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NOTE FROM THE EDITORS

The Centre for Documentation of Refugees and Migrants (CDR) is a research organisation and the secretariat of “Human Mobility Studies (HMS)”, a series of lectures in the University of Tokyo. CDR is charged with several tasks relating to the documentation and dissemination of information on forced displacement and migration issues; these issues are to be considered from a broad range of disciplinary perspectives. Our tasks include inviting experts including academic researchers and practitioners, governmental officers, and lawyers to discuss the pressing issues in our field of research. In addition, by the publishing of original research and information and by providing lectures and training sessions for students, the general public, and professionals, CDR is contributing to the building of a more conscious public opinion on human mobility and the future of our society. Moreover, CDR is developing an online database for knowledge accumulation and dissemination.

The publishing of this journal, “CDRQ”, is one of these tasks, and the focus of this journal is to record the activities of CDR. CDRQ includes records on seminars, workshops and symposia conducted by CDR and HMS. While some of the articles published here are written by the reporters and panelists of these events, outside contributions are also welcome.

After the issuance of CDRQ vol.5, we organised our intensive summer school this year with the theme “Refugee Status Determination in the Context of Refugee Protection” and continued our research activities. Details of our activities are described in the “Developments”.

Vol.6 contains working papers from our international contributors and a very candid interview of the former Senior Protection Officer of UNHCR Japan upon completion of his assignment here in Tokyo. Also in this issue is yet another Asian Digest report on resettlement, which will be the theme in the upcoming vol.7.

We would like to thank our contributors, and remind everyone that CDRQ is an open journal and that we welcome contributions from all parts of the world.

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September 2012

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REMARKS FROM DIRECTOR

It is truly an honour for us to publish an independent quarterly concerning the issues relating to the movement of people. Until now in Japan there have been no journals or magazines focused specifically on the issues of the movement of people, and which utilise a multidisciplinary approach through which to view these issues. Moreover, there have been no journals published in English, on this field in Japan. The CDRQ is the first of its kind in Japan. Although the level of discourse in Japan has developed to a point, the situation and activities in Japan have not been made well known to the rest of the world. The CDRQ will act as a doorway by which to pass through the language barrier and open the discussion in Japan to the rest of the world.

Japanese society is now facing serious decreasing of population and aging society. While it is recognised that these issues should be tackled from a multidisciplinary perspective, there has been an insufficient platform for networking and discussion until now. Discussion across disciplines and interactive information exchange connecting different fields of professionals is important not only to benefit academia, but also to make research contribute to society. The academic world should be more aware of facilitating engagement to the real world, as long as it tries to handle social issues. In this sense, I hope CDRQ to be one of the attempts to open a new frontier in discourse.

It is challenging to keep a balance between setting up an open platform for discussion and establishing an authoritative academic journal. However, I hope many of us might contribute to advancing the discussion and finding new solutions. Especially I expect those among the younger generations will propose to undertake unconventional styles of research, even though these new approaches may not be immediately complete. I strongly believe that we can improve our approach day by day, as long as we continue to try.

Yasunobu SATO

CDR Director

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WORKING PAPERS

“THAT’S IT?” HOW CONFLICTS AND CONFUSION ARE NEGOTIATED IN THE GLOBALIZED CONTACT ZONE OF A “JAPANESE” CLUB

Haeng-ja Sachiko CHUNG *

ABSTRACT

I argue that an ethnically unmarked—therefore, presumed as a “Japanese”—hostess club reflected on culturally and ethnically ever-diversifying Japanese society. Louise Mary Pratt discusses that “cultures meet, clash, and grapple with each other in contexts of highly asymmetrical relations of power” in a contact zone. The club functioned as a “contact zone” in contemporary Japan in terms of race, class, age, language, and gender. In this paper, I investigate the cultural conflicts and resolution as well as implicit preventative measures of multi-layered interpersonal clashes at the contact zone by analyzing the ethnographic data collected in my participant observation at the club. The participants of this contact zone included not only Japanese nationals but also transnational businessmen from South Africa, a Chinese hostess, and a South Korean hostess. While the South African white male customers in their fifties had ostensibly multiple hegemonic advantages in terms of gender, race, and social status, those who were situated to serve and entertain them implicitly collaborated to balance the power inequality as a form of resistance.

I. LOST IN GLOBALIZATION?

Globalization suggests “a world full of movement and mixture, contact and linkages, and

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This paper was originally titled as “the Globalization and Korean Night Clubs in Japan: Korean Hostesses and Japanese Customers.” I drafted it for the International Symposium “From Area Studies to Transregional Studies? Contours of Globalization in Asia’s Re-integration,” which was held at Center for Asian and Pacific Studies, the University of Iowa from May 5th to 8th, 2010. Then, I was on a research leave from Hamilton College and was a Postdoctoral Fellow of the Social Science Research Council and the Japan Society for the Promotion of Science at the University of Tokyo from 2008 to 2010. I significantly revised and expanded the original for this issue.

persistent cultural interaction and exchange.... a world where borders and boundaries have become increasingly porous, allowing more and more peoples and cultures to be cast into intense and immediate contact with each other" (Indra and Rosaldo 2008: 4). In short, globalization implies "global connectedness" (Indra and Rosaldo 2008: 4). Yet, close examinations of inter-personal interactions in globalization offer more complex pictures. Club Tohka serves as a "contact zone"— "cultures meet, clash, and grapple with each other in contexts of highly asymmetrical relations of power" making it a "contact zone" (Pratt 1991). It is a space for hostesses (professional drinking and conversational companions) and customers of various cultures, nationalities, languages, and class to interact in an intimate setting: sitting next to each other and having drinks together.

Many things in Japan are assumed to be "homogenously" Japanese or "uniquely" Japanese when in fact, some aspects of Japan and its culture are actually multi-ethnic due to the consequences of globalization and colonialism (cf. Lie 2001). Club Tohka hired and served both Japanese and non-Japanese, but it was not marked as an ethnic club, such as Korean (Chung 2004), Chinese, and Philippine clubs (cf. Parrenas 2011) in Japan. Club Tohka was considered to be a "Japanese" club. In this paper, I examine how the participants get disoriented, empowered, excited, and disappointed in this globalized high-end nightclub in Japan. As an ethnographer, I investigate the encounter of Japanese men and women, a South Korean woman, a Chinese woman, and three South African men at the club in one evening.

If a Japanese customer came to Club Tohka and saw these eight people for the first time, he might think four Japanese hostesses were entertaining three white (hakujin —"white people") males who were accompanied by a Japanese businessman. He might assume that the Caucasians were Americans because whiteness is often associated with the United States since the post-war occupation (1945-1952) after the World War Two in Japan. Contrarily, East Asians have long been invisible in the prevailing myth of "homogeneous" Japan (cf. Lie 2001).

This assumption proved to be wrong in this evening. The hakujin in this case were from South Africa, and the hostesses were diverse, being Japanese, Korean and Chinese. Yuri was South Korean and spoke excellent English, Korean, and Japanese. Lin was Chinese and spoke native Mandarin, proficient Japanese, and moderate English. Both Kayo and Mama were Japanese. Kayo could speak minimal English, and Mama could only say, "Hello," and "Thank you." Yuri and Lin were migrants and trilingual while the Japanese entertainers were close to monolingual. The Japanese hostesses suddenly became vulnerable when they had to entertain customers in a non-Japanese language.

Yuri and Lin had a combination of advantages and disadvantages in working as migrant Asian hostesses at Club Tohka in Japan. They had linguistic capital and cultural assets to entertain globalized clientele because of their exposures to multiple languages and cultures as transnational migrants. At the same time, Yuri and Lin were students during the day and hostesses at night. While a student visa allowed the visa holder to engage in many part-time jobs, the job of a hostess was one of the exceptions. Many migrant hostesses do not have appropriate visas to work as a hostess because the Japanese Bureau of Immigration does not have a hostess visa category. Yuri and Lin were not exceptions. The current Japanese visa system fails to recognize their occupational talents, skills, and efforts due to the gender biases (Chung 2012). It puts migrant hostesses in a precarious position and consequently hinders the use of their talents, which could be useful in globalized nightclub interactions.

I examine the commercialized, sexualized, interpersonal experiences of globalization by focusing on race, ethnicity, and affective/emotional labor. How do the hostesses and customers maneuver the relationships in a contact zone? What happens if cultural miscomprehension creates tension among the participants? More specifically, how do the hostesses overtly entertain and covertly manage the customers at the contact zone where power disparity is assumed between hostesses and customers in terms of language, race, and occupation? I analyze how the people with presumably less power (i.e., hostesses) subtly handle the difficult situations imposed by the people in power (i.e., customers) within the context of globalization. This is a part of my long-term research on high-end clubs in Japan (1997, 1999, 2000-2001, 2008-2010), the United States (1999), and Korea (2010), including my labor participant observation as a paid hostess at Club Tohka (Chung 2008).

II. SETTING AND SEATING

Daniel, Kevin, and Martin, three English-speaking South African men, came to Japan on their business trip to Asia. In the summer of 1999, they had a business meeting with Mr. Tagawa in Nagoya. The men were in their mid-fifties, and all held management level positions in their respective jewelry businesses. They could not speak Japanese. Mr. Tagawa was a Japanese businessman and spoke English if his work required it. Therefore, their business discussions were inevitably in English even if the meeting was held in Japan. Their business meeting went well, but Mr. Tagawa was exhausted by the time the business dinner was over. Talking in English wore him out. After all, his native language was Japanese. Mr. Tagawa wanted to unwind after the successful yet stressful day by relaxing and having a drink at his favorite nightclub, but he should not leave his three business partners right after dinner according to Japanese business protocol. Therefore, he decided to take the three South African businessmen to the nightclub where he could expect that someone else would help him entertain them.

Mr. Tagawa phoned to make a reservation at Club Tohka, a high-end nightclub in Nishiki, the most prestigious entertainment district in Nagoya. He explained the circumstances to Yasuko Sato, the owner and operator of the club. She functioned as the “mama” in her role as the employer of a dozen hostesses serving the clientele. Mr. Tagawa hoped that the mama would assign a few English-speaking hostesses to his table. He believed that Yasuko Mama would help him relax while the hostesses took on the partial responsibility of entertaining his English-speaking business counterparts.

At Club Tohka, all the tables were assigned numbers although no number signs were put on the table. All the workers memorized the table numbers in order to move from a table to another efficiently. Yasuko Mama was having a drink with customers at Table No. 2. At the same time, she was paying attention to the customers at several other tables as well as the club entrance. When Yasuko Mama heard Mr. Kikukawa, the Club Tohka’s manager’s voice saying, “Welcome” (*Irasshaimase*), she excused herself from her table and walked to the entrance. She exuberantly greeted Mr. Tagawa and politely bowed to his non-Japanese guests. She escorted them to the reserved table by affectionately addressing Mr. Tagawa by his nickname “Tagawa-chan.” Yasuko Mama was in her mid-twenties. She was often admired by her resemblance to the prominent Japanese actress, Sayuri Yoshinaga. Being aware of her charm,

Yasuko Mama dressed tastefully each evening so that her youthfulness was highlighted. She had her hair set in a Japanese style at a beauty salon so that her hairstyle matched her soft ambience.

This particular night, she wore her pale pink kimono, and her long hair was styled elegantly in a modern kimono-coif at the salon she went to each afternoon. While Yasuko Mama led Mr. Tagawa's group to the reserved Tables Nos. 5 and 6, she whispered to Mr. Kikukawa, to bring over Yuri, Lin, and Kayo. In an artful gesture, Yasuko Mama held up the billowing right sleeve of her kimono with her left hand and directed the guests to their seats with her outstretched palm.

Then, an unexpected thing happened. Usually, customers would sit apart from each other leaving a space for a hostess in-between. However, Daniel, Kevin, and Martin sat next to each other alongside Mr. Tagawa without spaces for hostesses to sit in-between. Mr. Tagawa had seated himself at the right end of the sofa, and Daniel, Kevin, and Martin just followed him. Therefore, four men ended up sitting on the same side of the tables while the other side was left unoccupied. This seating indicates that the three South-African customers were not familiar with a Japanese club.

Because Mama could not communicate in English, she had to wait until the hostesses came to help her redirect the seating. Without showing her perplexity, Mama elegantly pulled out a removable square ottoman below the right end of the table and sat down. Mama took this seat in order to get easy access to the whiskey bottle, ice bucket, and mineral water. The end seat allowed Mama to come and go with minimum disruption if necessary. She needed to be mobile because of her multiple responsibilities as the owner, operator, and entertainer. Mr. Tagawa knew where Mama would sit, and he chose his seat so that he could sit close to her and talk with her. Mr. Tagawa did not redirect his three South African guests to sit separately because he was not sure how many hostesses were assigned to his tables yet.

Before Mr. Tagawa's group arrived, three summoned hostesses, Yuri, Lin, and Kayo were serving different tables. The manager, Mr. Kikukawa, approached Table No. 1 where Yuri was seated and said, "Excuse me" (*"Shitsurei shimasu"*) to the customers. Then he asked for "Ms. Yuri, please" (*"Yuri-san, onegaishimasu"*). The manager got down on one knee and whispered to her, "Please go to Table No. 5." The manager repeated the similar request at the two other tables where Lin and Kayo were seated.

Yuri, Lin, and Kayo did not leave each table immediately, though. They waited for the best timing to break away from their respective tables. Before leaving, they excused themselves by saying, "Thank you very much for the drink. Excuse me for a while" (*Gochiso samadeshita. Chotto shitsurei shimasu*). This is a typical line even if they might never come back to the table. In a single evening, a hostess can be rotated around more than a few tables, and these rituals are repeated each time to give the effect that a hostess is a special expensive commodity. For example, the manager's physical mannerism of kneeling down indicates that a hostess has a higher status than a male employee and she is something precious. Such a reminder reinforces the sense of superiority of customers in the hierarchy. A customer is on the top who is served by a hostess, and she is served by a male worker (Chung 2009).

Multiple agents are involved in the seating arrangements. The mama decides the rotation of hostesses at the club as a whole, and the manager supports her. They decide which hostess should be transferred from one table to another at what timing, by observing the activities and interactions at all tables. At each table, unless the customer shows a preference, a senior

female entertainer, such as a “small mama” or an older hostess, assigns a junior hostess to a seat for the best match with the customer (Chung 2004).

When Yuri, a South Korean migrant hostess in her mid-thirties, came to the table, she wondered why the four male customers sat next to one another on one side of the table. The scene was odd. However, without showing such surprise, Yuri smiled and welcomed the customers in Japanese and in English. Mama introduced Yuri to the customers speaking in Japanese: “Yuri-san is very fluent in English.” Yasuko Mama referred to Yuri as “san” instead of “chan”— using a polite suffix rather than the diminutive suffix because Yasuko Mama was about ten years younger than Yuri.

In a whisper, Mama asked Yuri to tell the two white customers come to the other side of the tables so that hostesses could sit between them. At a high-end club like Tohka, at least one hostess should sit next to each customer. Kevin and Martin agreed to move to the other side. Yuri sat between Mama and Kevin to take care of the customers’ drinks. Seating is strategic in a club. Several minutes later, when Lin and Kayo were able to leave their original tables, they came to Tables No. 5 and 6 where the Tagawa party was seated. When Lin arrived, Mama suggested her to sit down between Mr. Tagawa and Daniel, so that at least one hostess sits on each side of the tables. The following chart indicates the seating arrangement and four customers and three hostesses. Mama sat on the right edge. It also shows what items were on the tables.

The Seating and Table Arrangement of the Mr. Tagawa’s Party. Mama sat at the right end of the table.

	Daniel S. African	Lin Chinese	Mr. Tagawa Japanese
	Glass & Ash Tray Bottles of Whiskey, Water & Ice	Glass Beer	Glass & Ash Tray Glass Bottles of Whiskey, Water & Ice
Dish	Glass	Dish	Glass
Glass		Glass	
Martin S. African	Kayo Japanese	Kevin S. African	Yuri Korean

Lin was a Chinese migrant hostess who was studying in Japan. She was in her mid- twenties with long dark hair and a slim figure. She was trilingual (native speaker of Mandarin, proficient Japanese studied in Japan, and moderate English learned at school), but she was shy and quiet. Lin was self-conscious of her Chinese accented Japanese. She knew that ex-

posing that she was a non-Japanese Asian would demote her status. The condescending gazes towards other Asians were detected here and there inside and outside Club Tohka and encouraged Lin to pass as Japanese as long as possible. The club workers and mama knew that Lin was Chinese, but she could postpone the ethnic disclosure to the customers by speaking less or speaking shorter, more practiced phrases of Japanese. In hostessing, talking and listening are key skills. Shyness can hurt a hostess' business, yet, if she is a good listener ("kiki-jozu"), she may still prosper. Mama knew that Mr. Tagawa had been to China and had some interest in the country. If Mama had to leave the table, Lin could entertain Mr. Tagawa and Daniel until another hostess is assigned to the tables. These were the reasons Mama suggested that Lin sit between Mr. Tagawa and Daniel.

Kayo, a Japanese high school graduate in her early twenties had minimal English skills. She became even more nervous that she had to sit at the last available seat between Kevin and Martin, the two big white men. If she could come to the table earlier and sat at Yuri's spot, escaping from an uncomfortable situation would be easier for Kayo by just leaving the seat because it was wide open on her right hand side. Then, the evening might have developed very differently, and the incidents described below might not have happened.

Anyhow, every customer was seated next to a mama or a hostess, and pairs were loosely created: Mr. Tagawa and mama, Daniel and Lin, Kevin and Yuri, and Martin and Kayo. Yet, the conversations does not need to be restricted within a pair, and can be often carried out inter-pairs as well. Therefore, pairs can transform into a group or a partner can be changed organically if there is no language barrier.

Mr. Tagawa's party was linguistically divided into two: Mr. Tagawa and Mama talked quietly in Japanese at the right end of the table. Mr. Tagawa had informed her of his budget, payment method, and the purpose of this party. Mama explained to Mr. Tagawa of the background of the hostesses at the table: two hostesses came from abroad and could speak English, and the young Japanese hostess spoke some English. The dominant language for the remaining pairs (Daniel and Lin; Kevin and Yuri; and Martin and Kayo) became English and body language because none of the South Africans spoke Japanese, Korean or Chinese.

In the meantime, Mr. Kikukawa, the manager, moved other hostesses from table to table in order to fill in the absences of Yuri, Lin, and Kayo and to enable Mama to focus on Mr. Tagawa's tables. Since the club was not fully occupied yet, the gender balance of Mr. Tagawa's party was satisfied. However, if the club became full, the gender ratio of 1 to 1 would have been compromised. Or if the business became slow, more hostesses might be assigned to Mr. Tagawa's tables. There was always a possibility of change of seating. The seating arrangement is fluid.

After making and serving mizuware (drinks mixed with whiskey, water, and ice), Yuri handed out her business card using both hands to each South African customer. Yuri did not hand it to Mr. Tagawa because they had exchanged their cards when they met for the first time at the club. Most Japanese customers give their business cards to hostesses. The card contains crucial information, such as a company name, address, phone number along his full name and title. The business card exchange between a customer and hostess indicates that the club scene is an extension of work. He considers a hostess as someone who helps his business, as Mr. Tagawa expects Mama to help him to entertain his international business clients. Because everything was written in Japanese, Yuri wrote her name in roman letters below the Japanese writing and explained that her name meant "lily" in Japanese. Lin and Kayo fol-

lowed Yuri, handing their cards and introducing themselves to the South African customers.

After the cards were distributed, Mr. Tagawa thought this might be a good time to reintegrate the group to have cheers and to share conversation rather than breaking into pairs so soon. Establishing the group identity is critical at an early stage within the drinking culture of clubs and bars. Midway through the evening or at later points, dyads or triads or smaller combinations may emerge, however it is important not to forget that they are a group (Allison 1994). Mr. Tagawa proudly introduced Mama to his South African business counterparts in English:

“Isn’t Yasuko Mama beautiful? She is only in her twenties and impressively owns this club.”

Mama stood up and walked toward Kevin, Martin, and Daniel to greet each individually. She handed them her business cards, and Yuri interpreted her greetings in English. Among the eight participants, four people were monolingual in this globalized contact zone: the three South Africans spoke only English, and mama spoke only Japanese. South Africans exercised their privilege as speakers of the hegemonic language English, which they assumed as the “global language.” While all the participants respected the South African guests’ assumptions, mama had the privilege to use her employees (hostesses) as her interpreters. Both the South African male customers and the Japanese Mama occupied the powerful positions, but there was a language barrier between them.

Throughout the evening, the participants experienced anxiety, disorientation, excitement, or confusion at various time and at different degrees. The initial odd seating was one example. Then halfway through the evening, Daniel and Martin in particular got confused and disoriented because they did not have a chance to learn the differences between Club Tohka and the bars they had been to in China and South Korea. In the following sections, I will closely examine anxiety, disorientation, excitement, annoyance, or confusion at a globalized contact zone.

Scene I: (Dis)Orientation at the Globalized Contact Zone

Yuri could work as a hostess even though she was older than other hostesses because she was a skillful conversationalist and trilingual. Kevin was impressed with her English skills and asked why.

Yuri answered, “I went to school in the United States” with a smile.

Kevin: “Oh, no wonder! How many languages do you speak?”

Yuri: “Let’s see... Korean, Japanese, and English. So three languages, I guess.”

Kevin: “Korean? Why?” Yuri: “Because I am actually Korean.”

