense and the economic law regulating production relations based on the socialist plan, it pursued such an experiment through paying full respect to the true will of the parties, invalidating a legal act due to defects in will without incorporating devices for the protection of bona fide third parties. The 1995 Russian Civil Code that, as aforementioned, integrated the civil and economic spheres maintains the tradition of protecting the true will in civil relations, as seen in its stance not having a system of apparent representatives for unauthorized acts of agency and by prioritizing the original owner who lost the property against his will over a bona fide third party. Opposing to this, the civil codes of the Asian market reform countries show a shift from the Russian style protection of true will to the promotion of transactions, which implies the influence of Japanese involvement.

1. Vietnam

According to a drafter of the 2015 Civil Code of Vietnam, the drafters held an explicit policy stance in favor of modifying the previous 2005 Civil Code toward the promotion of transactions.[22] In this context, a system of apparent representatives was newly incorporated in Book One on the clauses of "civil transactions" which is equivalent to the concept of judicial acts, so as to bind the agent's act against the principal in cases of express authorization (Art. 142, sec. 1 c) and unauthorized acts of agency (Art. 142, sec. 2). This is a remarkable shift from the original stance maintained since the first Vietnamese 1995 Civil Code, in which the drafters were highly skeptical of the idea of validating an agreement against the true will of the parties.

Another remarkable change under the Vietnam 2015 Civil Code was the introduction of an independent Book Two titled "Ownership and other Property Rights," which was meant to clearly separate the concepts of real

21 K. Okawa, Civil Code Drafting in Laos and Legal Assistance – General Provisions and Persons / Legal Persons, Comparative Law Studies 77 (2015) 111–119 (in Japanese).

22 The finding is the result of the author's interview of 25 October 2017 with Prof. Nguyen Hong Hai, a drafter of Vietnam 2015 Civil Code.

rights and personal rights.[23] While the Russian 1995 Civil Code had chosen this separated structure of property and obligations, the 1995 and 2005 versions of Vietnam's Civil Code did not follow it, and instead had a chapter titled "Property and Ownership" which simply listed the types of ownership according to the categories of actors, while the issues of the secured interests and the transfer of land use rights, a major category of property rights, were dealt with in separate chapters despite their major roles in the real economy.[24] A drafter of the 2015 Civil Code explains that this change is due to the policy stance of promoting transactions to accelerate further economic growth.[25] Not only was there a change in the chapter's title, but also its substance included major changes to the property rules to reflect the promotion of transactions, such as abstract rules for the transaction of immovable properties for the benefit of bona fide third parties (Art. 133, sec. 2) as well as the immediate acquisition of movables by a bona fide third party in transactions (Art. 133 sec. 1). The rationale for this abstract rule is that a transaction of immovables takes three steps: first, an initial contract between the parties; second, the transfer of property; and third, the perfection against third parties by registration, where the once established confidence associated with the perfection by a third party cannot be denied by asserting the invalidity of the original contract. This effect of protecting third parties is considered to be a result of the abstract rule embraced by the Vietnamese drafters. Such substantive rules in the Civil Code on real rights are expected to be automatically applied to the land use rights regulated under the Land Law, since land use rights are treated as leasehold rights and defined as one of the real rights restricting an ownership right (Art. 159, sec. 2; Art. 106, sec. 1).

On the other hand, the 2015 Civil Code of Vietnam sets out a strict basis for public intervention in contractual freedom when the true will of the parties has been violated. The general provisions on "civil transactions" provides for strict rules regarding defects in will such as mistake, fraud, compulsion, and failure to meet with formalities; such defects in will simply result in the invalidity of a civil transaction (Arts. 127–128), and their remedy is simply a restoration of the status quo. Such upper-level rules are duplicated in a deductive way in the general provisions on contracts (Art. 410). The 2010 Consumer Protection Law of Vietnam (Arts. 10–11) provides further for administrative and criminal penalties, as well as the

23 *See* NGUYEN, ibid.

24 Y. KANEKO, Reevaluating Model Laws: Transplant and Change of Financial Law in Vietnam, Journal of International Cooperation Studies 19-2/3 (Kōbe 2012) 1–37.

