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Pluralism in Asia: Introduction to the Symposium Issue

Cover Page Footnote

International Law; Commercial Law; Law

Introduction to the Symposium Issue:

Pluralism in Asia

Holning Lauf

The American legal academy is increasingly paying attention to Asia.¹ Within American law journals, however, very little has been written on the growing diversity and changing notions of identity in Asia. This issue of the *North Carolina Journal of International Law & Commercial Regulation* helps to fill that gap.

In recent years, many Asian societies have experienced a growth in heterogeneity. For background purposes, it is worth highlighting some of the factors that have driven this increase in heterogeneity. The first contributing factor is intraregional migration. Rapidly expanding intraregional migration has been changing population compositions in Asia, especially in jurisdictions that tend to be at the receiving end of migration, such as Hong Kong, Japan, Singapore, and South Korea.² These

† Symposium Advisor & Associate Professor of Law, University of North Carolina School of Law.

¹ According to searches in Westlaw's database of "Journals & Law Reviews (JLR)," the number of articles mentioning "Asia" has increased year after year: 1213 articles in 1999, 1275 in 2000, 1278 in 2001, 1493 in 2002, 1565 in 2003, 1656 in 2004, 1706 in 2005, 1889 in 2006, 2064 in 2007, 2204 in 2008, and 2321 in 2009. A search was not conducted for 2010, because at the time of this issue's publication, some articles from 2010 still had not been uploaded to Westlaw.

² See Stephen Castles & Mark J. Miller, *Migration in the Asia-Pacific Region*, MIGRATION INFORMATION SOURCE (July 2009), <http://www.migrationinformation.org/Feature/display.cfm?id=733>:

Since the 1990s, migration within Asia has grown, particularly from less-developed countries with massive labor surpluses to fast-growing newly industrialized countries. . . . The 21st century has been dubbed the "Pacific century" in terms of economic and political development, but it may also be an epoch of rapidly growing migration and population diversity in Asia.

See also Graeme Hugo, *Migration in the Asia-Pacific Region: A Paper Prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, GLOBAL COMM'N ON INT'L MIGRATION (Sept. 2005), available at

jurisdictions have experienced a growth in population diversity.

Second, in addition to intraregional migration, there has been increased migration from places outside of Asia to Asia.³ In today's knowledge-based economy, some Asian jurisdictions have stepped up efforts to attract highly skilled professionals from outside of Asia, as well as from within Asia. Consider the fact that the governments of Hong Kong and Singapore have commissioned studies on how to attract the global class of elite mobile professionals that economist Richard Florida refers to as the "creative class."⁴

Third, there has been increasingly visible diversity in Asia due to recent empowerment of local minority groups that had previously been invisible. For example, the growing political legibility of gays, lesbians, and other sexual minorities in Asia contributes to noticeable social diversity in Asia.⁵

Fourth, in this age of globalization, many Asian jurisdictions' connectiveness with international institutions and transnational networks, including the Internet, have fostered information exchanges.⁶ Such exchanges sometimes introduce new viewpoints

<http://www.gcim.org/mm/File/Regional%20Study%202.pdf> (providing statistical analyses of migration patterns).

³ Castles & Miller, *supra* note 2.

⁴ See RICHARD FLORIDA, *THE FLIGHT OF THE CREATIVE CLASS: THE NEW GLOBAL COMPETITION FOR TALENT* (2005) (providing background on the "creative class"); RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS: AND HOW IT'S TRANSFORMING WORK, LEISURE, COMMUNITY AND EVERYDAY LIFE* (2002) (providing an analysis of how society values creativity and cultivates a "creative class"); cf. Holning Lau, *Human Rights and Globalization: Putting the Race to the Top in Perspective*, 102 NW. U. L. REV. 2021 (2008) (examining Hong Kong's and Singapore's attempts to attract the creative class).

⁵ See generally, Holning Lau, *Grounding Conversations on Sexuality and Asian Law*, 44 U.C. DAVIS L. REV. (forthcoming May 2011) (elucidating the development of sexual orientation and gender identity rights in Asia).

⁶ See, e.g., *Australia Ranks Ahead of US for Home Broadband Access*, SYDNEY MORNING HERALD ONLINE, June 19, 2009, <http://www.smh.com.au/digital-life/hometech/australia-ranks-ahead-of-us-for-home-broadband-access-20090619-cn3e.html>. It is worth noting that some parts of Asia are extremely well-connected to the Internet. In 2009, the research firm Strategy Analytics conducted a study on the access to high-speed Internet in various countries and territories; according to press coverage of the study, "[f]ive of the top 10 countries or territories in the survey were in Asia and the firm predicted the broadband subscriber base in the Asia-Pacific region will grow on

to Asia, diversifying its ideological identities.

These are four examples of ways in which Asian societies are becoming more noticeably heterogeneous. Jurisdictions in Asia have been instituting legal reforms to address such changing dynamics. In different ways, Asian laws have come to reflect, reinforce, and resist pluralism in Asia.