Kevin did not notice that Yuri was not Japanese. Unlike Lin, she did not intend to pass as Japanese, but she was often “mistaken” as a Japanese. From there, Kevin and Yuri had very vibrant verbal exchanges on topics of business practices and cultural similarities/differences among South Africa, Japan, Korea, and the United States. One of the topics was about high-end clubs in South Korea and Japan. Because they had fairly frank conversations, Kevin felt comfortable sharing his experience in Seoul with Yuri:

"In Korea, our Korean business partners took us to a place called a "room salon." A customer could pick his favorite hostess as his companion among many hostesses. The girl I picked sat next to me and brought Korean food and snacks to my mouth with her chopsticks or fingers. At first, I felt strange to be fed like a baby, but other Korean men did not look concerned about being fed by their hostesses. So, I just followed them. Hostesses were pretty, attentive, and even flirtatious. I got a hostess who could speak English. When I asked her why she could speak such good English, she said she studied in New Zealand for a couple of years.

Later when I looked around, I noticed that one Korean business partner held his hostess around her shoulders. The other Korean guy put her on his lap. Another guy whispered in his hostess' ear, and they giggled. So I supposed it was okay to touch a hostess like them. I knew this banquet in a private party room was expensive, and our Korean business partner paid a lot. All of us had a good time. Apparently, some of our Korean partners went to hotels and spent the night with their hostesses."

The banquet room Kevin went to was inside an establishment typically referred to as "room salons" in South Korea. Anthropologist Haesu Shin conducted interviews with thirty customers and twenty-eight hostesses and mamas of room salons (Shin 2000). Kevin's description would fit into her description of room salon. While this Korean room salon might look similar to Club Tohka to Kevin in the sense that a hostess accompanied each customer as a companion, crucial differences existed. One of them was a special arrangement. Unlike the room salon in South Korea, Mr. Tagawa's tables were not in a private room. They could be seen by other customers and workers, just as they could see other parties. Kevin's narrative also includes a popular myth, which Yuri had heard repeatedly from a customer from abroad: Because clubbing was expensive, sexual service should be included. However, it was not often the case at the high-end club like Tohka. Yuri continued explaining other differences to Kevin:

"Our club is different from the room salon you went to in Seoul. Room salons sometimes offer the option of a so-called second party (I'cha) where you can take out a hostess to a hotel and have sex in exchange for money. A room salon hostess' primary income is her tips at the first and the second parties. That's why some room salon hostesses are more eager to please their customers outside the salon as well. The room salon gives no daily wages to a hostess while Club Tohka guarantees our daily wages. In Japan, some hostesses make their own long-term mistress-type arrangements with customers. Others go to hotels with customers by their choices. Or a mama may designate a few hostesses who are willing to offer sexual services to customers outside the clubs. This group is referred to as the "special attack corps" (tokkotai) in Nishiki and looked down by other hostesses. Those hostesses who cannot attract customers without having sex are frowned upon as "pillow geisha" (makura geisha) or "pillow sales promotion" (makura eigyo)."

In 2010, I interviewed another Mama who owned a club in Ginza, Tokyo. She firmly said, "An ideal hostess should be able to attract a customer without sleeping with him because

sexual attraction lasts shorter than other affective charms. I fire a hostess if I find out that she sleeps with a customer.” Yuri explained why she worked at Club Tohka:

I chose to work here because I had never heard any rumors that Yasuko Mama pressured hostesses to sleep with the customers. The regular customers know what we can offer and what we do not. If customers just want to have sex, they can either go to such clubs or other sex establishments. There are so many in Japan, and the cost is about the same or even cheaper.”

Yuri provided some information about the fees since Kevin asked:

“For example, Club Tohka bills about \$200 as a cover charge per customer. As the customer orders something else, the bill is adding up. Fees at sex establishments vary. Sexual acts without [penal-vaginal] intercourse at a lower end may cost as little as \$50 or sexual intercourse at a higher end might be as expensive as \$500”

Yuri’s explanation somewhat helped Kevin orient himself as to where he was, what he could do, and what he should not do at Club Tohka although he could not quite understand yet why a Japanese businessman was willing to pay \$200 for conversations.

Scene II: Problems at the Globalized Contact Zone

The language barrier deprived Daniel and Martin of a venue of learning about the codes of appropriate behavior through conversation. Daniel and Martin wrongly assumed that Club Tohka was similar to the bars they had visited in Korea and China. This confusion was enhanced by their problematic, yet fairly common conflation found among non-Asians, that Japan, Korea, and China are more or less similar. The concept of Asia as a region often obscures differences among nations within Asia. As a result, Daniel, Kevin, and Martin misunderstood Club Tohka as a place similar to the room salons and bars they had been to in South Korea and China.

A hostess signifies different thing in Japan and China. Hostesses are legal “mizushobai” workers in Japan (Allison 1994) while they are “illegal sex workers” in China (Zheng 2003: 143). The clubs I researched hired not only Japanese but also transnational migrants from South Korea, China, Brazil, and Taiwan (Chung 2004) while the bars in China predominantly hired hostesses from rural China (Zheng 2003: 161). Furthermore, the clubs in Japan hired hostesses of wider age range (18-50s) for primarily conversations (Chung 2004) while the clubs in China hired much younger hostesses (17-23 years old) for more sexually explicit services (Zheng 2009). Consequently, the job requirements for high-end hostesses in Japan differ from the hostesses in China where a hostess is called a “sanpei xiaojie.” She accompanies male customers and may perform the following acts: alcohol consumption, sexual services, and entertainment by dancing and singing. In Japan, a hostess is a legal job, and hostesses are often referred to as “mizushobai” women (Allison 1994).

Mizushôbai is a Japanese compound noun. Mizu means “water,” and shôbai signifies “business” or “trade.” With the combination, mizushôbai literally means “water business,”

but this literal translation, which may suggest selling bottled water, is misleading. Broadly speaking, Mizushôbai is the entertainment business, which includes sports industries, restaurants, coffee shops, bars, theatres (Robertson 1998), and gambling (e.g., arcades and pachinko parlors). The etymology of mizushôbai highlights some characteristics that are carried over to the present from the Edo period (1603-1867). Some find the origin of the word “water” (mizu) in Mud Water Business (“doromizu kagyo”), which used to refer to the geisha (artist companion entertainer). Its genealogy may be derived from Water Teahouse (“mizu jaya”), which offered tea and snacks (possibly with sexual services) near the temples and shrines during the Edo Period.

At a modern club, a hostess sits next to a customer and has drinks with him, but drinks need not be alcohol, and some drink non-alcoholic beverage, such as oolong tea. The core of a hostess job in Japan is to perform affective and/or emotional labor to take care of emotional needs rather than to provide sexual services. The club bill includes an expensive cover charge (\$100-300 per person), inflated prices for bottles of liquor (e.g. \$100-3,000 for a bottle of whiskey) and wine (\$300 up), fruits and snacks (\$30-100). The high-end club can be often more expensive than the sex joints because affective and emotional labor are highly valued in Japan. The bill is paid either by customer’s own funds or corporate accounts. The Japanese corporate entertainment expenses reached \$62 billion in 1992. Even after the bubble economy burst in the early 1990s and corporate accounts for entertainment had decreased, the corporate entertainment expenses still equaled \$34 billion in 2004 (Kadokura 2007: 21-22).

Although Club Tohka was very different from a bar in China, Lin never explained it. Actually it was unclear if Lin knew such differences. Therefore, when Daniel initiated the conversation by saying “I went to a bar like this in China,” Lin answered, “Oh, China? I am from China” with relief. She was happy to find something in common with a very “foreign” customer in terms of language, race, and nationality.

The language barrier also prevented Martin from learning the codes of behavior at Club Tohka. Martin was happy when the youngest little hostess, Kayo, sat next to him. Martin introduced himself and asked her name, again. Kayo responded with a cute smile and bookish English, “My name is Kayo. How do you do?” They continued the conversation, which sounded almost like an introductory English conversation book for a while.

Martin: “Oh, how do you do? How are you?”

Kayo: “Fine, thank you. And you?”

Martin: “I am fine.”

But when Martin continued, “Actually, I am a bit tired. It has been a long day.”

Kayo looked a bit puzzled and just kept looking at Martin smiling. Then, she took his glass, which was half empty, added more ice, whisky, and water, and stirred it up with a plastic swizzle stick. After wiping the outside of his glass with white cloth, she placed his glass in front of him. Martin thanked her, and Kayo replied, “You are welcome!” Martin realized that their conversation would not go beyond the level of initial introduction.

He gradually became restless. He began looking at other customers. Club Tohka was seventy-percent full, and all the other customers seemed to have a good time. Kevin seemed to enjoy talking with Yuri from the beginning. They were now comparing the countries they went to. Martin wished he could join them, but he could not find a right moment. Yuri could have noticed Martin's interest and made him join their conversations as a fluent senior hostess, but she could not or did not.

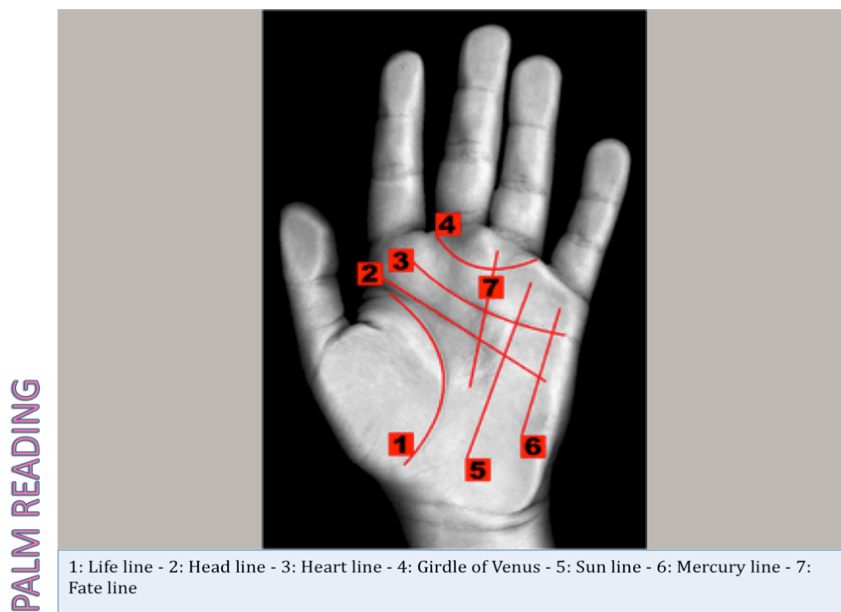
Mama and Mr. Tagawa were still speaking something in Japanese. After seeing that Daniel put his arm around Lin's shoulders, Martin put his hands on Kayo's waist, lifted her, and put her on his lap. Lin uncomfortably endured the weight of Daniel's arm on her shoulders, and Kayo was nervously giggling. Martin held her tighter after she had tried to move away from his lap. Lin and Kayo did not foresee Daniel and Martin's physical intrusions. It was difficult to manage customers' physical advancement once it happened. Therefore, a hostess nurtures sensitivity to predict a customer's body movement. If she anticipates something undesirable, she may send a subtle "No" verbally or physically or just leave her seat by excusing herself to go to restroom. Lin and Kayo had difficulty predicting what Daniel and Martin would do partially because of their unfamiliarity with South African customers. And once they were physically invaded, they did not know how to say no in a way not to embarrass or offend the customers. Consequently they ended up enduring poor treatment and managed their frustration—emotional labor (cf. Hochschild 1983: 84-85).

Such emotion management is a widely used strategy among hostesses. Emotional labor includes "encouraging smiles," "attentive listening," "flattery," "ingratiation," and "acceptance of poor treatment" (Hochschild 1983). A hostess at Club Tohka smiled at and listened to a customer. She could be flirtatious, eager to please him, or sometimes had to accept poor treatment. One hostess said, "You cannot get angry at a customer. Getting angry at him is the last thing a hostess should do. Otherwise, she will lose him." But that does not mean they accepted everything. They had various strategies to cope with customers without offending them. Another hostess said,

"I pinch a customer's hand really hard if he touches my lap. I pinch it under the table while I keep smiling so that others do not notice and the customer does not lose his face. Yet, I can still send him a clear message that he cannot touch me like that."

The cultural difference and language barrier debilitated and silenced Lin and Kayo: they could not dissuade the unfamiliar customers from undesirable physical contact, which they could handle much better with the Japanese-speaking customers. Yasuko Mama noticed it and indirectly intervened to stop Daniel and Martin's inappropriate behavior by integrating the four pairs into one big original group again by bringing up a topic of palm reading. Palm reading allowed physical touches but in a very controlled manner. By doing so, she also offered an opportunity for the customers to reassert their group identity as business partners.

The Names of lines and spot for the Palm Reading

*Scene III: Intervention at the Globalized Contact Zone*

Yasuko Mama brought up the innocent but interesting topic of palm reading. Palm reading was originated in South Asia a few thousand years ago, and spread all over to places such as Egypt, Persia, Greece, China, Korea, and Japan. In a way, palm reading is one of the fruits of the globalization, which is shared in various parts of the world. Professional palm readers tell fortune on streets or at their offices, and they are widely available in Japan. Yasuko Mama learned some basics of palm reading, which was a convenient tool to manage customers. Palm reading allows a hostess to control a customer's physical movement by drawing his attention to his hands. A customer may still enjoy the physical contact when a hostess holds his hand during the palm reading, even if she does so to control his hand movements. On that evening, Mama used palm reading as a unifying group topic while Yuri was interpreting:

“Do you do palm reading in South Africa? Many Japanese believe that their palms tell something about their lives.”

Mr. Tagawa, Yuri, and Kevin, Kayo, and Lin began looking at their palms. Daniel removed his arm from Lin and began staring at his palms. Martin also put Kayo back on the sofa in order to look at his palms. Mama continued by showing her left palm to everyone:

“This line (See picture #1) is the life line. This line (#2) is the head line, and this line

(3) is the heart line.”

Some Asians had some exposure to palm reading and heard of these three basic palm lines. Daniel, Kevin, and Martin all became drawn to Mama’s palm reading talk. They had heard of palm reading at a carnival type of space in South Africa, but they never had a chance to have actual reading experiences. Kevin asked Yuri, “Which lines mean what again?” So Yuri explained the three lines to everybody in English while pointing at Kevin’s life line, head line, and heart line. Lin did the same thing for Daniel, and so did Kayo. Now hostesses were able to be in charge of the customer’s body. Mama continued:

“Life line (#1) shows your vitality, vigor, and health. As the line is clearer and thicker, you are healthier. The length of your head line (#2) indicates your thinking style. If you have a long head line, you think long before decision. If your head line is short, you make your decision quickly. If you have a longer heart line, you are patient. If your heart line is unclear, short, or thin, you may be emotionally unstable. If you have a clear heart line, your inner life is peaceful.”

Whether customers believe in palm reading or not, palm reading is a convenient tool for mama and hostesses to entertain and manage customers. Mama had made Daniel and Martin voluntarily stop holding hostesses so inconspicuously that neither Daniel nor Martin noticed her intention and strategy. Mama instantly released the gendered racial, cultural, and linguistic tensions by introducing an appropriate topic to the group .

Mr. Tagawa, who was also a bit uneasy about Daniel and Martin’s behavior, was relieved by Mama’s subtle intervention. After enjoying the palm reading talk for a while as a group, Mr. Tagawa asked for the check and suggested the end of the evening to his South African guests. Daniel and Martin looked a little perplexed while Mama and hostesses escorted them to the outside of the building. As they were getting into the taxi stopped by Yuri, Daniel uttered, “That’s it?” And Yuri responded to him “That’s it!” with her big smile.

III. CONCLUSION

Language, race, and gender affect business/entertainment interactions at globalized contact zones. They affect the locations of power as well as the kinds and quality of interpersonal interactions. When English functions as the hegemonic language, the fluency of the language grants a speaker an advantage: the South African businessmen could keep speaking English even though they were doing business in Japan. Being “white males” reinforced their advantageous positions where the racial hierarchy was still influential. In order to maneuver the racialized and gendered interactions, Yuri and Mama came up with their own strategies. By being able to speak English, Yuri pointed out the differences between Club Tohka and other bars in South Korea and China. She sent an indirect but clear message that Kevin should not depend on his past experiences and observations at bars in other countries. Without being informed, Martin and Daniel acted inappropriately, and Yasuko Mama subtly intervened. She

managed their physical movements by proposing the palm reading to the whole group. Because palm reading is the fruit of long-term globalization, all the participants were somewhat exposed to the concept and it was a conversation topic into the globalized contact zone. Mama mediated the intercultural and interracial gendered tensions in a subtle but effective way. This was exactly why Mr. Tagawa decided to bring his South African businessmen to Club Tohka: Mama would help him to overcome any difficulties in entertaining his guests, and he was willing to pay for this service.

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CORPORATE SOCIAL RESPONSIBILITY IN CONFLICT-AFFECTED AREAS: PRINCIPLES AND PRACTICE

Dylan SCUDDER *

ABSTRACT

Decision makers at corporate field offices the world over are increasingly faced with the dilemma of what actions to take to prevent tensions in areas of conflict from escalating into violence. It is a dilemma that calls for a proportionately broad range of lessons learned from conflict experiences across the globe. By 2003, there were already over 63,000 multinationals with over 820,000 subsidiaries, employing over 20 million people in developing countries (and 90 million globally).¹ Preventing armed conflict often means preventing damage to local facilities, staff, corporate reputation, and profits. Taken together, these decide whether corporate and social interests can be reconciled in difficult operating environments. This paper discusses some of the recurring barriers to doing responsible business in conflict-affected areas.

I. INTRODUCTION

Conflicts can turn violent because of any of a number of social, economic or environmental factors, such as an increase in refugees or a change in the access rights to vital resources, the collapse of a major industry or natural disasters. Foreign direct investment (FDI), despite lofty intentions, can also exacerbate conflict by changing the allocation of resources in a society (Switzer & Hussels, 2004: 10-12).

From this perspective, violence is preventable and a consequence of conflicts that are handled ineffectively. It can be ignited by competition for scarce or dwindling resources, and

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1 See <http://yaleglobal.yale.edu/about/globalinc.jsp> for a book review of Globalinc., An Atlas of The Multinational Corporation, Medard Gabel & Henry Bruner NY: The New Press (2003).

fueled by greed or grievance as it fluctuates through periods of pre-conflict, mid-conflict and post-conflict. It is against this backdrop that peacebuilding enters as a specific tool of intervention that can be mobilized to prevent violence, including the reduction or removal of its structural drivers such as institutional arrangements that privilege one group of countries at the expense of another group. Given that one of the main structural drivers is poverty, corporate intervention at the pre-conflict stage, for instance, often targets economic development as an engagement objective. But while such an approach may yield certain benefits, it also brings with it new questions related to role of self-interest and the sustainability of profit-oriented organizations engaging in conflict prevention.

Developing a financial rationale for corporate involvement in an area of conflict is arguably a legitimate corporate responsibility from the conventional legal view of a company as an organization with fiduciary duties to its shareholders. Yet institutional guidelines on responsible business refrain from articulating an explicit approach to conducting conflict-sensitive business that meets the needs of investors while at the same time reducing tensions in emerging markets, and tend instead to leave such complexities to the invisible hand of market forces. As such, the prevailing discourse rests on the controversial assumptions that a neo-liberal model of socio-economic development is achievable and desirable, and that less industrialized countries can improve their standing by deregulating their markets and following best practice as defined, among others, by international financial institutions such as the World Bank and the International Monetary Fund.

To the question “Can it be made financially viable for companies to engage in conflict-sensitive business?”,² this article suggests that through the challenging process of navigating the risks of doing business in volatile and uncertain environments, companies can acquire intangible assets in the form of business acumen that can help to prevent otherwise costly damage and create opportunities in other parts of the company that serve their own self-interest while simultaneously serving the interests of the broader communities in which they operate. For a nuanced understanding of how companies have succeeded or failed at implementing such a conflict-sensitive approach, we begin by specifying the core concepts used in this process.

II. BACKGROUND

A. Definitions of Conflict

As we discuss corporate conflict prevention, a working definition of conflict will reconfirm the context in which the paper is written. The first step is to explore how conflict relates to violence. Conflict is a state of tension in which one party’s goals compete with those of one or more other parties, creating frustration that can lead to violent (or non-violent) out-

2 For the purposes of this paper, conflict-sensitive business is defined as corporate activities that, at a minimum do not exacerbate conflict in any way, and that, where possible, add to the socio-economic stability of the conflict areas where they occur.

comes depending on the degree to which their goals can be made mutually compatible. Violent conflict can come about as an outcome of inequitable access to resources, or from a failure to distribute wealth over time in ways that satisfy the needs of the majority of stakeholders reasonably well.³

Most of today's violent conflicts are within states rather than between them. The 'greed' hypothesis maintains that some conflicts are fought to gain control over valuable natural resources within national borders. The 'grievance' hypothesis maintains that some conflicts are due to development failures, where projects or policies aggravate existing divisions in society, often by undermining livelihoods that depend on natural resources. In both cases, violence tends to emerge more often in fragile states that are able to exploit their natural resources to fund conflict. Valuable resources appear to provide an opportunity, and in some cases, a motive, for war (Switzer & Hussels 2004).

But to say that the causes of war are determined by economics alone would be too simplistic. On the whole, the resource view on conflict holds that violent conflict has been the result of inequitable access to vital resources, competition between social groups for political power, and incompatibilities between groups with different senses of identity, opposing ideologies, or irreconcilable value systems. The impact economic dependence on trading oil or diamonds can have on funding armed violence is well documented, but there is no consensus to date as to whether these have led to 'resource wars' per se. In highlighting the contextual relationship between natural resources and armed conflict, Humphreys (2005) branches out from the greed and grievance hypotheses to posit six types of mechanisms; greedy rebels, greedy outsiders, grievance, feasibility, weak states, and sparse networks, elaborating on how any of the elements can conspire with another to fan the flames of violent conflict (Humphreys, 2005: 512-513). In sum, while the recurrence of violence cannot be explained sufficiently by economic factors alone, it cannot be denied that resource extraction has played a central role in sustaining armed conflict in areas where these assets are abundant.