25 The finding is the result of the author's interview of 25 October 2017 with Prof. NGUYEN Hong Hai, a drafter of Vietnam 2015 Civil Code.

civil damage claimed attached thereto, in fraud and compulsion cases causing defects in consumer contracts.

The Code seems to embody two mutually conflicting policy orientations, namely the promotion of market transactions for the pursuit of economic development and the protection of weaker parties in transactions, and the Code is incapable of defining a theoretical integration of the two.

2. Cambodia

The promotion of transactions seems to be a basic policy stance consistently established in the Cambodian Civil Code, which received Japanese assistance. Book Four on obligations contains a system of apparent representatives serving to validate an agent's act beyond the scope of authorization as well as the agent's acts after the termination of representation (Art. 372).

Book Three on property rights provides for the immediate acquisition of movables by a bona fide third party in transactions (Art. 134 sec. 2, Art. 192). As for transactions of immovables, the drafting process of the Civil Code experienced controversy when the initial draft code that the Japanese assisting team handed over to the Cambodian minister in 2003 did not provide for an abstract rule, envisaging a registration system that only had the effect of public notice. However, the 2001 Land Law drafting assistance provided by the World Bank and the Asian Development Bank introduced the Torrens-style land title registration system which aimed at the perfection of title or the absolute proof of freehold ownership once registration is finalized through cadastral dispute resolution. In order to fill the gap between the draft Civil Code and the Land Law, the former was amended to recognize the perfection effect of land registration as a requisite of the transaction of immovables (Art. 135).[26] As Torrens-style title registration perfects ownership without differentiating between a third party with or without knowledge of the defects in the original contract, the policy effect is more for the promotion of transactions.

3. Laos

The Civil Code of Laos which was adopted by the people's national assembly in 2018 and promulgated in May 2020 with some modifications is expected to provide for a system of apparent representatives that did not exist in the 2008 Law on Contract and Out of the Contract Obligations (Okawa 2015, p.118).[27]

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26 See KANEKO, *supra* note **Fehler! Textmarke nicht definiert.**.

27 K. OKAWA, Civil Code Drafting in Laos and Legal Assistance – General Provisions and Persons/Legal Persons, Comparative Law Studies 77 (2015) 111–119 (in Japanese).

On the other hand, the draft code does not have a provision on the immediate acquisition of movables nor abstract rules for real estate transactions benefiting bona fide third parties.[28] Even though title registration is a prerequisite for the transfer of immovables, the effect of registration is not considered as absolute proof of ownership, as in the case of Torrens-style registration, since contrary evidence is admissible even after the finalization of registration, according to Rule No.500/ 2008 of the Prime Minister's Office Land Management Agency, etc.[29] The majority opinion in the code drafting committee is against the prioritization of a second purchaser with registration in cases of a double-sale of real estate.[30] In sum, the policy orientation of the drafters in Laos does not amount to prioritizing the promotion of transactions at the expense of the protection of true will, giving the issue a different nuance than that taken by the aforementioned Vietnamese drafters.

V. Policy Implication of Remedies for Contracts Violation

The Russian 1995 Civil Code (Art. 393 and thereafter) maintains, as aforementioned, a series of detailed compulsory provisions on compensation for damage caused by the imperfect performance of a contract. This is a remnant of the socialist civil codes that saw a gradual integration of the concepts of "economic contract" and "civil contract" through the development of strict damage compensation rules as a substitute for the public compulsion of actual performance of an economic contract, something done as a means of implementing socialist plans. Such intervention by compulsory provisions of law might be considered an impediment to freedom of contract in respect of the trend in international commercial sales contracts to mitigate the perfect tender rule, but it could prove friendly to the interests of consumers.

A comparative review shows, on the other hand, that the majority of civil law tradition has placed importance on specific performance while narrowing unilateral termination, this in contrast to the common law tradition based on monetary compensation upon a termination. While the former is inclined toward the consumer's interests, the latter seems to facilitate the actions of sellers in the commercial transactions.

Inquires will be made in the following section as to the trend in the Asian market reform countries, which have been influenced not only by

28 MATSUO, *supra* note **Fehler! Textmarke nicht definiert.**, 130.

29 MATSUO, *supra* note **Fehler! Textmarke nicht definiert.**, 131.

30 H. MATSUO, Development of Civil Code in Laos, Asian Law Studies 6 (2012) 170 (in Japanese).

Russian law but also by different legal traditions since the colonial period as well by contemporary external pressures of legal reforms.