On January 14, 2011, a group of distinguished scholars gathered at the University of North Carolina School of Law to participate in a symposium dedicated to discussing these sociolegal changes. That symposium, titled "Pluralism in Asia," produced energetic exchanges of commentary. Madhavi Sunder delivered a keynote address, and thirteen panelists presented their papers.⁷ Of the papers presented, five are included in this issue. Three more are slated for publication in the following issue of this journal.⁸

The first article in this issue is by Apichai Shipper.⁹ In Japan, labor shortages have produced a demand for foreign workers.¹⁰ In his piece, Shipper explores how the government and civil society in Japan have addressed the rights of foreign workers.¹¹ Specifically, Shipper examines how non-governmental organizations have successfully pressured local governments in Japan to provide foreign residents with social, civil, and political rights, some of which are in tension with national-level public policy.¹²

average by a further 15 per cent a year between 2009 and 2013." *Id.*

⁷ Symposium, *Pluralism in Asia*, 36 N.C. J. INT'L L. & COM. REG. 499 (2011). The panelists included Wen-Chen Chang, Anil Kalhan, Yong-Sung Jonathan Kang, Ilhyung Lee, Kelley Loper, Carl Minzner, Puja Kapai, Jeffrey Redding, Dian Abdul Hamed Shah, Apichai Shipper, Timothy Webster, Meredith Weiss, and Hyunah Yang. In addition, five professors from the University of North Carolina served as moderators: John Coyle, Maxine Eichner, Thomas Kelley, William Marshall, and myself.

⁸ The remainder of this Introduction describes the five articles included in this issue. Puja Kapai, Kelley Loper, and Hyunah Yang will be submitting their articles for publication in the following issue.

⁹ See generally, Apichai W. Shipper, *Contesting Foreigners' Rights in Contemporary Japan*, 36 N.C. J. INT'L L. & COM. REG. 505 (2011).

¹⁰ *Id.* at 506.

¹¹ *Id.* at 527-540.

¹² *Id.* at 547.

Timothy Webster's contribution to this issue also focuses on Japan.¹³ He begins by explaining how, for much of history, the Japanese government has actively promoted an ethnically homogenous state through discriminatory policies.¹⁴ Webster then argues that international human rights law can be a source of empowerment for ethnic minorities in Japan.¹⁵ To build this claim, he explains that some Japanese courts have already begun to respond positively when ethnic minority litigants invoke international human rights law to challenge discrimination.¹⁶

Like Japan, Singapore is an Asian country that has sought to address labor shortages and a low fertility rate.¹⁷ To address these concerns, the Singaporean government has encouraged reproduction and embraced immigration.¹⁸ In her article, Meredith Weiss explains how these state policies are creating a more pluralistic society that disrupts the Singaporean government's attempts to shape national identity around its rigidly defined "Asian values."¹⁹ As Weiss explains, the Singaporean government's official encouragement of reproduction has provoked vocal opposition from feminists and sexual minorities.²⁰ Meanwhile, the city-state's embrace of immigration has aggravated fault lines based on national origin, religion, and class.²¹

The article by Dian Abdul Hamed Shah and Mohd Azizuddin Mohd Sani turns our attention to the topic of religious freedom in Malaysia.²² Drawing from recent cases, the authors illuminate the

¹³ Timothy Webster, *Insular Minorities: International Law's Challenge to Japan's Ethnic Homogeneity*, 36 N.C. J. INT'L L. & COM. REG. 557 (2011).

¹⁴ *Id.* at 560.

¹⁵ *Id.* at 582.

¹⁶ *Id.* at 591.

¹⁷ See generally, Meredith L. Weiss, *Diversity, Rights, and Rigidity in Singapore*, 36 N.C. J. INT'L L. & COM. REG. 625 (2011).

¹⁸ *Id.* at 630.

¹⁹ *Id.* at 634.

²⁰ *Id.* at 524.

²¹ *Id.* at 640.

²² See generally, Dian Abdul Hamed Shah & Mohd Azizuddin Mohd Sani, *Freedom of Religion in Malaysia: A Tangled Web of Legal, Political, and Social Issues*, 36 N.C. J. INT'L L. & COM. REG. 647 (2011).

fragility of constitutional protections of religious freedom in Malaysia.²³ The authors explain how the ongoing debate on whether human rights are universalistic or culturally relative, deeply impacts the degree to which religious pluralism is protected in Malaysia.²⁴ As such, the authors propose a middle ground that reconciles the universalist and relativist approaches.²⁵

Finally, Wen-Chen Chang addresses the question of whether globalization has prompted the constitutional courts of South Korea and Taiwan to refer more frequently to international human rights law.²⁶ Put differently, Chang explores whether constitutional litigation is increasingly informed by plural legal sources—domestic and international.²⁷ Based on her citation study, Chang finds that the two courts have indeed increasingly cited international law, and she explains how those citations operate.²⁸ Specifically, she suggests that the two courts are not citing international law because of pressures to conform to global standards.²⁹ Rather, the courts tend to reach decisions that are animated by domestic law, but they cite international law for supplemental support.³⁰

These five articles help to shed light on pluralism in Asia. Factors that have already contributed to increased heterogeneity in Asia—such as labor shortages and globalization—will continue to shape Asia. The articles in this issue help to stimulate and facilitate discussions on how such social changes interact with developments in law and public policy.

²³ *Id.* at 652.

²⁴ *Id.*

²⁵ *Id.* at 673.

²⁶ See generally, Wen-Chen Chang, *The Convergence of Constitutions and International Human Rights: Taiwan and South Korea in Comparison*, 36 N.C. J. INT'L L. & COM. REG. 593 (2011).

²⁷ *Id.*

²⁸ *Id.* at 601.

²⁹ *Id.* at 619.

³⁰ *Id.* at 600.