The countries referred to as the resource-rich-but-poor vividly illustrate how conflicts today resurface primarily in regions suffering from poverty and are often motivated or sustained by trade in natural resources or human trafficking. It is today common knowledge that natural resources have provided the bulk of revenues financing wars in developing countries since the end of the Cold War, having had increasingly severe consequences for civilian populations in resource-rich-but-poor countries. Civilian fatalities in wartime have grown from 5 per cent at the turn of the century, to 15 per cent during World War I, to 65 per cent after World War II, to over 90 per cent in the wars of the 1990s.⁴ But, although natural resources such as

3 For a more thorough delineation of conflict and violence, see Johan Galtung's definition of conflict and concepts of direct, structural and cultural violence (*Journal of Peace Research*, Vol. 27, No. 3, 291-305, 1990, International Peace Research Institute, Oslo). Though now conceptual icons in the social sciences, Galtung's models remain contested. For an outline of some of the main issues being debated, see Peter Lawler's (1995) book, *A Question of Values: Johan Galtung's Peace Research*.

4 Report by Graça Machel, UN Secretary-General's Expert on the Impact of Armed Conflict on Children. Full report at: <http://www.unicef.org/graca/patterns.htm>. Accessed 01/05/12.

oil, diamonds, and timber have contributed to untold suffering in times of war in countries like Liberia and Sierra Leone, there are also examples of business serving a stabilizing function in countries recovering from conflict by providing, among other benefits, economic alternatives for ex-combatants.

According to Nelson (2000), this was just the case with the AGRIMO company in Mozambique in the 1990s. The company established a cotton out-growers scheme for small-scale producers, providing seeds, micro-credit and know-how, with the government setting prices. After 17 years of civil strife, the country signed a peace agreement in 1992 and held its first elections in October of 1994. From 1995 to 1996, about 1,000 farmers produced 80 tons of cotton. Growth continued and by 1998, some 15,000 farmers were supplying 5,000 tons to AGRIMO (Nelson, 2000: 72). While some businesses provide support for technical assistance to target populations in conflict-affected areas for the reintegration of vulnerable populations, others such as AGRIMO have programs aimed at proactively helping populations at risk of livelihood vulnerability. (Saperstein and Campbell, 2007: 78-79). With AGRIMO's increased trade capacity and its programs to bring about widespread wealth creation in support of local livelihoods, it stands as an example of how mutual gains have been achieved from corporate intervention in a post-conflict scenario.

B. Basic Peacebuilding Issues

It is difficult to imagine today a global company, including its broader ownership structure of parent companies and subsidiaries, with no environmental or social controversies at some point in its history. The question of how to get companies to adopt socially responsible policies, especially those with influence in conflict zones, continues to attract increased attention in the media and in the academic literature. In search of a policy framework to guide business conduct in areas of conflict, the International Peace Academy writes in their 2001 report, *Private Sector Actors in Zones of Conflict: Research Challenges and Policy Responses*, that there are three types of approaches available to international actors seeking to promote conflict-reducing behavior (hereafter conflict prevention or peacebuilding, used interchangeably) among private sector actors; normative, instrumental, and coercive.⁵

Normative, in the context of IPA's report, means promoting principled conduct through advocacy campaigns that mobilize public awareness and pressure or through the voluntary adoption of codes of conduct and engagement in public-private sector dialogues. Instrumental means creating positive inducements that reward constructive industry practices, while coercive refers to regulatory regimes that sanction prohibited behavior. None of these ap-

5 On April 19, 2001, the International Peace Academy's (IPA) project on "Economic Agendas in Civil Wars" and the Fafo Institute's Program for International Cooperation and Conflict Resolution held an informal workshop on said topic. The report explains that "[t]he workshop arose from a Meeting of Experts, held in January 2001 under the auspices of IPA's Economic Agendas Program, which indicated a need for a more focused examination of the substantive research and policy challenges posed by the pervasive involvement of international private sector actors in countries marked by weak states, chronic instability, and violent conflict."

proaches has proven effective in isolation, though potential exists in developing strategic combinations between them (IPA, 2000: 11).

From this definition of a normative policy response, promoting conflict-sensitive codes of conduct for corporate actors, would clearly be considered a normative exercise. Concretely however, prior to exploring how general guidance on responsible business could support corporate leaders interested in becoming conflict-sensitive, what empirical data exists to demonstrate what it means to apply a conflict-sensitive code of conduct to operations at one of their field offices, or to design a conflict-sensitive product? Before considering specific roles new actors might play in peacebuilding, more fundamental issues in the field need consideration such as how the main criticisms and internal contradictions of peacebuilding itself are to be addressed. Paris argues, for example, that fledgling democracies may not be able to handle the destabilizing tensions of free elections and a free-market philosophy without sliding into armed conflict and violence (Paris 2000).⁶ Taking the perspective that peacebuilding is itself an ideologically unproblematic activity reduces the scope of discussion to strategies for its effective implementation, instead of allowing for the more critical questions that need to be raised in order to identify the potentially unintended negative consequences of such interventions altogether.

Today, for example, internationally sponsored peace settlements in the contemporary international system tend to be envisaged within the so-called liberal peace framework. In this framework, settlements include demobilization, demilitarization, return of refugees, democratization processes, human rights safeguards, the rule of law, and the free market. The overall liberal peace package permeates all international views on settlement in conflict zones in which international organizations, regional organizations, donors, NGOs, and diplomats become involved. Authors Newman and Richmond (2006) point out that, “Many observers would argue that if we take this as a starting point it becomes relatively easy to identify spoiling behavior when it is in opposition to the components of the liberal peace. Thus, any actor who obstructs this is seen as a ‘spoiler’” (Newman & Richmond, 2006: 4-5). Paris continues:

“The central tenet of the liberal internationalist paradigm is the assumption that the surest foundation for peace, both within and between states, is market democracy, that is, a liberal democratic polity and a market-oriented economy. Peacebuilding is in effect an enormous experiment in social engineering – an experiment that involves transplanting Western models of social, political, and economic organization into

6 Paris (2002) explains that, “Among other things, peacebuilders attempt to bring war-shattered states into conformity with the international system’s prevailing standards of domestic governance, or standards that define how states should organise themselves internally. In this respect, the contemporary practice of peacebuilding may be viewed as a modern rendering of the *mission civilisatrice*—the colonial-era belief that the European imperial powers had a duty to ‘civilise’ their overseas possessions. Although modern peacebuilders have largely abandoned the archaic language of civilised versus uncivilised, they nevertheless appear to act upon the belief that one model of domestic governance—liberal market democracy—is superior to all others.” See *peacebuilding and the ‘mission civilisatrice’*. Review of International Studies (2002), 28, pp. 637–656.

war-shattered states in order to control civil conflict: in other words, pacification through political and economic liberalization. This paradigm, however, has not been a particularly effective model for establishing stable peace. Paradoxically, the very process of political and economic liberalization has generated destabilizing side effects in war-shattered states, hindering the consolidation of peace and in some cases even sparking renewed fighting. [...] At best, the liberal internationalist approach to peacebuilding has generated unforeseen problems. At worst, peacebuilding missions have had the 'perverse effect' of undermining the very peace they were meant to buttress." (Paris, 1997: 56)

If, as Paris claims, peacebuilding mistakenly assumes that market democracy is the surest foundation for peace, is it then not premature to discuss the involvement of corporate actors – or any actors – in this counterproductive undertaking? Some would point to the fact that corporations have become more influential to the peace, security, and prosperity of developing countries than in previous decades due to the global shift of power from the public to the private sector. Others highlight issues related to globalization, the decline in the state's power as a whole, and to its development assistance programs in particular. In brief, while the growing global role of corporations is recognized, there has been little empirical study to date on the consequences of corporate intervention in countries experiencing conflict. There have been case studies examining the role of corporate behavior in specific conflicts, but there is no general explanation that draws clear correlations between corporate presence in conflict zones and the level of inter-group tensions.⁷ It would seem rather that foreign investments in conflict areas are a double-edged sword, providing short-term employment at the expense of long-term resource depletion. Depending on where their interests lie, i.e., what their ideological and institutional affiliations are, those familiar with the subject tend to refer strategically to one side of the sword or the other, to the peaceful contributions of employment, or to the self-serving nature of profit-seeking organizations.

To demonstrate how their business activities help to deescalate social tensions in what are euphemized as difficult operating environments, Western companies, for example, are often quick to defend their presence in conflict-affected countries with the argument that they are providing employment and thereby 'contributing to the local economy'. Bird and Herman (2004) put this assertion in question and take a closer look at the extent to which the argu-

7 As a potential exception, using a spiral model of norm socialization to analyze the behavior of extractive industries in zones of conflict, Rieth and Zimmer have observed a recurring pattern: 'TNCs go through different phases within a norm socialization process: First being guided by a logic of consequences, then becoming "self- entrapped" in justifying their (non-)role in a conflict, and, in a later phase, gradually accepting some responsibility in a conflict zone. This phase eventually leads to initiatives and measures contributing to conflict prevention'. See Lothar Rieth and Melanie Zimmer, *Transnational Corporations and Conflict Prevention: The Impact of Norms on Private Actors*, Working Paper Nr. 43, 2004, Center for International Relations/ Peace and Conflict Studies, Institute for Political Science, University of Tübingen.

ment of ‘creating jobs reduces poverty’ actually stands.⁸ The summary of their findings from British and American tobacco companies in Africa was that:

“[(1) High technology] business activities do not easily provide job opportunities for largely unskilled or semi-skilled indigenous people living in rural areas [but that (2) Nonetheless] looking over a 30-40 year period, training local staff and providing economic and technical assistance would have strengthened the local economy and the corporate-community relationship.” (Bird & Herman, 2004: 124-138)

Based on their research on the social impact of tobacco farming, Bird and Herman (2004) observe that the core issue is compensation for the inevitable disruptions that an international business brings to a local community. Together with two dozen researchers from developed and developing countries they conducted field studies with firms in Nigeria, Uganda, Ghana, Vietnam, Guyana, and the Nunavik region of northern Canada to design strategies firms might adopt to enhance their own assets and those of the areas in which they operate. They conclude that returns must be shared and sustained over the long term in an equitable manner to have any positive economic impact, and argue that there are three principles that need to be taken into account in assessing the social responsibilities of international business firms in developing areas:

“[1] an awareness of the historical and institutional dynamics of local communities. This influences the type and range of responsibilities the firm can be expected to assume; it also reveals the limitations of any universal codes of conduct, [2] the necessity of non-intimidating communication with local constituencies, and [3] the degree to which the firm’s operations safeguard and indeed improve the social and economic assets of local communities.” (Bird & Herman, 2004, pp. 14-33)

Building on their fieldwork in Africa and the Americas, Bird & Herman review the principles of the Caux Round Table, the Sullivan Principles, and the guidelines of the ISO26000, SA8000 and OECD, and conclude that there are three criteria upon which to base guidelines if they are to be operational: [1] maximize returns for all stakeholders in proportion to the value of their contributions, [2] in proportion to their legal claims and [3] in proportion to the risks to which their investments have been exposed. (Bird & Herman, 2004: 111-123).

These conclusions show that a more equitable scheme for profit-sharing among a broader set of stakeholders deserves consideration, one that would challenge local staff to work more closely with the stakeholders within their sphere of influence. To extract value from this approach for the company could be achieved by transferring the lessons learned in their discussions with stakeholders, and applying these lessons to upcoming interventions to prevent unnecessarily high security costs, litigation fees and a host of other preventable costs related to doing future business in other turbulent or hostile operating environments.

8 For a series of corporate case studies across a range of socio-economic development projects, see Herman and Bird’s *International businesses and the challenges of poverty in the developing world*, 2004, Palgrave Macmillan, New York.

C. Drivers of Responsible Business

Externalities, or the hidden costs of so many of the products made today, often resurface in the form of stakeholder issues that can have expensive consequences for companies that may have never anticipated the costs that reputation damage can have on their bottom line. By adhering to a code of conduct, businesses often try to prevent making the kinds of irresponsible decisions that could affect reputation negatively. But codes of conduct, whether specific to business in conflict zones, or to business in general, need to address industry-specific issues if they are to be made operational. The automaker industry, for example, has recently appeared again in the CSR press due to supply chain labor issues. Recent media reports indicate a growing public expectation for corporate leaders to be more rigorous in the way they demonstrate their commitment to the principles of CSR by respecting not only the letter, but also the spirit of said principles. It would require little effort to use industry-specific terminology or metrics to mask any performance gaps or indiscretions by presenting, for example, slave labor as job creation, which under the right circumstances would appear to be perfectly compliant from a narrow legal perspective even if not a *de facto* case of alleviating negative social impacts. Two companies that have recently experienced increased scrutiny in this regard are Japanese automakers Honda and Toyota. Despite their positive environmental performance (e.g. introduction of hydrogen-fueled cars), both companies were deleted from the FTSE4Good in September 2007, due to allegations of using slave labor earlier the same year.

Michael Smith and David Voreacos of Seattle Times reported in January 2007 on the allegations of Honda and Toyota's use of slave labor in Brazil. They mention in their report that Toyota decided not to join Ford, DaimlerChrysler, General Motors and Honda on 4 December 2006 when the latter four companies announced plans to work together to train suppliers to avoid buying materials made by slaves. But a Toyota spokesman said the company did in fact change its decision on 21 December and joined the anti-slavery effort. Putting all accusations and defenses aside, the fact remains that Honda and Toyota have been deleted from one of the leading CSR ranking institutions for failing to meet human rights performance criteria. This incident in itself is not likely to have had any significant impact on either of the companies' share value but, bearing in mind that the FTSE4Good defines itself as an index series designed to measure the performance of companies that meet globally recognized corporate responsibility standards, the incident at least casts doubt on the FTSE4Good's ability to influence corporate policy by way of incentivizing.⁹

In cases like those of Honda and Toyota, however, the direct costs or risks to reputation are not as acute as in societies experiencing violent conflict. Rather, these seem to have been isolated incidents, and reputation damage is likely to have been minimal due to the relatively low media exposure. But it shows that CSR coverage of human rights issues does not discriminate between the levels of ownership in a company's supply chain, whether they be in

9 Bloomberg News also points to allegations of slave labor aimed at these same companies, including Nissan, in a case involving foreign workers in Japan. For more information, see Bloomberg News from 27 July, 2007, reported by Sachiko Sakamaki: <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aUSYwOKpTbko>. Last accessed: 1/2/2012

the host country or in the home country. It also shows, however, that even clearly newsworthy issues that occur in the home country do not all receive equal coverage in the media. In contrast, in areas of conflict, Nelson (2000) shows how the mismanagement of reputation issues has a higher likelihood of hitting a company's bottom line due in many cases to a company's failure to mitigate local risks that then catch the attention of the global media. These costs are often related to public opinion and public perception of the company's involvement in local conflicts, but also have a more direct impact on a company's immediate business operations or investment strategies (Nelson, 2000: 20).

As a case in point, the former CEO of Shell Petroleum Development Company in Nigeria (1991-1994), Philip Watts, who was also Shell International's regional coordinator for Europe during the time of the famous Brent Spar incident in 1995, has explained that the company's failures in Nigeria and the North Sea coincided with rising public expectations for the company to do more than what had traditionally been expected. He commented already in 1998 that, "New attitudes, ideals and expectations are driving individuals to demand more of institutions and to demand it more forcefully and often effectively [...] There is a growing feeling that Shell companies, for example, should be more than economic actors – they should be social activists." In this sense, Shell's experience suggests that reputations are vulnerable to the fluctuations of social expectations over time and in the way they relate to specific issues and contexts, which in turn depend on the level of public awareness around social issues.

The literature would also indicate that, whereas negative incentives related to reputation have had a measure of influence, positive incentives remain wanting. This holds not only for controversial Western mining companies, but also for a broad cross-section of Japanese businesses. With the constant pressure of quarterly reporting to demanding shareholders, combined with the fact that even the most patient capital – public pension funds – is largely uninterested in socially responsible investing, the incentives for Japanese companies to put profits first may limit deeper implementation of CSR in the short term (Bevacqua, 2005, Tokyo).¹⁰ This argument focuses on the CSR of Japanese companies in general, and includes the more specific issue of CSR in conflict zones. While this reinforces the point that the 'return on investment' from conflict-sensitive business is an intangible and long-term value for the company, it also raises the question of how to reconcile this view with shareholder expectations for returns that are tangible and short-term. In sum, reputation per se cannot be said to be a driver of responsible business without also discussing a range of interdependent factors that include industry footprint, specific social and environmental issues, degree of perceived threat to local communities, media exposure, and public awareness.

10 The Economist's May 2005 *The way of the merchant: Corporate social responsibility in Japan* reports that from the nearly 200 executives from around the world who participated in their survey on corporate social responsibility, over one quarter of the respondents came from Japan. The survey group was mostly senior, with C-level executives or board members accounting for 36 per cent of respondents. The range of industries represented covered services, manufacturing and natural resources. Slightly more than half of the respondents were from private companies, with the size of the companies participating varying and with 56 per cent reporting annual revenue of over US\$100m (Economist, May 2005, p. 5).

III. WHEN CONTINUED EXPLOITATION IS THE BETTER OPTION

As a company is per definition a profit-seeking entity, it is unlikely that one would withdraw for reasons other than financial considerations or imminent threats to the physical well-being of its staff. It can also be argued that divestment would not necessarily improve the situation for local stakeholders, as commercial operations would simply continue under new ownership, potentially with less concern about managing conflict impacts. This was the case with Talisman Energy's successor in Sudan. For years, it was under pressure to divest and withdraw from Sudan, especially after the Canadian government's Harker Report, which criticized the company for contributing to the conflict. Talisman then sold its shares in a Sudanese oil pipeline to an Indian oil and gas company, which faces less pressure to behave responsibly. The net effect may be a worsening of the impact of oil operations on the conflict. Or, as recently noted at an institutional investor meeting in New York:¹¹

In the context of Sudan, it was noted that although since 1997 US companies have been restricted from operating there, international direct foreign investment has increased to \$2.3 billion. The case of Talisman in Sudan was cited since the company was pressured into leaving the country. It was questioned whether their departure resulted in any benefits for the people of Sudan or had any impact on the regime there.

Daniel Wagner (2004) from the Asian Development Bank points to a case from Indonesia that illustrates some of the lessons learned in situ, one of them being that divesting from a difficult operating environment is not always in everyone's best long-term interest. Wagner explains:¹²

One of the best examples is the Freeport mine in West Papua (formerly, Irian Jaya), Indonesia. An NGO sought to have Freeport's PRI [political risk insurance] cancelled for alleged violations of the environmental conditions set out in the insurance pro-

11 From the report of the Informal Consultation with the Institutional Investor and Business Communities: *Responsible Investment in Weak or Conflict-Prone States*, 17 January 2007, United Nations Headquarters, New York, USA. The event was convened by the UN Global Compact Office, the Office of the Comptroller of the City of New York and Principles for Responsible Investment (PRI), and attended by institutional investors, business representatives and civil society. The lead author of the report is John Morrison, director of the Business Leaders Initiative on Human Rights.

12 From the report, *Investing in Stability; Conflict Risk, Environmental Challenges and the Bottom Line*, published by the United Nations Environment Programme and International Institute for Sustainable Development (IISD) in Geneva in cooperation with the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, 2004.

vided by the Overseas Private Investment Corporation (OPIC, a US Government agency) and the Multilateral Investment Guarantee Agency (MIGA, a member of the World Bank Group). Because covenants of the insurance appeared to have been breached by the company, OPIC cancelled the coverage. Freeport took OPIC to court, had the insurance reinstated, and then itself cancelled OPIC's and MIGA's insurance. The NGO's objective of stricter environmental compliance backfired. When the insurance was cancelled, Freeport was no longer obligated to adhere to strict, internationally accepted environmental regulations (Wagner, 2004: 36).

As in this case from Indonesia, a common dilemma corporate leaders in conflict areas face when conflicts escalate is whether to continue operating or to disinvest. The third option is to develop a creative way forward that balances the company's financial sustainability with the needs of its stakeholders in the host country, enabling the company to generate profits while adding societal value. While compliance and regulatory measures cover the minimal legal obligations of a company, 'doing no harm' and the more proactive 'peacebuilding' level is where the bulk of the more innovative initiatives develop. To depict this range of options, Banfield et al (2003) use Nelson's pyramid to show how corporate leaders can respond to conflict at different levels of proactivity extending from compliance and doing no harm, to peacebuilding.¹³

Strategies for managing company/conflict risk



Figure 1: Adapted from Banfield, J. et al, a framework for action (2003)

13 Jane Nelson's pyramid uses the categories of compliance, risk minimization and value creation to show a scale of proactive thinking. See Nelson's *The Business of Peace. The Private Sector as a Partner in Conflict Prevention and Resolution*, p. 7.

In practice, especially for industries that are more deeply invested in a conflict zone, such as the extractive, telecommunication and heavy construction industries, disinvesting is very rare. Despite the extreme controversies over Shell's operations in Nigeria for example, Basil Omiyi, country chair, Shell Nigeria, stated in December 2008 that, "We have been a major player here for the past 50 years and [...] Shell has no plan to pull out of Nigeria."¹⁴ For these big footprint industries, the business case for corporate engagement is more likely to be found in preventing exorbitant costs resulting from material or non-material damage, such as costs related to litigation and security than in the often heard 'new business in emerging markets'. But if CSR principles are to be made operational in conflict-affected areas, relying on lessons learned from a limited set of industries from primarily Western companies would run the risk of overlooking insights from other industries and business cultures.