1. Vietnam

The drafters of the 2015 Vietnam Civil Code paid special attention to the standardization of contractual liabilities so as to encourage transparent judicial rulings, in response to the criticism that the Vietnamese judiciary is still inflexibly bound by the notion of perfect performance of contract consistent with the tradition of socialist economic plans.[31] Book Four on Obligations first differentiates the general rules on delayed performance and imperfect performance where, on the one hand, a party's negligence is involved (Art. 351 sec.1) and, on the other, force majeure, which is a matter of distribution of risk (Art. 351 sec.2; Art. 441). As for the former, the principle of perfect performance is maintained as the principle (Art. 352), and damage compensation is elaborated in detail (Arts. 360–364), without identifying whether such compensation is a substitute or a supplement to the perfect performance. The general provisions on contracts basically function deductively but also accept such standardized compensation rules given in the upper provisions on obligations (Art. 419) – though newly referred to is the principle of *clausula rebus sic stantibus* (Art. 420), where the parties (or the court) are obliged to modify the contract so as to let the contractual relation continue instead of being terminated. On the other hand, the chapter on sales elaborates the details of remedies for contractual violations, posing an alternative choice between a claim for completion (reform or exchange), damage compensation in connection with an acceptance of the imperfect tender, and cancellation of the contract (Arts. 437–445).

Thus, the Civil Code drafting policy looks to maintain the socialist contract tradition of actual performance as the principle of civil obligations, but it modifies it in the detailed provisions for sales contract, in a sense, making use of the Pandectist system.

However, subsidiary legislation such as the 2005 Commercial Law provides for stricter rules of contract liability outside of the Civil Code, making perfect tender a principle while admitting compensation for damage only as a supplementary means of remedy for a bona fide purchaser (Arts. 39–41). Even if the Civil Code chooses to follow autonomous rules for sales contracts, subsidiary legislation may maintain administrative intervention into commercial and consumer sales contracts.

31 This finding is the result of the author's interview of 25 October 2017 with Prof. NGUYEN Hong Hai, a drafter of Vietnam 2015 Civil Code.

2. Cambodia

Book Four, Chapter 4 of the Cambodian Civil Code provides for remedies in cases of contract infringement, referring to three categories: delay of performance, impossibility of performance, and imperfect performance (Art. 389); set out are the remedies of completion of performance based on the defect, compensation for damage, and cancellation (Arts. 390, 398), of which the claimant has a freedom of choice (Art. 395). Further, the provisions on sales refer to the remedies in cases of latent defects, including substitution and repair, cancellation, reduction of price, and compensation for damage (Arts. 543–546). Thus, the basic stance is the promotion of party autonomy as done by providing a variety of remedies and the free choice of the parties to the contract, in accordance with the Japanese assistance. The question is how this stance of the Code has been interpreted by the judiciary in response to the needs of the actual socio-economy after several years' of implementation since the adoption of the Code.[32]

3. Laos

The 2008 Law on Contract and Out of Contract Obligations, which is the origin of the contract provisions of the draft Civil Code of Laos that is being debated since 2012, has only a few provisions on remedies for contract infringement. While the non-performance of an obligation results in compensation for damage except in cases of force majeure (Art. 33), additional penalties can be imposed according to the legal standards and by mutual agreement (Art. 36). The party whose interest is adversely affected by the contract infringement can unilaterally alter or cancel the contract (Art. 37). As for the individual provisions for sales contracts, compensation for damage can be claimed for a defect in quality in addition to other remedies, such as substitution, reduction of price, and cancellation (Art. 40). It is explicitly stated that a buyer can both cancel and claim compensation for imperfect performance by the seller (Art. 43).

