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The Future of Foreign Law Offices in Japan

SYDNEY M. CONE, III

I have been asked to talk about the future of the newly opened offices in Tokyo of foreign law firms. Notwithstanding having heard all these learned and impressive comments, I am optimistic about these offices for a great many reasons. I will name five reasons why I am optimistic for the future. Let me enter a note, however, of lawyerly caution. It has been one year and 28 days since Edward F. Greene had the first application accepted for being licensed as a *gaikokuhō jimu bengoshi*, and that is not a very long time in which to have a basis for making the predictions that I have been asked to make. Nonetheless, here I go.

Why am I optimistic about the future? The first reason is very obvious: Japan is a major economic and financial power, and having law offices in Tokyo is eminently logical for a practice based on economic and financial activity. That reason alone seems to me to augur well for success.

The second reason may seem obvious but is rarely discussed: it is the matter of geography. Japan is a very long way from any other likely international legal center. There is no competition between international legal centers for Japanese business. One can contrast this with Europe. There are a number of potential international legal centers in Europe. When the French, for example, adopted their current regime governing foreign lawyers in 1971, they were very concerned to maintain Paris as a major international legal center, fearful that if they did not do so, they would lose business to other international legal centers such as London and Brussels. Japan does not have that problem, and I should dwell on this but I will not because of the lack of time. I think that the Japanese, in establishing an international legal center, are able to do so without worrying about competing legal centers. Geography is a two-edged sword, however. It helps to insure the success of those foreign law offices that are actually in Tokyo. It gives them a geographic advantage. But because of the lack of competition I just mentioned, it enables the Japanese to establish conditions for gaining access to their international legal center that might be risky in other international legal centers. In Europe, even to a certain extent in the United States, international legal centers have to worry about competition.

The third reason I am optimistic is that the governments are involved. Like Kunio Hamada, I too regretted that this became a trade issue. I wish it had not, but it did. We are where we are, and the governments are involved. I think that this promises well for the future, in large part because of the kind and quality of governmental people involved. I think we are very fortunate that Glen Fukushima has been involved, and I think we are very fortunate

that Mr. Tadaki of the Japanese Ministry of Justice has been involved. I think their involvement provides a basis for optimism.

The fourth reason for my optimism for these foreign law offices in Tokyo is that the legal practitioners involved, American and Japanese, are, at bottom, pragmatic people. They will work out the problems. Yes, there are a lot of technical restrictions. Yes, as Mr. Kanter pointed out, the regulations are impossibly long. But I think that these pragmatic legal practitioners will figure out ways to deal with the restrictions and regulations. For example, the scope of practice problem, which Glen described to us at some length, was really solved through sheer pragmatism, and it went away completely, although unforeseen problems about scope of practice may still arise.

The fifth and final reason for optimism that I will give in this abridged presentation is the general trend toward liberalism in international legal centers. As the Japanese become increasingly accustomed to having a true international legal center in Tokyo, I do not think they will be immune to this trend toward liberalism. I have seen it in Paris, I have seen it in London, and I have seen it in New York. The rules that were adopted to govern the regulation of foreign lawyers in these international legal centers were initially adopted with enormous reluctance. They were implemented in a very hesitant way and in a rather restrictive way. Over time, the way that these rules have been enforced has been adapted to the realities of the international legal community. Cooperation between local bars and foreign law offices has been enhanced, has been facilitated; the rules themselves have been modified from time to time to make this possible.

To summarize, for the five reasons I mentioned—the impressive economic and financial power of Japan, its geography, the involvement of the governments, which is with us now and will remain with us, the pragmatism of the legal practitioners involved, and what I perceive to be a general trend toward liberalization in international legal centers—I am optimistic for the future of the foreign law offices that have been established in Japan under the new Japanese law.

Post Scriptum. Showa has been followed by Heisei; two years and 128 days have elapsed since Ed Greene's application was accepted by the Japanese Ministry of Justice (paragraph 1 above); and I have been asked by the University of Washington Law School to supplement the foregoing comments, which I am pleased to do, as follows.

In the case of Ed Greene and a number of other American lawyers licensed as *gaikokuhō jimu bengoshi*, my optimism has been justified: they have developed an active and successful practice in Tokyo. In addition to reaffirming my five reasons for optimism expressed early last year, I would add a sixth reason for continued optimism in the future: Japanese law firms have begun to seek reciprocal privileges in international legal centers outside Japan. The firm of Mr. Kunio Hamada (paragraph 4 above), for example, has opened an office in London.

In light of this development, the United States government can be expected to seek more liberal rules for foreign lawyers in Tokyo, that is, rules similar to those that will be available to Japanese law firms when they open offices in New York. First and foremost, a Japanese firm opening an office in

New York (like the Hamada firm's London office) will be entitled to practice under its firm name. The U.S. government should therefore insist that American firms be granted the unrestricted right to use their firm names in Tokyo. The time has clearly come to drop the hazing that takes the form of requiring a Tokyo office "sponsored" by a U.S. firm to practice under the name(s) of the locally licensed lawyer(s).

Additional points of liberalization in Tokyo that require attention now in light of the treatment available to foreign lawyers in other international legal centers are: (1) American lawyers in Tokyo should be permitted to associate freely with members of the Japanese Bar, and (2) junior American lawyers in U.S. law offices in Tokyo should be permitted to count their time in Tokyo toward the five years of practice required in order to be licensed as *gaikokuhō jimu bengoshi*.

Finally, I might revert to my earlier comment about unforeseen problems involving scope of practice (paragraph 5 above). The Japanese Bar has been endeavoring to prevent American lawyers in Tokyo from representing their clients in arbitration proceedings. The American Chamber of Commerce in Tokyo has protested this protectionist position taken by the local Bar, and it is to be hoped that the Japanese authorities will be persuaded not to place pointless barriers between client and lawyer in the context of arbitrations, which, after all, are supposed to facilitate the resolution of disputes.