Japan, for example, has a much longer history of CSR than many of those countries advocating its practice today. The country's 17th century Ohmi merchants used an expression, *sanpo yoshi*, (lit. the "three-sided good"), meaning that transactions should be good for sellers, buyers, and society. CSR has emerged as a norm in the discussion of business ethics in the west, but it is nothing new to Japanese business culture.¹⁵ At the global level, too, an exceptional example to Japan's otherwise reserved stance on CSR is its very central role in the Caux Roundtable, where Canon's then chairman, Ryuzaburo Kaku promoted the corporate philosophy of cooperation or *kyosei*.¹⁶ To demonstrate how these principles might be carried out in practice, we look now at a case of a pioneer of peacebuilding business whose approach provides a potential example of how engaging in peacebuilding can be made feasible under certain conditions. Kiyoshi Amemiya, president of Yamanashi Hitachi Construction Machinery Co., Ltd., reports in his own words that:¹⁷

14 See 1/4/09 article from Africa Oil and Gas Today at <http://africatoday.eh7.co.uk/cgi-bin/public>. Last accessed 1/5/2012.

15 For more information on the historical development of Japanese CSR, see Masahiko Kawamura's (2003) paper, *Japanese Companies Launch New Era of CSR Management in 2003*, NLI Research Institute (Nippon Life Insurance Company).

16 Kaku defined *kyosei* as: "[a] 'sprit of cooperation' in which individuals and organizations live and work together for the common good. A company that is practicing *kyosei* establishes harmonious relations with its customers, its suppliers, its competitors, the governments with which it deals, and the natural environment." (*The Confucian Roots of Business Kyosei*, Journal of Business Ethics 48: 317-333, 2003)

17 For the full story, see Hitachi's 2005 CSR report: http://www.hitachi.com/csr/csr_images/khoukoku2005.pdf (last visited 2/3/2012). One of the many unique points in this case is the fact that it is technically a small company with only some 60 employees (though part of the larger parent company). This raises the question of the potential of SMEs to be 'sustainable enterprises' (contrary to the public perception that SMEs cannot engage in CSR like major companies).

"[We recognized the problem that in] Africa one person is injured by a landmine every twenty minutes. In Afghanistan, four children under the age of sixteen die every day, and four are injured. In Angola, landmines are buried in an area covering 420,000 square kilometers, larger than the land area of Japan. The reasons for so many children among the victims are that, first of all, children are closer to the ground and more likely to be injured in a blast, and second, they try to pick them up, attracted by their colorful appearance and shapes, mistaking them for toys. And kids can't read the letters spelling 'danger'. Children lose arms and legs during their growing years, and then they are wracked by unimaginable pain. Artificial limbs can cost \$3,000 each.

But [we asked ourselves] what can a company with only 60 employees accomplish? And this work involved danger. 'Even for a small-town factory there's a way to contribute something to the world. Please help me battle the world's landmines,' I said. And my employees and their families responded positively.

[...A priority] in our design was to support the self-sufficiency of local people. We help by providing technology transfers for machinery operation and maintenance, and the machine itself is designed to be versatile. By changing the attachments, the people can use this machine for more regular work. For example, in a Nicaraguan village, an area where the landmines had been cleared away was cultivated and restored as an orchard. Today, the village ships 600,000 cases of oranges every year."

But before discussing the potential merits of more forward-looking approaches such as these in more depth, we first focus on measures for overcoming some of the challenges of identifying corporate complicity in human right violations.

A. Dealing with Varying Degrees of Complicity

In 2001,¹⁸ the International Peace Academy wrote that companies make themselves part of the wider context of conflict by entering or continuing to operate in countries affected by chronic human rights abuse, instability, or civil war, or by maintaining business relations with local suppliers or distributors in these countries. The report emphasizes their findings that "any decision corporate leaders make in these circumstances may potentially affect the conflict in a positive or negative manner". Finally, the report confirms that establishing the extent to which a corporation is complicit in conflict is central to the notion of corporate responsibility, and highlights the fact that no consensus exists on what 'being complicit' actually constitutes.

A company's complicity in the exacerbation of violent conflict greatly increases its exposure to a range of risks, regardless of how much of the complicity is actual or perceived, di-

18 See IPA's 2001 report: *Private Sector Actors in Zones of Conflict: Research Challenges and Policy Responses*.

rect or indirect, or whether it is the result of intent or ignorance. Corporate reputation, arguably one of the company's most valuable assets, becomes increasingly vulnerable to public scrutiny the more invested it is in the conflict area. The varying nature of new and existing standards can create blind spots that can be overlooked when a company actually has to implement its code of conduct in the field.¹⁹ More threatening than damage to a company's reputation or share value, are the many risks to which a company's employees are exposed.²⁰ Whether corporate reputation, physical installments, or employees, we are reminded again of the necessity of capitalizing on the lessons learned in one area of risk, identifying structural similarities with other areas of risk, and then applying those lessons accordingly. But in spite of the risks involved, matters become more complex under the business imperative of earning a return. Though the case for divesting from areas of conflict may be more visible, the consequences of withdrawing are often not as foreseeable or positive for local communities as some advocates may anticipate. In theory, any company that finds itself caught in the conflict web has the option of withdrawing. But how realistic is that for a company that has just received a 15-20 year concession, and has a buyer that has committed to purchasing those supplies for the next 10 years? Before pursuing this option, an accurate assessment of potential complicity needs to be established that distinguishes between the different types of linkage between business activity and the local conflict dynamics.

B. Complicity Related to Trade

Privatizing peace in the context of trade requires regulating the illicit flow of conflict-enabling and high-value resources, easily tradable commodities like diamonds, gold, and precious gemstones. Similarly, goods that are only slightly less tradable – like forest woods, oil, drugs and arms – call for trafficking controls. The German research house, InWEnt, reported in 2003 of a Japanese consortium's involvement in this type of trade-related conflict (Schroeder-Wildberg and Carius, 2003, p. 20). The report reads:

19 Columbite-tantalite or coltan is an ore of the metallic element tantalum, found mostly in Africa, specifically the African Great Lakes region of the Democratic Republic of Congo (DRC). Used in manufacturing electronic components, it is capable of storing and slowly releasing an electrical charge vital in ever-smaller portable electronic equipment. With its rising value over the past decade and its easy accessibility to anyone with a shovel, business around coltan has contributed significantly to funding the ongoing violence in the DRC.

20 There is an increasing number of cases in which employees are kidnapped or even killed. For example, Andrew Buncombe of The Independent reported Thursday, 4 November 1999 in an article entitled "Chechnya Crisis: Families of beheaded hostages to sue employers for negligence" that, "The families of the four telecommunication engineers kidnapped and murdered last year in Chechnya are to launch civil actions against their employers, claiming they failed in their duty to protect the men. The announcement followed an inquest, which heard that the men were starved and beaten before being decapitated. Their severed heads were found on a road-side east of the Chechen capital Grozny."

Four large conglomerates dominate the pulp and paper industry in Indonesia. The Sinar Mas/APP and Raja Garuda Mas/APRIL groups represent integrated producers while Kiani Kertas and PT Tanjung Enim Lestari are the most important producers of market pulp. [...] PT Tanjung Enim Lestari is a joint venture between Indonesia's Barito Pacific Group, a consortium of Japanese investors, and a holding company owned by former President Suharto's eldest daughter.

According to this account, Japan's demand for wood has led to an increase in illegal logging in Indonesia, which has in turn led to an increase in local conflict and violence. Meanwhile, a consortium of Japanese investors (and Suharto's eldest daughter) continue to export these products to the Marubeni corporation in Japan. From a complicity perspective, this begs the question of who should be held accountable, and for what. Also, what degree of responsibility would the end-users in Japan have in such a case? And to what extent could the shareholders of Marubeni bear responsibility for the ongoing conflicts in Indonesia?

Among the issues corporate leaders often face when deliberating whether to invest socially or not are that of defection and of free-riders. Defection refers to the problem of same-industry peers' non-participation in a given initiative, whereas the free-rider issue refers to corporate leaders that 'piggyback' on the efforts of so-called first-movers. One approach to countering these risks is to partner with the public sector, which is itself not always straightforward. Switzer and Ward (2000) explain:

"A further question related to complicity is what companies involved in conflict zones should be held responsible for. Within the range of possibilities, companies could be encouraged, alongside other third-party actors, to use their economic influence with host governments to take an active diplomatic role in conflict prevention, dispute resolution, and post-conflict reconstructions. Alternatively, or in parallel, they could undertake partnerships with donor states and NGOs to promote in the host country that target pressing social needs and directly extend redistributive benefits to surrounding communities. Neither of these proposed initiatives is without complications, however. Private sector diplomacy raises legitimate concerns about the potential for self-interested collusion between powerful multinationals and host governments. [...] Likewise, unless carefully designed and managed, social investment and community development initiatives can – and, indeed, do – exacerbate social and political tensions. [...] First and foremost, corporate responsibility for conflict mitigation should begin with more sustained effort so to identify the wider security risks and minimize the destabilizing repercussions of other routine business operations" (Switzer & Ward, 2000:17).

Local complicity can have global legal implications too. Ward (2003) notes that conflict complicity is an emerging litigation risk. Several legal actions have been filed seeking to hold parent companies liable in 'home country' courts for acts of violence alleged to be associated with their operations abroad. Examples include US litigation under the Alien Tort Claims Act against Canadian company Talisman Energy over its oil investment in the Sudan, against Shell over its operations in the Niger Delta, against Rio Tinto over the Bougainville Mine in Papua-

New Guinea, and against Total over its investment in Myanmar (Ward, 2003: 17).²¹ The delicate nature and far-reaching consequences of litigation, including the threat of exorbitant costs, all strengthen the case for using conflict-sensitive business model as a preparatory exercise to flag potential issues and refine entry (and exit) strategies for operating in conflict-affected and high-risk areas.

C. Complicity Related to Products

Assessing the return on investment from transferring corporate experience in conflicts to relevant projects in other parts of the business requires a solid understanding of the risks associated with perceived complicity, but also with the difficulties of proving complicity. Causation remains an issue insofar as the correlation between a company's participation in a given country's economy, and the violence perpetrated in that country by the government or rebel groups remains ambiguous. In other words, if a corporation's activities contribute to the revenues of a government at war, then it is sustaining that government and its ability to perpetuate systematic violence. The shortage of practical guidelines that can be made operational is particularly relevant to conflict-sensitive codes of conduct, as many of the enabling factors that perpetuate violent conflict are indirect and often unintended. In explaining some of the linkage between trade and conflict, Neil Cooper offers the following definition of conflict goods:²²

“Conflict goods are non-military materials, knowledge, animals or humans whose trade, taxation or protection is exploited to finance or otherwise maintain the war economies of contemporary conflicts. Trade can take place by direct import or export from the conflict zone or on behalf of military factions (both government and non-government) by outside supporters. Arms, military aid and services of mercenaries, as they may be paid in kind, concessions, or cash could be included as conflict goods.”

But it remains difficult to assess the extent to which the provision or deprivation of revenues from such products correlates to the scope and intensity of military campaigns (IPA, 2001: 4-5). One example of this was when roads and airstrips built in Sudan by the Canadian oil corporation Talisman were used with Talisman's permission by the Sudanese government

21 *Investing in Stability*. Also refers to Ward, H. *Legal Issues in Corporate Citizenship*. Swedish Partnership for Global Responsibility/IIED, Feb 2003: 8 11 and generally Kamminga, M. and Zia-Zarifi, S. (eds.) *Liability of Multinational Corporations under International Law*. Kluwer Law International, 2000.

22 For a full description of conflict goods, see Neil Cooper's chapter, *State Collapse as Business: The Role of Conflict Trade and the Emerging Control Agenda*, p. 180, in Jennifer Milliken's, *State Failure, Collapse and Reconstruction*, Blackwell Publishing, 2003, Oxford.

during the civil war to launch attacks on groups in southern Sudan.²³ Another example of this was when Exxon Mobil hired one or more military units of the Indonesian national army, known as the Tentara Nasional Indonesia, to provide security for its gas extraction project in Aceh. The troops set out on an ongoing campaign of systematic torture, murder, rape, and acts of genocide against the local Achanese population.²⁴

That said, appreciating the complexity of corporate involvement in conflict areas, requires keeping in mind that difficulties raised by business activities in conflict-affected regions have less to do with business projects themselves and far more to do with the contexts within which projects take place. These contexts often include the presence of displaced peoples or accessibility of weapons. Add to this the presence of militia or insurgent groups operating in the region surrounding the project and the conflict system begins to emerge. Under these conditions, corporate leaders may be overwhelmed by sensitive decisions such as how exactly to engage in dialogue with insurgent groups, many of whom function as states-within-states and may very well be part of the country's future government (Switzer & Ward: 2004).

Two examples of voluntary initiatives that address the use of products or services to commit human rights violations or pursue violent conflict are Amnesty International Human Rights Principles for Companies that say 'companies which supply military security or police products or services should take stringent steps to prevent those products and services from being misused to commit human rights violations', and the UN Norms which say that 'business enterprises shall refrain from any activity which supports, solicits, or encourages states or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights' (Switzer & Ward, 2004: 28). After reviewing these instances of preventing complicity, we move now to the more proactive approach of business diplomacy.

IV. BUSINESS DIPLOMACY IN CONFLICT-AFFECTED AREAS

Becoming increasingly aware that there is no neutral ground for companies in areas of conflict, corporate decision makers face a basic dilemma formulated succinctly by Haufler (2001): stay and exacerbate the conflict; stay and contribute to a peaceful transformation of the conflict; or leave. An additional dimension can be introduced to this three-part structure to study the dilemma through a fourfold table (see figure 2). The dilemma of staying or withdrawing is a useful point of departure for focusing only on the most pressing decision to be made, but the anticipated consequences of staying or leaving should be factored in to map the potential impacts of these actions on the conflict areas. This additional dimension serves a

23 For more information, see Gagnon, Macklin & Simons, "Deconstructing Engagement: Corporate Self-Regulation in Conflict Zones – Implications for Human Rights and Canadian Public Policy." University of Toronto, Public Law Research Paper No. 04-07, p. 26, January 2003.

24 For more information, see *The Key Human Rights Challenge: Developing Enforcement Mechanisms*, Harvard Human Rights Journal, 2002: 15, p. 190.

second function of making explicit the (potentially false) dichotomy of staying or withdrawing. For instance, it is theoretically possible that a proactive company not in the conflict area chooses to engage in peacebuilding in a country in which they currently have no operations.

Haufler's description of the below dilemma is "[...] when violence breaks out businesses have three general options: withdraw entirely; stay but try to ignore the conflict; and—a new option—remain invested in a country but work to prevent the escalation of violence" (Haufler, 2001: 663). In the author's correspondence with Haufler, the latter included examples of how having abundant natural resources can, paradoxically, have a negative effect on a country's ability to meet its own basic human needs (referred to in different contexts as "resource rich but poor" countries, the "paradox of plenty", the "resource curse" or the "Dutch disease"). She wrote that it is often referred to as the 'Dutch disease', named after the Dutch experience with the macroeconomic pitfalls of oil resource development (Haufler, *The Private Sector and Governance in Post-Conflict Societies*, unpublished draft, 2006).

	De-escalate Conflict	Exacerbate Conflict
Stay Invested	<ul style="list-style-type: none"> • Business Diplomacy Boston-Derry, N. Ireland • Industry-wide Initiatives Kimberley Process, S.Africa 	<ul style="list-style-type: none"> • BP in Colombia • UNOCAL in Myanmar • Rio Tinto in Chile
Withdraw	<ul style="list-style-type: none"> • Texaco et al in Myanmar 	<ul style="list-style-type: none"> • Talisman in Sudan

Figure 2: Extension of Haufler's corporate-conflict dilemma (2001)

Professor Ian Holliday of the City University of Hong Kong sent the author an article he wrote that points to the possibility of Japan's MNCs assuming a proactively diplomatic role in Myanmar. His article reminds the reader that diplomats in Tokyo have spent many years pondering how to make constructive engagement work, and are concerned about how to balance Chinese influence in Southeast Asia (Holliday: 2005b). Chinese corporate leaders currently oversee a significant array of MNC representation in Myanmar. This proposal is thus in many ways a plausible private-sector extension of Tokyo's existing involvement with the Myanmar problem.

Furthermore, Japan is ideally placed to secure some degree of US acceptance of a new way forward, and might through skillful diplomacy be able to engage the ASEAN states and even China. This would stand as an example of corporate peacebuilding as indicated in the above diagram, i.e., a new category of company that engages a difficult operating environment with the express intent of easing local tensions within its own sphere of influence. (Holliday: 2005, *Doing Business with Rights Violating Regimes; Corporate Social Responsibility and Myanmar's Military Junta*, *Journal of Business Ethics*, 61: 329-342).

A further example of business diplomacy is the Consultative Business Movement (CBM), which according to UNEP/FI (2004), was established by members of the South African business community in the 1980s to promote a peaceful transition from apartheid. Through consultations with exiles and leaders from banned or restricted organizations such as the African National Congress (ANC), it established relationships between key business people, politi-

cians and activists. This permitted CBM to mediate at a critical juncture between the government and ANC in the negotiations that led to the 1991 National Peace Accord, and in convincing the ANC of relaunching economic growth through a market economy.²⁵ In spite of the relative success achieved in these and other cases, skeptics remain unconvinced that the private sector has a constructive role to play in conflict areas.

A. Mixed Views on Corporate Engagement

As a consequence of globalization, international private sector actors have become more influential to the peace, security, and prosperity of developing countries than in previous decades, but foreign direct investment (FDI) can have helpful or damaging impacts. The nature of the impact depends to some extent on the corporate leaders' level of conflict sensitivity. It is recognized that intentional profiteering from a disenfranchised community or from business activities related to violent conflict does not necessarily constitute complicity. Conversely, complicity can also be unintentional. As Wagner (2004) observes:²⁶

"A good example of the possible consequences of not paying enough attention to the social and environmental issues associated with owning and operating a mine is Bougainville in Papua New Guinea (PNG). In 1988 a small group of villagers blew up some of the mine's installations, coming in the wake of demands for compensation for loss of land and resources to the project, and alleged pollution of the local river system. Refusal by the mine owner and the PNG government to address the demands prompted escalating guerrilla action against the mine and its employees. The company closed the mine down the following year and it has remained closed. Thousands of people died in an ensuing civil war, and litigation against the mine and its owners continues to this day."

Proponents of FDI on the other hand maintain that it stimulates economic growth and facilitates economic and political liberalization. Under certain circumstances, however, and particularly in the natural resource extraction sector, FDI has weakened fledgling states and facilitated the outbreak or continuation of violent conflict, regardless of the intentions of the

25 From the report, *Investing in Stability; Conflict Risk, Environmental Challenges and the Bottom Line*, published by the United Nations Environment Programme and International Institute for Sustainable Development (IISD) in Geneva in cooperation with the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. The report is a collection of articles written by John Bray (Control Risks Group), Jason Switzer, Mareike Hussels (IISD), Daniel Wagner (Asian Development Bank) and Michael Kelly (KPMG).

26 Ibid.

particular corporation concerned (IPA, 2001: 1).²⁷ Giving careful consideration to the potential social impacts of a proposed FDI initiative and thinking through the most appropriate alliance for conducting business in a volatile area can make the difference between succeeding and failing at managing local risk and its repercussions on global reputation. As an example of a failed FDI project, Switzer and Hussels cite a public utility project, which triggered a series of violent events in Bolivia:

In Cochabamba, Bolivia, more than 40 per cent of the city's inhabitants lack direct access to treated water sources. In 1999, Bolivia granted a 40-year privatization lease to London based International Waters Ltd., giving it control over the water utility for the town. The company increased water charges as a prelude to infrastructure investment. In mid-January 2000, residents called a general strike, allegedly in protest against higher water prices and lack of measurable access and service improvements. Cochabamba was placed under martial law. More than 175 protesters were injured and several more killed in street battles over four days. In concession to the public uprisings, the Bolivian government broke the contract that had privatised the region's water system. International Waters Ltd. in Bolivia withdrew, claiming some US\$40 million in damages. The resolution of the urban water crisis in Cochabamba will require, therefore, not only compensation for the failed privatisation, but new investment sources, which may be even harder to attract in the wake of past violence. (Switzer & Hussels, 2004: 12).

Although there is a long history of failed attempts by the private sector to intervene in a supportive capacity, some nevertheless advocate for a diplomatic role for companies in areas of conflict.²⁸ But peacebuilding is a notoriously unpredictable undertaking, which may have the effect of increasing a company's exposure to risk. Reconciling differences and developing non-violent approaches to armed conflict is not always a shared objective among local stakeholders. It may in the perceived interest of some to instigate or prolong a volatile environment or an atmosphere of distrust. There are ample cases of this in the literature where it is referred to as 'spoiling', or actively seek to hinder, delay, or undermine conflict settlement through a variety of means and for a variety of motives (Newman & Richmond, 2006: 1). One particular observation in the more recent peacebuilding literature of relevance for the design of conflict-sensitive codes of conduct is the influence of parties geographically removed from the location in which violence manifests. Newman & Richmond (2006: 16), refer to this and conclude that:

"Spoiling and the obstruction of peace processes tend to be associated only with the

27 See Roland Paris's chapter, *peacebuilding and the 'mission civilisatrice'*, in *Review of International Studies* (2002), 28, p. 650.