A member of the Japanese team that assisted in the drafting of the Laos Civil Code has criticized the Lao drafters' choice on contract provisions, which are a deviation from the original 2008 Law on Contract and Out of Contract Obligations that basically follows the lines set by the United Na-

32 A review of the implementation of the Civil Code has been attempted in connection with supplementary training projects addressed to local lawyers. This finding is the result of the author's interview of 25 March 2015 with a JICA legal assistance office in Pennon Penh, as well as the participants of such training.

tions Convention on the International Sales of Goods (CISG).[33] For example, the Lao Civil Code draft (Art. 408) exempts not only compensation but also all other types of claims of the buyer in cases of force majeure, which is criticized as being a result of misunderstanding the stance of the CISG. The CISG exempts only compensation in the case of force majeure, without affecting other claims of the buyer, such as reduction of price and cancellation (Art. 79 sec. 1–5), this being the result of a theoretical differentiation of the contractual liabilities involving fault on the part of the seller and the remedies for latent defects which are based on risk allocation without requiring the element of the seller's default.

It may be true that the Japanese assisting team had difficulties in transferring highly theoretical concepts needed for code drafting to the Lao drafters.[34] The question is how code drafting assistance can be pursued in a country whose technical capacity does not always meet the expectations of the donor. Perhaps, the stance of assistance should be flexibly modified to meet with the local socio-economic needs, as Laos has a special need to protect the interests of consumers as the final market in the ASEAN region and as the region's least developed economy in terms of industrialization.

VI. Conclusion

This article has paid attention to the changes over time of the socialist civil codes in Asia through a consideration of the donor involvement to the code drafting provided for the Asian market reform countries. In order to understand the contemporary code-drafting tendencies of Asian socialist reform countries, it is helpful to keep in mind the context of overcoming the dualistic socialist tradition of public regulation in economic legal spheres and private autonomy vis-à-vis the narrow sphere of consumer relations which is the context interlinked with the common goal for the contemporary legal evolution across all jurisdictions from a modern capitalist legal system toward a system that can mitigate the disparity of bargaining positions between commercial actors and consumers. Although there are criticisms on the Japanese involvement in the code drafting suggesting that it represents the exportation of the Japanese model in order to serve the interests of

33 See M. Nozawa, Civil Code Drafting in Laos and Legal Assistance – Contract and Out-of-Contract Obligations, Comparative Law Studies 77 (2015) 137–144, 143 (in Japanese).

34 The author's anonymous interview of 18 August 2016 with a person who used to be a member of the Civil Code drafting team and who spoke of the technical difficulties and mental stress that he had experienced throughout his involvement in the project.

Japanese investors in these countries, perhaps such criticisms fail to recognize the implication of socialist civil codes development in these countries. Japanese involvement has been mere technical assistance to meet the needs of local code drafters, which is equivalent to the role taken by the Netherlands-Leiden University team in its support of drafting the Russian 1995 Civil Code. However, a fundamental difference between the two assistance projects was the fact that the counterparts of Japanese assistance have often wholly lacked basic knowledge and experience as regards code-drafting, which would have necessarily resulted in more substantive involvement of the Japanese team in the Asian codifications – and which might have caused a misunderstanding in terms of its overly intense relation to national interests. Also, as a natural effect of such intense involvement, the substantive contents of the codes sometimes reflect the trends of debates in Japanese academia or in industrial sectors regarding the reform of Japan's own Civil Code, which do not always directly meet with the local needs of the counterpart countries.

As for the points of debate for legal policy development in the contemporary context, this article has reviewed such issues as the conflict of policy choices protecting true will and promoting capitalist transactions, and the controversies in contract law reforms as between the stances of following trends in, on one hand, international commercial customs and, on the other, consumer protection. As the Asian market reform countries pursue their individual paths for economic growth – through their participation in international economic frameworks such as the World Trade Organization (WTO) and free trade agreements (FTA), as well as in the reception of international assistance from various foreign donors – they are increasingly exposed to conditionalities and other forms of foreign pressure to undertake legal reforms that meet with the needs of commercial entities. The introduction of the Russian 1995 Civil Code seemed to be an attempt to establish higher-ranking norms that integrate all spheres of civil, commercial, and consumer transactions by extending the reach of a single leading code that has a reformist tendency so as to protect the true will of the party in the weaker bargaining position. Such a policy stance is not, however, always taken by the Asian market reform countries, whose codifications often reveal a positive tendency to follow international commercial interests which promote transactions at the expense of true will and limit contract liabilities for the benefit of sellers.