28 See Allan and Colletta's *Privatizing Peace*, p. 155.

attitudes and intentions of actors who are direct participants in the conflict. However, it is essential to consider a broader range of actors and factors[:]

- **Third parties themselves [including companies] may bring incentives for spoiling in terms of resources, recognition, and favouritism to one or the other party. At other times third parties may play into the hands of spoiling by projecting the idea that any form of settlement is a priority, and thus raising opportunities for getting aid from international donors – which spoilers may come to see as an end in itself.**
- **Similarly, when multiple international actors are involved in promoting or funding a peace process a lack of coordination can complicate the picture and result in behavior that effectively constitutes spoiling. Parallel mediation provides opportunities for manipulation by spoilers [...]**

In spite of these reservations about corporate engagement in conflict prevention, Gerson and Colletta claim the private sector can ‘aid the public sector in the area of peace’ because (1) the private sector shares an interest in having predictable environments to carry out their operations, (2) rebel armies, at least those in Colombia, trust the business community more than the government, supposedly because their intermediary skills are superior to those of the public sector staff, (3) the private sector is able to identify the financial needs of these rebel armies without letting ‘politics and ideology’ get in the way, and (4) because the private sector seeks to ‘maximize results from a minimal use of resources’, unlike the public sector. There remain however constituencies with strong reservations about corporate involvement in what has traditionally been a public sector function, and with significant grounds for said reservations related to the private sector’s prioritization of its constituents, adhering to a creed of shareholder primacy over the needs of other stakeholders.

From a more pragmatic perspective, Bull and McNeill (2007: 12-20) developed a typology of eight kinds of partnership between companies and international organizations such as the UN or development banks, which classify partnerships by organizational structure and objective. (1) Resource mobilization partnerships – raising funds for specific goals, i.e. the MDGs, (2) multilateral fundraising such as direct private sponsoring of multilateral activities (e.g. P&G and UNICEF, IKEA and UNICEF etc.), (3) Channeling private investments to specific projects: The World Bank, UNDP, or UNCTAD position themselves to leverage FDI flows to those countries where it is most needed, whereas UNIDO is taking a lead role in bringing SMEs into the global value chain, (4) Advocacy partnerships: raise awareness concerning the global issues addressed by the UN – or add new issues. These typically seek to combine the expertise of the private sector, the legitimacy of the UN, and the resources of both partners. (5) NetAid – online community for poverty issues launched by UNDP and Cisco Systems or UNESCO and the History Channel in Japan (The World Heritage), (6) Policy partnerships: one of the main functions is to develop norms and standards, the Global Compact being the most important example, (7) Operational partnerships: these range from standard products and services from companies to the UN (\$3 billion per year), to provision of AIDS medication, risk management support for companies etc., and (8) Secondment between companies and the UN/World Bank, sometimes also through fellowship programs (Bull & McNeill, D., 2007: 12-20).

In view of the work accomplished by public-private partnerships such as these, and simi-

lar initiatives, some NGOs remain optimistic regarding the private sector's potential for constructive engagement (see below diagram from International Alert's contribution to Jane Nelson's *The Business of Peace*). The World Bank, too, unreservedly promotes the idea of "privatizing peace" (see Gerson & Colleta's book by same name). In a chapter entitled "The Private Sector: Problem or Panacea?", they proclaim:

"The private sector has a role in peace processes in myriad ways. The process of peace is complex and multi-staged, from peacemaking to peacekeeping and enforcement to peacebuilding. To varying degrees of effectiveness, the private sector has an important part to play at almost every stage. Moreover, at each step, the rise of globalization and the shift in the nature of war only serves to increase the private sector's influence.

In speaking of privatizing peace, we suggest injecting the private sector in all UN and other multilateral peacemaking, peacekeeping, peace-enforcement, and peacebuilding efforts. The anticipated result is greater clarity of mission, better articulation of performance objectives, and the delineation of measures for judging results in an open, transparent and accountable framework." (Gerson & Colletta, 2002: 34)

Adaptation of Lederach's Triangle

A role for people in business



Figure 3: Adapted from Nick Killick of International

Alert, a peacebuilding role for businesspeople (2001)

Killick's pyramid above lists some of the basic options for corporate engagement at various

levels. Similar to Haufler's dilemma model, however, it leaves out the option for a company to proactively engage in an area of conflict with an explicit peacebuilding objective. The US-based company, PeaceWorks, is an example of such a company. It creates business opportunities for former adversaries to collaborate through commerce rather than engaging in violent alternatives. The founder and CEO, Daniel Lubetzky, has initiated several conflict prevention projects that have been documented including Israel/Palestine and Chiapas, Mexico.²⁹ By sourcing ingredients from both countries for products that he sells in the US, he is able to provide his Israeli and Palestinian partners a viable alternative to fighting each other. He informed the author in a telephone interview that in spite of the frequent upheavals in the region, his business partners on both sides of the border have continued their collaboration now for decades.

V. CONCLUSION

This study has shown that companies with operations in areas experiencing conflict cannot reasonably claim not to have any influence on the communities in those places, though the nature of that influence is situational and often complex. Second, the examples of companies working in conflict-affected areas have shown that the decision to remain invested or to withdraw is indeed multi-faceted and not without risk.

Furthermore, as evidenced by such initiatives as the United Nations Global Compact and its Principles of Responsible Investment or Principles for Responsible Management Education, International Alert's guidelines for Conflict-Sensitive Business Practice, the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the Voluntary Principles on Security and Human Rights, and Amnesty International's Human Rights Guidelines for Companies, there is a growing body of codes of conduct related to businesses in areas of conflict. Though these guidelines address basic challenges businesses face when trying to act responsibly in areas of conflict, they have important limitations; most notably their absence of enforceability and independent monitoring, and the lack of industry specificity – most focusing mainly on the extractive industries (Kolk & van Tulder, 2002, p. 36).³⁰

A further limitation to conflict-sensitive codes of conduct of the past decade has been their focus on guidelines for corporate conduct within a fixed geographic area, a "conflict zone", rather than guidelines including a broader range of stakeholders who operate outside the conflict zone but who can influence social tensions and are therefore part of the wider conflict system (e.g. diaspora, socially responsible investors, shareholder and consumer activ-

29 See the PeaceWorks approach at <http://www.peaceworks.com/press/index.html>. Last visited 2/2/2012.

30 For a comprehensive study on codes of conduct, see Kolk and van Tulden's work on *International Codes of Conduct; Trends, Sectors, Issues and Effectiveness* (2002), Erasmus University, Rotterdam.

ists, etc.).³¹ It is acknowledged that Amnesty International and the UN Norms make reference to products and their misuse to commit human rights violations, but this implies exclusion of all products sold outside the conflict zone that fund, albeit only in part, corporate actors in conflict zones. In other words, if the argument is that companies operating in corrupt regimes serve to sustain those regimes, then consumers who support these companies with their continued purchasing of those companies' products also bear a degree of responsibility.

To sum up, there remains a dearth of empirical research on the barriers to making CSR principles more operational in conflict-affected areas. Conflicts are multifaceted phenomena, and leveraging a company's core competencies to ease the tensions in a conflict zone is easier said than done. And yet, whether or not to continue operating, what level of engagement to have, if any at all, and with what intent to continue doing business in the area; all these dilemmas remain inescapable. Though there is still too little evidence to establish any correlation between 'doing well by doing good' in areas of conflict, using a conflict-sensitive business approach to probe the business case for corporate conflict prevention has begun to yield new insights into this urgent and intriguing investigation.

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ASIAN DIGEST ON HUMAN MOBILITY

RESETTLED KAREN REFUGEES IN JAPAN: WHO ARE THEY?

Junko MIURA*

I. INTRODUCTION

Japan began to implement its third country resettlement programme as a pilot project in 2010. Between 2010 and 2012, Japan was planning to accept thirty refugees per year, ninety refugees in total, from Mae La refugee camp in Thailand. In fact, 27 refugees had arrived in the first year, and 18 refugees came to Japan for the second year of the programme. The expected quota has never been filled. For the first three years, the project has been implemented as a pilot programme, and the Japanese government has given an announcement to extend the pilot project for two more years on 29th March 2012.¹ However, in spite of the efforts of many practitioners, the programme has been facing various difficulties especially for some resettled refugees.² The system of the programme should be re-considered. Different government agencies and other practitioners have been involved in the implementation of the programme, but most of the policies have been developed mainly from the perspective of their own views. The perspective of “refugees” seems to be completely eliminated.

Currently, Karen refugees have been selected to be candidates for resettlement in Japan. In the past three years, all candidates were Karen. What kind of people are they? What kind of culture or customs do they have? It is crucial to comprehend their cultural background and values. As well as understanding the cultural background, it is also necessary to understand their long-term experience inside refugee camps.

The paper will focus on the discussion of cultural background of Karen. Not only for having a proper framework of the resettlement programme, but it is also important for resettled refugees for having their own networks, and maintaining their cultural identities. To this end, to consider the refugee’s background is crucial. In this paper, some examples will be shown to deepen the comprehension of the background of resettled “Karen refugees” from refugee camps. To grasp the whole picture of “Karen-ness” is almost impossible. Karen has no written records, and it is difficult to know the accurate number of Karen people due to having no registration system. However, the paper examines to grasp the brief picture of cultural background with discussions provided by Karen people and several anthropologists. I hope that

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1 Cabinet Secretariat 2012.

2 Miura and Masutomi 2012.

Please see the papers on third country resettlement programme in CDRQ volume 2, 3, 4 and 5. It is available at : <http://cdr.c.u-tokyo.ac.jp/>

the information would be useful to address some different perspectives in terms of re-considering the policies for the resettlement programme in Japan.

II. WHO ARE KAREN? : THE CULTURAL BACKGROUND

A. Ethnic “Karen”

Who is a Karen? The term “Karen” is said to be an English name. “Karen” can be called Karian in Thai language, and Kayin is also used in Burmese. However, for the practical reason, the term “Karen” has mainly been used, because two major types of ethnic Karen call themselves differently. Sgaw Karen have called themselves as Pwa Ka Nyaw while Pwo Karen use Ploan as their autonym.³ According to the description regarding the identification of Karen by the Karen Buddhist Dhamma Dhutta Foundation (KBDDF), “many people whose parents come from other ethnic groups but who have grown up in Karen villages chose to identify as Karen, and are regarded as being Karen by their communities”.⁴ Further, it explains that Karen people are “honest, hardworking, friendly, and hospitable”.⁵

The historical origin of the Karen has been defined as follows. Their earliest known patriarch is Poo Htot-meh-pah, who he is recognised as boar tusk’s father. Karen people can be “one who can claim his ancestry to Poo Htot-meh-pah” and “one who possesses, maintains and cultivates the legacies bequeathed to him by the said fore-bear and his predecessors”.⁶ Karen people is said to be originally coming from current China, one of the first groups who settled in the region⁷ in current Myanmar.⁸ It is also believed that Mon and Karen people were the first groups that arrived in Myanmar more than two thousand years ago.⁹ Currently, ethnic Karen has mainly been distributed to the states in Myanmar, the regions in Thai-

3 Hayami 2009.

4 KBDDF 2010, 5.

5 Ibid.

6 Saw Moo Troo and Mika Rolley n.d.,1.

7 Ikeda 2010.

8 Disclaimer: CDR uses the term “Myanmar” and not “Burma”, but it is not an expression of our political view. It simply follows the term “Myanmar” used by the United Nations.

9 KBDDF 2010.

Myanmar border, and resettled in third countries such as the US, Canada, and Australia from refugee camps.

In terms of ethnic groups, the Ministry of Foreign Affairs of Myanmar has recognised that the Union of Myanmar consists of 135 national races, and Kachin, Kayah, Kayin, Chin, Bamar, Mon, Rakhine and Shan are officially reported as the main eight national races.¹⁰ However, it is also said that ethnicity in Myanmar is usually divided into Burman and seven ethnic minority groups which are Karen, Mon, Shan, Chin, Arakhan, Kachin, and Karenni. Further, Indian, Chinese and Rohingya are also ethnic groups that exist inside the country.¹¹ In terms of religion in Myanmar, the majority of nationals, or 89.2 per cent, are recognised as Buddhists. Christianity (5.0 percent), Islam (3.8 percent), and Hinduism (0.5 per cent) are also religions officially reported on the website of Myanmar's Ministry of Foreign Affairs.¹²

The number of Karen people is unknown, because not all of them have been registered officially in Myanmar as well as those who reside outside the country. Some Karen people, who reside in mountain villages, do not know their birthdays or age due to having no records or official registration.¹³ Various organisations estimate the number differently, and there are huge gaps among them. Reasonable data for the population of Karen could be between three and seven million. The Karen National Union (KNU)¹⁴ estimates the Karen population as seven million, but the Myanmar government's figure is less than half of that number.¹⁵ No accurate population data of Karen people has been revealed.

Karen people cannot be considered as one single ethnic group. Anthropologists and several organisations that know Karen culture well provide descriptions regarding the diversity of Karen people. Although those people are recognised as "Karen", they have different languages, dialects, or religions. Karen group has around forty sub groups based on different dialects, and Sgaw and Pwo are categorised as two largest groups that consist Karen people. Sgaw and Pwo usually use Burmese language for their communications, but most of Pwo who have been educated in refugee camps for a long period can use the dialect of Sgaw.¹⁶ The largest sub-group of Karen is Sgaw, and they settle in both mountain and lowland areas while Pwo Karen, the second largest sub-group, usually reside in lowland areas. Further, Karenni is sometimes categorised as one of Karen groups, but Karenni prefer to identify them-

10 Ministry of Foreign Affairs, Myanmar 2012a.

11 Ikeda 2010.

12 Ministry of Foreign Affairs, Myanmar 2012b.

13 Hayami 2009.

14 Karen National Union (KNU) is a democratic organisation founded by Karen people in Myanmar in 1947. <http://karennationalunion.net/index.php>

15 Smith 2003.

16 Ikeda 2010.

selves as cousins of Karen.¹⁷ As described above, the ethnic Karen cannot be simply defined.

Rajah, who has published a study of the culture and identity of Karen people using anthropological approaches, shows the complexity of analysis of ethnicity and cultural identity. To quote from Rajah, “the relation concerns the correspondence between processes: the construction and maintenance of identity in the context of intergroup relations, and the constituted distinctiveness (or identity) and continuity of a culture within group, to the extent that it assumes a separate language, appear to be important variables in Karen community life and identity”.¹⁸ This shows the complexity of the “Karen” that it cannot be categorised as one single ethnicity and language. However, for practical purposes, there is only little attachment in terms of differences between Sgaw and Pwo. For instance, KNU and its military branch called Karen National Liberation Army (KNLA) use Sgaw Karen and English as two major languages, and they also sometimes use Burmese language.¹⁹

B. History

The sixty years of armed conflict between Karen and the Myanmar government is recognised as the world’s longest ongoing war. As it is already mentioned in the previous section, Karen is said to be one of the earliest settled group in the land of current Myanmar. There is description that Karen originally migrated to China from Mongolia and reached Myanmar. General Saw Bo Mya, former KNU leader, explains that “the Karen are peace-loving people and for that reason they suffer”.²⁰ Thus, it is claimed that they gave away the lands to Burmese who settled after them.²¹

Most of Karen people reside beyond zones of armed conflict, and the Myanmar government has controlled those areas. Myanmar was granted independence from Britain in 1948, and the British colonial rule for sixty years came to an end. After the independence of the country, conflicts among the central government, armed ethnic groups and political groups have continued and never ended. South, who is specialising in political issues in Myanmar and Southeast Asia, has written a report on the Karen conflict, suggesting that the conflicts in Myanmar can be classified into two types: “a predominantly urban-based movement struggling to achieve greater accountability and democracy in a state dominated by a military government since the 1950s; and an overlapping set of conflicts between a centralized state

17 KBDDF 2010.

18 Rajah 2008, 2.

19 Ibid.

20 Rajah 2008, 252.

21 Lonsdale n.d.

and representatives of ethnic minority communities...".²² The KNU was established in 1947, one year before independence. Due to the failure to reach a political agreement with the central government, KNU began taking up arms to defend the Karen people on 31 January 1949 at the battle of Insein. The date is called "revolution day", and it has been celebrated by KNU every year. Since then, Karen people have called for independence, and the fighting between Karen and the central government has continued. By the middle of 1990s, as a result of the protracted armed conflict, vast numbers of Karen people were internally displaced or crossed the border between Thailand and Myanmar, becoming "refugees".²³ It is estimated that the refugee camps along the Thai-Myanmar border accommodate approximately fourteen thousand people, most of whom are Karen.²⁴

C. Culture

Why has the Japanese government selected Karen people as the candidates to be settled in Japan by the resettlement programme? It is not officially announced, but one of the reasons could be considered that Karen people have customs and values similar to the Japanese culture. For instance, they eat rice and usually take shoes off before stepping inside home as Japanese do. One of my refugee friends, who used to be in a refugee camp in Thailand and recently moved to the United States by the resettlement programme, tells me that she misses her traditional foods made with rice. She expresses an interest in Japanese food culture and coming to Japan. Culture that includes food, clothes, religions, and all other related factors influence people's daily lives and are quite important. Malinowski, who is known as the father of social anthropology, gave the idea that cultures function to satisfy individual basic needs. The following descriptions regarding the Karen society could provide some useful suggestions for the integration of resettled Karen refugees in Japan.

As the paper has already examined the complexity of Karen, the culture of Karen could be also diverse. As well as all other cultures, Karen culture is also constantly changing. The description in terms of the Karen people published by the KBDDF gives examples that religions and music culture have completely changed from a hundred and fifty years ago.²⁵ Let us see the current discussions of the Karen culture.

1. Religion

What does religion mean for Karen people? Needless to say, it is also crucial for them and deeply related to their cultural identities. Due to lack of documentations, no accurate data is

22 South 2011,6.

23 South 2011.

24 TBBC 2012.

25 KBDDF 2010.

available, but most of Karen are said to be Buddhist. They have also practised Christianity and animism. The number of Christians is considered to be much smaller than the number of Buddhists. However, some Christians and missionaries claim that Karen people are Christians. Rajah points out that animism and the “spirit and ancestor worship” are also fundamental elements for Karen.²⁶ The description published by the KBDDF has given the information that the situation in refugee camps in Thailand is unusual. It explains “the proportion of Karen in refugee camps who are Christian is much higher than anywhere else, although the majority of Karen refugees are still Buddhist”.²⁷ Thus, Karen cannot be categorised in one certain religion and their complexities and diversity can be seen from the descriptions.

Religion is one of the most significant matters for refugees in order to keep their stable minds. Religion is crucial not only for having their faith, but also since it relates to all their daily lives. They also create useful human networks. For instance, most of settled refugees in Japan have access to networks through religious activities. They share all information related to the lives in Japan, and support each other at the place of worship such as churches. Castell, who is a sociologist specialising in migration studies, states the social theory of networks that explains how refugees rely on support networks.²⁸

Furthermore, not only to maintain their identity and stable mind, it is certain to say that the power of networks through religious activities could be useful for practitioners and provide support for the lives of refugees. Horstman, who is doing research on faith-humanitarian organisations in the Karen refugee crisis, analyzes the role of Christian networks and suggests the important role of religious networks.²⁹ He uses an example of difficulties to provide aid by humanitarian organisations to the invisible and undocumented populations especially in the conflict zone in eastern Myanmar. He continues that “this gap is filled by religious networks, including Christian church networks, Buddhist monastery networks and Islamic revivalist grassroots movements that provide shelter and protection to displaced people”. When it comes to providing support for refugees, religious networks could be also key elements to find better systems. This idea can also be applied to Karen people.

2. *Family*

The Japanese government currently sets the criteria that family units should be selected for the candidates of resettlement. However, what does “family” mean for the government? There should be a huge gap between Karen people and the government’s criteria if cultural background is ignored. It is said that the third group of Karen cancelled to come to Japan, because their family members opposed them to come to Japan. It can be considered that Karen people recognise “family” with a wider perspective, and they might have wanted to bring more fam-

26 Rajah 2008, 5.

27 KBDDF 2010, 29.

28 Castells 1996.

29 Horstman 2011.

ily members. When it comes to re-considering the criteria of the resettlement programme in Japan, it should be useful to see the concept of family in Karen culture.

The concept of family for Karen people is quite strong and significant. To what extent are values of family and marriage important for Karen people? In contrast to Western cultures that emphasise individuals, Karen people consider family as their priority. Especially the extended family is quite important for them. Hence, the “family unit” plays an essential role for Karen society, and it has social, economic, and religious functions as well.³⁰ Kunstadter, an anthropologist, states that matrilocal matrilineal expanded family is the fundamental social unit to create a Karen village community.³¹ Furthermore, family is considered as a minimum social unit, but it also functions as a maximum social unit called “corporate group”³², for the Karen society. The family becomes the fundamental unit of residence, society, religion, and the economy.³³

3. Marriage

Needless to say, marriage is also crucial for Karen people. The following describes the Karen custom related to marriage and family. Most couples can choose their own partners by themselves, but the parents will find their children’s partner and arrange the marriage if they are still single at a certain age. What may be unique for the Karen society is the tradition that the groom often moves to the bride’s home village and stays with the bride’s family for a while after getting married, so the groom’s living environment changes more compared to the bride’s. Like most Myanmar people, the Karen do not have family names. In this way, when women get married, they do not change their name. Traditionally, after getting married, Karen women change their daily clothes and their social status.

As well as the importance of marriage, having and raising children is also a fundamental matter. Being a “mother”, therefore, is of great value for Karen women. Thus, women who have no children tend to feel timid in their society.³⁴ It is easy to imagine that the women feel some kind of social pressure for getting married and having children.

The above description could be connected to the fact that most of Karen refugees in the camp have many children, like five or six, in each household. Having children can be considered to be crucial matter for Karen people. Thus, marriage, family and having children can be fundamental elements to construct the society.

30 Iijima 1971.

31 Kunstadter 1966.

32 Burling 1963, 71.

33 Iijima 1971.

34 Hayami 2009.

4. Education

All of resettled refugees in Japan state children's education for the reason to come to Japan. The CDR research on resettled refugees in Japan reveals that education is a crucial factor for resettled parents in Japan, and they felt limitation in terms of education in refugee camps.³⁵ All of the interviewed refugees said that they decided to move to Japan for the children's future. Education is crucial and a priority in their life.

As the refugees in Japan, Karen people usually place great value on education. Churches and temples play an important role for Karen people since their parents cannot afford to send their children to government schools. Those children usually go to monastery or mission schools for free. Both Buddhist and Christian teaching shows highest respect for monks, parents, and teachers. Buddhist Karen children make a bow to their teachers three times.³⁶ There are terms to respect teachers. Thera is the term to respect male teachers and Theramu is the word for female teachers.³⁷ In Western countries, children sometimes call their schoolteachers by their first name. However, it is rude for Karen children to do so. Similarly, children are taught to make eye contact with teachers in Western countries, but, in Karen society, they learn to look down when they talk to teachers to express respect. This custom is similar to Japanese culture. In resettled places, refugees would usually face cultural challenges as "some values learned at school will clash with traditional Karen values".³⁸

5. Food

Similar to Japanese culture, people mainly eat rice in Karen culture. Resettled refugees in Japan express their satisfaction regarding Japanese food culture. For Karen, food is not only for eating, but it has a profound social meaning.

To eat food is said to have a central role in Karen culture. Karen people usually use "Aw mee wee lee ar" for greeting which means, "have you had meals?" in English. Hayami states that food is an essential element in daily conversation of Karen who live in mountain villages. Food can be at the core of social life that expresses the social relations and regulations.³⁹ In Karen rituals and social life, food is a crucial tool to construct social relations, power relations, and spiritual relations.⁴⁰ In this way, meals are great concerns among Karen people, but people in villages usually do not eat meals together. Visitors often leave the

35 CDR research team 2011.

36 KBDDF 2010.

37 KBDDF 2010, 24.

38 KBDDF 2010, 42.

39 Hayami 2009.

40 Rajah 1989.

place when people start having meals at home they visit. Even if the head of the family invites the visitors, most people would avoid having food at the home they visit. In villages, mothers and daughters have interrelationships in terms of food, but except for this case, meals can be considered as independent for each household. If someone can afford to invite friends to their homes and treat them for meals, it means that this person is financially independent and has become an adult.⁴¹ “Eating together is a way of expressing hospitality and creating bonds”. Thus, it can be said that “food” is one of key components of the Karen culture.

III. MAINTENANCE OF KAREN CULTURE

Resettled refugees from Myanmar can be considered to have two unique backgrounds. First one is based on their ethnic identity as “Karen”, “Burma” or other ethnicity, and the second background can be shown as “refugee”, meaning that they escaped from Myanmar and lived in a “refugee camp” for a long time.

The case study of resettled Myanmar refugees in New Zealand written by Violet Cho, who had been in a refugee camp in Thailand as a Karen refugee, shows how Myanmar diasporas maintain their identities in the place of migration. Her studies examine how the new media such as the internet, radio, television, including social networks and chats, can be significant tools to maintain Myanmar culture, and political, national, and ethnic identities in Auckland. Due to the oppression by the government and experience of exile from their place of origin, the Myanmar community has created a complex and unique group. Restricted movement along the border between Thailand and Myanmar also becomes one of the factors to make such a unique group.⁴²

The Karen language comes from an oral tradition, so Cho indicates the difficulties to provide a written culture with Karen language. Karen is a non-literate culture and there are only few written documents⁴³, in contrast to the Burmese culture, which has a literary tradition.⁴⁴ They used to have a written tradition with Karen alphabet, but it was later lost.⁴⁵ In the early 19th century, their current original alphabet was invented by missionaries, so their written tradition is still new and influenced by colonialism.⁴⁶

In refugee camps along the borders with Thailand, Karen people can maintain their culture and it seems that there is cultural reproduction. Most of them have spent their lives in-

41 Hayami 2009.

42 Cho 2011.

43 KBDDF 2010.

44 Cho 2011.

45 Saw Aung Hla 1999.

46 Cho 2011.

side the refugee camps for few decades. Children can use Karen language, and study the subjects in Karen language. Due to having quality education inside the camps, some parents in Myanmar would like to send their children to the camps in border areas.⁴⁷

In terms of education for children, Karen refugees tend to be anxious about maintaining and passing on the Karen culture to their children. For instance, not only Karen, but most of settled refugees from Myanmar also find it difficult to keep the culture and pass it to their children including languages. Further, from the conversations of settled refugees in Japan, parents seem to be confused by the difference in customs between Japan and Myanmar regarding their schooling. As the previous section on education shows, teachers are given the highest respect in the Karen society. For instance, in Myanmar, children are always afraid of teachers. Children would commonly avoid walking the same way if they bump into their schoolteachers on the streets.

As the case stands now, it is challenging for Karen people to conduct cultural activities inside Myanmar due to persecution. Accordingly, it could be said that “refugee camps” and “resettled places” are significant places for Karen people to maintain their traditional culture, values and identity. The key for the maintenance of the Karen culture depends on the activities of Karen people outside Myanmar. Reproduction of the Karen culture can be seen at new places of settlement. Nevertheless, current resettled Karen refugees in Japan rarely have access to their own culture. For the success of the programme, it can also be crucial for Japan to support the maintenance of the Karen identity and culture rather than focusing only on “integration”.

IV. CONCLUSION

Resettled Karen refugees from Myanmar can be considered to have two unique backgrounds. Firstly resettled refugees in Japan have their own ethnic identity as “Karen”. Secondly, they also have the background as “refugees”, having escaped from Myanmar⁴⁸ and having experiences to live in a “refugee camp” for a long time. This paper focuses on the first point of “Karen-ness” of refugees.

Japan has received Karen refugees from the camps in Thailand through the resettlement project. What kind of people are they? Who are those people? What kind of culture and customs do they have? It is crucial to find the responses to these questions when it comes to formulate the policy. The current criteria for the candidates of the resettlement programme seem to be lacking in consideration of their backgrounds. This could be the reason why the quota for the resettlement programme has never been filled. The paper shows a brief cultural background regarding Karen people.

Although it is common to use “Karen” to express those people, Karen people cannot simply be categorised as one ethnicity. The term “Karen” is said to be an English name, but most people including themselves use “Karen” for practical reasons. It is because there are two major groups in their ethnicity, which are Sgaw and Pwo. With regard to religions of Karen

47 Matsuoka 2011.

48 Fuertes 2007.

people, there are Christians, Buddhists, and people who practice animism. They have different languages, dialects, or religions, and the Karen have forty sub groups based on different dialects. The description shows the diversity of ethnic Karen.

Karen is known for being an ethnic group in conflict over sixty years, the longest in the world. Originally they are said to be the first people who settled in Myanmar. After the end of the British colonisation, Karen has been fighting against the Myanmar government since the late 1940s, and they have insisted on independence. Thus, thousands of Karen refugees were produced and spread to neighboring countries, especially to Thailand. In consequence, currently, fourteen thousand refugees are still in refugee camps in the border area between Thailand and Myanmar, including many Karen.⁴⁹

In order to comprehend the Karen culture, the discussion focuses on a few significant elements to construct the culture such as religion, family, marriage, education and food. The reason why the Japanese government selected Karen refugees as the candidates for the resettlement programme has never been officially announced. However, informal information among several practitioners indicates that Karen refugees were chosen, because Japanese culture and Karen culture have similarity, such as the love of peace,⁵⁰ customs, behaviours, and foods. Compared to other resettled places such as the US, Canada and Australia, the Japanese culture could be close to Karen culture. Family is one of the crucial factors for Karen people. Japan set the criterion to accept resettled refugees in "family units". However, it can be seen that there is a gap between the government and Karen on the idea of "family". Karen people consider family with a wider perspective, including grandparents or all close relatives.

Due to the Karen situation in armed conflict for a long time, it is a key to maintain their culture outside Myanmar, such as refugee camps or resettled places. Many Karen have concerns regarding the maintenance of their culture. Refugee camps are unique places where Karen can keep their identity and culture, and there is reproduction of the culture. In refugee camps, children can study in the Karen language, and there are even students who come from Myanmar for education. It is also possible to maintain the culture in resettled places. Resettled refugees may have opportunities to hold their cultural identity as "Karen" in Japan. Their original network based on cultures should not be cut by outsiders.

As the above discussion shows, it is crucial to comprehend the background of resettled refugees in order to formulate a better system for the resettlement programme. When setting the criteria for candidates, it is crucial to understand their two unique backgrounds. One is based on their ethnicity, and the second is their long term experience inside refugee camps. The paper could not show the second point of discussion, but I hope that it can be helpful to comprehend the first background and to make a better formulation of the third country resettlement programme in Japan.

49 TBBC 2012.

50 Rajah 2008.

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INTERVIEW

INTERVIEW OF DANIEL ALKHAL

by Satoshi YAMAMOTO and Miki ARIMA *

on 25 May 2012 at CDR

PROFILE OF THE INTERVIEWEE

Mr. Daniel Alkhal was the Senior Legal Officer of UNHCR Representation in Japan from April 2007 to June 2012. Prior to his assignment in Japan, he had worked for UNHCR in Lebanon, Bosnia and Herzegovina, and Turkey. His former career was in family and couples therapy. He holds a Juris Doctor degree from the City University of New York.



Q1. We would like to start with your background. You have a JD (law degree) and you also used to be a DJ. How did you become interested in asylum? We have heard that your family is originally from Lebanon?

I have heard from refugees that they believed my family and I were refugees. Actually, we weren't refugees. We were migrants. My grandfather started it all by emigrating to the US in 1896. He was a migrant, a businessman, travelling. What I was told is that he worked in the steel industry in the US. After that he went to the Caribbean islands, specifically, the Martinique. Then back to Lebanon and Syria. Since then, my family (extended) has been back and

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forth between Lebanon and the US.

So why I became interested in working in the asylum field? Actually, this is my third career. My first job was actually working as a DJ at a radio station. Even earlier than that, I started DJ-ing on Friday and Saturday nights working in nightclubs. Before going to law school, I did therapy, because my graduate studies were in psychology. So, I worked with youth and their families in Pennsylvania. No interest at all in refugees. Even when I was in law school, I was not interested in refugees.

I was always interested in civil rights for children and human rights law. My law school was one of a few schools that focused on public interest law in the US. We had clinics in our third year. It was different from your typical US law school. You were not considered as students, you were considered as lawyers in training. They dealt with you like that, as a lawyer from the beginning. In my third year I specialised in international women rights law. And my hope was to go to Eastern Europe because in those days Eastern European community was growing. The infrastructure, the legal infrastructure in those countries, especially for the civil rights for children, was being developed, so I was hoping to get in on that. Then my friends basically had me apply for the Junior Professional Officer (JPO) program in the United Nations. The US is one of the largest countries to support the JPO program. So I went in for an interview, and that was the first time I got interested in working with refugees.

Actually, during my third year of law school, I worked on two refugee cases. One was as part of a class action suit against fundamentalist Islamist groups, and the other was supporting Ethiopian and Somali refugee women adjust their status in the US to become immigrants (green card holders). But it wasn't actual work on their refugee issues. It was simply helping them with the administrative legal process. So there was no work with them and I wasn't interested. But when I interviewed for the JPO position, I was given an option to apply either for IOM or UNHCR, and I chose UNHCR. That's it. The rest is history as they say.

I had no interest in asylum, and even in the first 2 years I remember I didn't like it that much and I wanted to get out. Because I thought the cause itself was very politicised. You know, the old question is, "Is UNHCR a humanitarian organisation or a human rights organisation?" I think as I matured with the organisation, I grew to love the process of helping refugees. And like many things in life, the answer is that UNHCR is somewhere in the middle. We are not humanitarian fully, and we are not human rights fully. We are both. That I think is what got me interested. We are helping them get their rights but we are also helping them get their whole life back... necessary things in life, raising their children, or getting education.... Even though I specialise within UNHCR on legal issues, I'm more interested in what we are doing here in Japan in all the other aspects.

Q2: It is our understanding that the relationship between UNHCR and MOJ has improved during your tenure. Was there a policy change within HCR about how to approach the MOJ?

Quite honestly, it was a formal approach change. Basically, I studied the system when I came, and our representative was Takizawa-san. He had been in the country for 6 months. He's a former MOJ official. I arrived on about 27th of April, and I said to him, "Allow me to study the system and situation before I can give you a recommendation or even give an opin-

ion” and he accepted. So I started studying the system. I started reading articles that were written by very well known professors and including Judge Allan Mackey when he came and did the study in Japan. And I started studying the practical aspects of the Japanese asylum system. And I was very surprised at how advanced it was, the safeguards that it offered. It was clear that it was a functional system, a system that functions well, that has been well developed over the past 30 years with small numbers. With those small numbers it was allowed to develop at that pace. If they had every year 20,000 applications I think the system would have developed differently. But when I first came, I didn’t realise all the cultural aspects of Japan and the Japanese society, and their impact, their ramifications on the asylum system. So, after 2 months of reviewing everything, meeting people, meeting NGOs, listening to them, and reading tons of documents, I had a different point of view from my predecessors; at least, I think so.

In my opinion, usually in UNHCR, there are two types of protection officers. There are the ones that hold international standards, and fight for it, and say this is the way forward. Because we need to put a very high standard and have everybody get up there. And there is another group, to which I belong. We know the standards and the principles behind it. But we also know that practically, it’s a standard that even the best asylum countries don’t reach. And it is our job in UNHCR to help them reach for the standards and not compromise the principles. And to be objective, even UNHCR operations around the world do not get to reach the standards.

So, when I first came here to Japan I felt like, really we are kind of being hypocritical. We know that the system is improving. Albeit, it was progressing bit by bit but still heading in the right direction. But there were a lot of faux pas that were made, and it wasn’t only the government’s fault. They do have faults, but it wasn’t just their fault. I didn’t feel like I was ready to join my predecessors by saying, “very bad system”. Six months before I came here, the High Commissioner was here, I think it was December or November 2006, and he openly declared the system as embryonic. It was my opinion that assessment was based on only partial information, and hence, was not accurate evaluation of the system, and I had the opportunity to mention that to him a couple of years later. He had been provided with information that led him to assess it as such. I thought on the other hand it was a well-functioning system that needs a great deal of support. The HC has over the years appreciated the attempts made to improve the system and has always extended the capabilities of the agency and the office towards that purpose.

So we had to change. We had to develop a policy that would help us make those improvements at a faster rate. Because I looked at the different players in the system: MOJ, MOFA, the Cabinet, the civil society, the lawyers networks, UNHCR, IOM, all of these players are there. And they were all well intentioned and active. But I noticed that there’s no coordination among them. UNHCR had joined the civil society by publicly addressing the issues with MOJ. MOFA was playing more of a peacemaker type of role. And what I thought that strategy did, it pushed MOJ into a corner, or what I used to say is a cocoon. And in the cocoon you can do whatever you want because, whatever you do you feel that others are going to attack you. So you start doing things without meetings, without discussing the issues. The danger in that is that you lose the other perspectives and the other contributions for solutions. Each party will work separately. I thought that needed to change. We needed to break that cocoon. We needed to get them out bit by bit. That was the engagement approach

change. We need to engage them. And I felt that, in the engagement approach that we needed to develop, we needed to increase our own relevance to the process. Why would they care what we have to say? So, that's what we did. We basically understood the system, I think from a different context, and we understood that the system needs improvement. And most importantly, we understood that all those who are working in the system are willing and able, including the government, civil society and refugees.

So what was the best way to make that improvement take place? There could have continued a focus on international standards, or bring the discussions closer to the high quality Japanese standards. What helped us is that Japan is the second largest humanitarian power for funding humanitarian operations, especially UNHCR's. At the time, it was talking about decreasing its support because of funding difficulties. Now we have more than doubled it. So, I would say this humanitarian standard idea has worked a little bit. Because we went to them and said, "Forget about applying the international standards. We would like to apply in Japan, the work that you do overseas, let's try to apply it right here." Of course, what we were hoping by this internal focus is that it would inch us closer to the international standards.

So we started working with them in that fashion. I remember the first meeting that we had. We needed MOFA to be present. MOJ was sitting on the other side of the room from UNHCR. The idea was like we were negotiating at a high, conference level, and the only item on the agenda was to discuss two cases. Specific two mandate cases that had been recognised under UNHCR mandate, and MOJ wanted us to resettle them. That was the only point on the agenda.

And the process to set up that agenda was very telling about how strained the working relationship was, because these exchanges went back and forth, back and forth about semantics. We would say this, we would say that, no we can't say this, we can't say that. And I looked at some of the old documentation. There was a lot of haggling about, we want to mention this in this context, or we want to mention this and that. We could have continued to put things in writing and send them to the government and these are documents that are probably never read by anyone. They are not made public. UNHCR internally uses them, and MOJ internally uses them. And then they go to some drawer. In the past we would spend hours and days over these little words. So we changed that. For example, I said to the Protection Assistants, "Let them set whatever agenda they want. If I go there, if I speak, well, are they going to fire me? Are they going to push me out of the room? We will talk together." So that first meeting was, I think, was an icebreaker. It was the only meeting that MOFA "chaperoned". And that was it. Soon after that, bilateral meetings with MOJ began and a steadily built partnership began. And MOJ realised they could talk to us. And this is how I think I think how we made their minds change.

Q3. Is it true that before you came, there was a period when MOJ would not meet directly with UNHCR and agree to meet only in the presence of MOFA?

Yes. It was for about 6-8 months. And this was a mechanism that was developed basically by the Senior Protection Officer and the Deputy Representative at the time of UNHCR, who was on secondment from MOFA. So they developed this idea that at least this way they can

put UNHCR and MOJ at the same table. I mean there was a lot of faux pas along the way, that I can't really get into. And what helped, I think, this is a point I wanted to make earlier, is when I read these two cases, I thought they were recognised erroneously. It was very clear. So I shared my opinion with MOJ and what I promised them is that I would examine whether this recognition can actually withstand a properly administered cancellation process. Because you cannot just cancel cases. You have to go through a long process and in that process, facts come out. So they could still have been refugees, but based on the information in the files, in my opinion, they were recognised erroneously. And it was only prudent that we examine their status determination.

Q4. Who came up with those strategic changes in communication with MOJ?

It was basically me talking to the Representative in Japan. Even after MOJ's relationship with UNHCR changed and we needed to keep engaging them, I felt there was a double standard in this exchange. But I don't think that anyone actually thought that the system in Japan was not functional. We all understood that it is a functional system but we were focusing on the wrong approach. Why should we confront the government in the media? What does that bring? I thought it was a lack of understanding of the culture in Japan, and it's a lack of understanding of the culture in MOJ. People would spend their time and efforts defending their stances instead of working with you on repairing the issues. The targets become more defensive, and what you do is you lose the people that are willing to move the agenda forward, the agenda that you want and they want. So I spoke with the Representative about that, and he was a very flexible person.

Were these personal factors critical to the change? Absolutely. Of course there are personal things and I think this is a very interesting comment because that is what we spent the last four years on. The engagement process was interesting. It happened but then what do you do after that? We tried to institutionalise those changes and that was the difficult part. To communicate our issues with the government through the media would have been the easiest approach because everybody expected it. You say it to a journalist and then you are done. You spend most of your time doing the thing that you are comfortable doing from your office. You write emails and review documents and say that the civil society is not working properly and the government is not doing its job, and let's write another article, let's talk to the media. But the one that you really have to work on is to sit across from someone and try to convince his or her mentality to change. That's where I think the hard work is. So I think that's what happened when we followed the new approach.

Q5. Those innovative ways, some sort of a breakthrough, cannot be achieved in a bureaucratic way. I know Takizawa-san, who was the Representative at the time. He is also a very unique person. And I suppose UNHCR is one of the organisations that have a strong bureaucratic system. Why these two talented people could change? Why not others?

I think it's just like anything in life, right? If it weren't for the hard work of all my colleagues, bit by bit, the first SPO (senior protection officer), the first Representative... then someone does a mistake, they bring it down, but you have a basis. I don't think that I started from scratch. I was a therapist before, so the only analogy I can talk about is in that context. A therapist works with the patient for two years and then they hit a block, they can't move forward with each other anymore. Then the therapist would refer the patient to another therapist. That therapist works for another two years then they hit a similar block then there is the third therapist. The third therapist, after two months of working, everything becomes clear to the patient. "Oh my God! You are great!" No, the reason is in those two months, you basically built on the blocks that were made over several years. It is blocks upon blocks and at some point a breakthrough happens. The credit goes to all the therapists that worked with the patient and the patient himself as well.

In our situation here, I think our colleagues (government, civil society and UNHCR) had been building blocks here. Some blocks we could have done without. For example, I personally think UNHCR should not have done refugee status determination in Japan a decade ago. I am sure it was a difficult decision to take but still that is the the easy way out. And even Takizawa-san asked me and you guys pressured me when I first came, remember, "Why don't you do refugee status determination?" Because simply you create a parallel system of recognition to the government's. That is almost giving up on the system instead of working on improving it. I am certain many who heard me say that over the years would disagree with me, and may be they are right, but in a country like Japan with a functional asylum system, UNHCR should not recognise refugees and resettle them to other country.