As for the impact of Japanese involvement in such a process of policy choices in the Asian civil codes, a hypothetical view might find that the deviation of the Asian civil codes from the Russian reformist stance might be a direct result of Japanese involvement. But another possible hypothesis would be that Japan's role has been one of mere technical assistance and

the tendency of these Asian countries had already selected policies toward the promotion of economic growth. Although this contribution cannot clearly conclude which was the case, due to limited access to information on policy formation as done by the Japanese assistance projects, so far the author is inclined to favor the second hypothesis based on the fact that each Civil Code in the target countries (Vietnam, Cambodia and Laos) more or less reveals mutual differences in the policy choices on the debated aspects, even though they received similar assistance from Japanese teams led by similar members.

Perhaps, a more crucial issue is the common law–civil law conflict in the law reforms in these Asian market reform countries, who are increasingly affected by commercial law models imposed by international donor's agencies mostly based on American law trends toward neo liberalism, this deviating from continental law models applied in Japanese legal assistance as well as in terms of Russian influence. While the continental contract law is evolving toward a flexible intervention by the judiciary for the purpose of modifying the asymmetrical contractual bargaining position of weaker parties, with a number of bases for judicial intervention incorporated in the Civil Code, such as the interpretive principle of good faith, judicial practice allowing consideration of pre-contract negotiations, judicial consideration of a change in the circumstances *(clausula rebus sic stantibusation),* and admission of the defense of lack of fault in the breach of contract and when the judiciary of the Asian socialist reform countries, as the result of donor involvement, intends to follow such a policy-minded approach of judicial activism and contractual intervention, more conflicts will inevitably occur between such judicial intervention and the commercial norms guided by laissez-faire orientation.

Further, when the mode of integrated application of norms of the civil code is considered across the spheres of civil, commercial and consumer laws, an obvious tendency in these Asian market reform countries has been the substantial role played by pubic supervision over the private spheres. This can be observed in Vietnam, where the Civil Code as the general law in the private sphere is supplemented by subsidiary legislation such as the Commercial Law and the Consumer Protection Law, which for their part are increasingly providing the basis for administrative intervention in market transactions. In this trend of increasing public methods of regulation, the role of the Civil Code is expected to go beyond a general law for the private sphere only; rather, it is the supreme law that provides the basic norms to regulate all market mechanisms, through both public and private means of supervision. If this is the case, the role of donor assistance in drafting Civil Codes is expected to also consider the administrative system of implementation as well as the judicial system. Otherwise, the Civil Code

would lose its importance, without having an effect on the increasing administrative regulations imposed on the market. In that sense, for example, the fact that the 2015 Civil Code of Vietnam deleted the list of human rights which the 2005 Code advocated could be seen as a retreat in the role of the Civil Code as the ultimate source of norms to regulate the limit of public intervention in private relations.

Perhaps, the goal of legal assistance with code drafting is not influencing the point in time when the code is adopted; rather, it is the initial adoption that is the starting point for a second stage of involvement in the further evolution of the code. All of the countries that received Japanese code drafting assistance are still in the initial stages of adopting relevant legislation, and they remain interested in a continuous involvement of the Japanese support teams. For example, the Vietnamese Civil Code has been amended every ten years, and the preparation of the next amendment was started soon after the adoption of the 2015 Civil Code, in which the code drafters had a keen interest in conducting joint empirical research with their Japanese counterparts on the impact of code implementation on the socio-economic reality in Vietnam.[35] For the least industrialized countries of Laos and Cambodia, there are further needs to identify country-specific issues regarding code development so to meet local socio-economic conditions. As the initiator of code drafting assistance in the Asian region, Japanese technical assistance is expected to continue to take the role of a side runner in the long journey of Asian civil code development. This will be a difficult process of seeking out an integrated, normative regime that balances numerous conflicts between the different interests of civil parties, commercial parties, consumers, laborers and SMEs as actors in the market, and which will also accompany the continuous historical process of post-colonial efforts toward re-establishing an integrated legal system.

35 This finding is the result of the author's interview of 25 October 2017 with Prof. NGUYEN Hong Hai, a drafter of Vietnam 2015 Civil Code.