I think it is unacceptable that Japan has to resettle refugees out of it. This is the safest country in the world. It is the safest for refugees. I have been here for five years and I have never heard of a single incident where the asylum seekers or refugees were attacked because they were refugees. Yes, there are difficulties with open integration, and that is one of the main reasons why the system can operate much better; there are some things that we all need to work together to fix.

So yes, I think that there were many building blocks, there were mistakes made along the way, and it was the right time for the system to begin ripening. Takizawa-san, who started his professional career with MOJ, was friends with Inami-san (then Director-General of the Immigration Bureau). I think they entered the Ministry around the same time. So when we changed our way we talked to them, word went up to Inami-san that UNHCR is a partner that we can work with. I can't tell you that everybody's interests in those days were pure. The dead environment was stifling the system, and certainly was not beneficial to the refugees or any of the actors involved in it; that needed to change. Honestly, it wasn't that bad. There were many bad things, but the system itself wasn't that bad. And we needed to depict the difference.

So Inami-san and Takizawa-san had a good working relationship. Then we started meeting

with MOJ bit by bit. We discussed. To be honest, the fact that they also needed someone who understands RSD very well did help with the trust building. If I, probably, had a different background, I am not sure that would have helped because they needed someone that, if he spoke to them about RSD, they understand that he has some authority on the subject matter. He is not just speaking about it. He has done it. So, when I agreed with them about the above mentioned cases, then they said OK. By the way, we didn't cancel the mandate recognition; the cases self-resolved. But MOJ did understand that it was a process that may take a long period. I also made sure they understood that UNHCR would only advocate for the cases in which we strongly believed. And they respected that. So I wasn't coming to them every time with twenty cases that are weak. We discussed cases because we believed them. That's why we changed some of their opinions about the Rohingya caseloads and many were protected. Six months of discussion back and forth, back and forth. Not in anyway trying to push one case. It was more on the policy level discussion. MOJ colleagues were strong advocates for their position but still kept an open mind to listen to others.

I think a big part of the strategy that we were talking about is based on the understanding of the culture in which we were working. You understand the context where you are working at, instead of just applying those international concepts.

Q6. Were there anything about the Japanese culture you found to be difficult or different from your experience in other countries?

There were many things, too many to count.

I think, as a matter of difficulty, the discussion on the real issues, on how to do that, you do that in advance. You do that before you actually go to the meeting. Then the meeting is more of an orchestrated environment, less about the discussions, less about that difficult exchange with people when they have to share their differences... I think that needed to be understood and not to be offended by. Because if someone is telling you differently on the phone and then when we meet they play a different game, some people might see it as offensive. So, for me at least that was a learning experience and I believe in this context it worked very well.

I think when you talk about RSD, you talk about the cultural differences. You have to respect those cultural differences. Whether an applicant looks you in the eye or not does not mean necessarily s/he was being disrespectful, it is simply a cultural thing. And here, it was a cultural difference in negotiating. Instead, I tried to build on it.

The other difficulty I encountered is the methodical approach to everything: things have to be vetted through different methods, which can slow down the process. It is great if you have the time and resources, but mostly, you don't. That produces lack of flexibility. But I mean, like anything else, it also carries positivity, including covering all the bases. For examples, look at the resettlement program: 30 cases take one year. Look at the RSD process. The RSD process is very methodical. Even the right to re-application is coming from the point that some people say we have to give asylum seekers that right, without this right, it hinders the process. So the process itself becomes weaker because of that. But because we are elaborate, we have to never say no. Just in case someone reapplies, we have to study it all over again. First instance, appeal. Appeal studies it all over again, without having real valid reasons why

they should study it all over again.

The third point (difficulty) that I want to highlight is probably the fact that things here have to go through a process of consensus, not a vote by majority. It seems like everyone has to agree on the action, otherwise, things do not move on.

Just to highlight these differences without saying the following statement I think is a mistake on my part because I think the success that you have is how you can make the best with those differences, not necessarily have to change them. The idea is not to change the Japanese culture, the idea is how to adapt to the Japanese culture and it becomes more hospitable for refugees. And I am not sure but I think this may be a difference between my approach and my predecessor's. My predecessors were kind of adapting the Japanese system to the international system. I was more interested in making the Japanese system better, not by adapting it, but by itself becoming better. That was my focus, really. Asylum arena is not a competition among asylum countries. It is incumbent on every country (with all actors in the process) to work on having the best system they can, especially when considering all their internal and external factors. In that regard, Japan has a race to outdo its own system, not other countries'.

Q7. As a result of this better relationship with MOJ, now UNHCR is more involved with the MOJ training for refugee inquirers. Can you explain the training program?

First of all, I don't like to call it training, because the system itself is functional. You have immigration officers who are doing refugee status determination after 12-15 years of being immigration officers. So, many of them are very strong professionals in the field. I found from these trainings, that they are very well-informed and well-skilled asylum officers. It's just that we don't know the instructions that they have. Like any employee, no matter what my thoughts are as an individual, at the end of the day, I have to function as a UNHCR staff. They too had to function as staff of their institution. But, truly, that was the pleasure, basically, that I found in these trainings. They were not real trainings, they were exchanges with professionals. They were not people you are starting from scratch with, like with other countries where we do training, especially if their asylum system is new. These were very well-trained professionals. And I was proud to be part of their growth journey, as many of them were part of mine. A real honour.

What we needed was to provide them with the other side of the thought process. As a lawyer, you always need to think of what your opponent would say and to counter with your own argument. So how can the other way of thinking enrich your argumentation? We were hoping that, by showing them the way UNHCR does it, the way other governments do it, they would start a self-examination of their own process. And it worked well. REC members reported that, for example, field officers that participated in UNHCR training exemplified differences in their approaches. They were always professional, taking this very elaborate methodical approach to cases. But now they were also incorporating a different perspective. It didn't necessarily change 100% their perspectives but it changes maybe 30, 40% and that I think that is something you and they can build on. My successor will probably take it to the next step, another 20%, another 30%. Remember, the goal is to have the Japanese system be the best it can be.

There are a lot of smaller “trainings” that were increased on protection issues; for RSD itself, we are now doing two three-day workshops. Two training sessions in the same year for two sets of participants. People come from all over the country. We have had people from Osaka and people from Kyushu. It’s centralised. It is also part of their training, part of their process. It used to be six hours a year, one time, where we basically talked about RSD from the perspective of UNHCR. Now we are free to do whatever we want with the “training”, but the idea is to develop exchanges for open discussions about practical issues that the colleagues face in their daily work. It is interactive, analytical and topical. We work with the MOJ on the development of the workshops.

Beside our input, I am aware that they do receive trainings on human rights, I think it is part of the two or three week training. One of them is this annual training for select number of immigration officers. The other one is specifically for asylum, and we are part of that. And I think they target different groups of immigration officers that are doing refugee status determination in both trainings. I think one is for more experienced ones, and the other one is for those who are just recently doing asylum cases.

Q8. Is it your understanding that the refugee inquirers who are assigned on REC teams have influence on how the interview is conducted?

Without a doubt. I observed an interview. And they didn’t hide things. They believe in what they are doing and they feel they are justified. So they don’t mind. Otherwise, they would have given me a much easier case to observe, where everything was hunky dory, where the REC members were interviewing. I observed and in that interview, I saw many of the problems at the appeal level. In the interview we had about seven or eight MOJ officers, three RECs, one interpreter, a lawyer for the applicant, UNHCR and the appellant. Very crowded room. And the applicant came in shackles. Two of the immigration officers were guards, one on each side. One REC member slept in the interview or maybe I should say he had his eyes closed half the time. The questions seemed more rehearsed than an actual interaction with the appellant. Some of the questions by the RECs were right on target. Others were simply going through the motions type. MOJ officers asked many questions and clearly were managing the process.

The way the officer reacted when I made some comments after the observation process, showed he was not happy. But I think overall, many of the colleagues at the various managerial and working levels, were listening and wanted to improve things. People, I think that, have this idea that all of our exchanges with MOJ, because we’ve changed the approach and become nice, we just go in and have some coffee. That is simply not the case. Always we have had respectful discussions, but there were many very heated discussions, uncomfortable debates, and sometimes even tensions, exactly what you would expect when peers are discussing issues. We always attempted to raise the level of the discussion, I think, and always maintained positivity; it was in our interest for us to get better, not to fight with each other. But it wasn’t easy. Not that it should be.

So, there were officers that I worked with whom we had no individual relationship at all.

It was clear that we did not get along. Some I went out to lunch or dinner with, and had discussions. Others would not, and these are the ones that we focused on to change, the ones that we have difficulty with, the ones that we had a lot of tension in those meetings. They needed the most changes in their mentalities. It was these colleagues, that after they rotated out of their positions, they would approach me and speak in their personal capacities and not as government officials. They would say how respectful they thought the exchanges were and how effective in changing their mentalities.

And if you want to go back to the earlier questions, one of the positive things about the Japanese system I found difficult is that they are very knowledgeable about asylum, about the system and everything, including lawyers. When you deal with people that are very knowledgeable about something, they know they are experts. So to change their approach to things is very difficult because they believe in their conviction. I can honestly tell you that I would be a very challenging prospect for change in RSD for example, because of my long and extensive experience in the field. You would need to work extremely hard to convince me. The same thing with our colleagues at MOJ. I saw people snickering at the beginning of meetings when I talk about how we should change their activist approach because they believe that this is the only way that the Japanese government is going to change. But once the changes as a result of the new approach start becoming clear, one by one, I was hoping that they would revisit their approaches, because I am very positive about the Japanese asylum system. I think it will be improving at higher rates if we continue with this approach. There is always a period of development. At some point, you will see big sprouts but I hope we don't go back to the old approach. That's why I am very happy with Obi-san, my successor. I believe she sees things similarly.

Q9. Do you have good access to the RECs?

Some. Some of them did not want to establish a working relationship with UNHCR. They were focused on the appropriateness of the communication, especially as it relates to confidentiality of the cases. Most are not experts in the field. Many of them don't know much about asylum. For example, for me, we don't need three RECs taking the lead on every case. Give three cases for each team. One takes the lead on one case and the other two play supporting roles, just like how the judges would do it. So if you get three cases instead of one, you speed up the process and you still have one REC member taking the lead and working with the other two on their cases. With this minor change, what can also happen is that the RECs would take more ownership of their cases. I am told for example that some RECs simply sign off on decisions that are written by the MOJ. I was told by one immigration officer off the record that MOJ would prefer that RECs write their own decisions every single time. In some cases, RECs participate in the writing process with the immigration bureau. Sometimes, they will simply agree with the written decision. I say these things not as sharing secrets because they are not. They are well known even if rarely discussed. I say them to illustrate the point that for the RECs system to improve and have the impact it was intended to have, the RECs themselves need to take on more responsibility in the process. I realise that many will not like to hear that but it is the truth. They are partners in the appeal process and they, all of them,

should act accordingly. With minor tweaks of the system, you can have much faster results. The current system, I think, has room for improvement and would require less of the expertise of the immigration bureau as RECs can improve their own expertise. For example, in the teams of three, there are always one or two REC members that are better “experts” than the other “experts”. So the second and third may not feel the need to become an expert because s/he can always rely on the good one(s). I think strategically, from the teams that I saw, the immigration bureau places that way. Like they will not put you with two that are very liberal and open. You will get one that is probably former prosecutor, one lawyer, and a social worker. The idea is that they will cover the case from all different angles. At some point, you guys (RECs) need to become experts on RSD.

When we were sitting with MOJ to discuss the expansion to 56 [REC members], they asked for our inputs. They asked for our official list and we also gave an unofficial list. And when they started opening up by choosing new REC members, then the make-up of teams would change automatically. I think most of the teams are taking on a new look, a look that represents more MOJ's new approach. This is exactly the example that I was telling you about earlier. Instead of, for example, saying “We are going to change the entire REC system,” they would take a very methodical approach: change them one by one. I hope that approach will not take twenty years to effectuate the system that we all want.

But they know what they are doing. I think they know that this is the only way that they can actually achieve that. It's always about increasing the budget, and not offending anyone. They would create this 56. If they changed the system and said, “we need REC members,” this is the only way that they can actually achieve that. But instead of having REC members that can only work two days a month, why don't we hire half full-timers and half part-timers? There are many ways you can organise the system that way. The full-timers can make up teams of their own or lead their teams (as soon as they will develop more expertise). There are different ways that you can tweak the system instead of expanding a system that is not working optimally. The fact we have this major backlog developing even though we doubled the number tells them that it will not address the issue. The issue remains that the caseload is expanding and two cases a month for each team will not cut it. RSD is a process of experts in both the substance and management. We do not have to go for the big names.

Q10. It's my understanding that there is no training at the appeal level for the RECs. Do you see it happening in the future?

For the RECs, no. But immigration officers come to the training. And you have people that are doing interviews, you have people that are doing management. So they are managing the cases. We believe that REC members should have similar trainings for themselves. I think it would be very useful, but it's a bit difficult because, to be honest with you, RECs are so different and varied. All they receive in training is a bunch of documents that are given to them when they first start. There is no other formal training provided to them and we are hoping that they become experts on their own. How? So we opened the floor, I think, three years ago. We started meeting with different REC members and that improved. We started with three, then it became six, eight, twelve, then we had these regular meetings. But there was a variety of REC members that came. There were some people that were beginners, and some

people like Honma sensei. It was very difficult for him to address some of the issues that I was addressing with those that just came, who had never done RSD or asylum before. But they were chosen [to be RECs] because they were prominent members in their fields or something like that. That does not necessarily translate well into expertise in RSD. There are some that have been involved most of their professional lives in the asylum field, like Honma sensei and it is very hard to put in the same room someone like him and someone who doesn't know anything about RSD. The discussions become quickly uneven. Having said that, I believe that there is a culture of change in the MOJ and the colleagues at the DG and director levels do intend to make changes to improve the system. The point I mentioned earlier remains true though, the RECs themselves need to be more involved in making the changes as well.

This is why I think probably a better system would be where the RECs would manage their own portfolio. They would manage their cases, they would manage their training, they would manage their access to COI and things like that. And the Immigration Bureau can facilitate, instead of the Immigration Bureau doing all of that. For that to happen, you need to have a group of REC members who are full-timers or at least have people working for them who are dedicated to this process. Like judges, you know, they would have clerks. And I think that would make it a better appeal system. By doing that you would still maintain the Immigration Bureau's involvement but would create, not autonomy, but greater independence.

Just to be comprehensive on this, many REC members turned down UNHCR's ideas even though MOJ was willing and they would say to us: "We want to do that!" ... And I think one of those directors that I told you who otherwise was not basically seeing eye to eye with us wanted to make these changes. But the REC members would not agree. That's where the above mentioned consensus issue comes in. We had to convince ALL the REC members. It was impossible because some of them want the system to continue as is because it is to show up a couple of days every month. It's very nice camaraderie they develop. They see each other once every month. They have busy schedules maybe but this is something important to do and they enjoy it. Whether it is the optimal way to operate the appeal system, that is not their priority. They are not responsible for the system, the MOJ is. Give them more, and they don't want the responsibility. Maybe they are not really interested in becoming experts. Someone younger, maybe, would be very interested in gaining more knowledge, more information, more training, more independence, and they would not want the Immigration Bureau to put their thoughts on the RECs' recommendations or decisions. For example, the most resistance regarding this idea that REC members would be involved in choosing their cases or doing what cases, came from RECs, not from the Immigration Bureau.

Q11. Why do you think, with all this engagement with MOJ, the recognition rate from last year was so low? Some people say good applications don't come to Japan and also this re-application process is a factor in lowering the recognition rate. Others say that Japan is too tough, the standards are too high. What is your view on this?

I think it is a combination of all of these things. I think if you want to do a very thorough

analysis of this issue it would take several years and probably come out with a conclusion that it is all of the above. Looking back at the last thirty years, you would see that there were some trends. Indochinese, then focus on Vietnamese, another few years, you have another population. And now the most current population is the Burmese. I don't really care about the numbers because it should not be like a quota. If you are doing proper RSD, if you are doing full RSD, your numbers could be one year, zero because you didn't get any refugees and the next year, you might get 80%. So it depends on the applications, if you are doing proper RSD, if you are covering all your bases, if you are doing individual RSD.

But the biggest argument against that, and we have discussed this extensively with the Immigration Bureau, is what we say publicly: currently, if you are not from Myanmar, chances are you will not be recognised as refugees. I am not convinced that the argument that it's a lower rate is a very winning argument. The better argument is why we are almost solely providing more protection for Myanmar citizens, when the other populations are increasing in Japan. So for example, if we provided the same lower rate for all the others, including Myanmar and all the other nationalities, I would have no problem because then it would be that that is how the system is working, this is how they see it. But can we convincingly argue that while the Myanmar refugees need protection, the vast majority of the other asylum seekers or refugees coming from other countries don't? So that is the issue for me. So even if it is a low number, I would have no problem if it is an equal number for all of them, which proves to be that there is no individual RSD process. If it is individual, you would do Burma, Nepal, Zimbabwe and you would have one or two if the standard is very high. But how come the standard for Myanmar is lower than the other? So for some reason, it is not individual and if you look at the last thirty years, you would see that there are groupings. Every few years, we concentrate on certain population.

[CDR: Do you think it is political?]

I honestly don't know. I think it is the simplest answer to say that it is political. I think it is more of the compassion with certain population, because they get more media attention, the people were discussing them more. I think for the Burmese, for example, the numbers of Burmese increased. For me, even the increase in the asylum application is not a straightforward phenomenon in Japan. Most of those increases happened after the immigration's five-year policy to flush out the illegals. So you have people who have been in Japan for many years before they actually applied for asylum. That is when it started going from 300 a year to 1000, 1500. These people, the majority of them, were living in Japan so you are not talking about asylum seekers who came to Japan and started applying for asylum right away. Because still the number of asylum applicants at the airport is less than 100 every year. That does not seem to be increasing. So you have people that are living here for quite some time and then they apply. And don't forget until 2004, these people would not have been allowed to apply. So now they apply [editorial note: before the 2004 revision of the Immigration Control and Refugee Recognition Act, one had to apply for asylum within 60 days of arrival, in principle]. Now it is very hard to change the mentality of the immigration officer who thinks, "if this guy is a refugee, he would have applied before". So he may always treat them as if they are lying. I think that is a very hard threshold to jump over. If your starting point with the interviewer is that s/he does not believe you from the start, your burden of proof is much higher. So there is

a concept, I think, in Japan that is not very well discussed, the “genuine asylum seeker” concept, not the genuine refugee. So people are perceived to be disingenuous, if you want. They are not real asylum seekers, they are cheating the system. They are abusing the process.

But it is not necessarily like that. People may genuinely believe that they are refugees but they may not qualify. I have given many examples in the last couple of years of cases that were genuine refugees but they were looking for other ways out because people don’t necessarily just choose or plan to be refugees. People don’t know that they are refugees. And I have extensively explained in my ‘training’ this concept. In our professional lives, we speak about asylum and refugee status determination and well-founded fear of persecution and all of that so much that it becomes deeply engrained in our thought process. We forget that people in the rest of the world do not think like that.

Q12. What are some important elements in RSD to make a sound decision on refugee status determination?

Without a question, a clearer approach to all the cases, individualised approach, case per case, not grouping is number one. The COI (country of origin information), more current. I am not sure, for example, for the RECs, if and how they are given the most up to date COI. I am not certain if they have any guidelines on using COI. There is a need to improve the access (to COI) in general through regularised training and exposure to international procedures. I think that the level of these individual inquirers is high. There are some of them that have gone toe to toe with me on cases and made me think. Only on very few occasions that I find anyone who is weak that I thought that person shouldn’t be doing this line of work. Because these are the same people who go to the same classes that you went to, under the same professors that you had. And they excelled in their education and then they get there. And there they have to balance what their thought process is, what they would imagine asylum is, immigration is or whatever, and the systems that are created by their predecessors/superiors. It is an internal struggle. Do you get kicked out of the system or do you try to make the changes from within?

One of the things I didn’t mention earlier in our strategy, is that we worked on identifying government officials that were moderate to forward thinkers. And what we wanted to do is to give them ammunition in these internal struggles. How they can fight the fight from within. Allow them to bring in the ideas for change from within. Those ideas are better received if brought from internal sources, rather than external. At least, at this stage of the progress of the asylum process in Japan, they are. And I think that was a more effective strategy, more than just engagement in the discussions and trying to convince them of our points of action. A combination probably worked. Some points we brought to the table, others were pushed up internally. And by the way, here I am not talking only within MOJ but these colleagues are found throughout the government.

Have I found enough people? I think so. And that was probably the biggest surprise. How many of these very strong and efficient people who believe in the right vision for Japan, believe in doing the right thing. The biggest part of what I love about Japanese is that they want to do the right thing. And it’s not easy, if your institution is not making it feasible to do that

because of other considerations and factors.

Let's take detention as an example. Many people, many DGs, would probably want to close the detention centers but they probably won't do it because of the impact on their budgets. They would lose their budgets and they probably would fear it will never get back when they need it. If they release, then they can't justify those detention centers. Then that center will be closed and they would lose that budget, they would have to let go of immigration officers. This is not just the case in Japan. Just think of how many companies that would be closed, from security to food, etc. Of course, this is my analysis. I am not basing it on statements from the immigration bureau. Just my own analysis. When we were requesting them to release certain asylum seekers, they have been very cooperative for the most part.

The last statistics I saw was less than 100 asylum seekers in Ushiku [East Japan Immigration Center]. So there are many questions that normally we don't think about but they have to consider. If someone from the enforcement section comes in and says, "I want to establish a program where we are releasing these people, giving more provisional releases, more provisional permissions to stay", they will face the problem, the fact that their bosses want to keep these detention centers open. If they don't detain, these centers would have to be closed.

[CDR: But with this idea for the alternatives to detention, if the government can release, it can still provide the budget for the oversight and management of the asylum seekers on provisional release.]

It's a good idea, right? That's what we have been talking about for years: Let us find different places and different ways. But because you have to have that consensus from everybody, it is very difficult to convince them of those different ways. And it is not just with the government. I mean, I can honestly tell you and I am being very sincere: I have received more effective cooperation from the government than from the civil society. Things move faster. The most efficient counterpart that I have had has been MOJ. They are the ones that have made the most changes than all the others. FRJ took us the longest to organise, to move forward. And I got so frustrated at the beginning, I hadn't understood the system or culture as much, and I kept pushing for it. Until one day one NGO colleague (asked) me, "What is your real agenda?" "Daniel, but what do you really want?" I said, that is exactly what I want, I want you guys to just start moving forward, to agree on things fast, and get going. These are the initial stages and we haven't really dealt with any actual controversial issues and our movement is this slow. And they think that UNHCR has always had some agenda. For example, we said we don't want to be board members of FRJ, not like J-Fun where we have to sit as a chair.... Why? Why? Why? You don't want to be in the front, you want to basically withdraw... No, I want basically for you guys to be independent so that we don't have to influence you. FRJ should not be an implementing partner of UNHCR.

[CDR: MOJ may have its own bureaucratic difficulties but it's still one organisation. It is not easy to change the policies, of course it takes time, but if the DG changes the approach, it's probably easier to change than FRJ, which has many member organisations.]

I think that's what DPJ thought. Just if they can come and give the good ideas, but you

know, things like that don't happen in Japan. Even a DG cannot change much, and that is something I learned. The power of the group in Japan is extremely, extremely important. Even the DG, Parliamentary Secretary, Vice Minister, Minister, you know how the situation is. There was the Minister of Justice who was an Amnesty International supporter all of her career. She was from DPJ, became the Minister of Justice and she came and signed the capital punishment case. She agreed to the deportation of the Chin right before the High Commissioner's visit. Power of the group. It's very, very strong in Japan and that's why you need to change their mentalities, one by one, and then you make those changes. The consensus building, it's very important. So I do see the argument you are making. It is a valid argument, a logical argument that MOJ is one organisation so they can move things faster. But I also think that the civil society is supposed to be all working on the same issues and the same objectives, and should be working with similar speeds and similar interests. Every NGO has a program of supporting asylum seekers or refugees. They have procured funding for these programs. How about if they bring these as part of solutions to the resettlement program's difficulties and offer them as the civil society's contributions? A simple concept like that was not agreed on. Why? Because some people believe that they have to force the government to come up with the funds and create a perfect resettlement program. While it is actually the responsibility of all the players in the system, I see in such lack of initiatives as missed opportunities. And probably because one NGO has that approach, the other FRJ members would not step on the NGO's toes and go along.

Q13. Talking about the civil society, one of the achievements during your tenure here is the creation of RCCJ. What was your role and UNHCR's role in it? Where do you think it should go from here?

I think that was also part of our change internally of our approach. We were focused mostly on, as is the system here in Japan, on asylum seekers, very little work with refugees. Much of what I have mentioned in changing mentalities in the government and civil society also applied to UNHCR. UNHCR I think was guilty of the same thing so we changed our approach recently. About three years ago, we started the new approach, which is instead of filling the gaps in the process, we wanted to support the system to improve. We did not need to do the things that are missing in the system. We needed to support the other actors in the system to step in and find solutions. Because in a country like Japan, I don't believe it is the matter of not having the budget. I think it is the matter of spending the budget appropriately and properly. Considering the number of asylum seekers and refugees, I think what we need is a process where you don't fill in the gap for the government. Rather, you actually create capacity building programs across the board in the society. Bring in more actors, more partners. Ones that had not been involved. Involve them. Increase their awareness and skills. And I think that's where this idea that we need to start working with the refugees and increase their capacity so that they are no longer perceived as only recipients but as participants. So it started, actually, because our minds were being changed by this idea that we focused on asylum seekers, we were not focusing on refugees. Who were helping them with local integration? Nobody. And if they are locally integrated better in the Japanese society, the asylum

process including refugee status determination will be improved, right? If they are successful, the perception of refugees is different so even the perception of asylum seekers is going to be different. And the assistance frameworks will improve for asylum seekers as well. So that's where it started. We facilitated the process of RCCJ to develop. We started working with them on developing the first roundtable in collaboration with the University of Tokyo. RCCJ was facilitated as an NGO basically, to start as an NGO that these refugees participate in their own protection and support programs and to have a voice that can be heard. And basically they give inputs into not only the implementation but also the design of the asylum procedure. That's where I see it going, if they play their cards right. And I think we are not there yet. It's a small organisation that has not received the support that I was hoping it would from all places. And when I say all, you know what I mean. So a lot of the support I have given was personal, on my own. You know, a Senior Protection Officer would not go to a refugee meeting at 11 o'clock at night, we don't do that on a regular basis, but I did. I think there are two frontiers for UNHCR: local integration and the role of the judiciary in the asylum process. I think if we do that, if we focus on that, and the role of the refugees, I think local integration would be easier. Refugees not only would succeed but they would want to live in Japan.

Q14. What do you see as the potential of CDR or the role of the academia in Japan?

I think, in a country like Japan, wealthy, rich not only in money but in other resources, every faction of the society has a major role to play, but more than anyone else is the role of the academia. CDR, other smaller initiatives as well where they start refugee study programs, courses, scholarships, working with potential employers, working with NGOs, even on the refugee status determination process, engaging in free, independent and objective COI, for example. I think that would be fantastic. And the academia can actually be in touch with partners more internationally, more than the government. It doesn't have the hindrances that the government would have. For example, one of the processes of country of origin information is the CEREIA process. It's a European process. It's basically the European Union initiative where all of these governments have their COIs and they bundle it up in this CEREIA process and then all of the EU is benefiting from one country's fact-finding mission, for example, or research on a certain country or guidelines or certain operations. And then you add to that cooperation with UNHCR's COI, the academia, I think, has a lot more potential because the government will be faced with, and I am talking about Japan, lots of political/bureaucratic hurdles.

Q15. What about the role of the media? Do you think there is room for improvement?

Very. I think the media is, as we say in the US, the fourth branch. Here in Japan, I think it can do a lot more. The media can cover issues more comprehensively, not just simply highlighting the deficiencies because it gets more news, of course. But I think the media has a bigger role in raising awareness than they are doing. Remember when we were talking about

an interest in a certain issue or a certain group for MOJ and they start recognising those groups, I think the media is like that. They get stuck in one issue so that they beat it to death. But all the other issues that can be raised in the asylum process, they don't write about them or investigate them and as such these go uncovered. I think there could be more depth in the media's analyses. That is missing right now. I see it more as coverage than analysis. I hope that there would be more, because the journalists in Japan are some of the best in the world, so they have the capacity to look beyond the obvious and the news. They need to look at things more analytically, looking for all those "WH" questions, all five of them, why, what, where, who and how.

Q16. Statelessness is part of the UNHCR's mandate. What is the state of statelessness in Japan?

Progressing, but at a slower pace than asylum. The legal system in Japan for statelessness is there. The laws even provide an alternative to the Convention on Prevention of Statelessness. So the laws are there. I think what is most needed in Japan is the status determination process for statelessness. Raising awareness is definitely needed. And I think the establishment of the statelessness network recently is a step in the right direction, especially if they do things properly. If they don't just engage in normal, just focus on individual cases because I think what we need to do is to have more advocacy for a system that needs to be established. And in statelessness, I think many of the elements are there, we already have a system that needs to be established. I think in Japan, it would be a better process, and this is just my personal opinion, not UNHCR's, if the bureau that does citizenships in Japan does the status determination because they already do it. Now they don't say that they do it because it is not their mandate. So nobody is given the mandate to determine whether a person is stateless or not in Japan: neither the Immigration Bureau nor the Civil Affairs Bureau.

[CDR: I understand that in some other countries, the refugee status determination and the statelessness determination are combined. But do you think it is better for them to be separated in Japan?]

I think in Japan it is just better. I think the assistance already happens. If you bring in another Immigration Bureau on board, you need to change a lot of the things. Right now, for example, CDR is doing COI, if we want to remove that from CDR, something else might take a lot longer to establish that system. Now, Civil Affairs Bureau is doing it because every time you have an application for Japanese citizenship, they have to determine the qualification process and determine along the way whether statelessness is a factor. And if you are trying to determine statelessness, it is for what purpose? So that you actually find a solution for that, right? So, since they are already doing it, why move it to the Immigration Bureau? We have had these discussions already, but I think it is not there yet. And this is why I think we need to basically implement the strategy that we have developed of how we can get that accomplished. But this also is affected by a consensus kind of thing, it takes a lot of time. I think there should be more coverage from the Parliamentarians on the issue of statelessness. We did this study two years ago, with Professor Abe. It was quite good. It raised the issues. The

important point is to acknowledge that the statelessness issue is not at a level very large in numbers. But that should be an incentive for us to resolve it, not just put it on the back burner.

[CDR: Are there any developments in terms of accession to the Statelessness Conventions?]

No, I think there are two reasons for that. I mean, of course that is one of our goals to materialise the accession. It is because the law itself covers that. But we should not de-link the accession issue from improving the situation for those who are either stateless or at risk. So for the accession to happen, now our argument is that, you already have it in the law so why don't you accede? At least that is true for one of the Statelessness conventions. But it needs, I think, the issue to become discussed at a higher level so that, unfortunately this is how things work here, you need to raise the level of discussion so that it becomes a necessity. Since it is not a necessity, it is not being discussed. And I think, in my opinion, more so by other actors than by UNHCR; if we start with the status, with SSD, then you do the accession afterward. You start with SSD, you raise the issue, people will start discussing, whether individual cases or on a policy level, and then automatically saying, well, you know, since we are already doing it, why not? I think it is more of a practical approach.

Q17. What do you think are your main achievements during your time here?

I think history will tell. I came with very modest objectives when I arrived to Japan, which is what I do everywhere I go, which is to make the environment around me a little bit better. And I think that that would be the best achievement. But I think that now I feel I have contributed to the discussions positively, people see a little bit the perspectives of others more than before. I think by highlighting the positives in the system from UNHCR, people started seeing both positive because before, it was mainly all negative. So just allowing people to have a different perspective, I think, helped the system. There are a lot of minor, if you want, accomplishments that I am proud of, but I am not interested to go into them personally. But I feel like just improving the environment, that would be the greatest achievement.

Q18. Any regrets?

Missed opportunities. Absolutely! Every day, every day, every day. I am leaving Japan with a heavy heart because of these missed opportunities because it is very hard when you have such great aspirations for this country and for the people that how qualified they are, how great they are and how wonderful, loving and caring ... I don't buy into the argument that Japan is not ready for receiving asylum seekers. Every day my experience in five years here, in the thick of things, in the trenches, tells me it's the opposite. This is my 6th UNHCR country, including my own, and I see people here are more ready to help and assist, it is just how you deliver the messages to them. I have never seen more generous people towards refugees. I

have never seen Japanese families, Japanese families adopting refugee families more than here. And this is all part of individual, volunteer-type initiatives. In other countries, yes, we have more volunteers, for example in New Zealand, but that is orchestrated by a very well-functioning system. Here things are happening on their own. For me, it is just an indication of how well meaning people are.

NOTES

DEVELOPMENTS OF HMS/CDR

Satoshi YAMAMOTO

I. CDR SUMMER SCHOOL 2012: REFUGEE STATUS DETERMINATION IN THE CONTEXT OF REFUGEE PROTECTION

Since the last year's summer school, CDR has prepared not only to invite international eminent scholars and practitioners but also to lecture by ourselves. This time, we CDR staffers gave a variety of lectures especially focusing on the issues of credibility test in refugee status determination (RSD) process.

The first session of the summer school 2012 (13-15 September 2012) was planned to learn basics of RSD, as the participants of the summer school were expected coming from diverse backgrounds. By using teaching materials created by Miki Arima (CDR) and a film featuring livelihood of asylum seekers introduced by Kumiko Niitsu (CDR), the first session received favourable impressions from the participants. Then the second session was planned to explain how and where in the process of RSD the credibility test is required from both the practical and theoretical perspectives. To make these explanation meaningful, we CDR published *100 Q&A on Basics of Refugee Protection: Refugee Status Determination and Credibility Test* as the textbook and provided them to all the participants in advance.

After the introductory sessions of the first day (13 Thu.), the second day was organized to provide more advanced contents on comparative studies. All three judges (Katelijne Declerck Martin Treadwell, and Allan Mackey) as the lecturers are also known as eminent leaders of international cooperation for refugee protection. Each of them has been playing important roles as a member of International Association for Refugee Law Judges (IARLJ). The basic understanding for the lecture is that as long as the Refugee Convention stipulates common obligations among all the contracting parties, every party must seek common interpretation of the articles including refugee definition (Art.1A-2). In that sense, experiences over RSD should be shared and the theory for ideal RSD needs to be articulated. Credibility test for RSD is one of the most important practices of that kind.

Among the over 100 participants, there were many practitioners including 4 officers of the Ministry of Justice and 8 Refugee Examination Counsellors (RECs) in charge of RSD in Japan, 3 Lawyers assisting RSD related judicial cases in Japan, and 22 NGO staffers. In the Q&A session, a well-experienced REC commented that many of the lessons heard from the lecturers were really sympathising as she had also experienced similar difficulties and problems of credibility test in RSD process in Japan. It was very impressive and symbolic comment as it shows the experiences outside of Japan naturally fit and give a thought-provoking suggestions to the practices in Japan too.

See the details at: http://cdr.c.u-tokyo.ac.jp/documents/ss2012_announcemnet_eng.pdf

II. STAFF AS OF SEPTEMBER 2012

General policy of CDR is decided by the CDR Executive Committee in its monthly meetings. The daily work of CDR is managed by the following staff members.

A. Members of the CDR Executive Committee

- Professor Yasunobu SATO (Chair)
- Professor Shinji YAMASHITA
- Professor Mitsugi ENDO

B. Staff

- Yasunobu SATO (Director)
 - Satoshi YAMAMOTO (Editor / Vice Director)
 - Miki ARIMA (Editor / Researcher)
 - Junko MIURA (Secretariat / Researcher)
 - Kumiko NIITSU (Research Assistant)
 - Mutsuhisa BAN (Research Assistant)
 - Kie HORIKOSHI (Research Assistant)
-
- Nga Hong Hanh Nguy (Summer Intern, Harvard University, June-July 2012)
 - Douglas MacLean (Research Fellow / Fulbright Scholar, September 2012 - present)

III. EVENTS

April - September 2012

【Seminars and Symposia】

■ ***CDR/HSF Summer School 2012 Refugee Status Determination in the Context of Refugee Protection (co-organised by CDR and HSF, in cooperation with Japan Lawyers Network for Refugees(JLNR) and Japan Association for Refugees(JAR), supported by UNHCR Representation in Japan).***

Topic: Credibility assessment and determination of refugee status: theory, practice and effective use of country of origin information (COI)

Day1: September 13, 2012, 10:00-18:00

Venue: Open Space Arena, 21 Komcee, Komaba Campus, the University of Tokyo

Lecturers:

- Dr. Satoshi YAMAMOTO (Vice Director of CDR, and Refugee Examination Counselor of the Ministry of Justice)
- Ms. Kumiko NIITSU (Research assistant at CDR, and Refugee Examination Counselor of the Ministry of Justice)
- Ms. Miki ARIMA (Researcher at CDR; and Refugee Examination Counselor of the Ministry of Justice)

Day2: September 14, 2012, 10:00-17:15

Venue: Open Space Arena, 21 Komcee, Komaba Campus, the University of Tokyo

Lecturers:

- Judge Allan MACKEY (Deputy Chair, Immigration and Protection Tribunal New Zealand, Former President of IARLJ)
- Judge Martin TREADWELL (Deputy Chair, Immigration and Protection Tribunal, New Zealand, Deputy Chair Australasian Chapter of IARLJ)
- Judge Katelijne DECLERCK (Judge of the Belgian Appeals Commission, Vice President of the European Chapter of IARLJ)

Language : English/Japanese (simultaneous interpretation provided)

Day 3: Symposium on Refugee Protection, September 15, 10:00-13:00

Venue: Building No.18 Hall, Komaba Campus, the University of Tokyo

Topic: Credibility assessment and COI: toward a new institution building

Moderators: Sato YASUNOBU and Satoshi YAMAMOTO

Panelists:

- Judge Allan Mackey (Deputy Chair, Immigration and Protection Tribunal New Zea-

land, Former President of IARLJ)

- Judge Martin Treadwell (Deputy Chair, Immigration and Protection Tribunal, New Zealand, Deputy Chair Australasian Chapter of IARLJ)
- Judge Katelijne Declerck (Judge of the Belgian Appeals Commission, Vice President of the European Chapter of IARLJ)
- Mr. Akihiko KITAMURA (Director of the Adjudication Division, Immigration Bureau, Ministry of Justice)
- Mr. Shogo WATANABE (Attorney-at-law, Secretary General, Japan Lawyers Network for Refugees)
- Ms. Naoko OBI (UNHCR Senior Protection Officer)

Language : English/Japanese (simultaneous interpretation provided)

Organisers: Human Security Forum (HSF); Center for Documentation of Refugees and Migrants (CDR)

【*Research Projects*】

■ ***Country of Origin Information (COI)***

As a follow-up to the study of COI systems in Europe, Yamamoto participated in the COI course in the European Asylum Curriculum in May. In preparation for the summer school, an e-learning material was developed at CDR. It contained 100 questions and answers on the basics of refugee protection and refugee status determination, including some reference to the use of COI. The material was also compiled into a booklet, which was distributed to the participants of the summer school. The booklet is also being sold to the general public.

■ ***Resettlement***

A booklet similar to the one mentioned above is currently under preparation.

■ ***Translation***

Translation of the Rights of Refugees under International Law by Professor James C. Hathaway is under way; Translation of HM Inspectorate of Prisons: Inspection Manual 2008 is under way. Both documents are written in English and translated into Japanese by staffers of CDR.

【Other】

■ ***Lecture on Human Rights of Refugees in Detention Centers***

Date: June 24

Occasion: Itojuku “Asu no Horitsu-ka Koza” (Lecture series for future lawyers)

Lecturers: Kumiko NIITSU and Myo Min Swe, a Burmese refugee and MA candidate, Human Security Program at the University of Tokyo, together with Satoshi YAMAMOTO.

■ ***Lecture on the Practice of Refugee Examination Board***

Date: July 19

Occasion: Guest lecture at Waseda Law School, for the course titled “Aliens and Law”

Lecturer: Miki ARIMA

■ ***Academic Presentations on Refugee Protection and Resettlement***

Date: September 30

Occasion: Second annual conference of Japan Association for Human Security Studies

Presenters: Satoshi YAMAMOTO and Junko MIURA

■ ***Panel Discussion on Refugee Examination Board***

Date: September 17

Occasion: Annual assembly of the Japan Lawyers Network for Refugees

Panelists: Kumiko NIITSU together with other Refugee Examination Counselors

■ ***Publication of “100 Q&A on Basics of Refugee Protection: Refugee Status Determination and Credibility Test”, September 2012***

Authors: Satoshi YAMAMOTO and Miki ARIMA

CALL FOR CONTRIBUTIONS

CDRQ is an open journal published on a quarterly basis. The aim of the journal is to disseminate information collected from research activities of CDR and related partners. It also welcomes contributions not only from academics but also from practitioners who are facing real social problems. This journal primarily focuses on issues of movement of people. However the contents also include variety of related fields such as governance and conflict resolution and prevention, as these issues induce and escalate forced displacement and more longer-term movement of people. The purpose of the journal is to provide a crosscutting perspectives on refugee and migrant issues with comprehensive awareness of the issues of movement of people.

For more details, please access the official website of the CDR and download the “CDRQ Handbook”: http://cdr.c.u-tokyo.ac.jp/Quarterly/Q_handbook.pdf

Official Website of CDR [<http://cdr.c.u-tokyo.ac.jp/>]

The screenshot shows the official website of the Center for Documentation of Refugees and Migrants (CDR) at The University of Tokyo. The website has a dark grey header with navigation links: Portal, Database, Events, Links, FONT, and a zoom control (- +). A left sidebar contains a tree menu with categories like Portal, Database, Events, Links, and Members, each with sub-links. The main content area features the CDR logo and name, a 'Welcome!' message, and a brief description of the center's mission and activities. A list of bullet points details the center's publications, database, and events. A photograph of a building is shown on the right. The footer includes copyright information and the university's name.

Portal Database Events Links FONT (- +)


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Portal **Welcome!** News Lectures About us Summer School


Welcome!

to the official website of the Center for Documentation of Refugees and Migrants.


The Center for Documentation of Refugees and Migrants (CDR) was established in April 2009 through a grant from Hogakukan Ltd., a private corporation based in Tokyo. The goal of the CDR is to collect, organize and distribute information related to the migration of peoples, and especially the study of migration.

- The CDR publishes a journal, “The [CDR Quarterly \(CDRQ\)](#),” which is available in print and on the website.
- We are involved in the creation of “Shortbooks”, one page summaries on a variety of topics related to migration and migration studies.
- We are involved in a project to create an online database utilizing the reference management software [Zotero](#), which can be accessed by anyone looking for references of printed and video material about migration.
- We hold symposiums, academic conferences, a summer school and other events throughout the year.

The CDR is also the organization in charge of the [Human Mobility Studies](#) course at [the University of Tokyo](#).



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