

Reflections on the Past 10 Years of the Soft Law Project

Masahiko Iwamura

Leader of the GCOE Program

Professor of Law, Graduate Schools for Law and Politics, University of Tokyo

The Soft Law Project established by Tokyo University's Law and Political Science faculty started in 2003 as the activities of the 21st Century Center of Excellence (COE) program. Soft laws do not refer to the laws or regulations of a State (commonly called "hard laws"); rather, they are the norms found in a real economic society that a State and companies etc. find binding, although the enforcement of those laws is not finally secured by the courts. There are various forms of soft laws, such as laws established by States, those formed by companies and markets, and those established in the international relations that exist between countries. Furthermore, in real laws related to business, soft laws have an important place and they are used to control the activities of companies. However, in the past, hard laws have been the main subject of legal studies and education in our country. As a result, in Japan, little advancement has been made in the studies of soft laws that play an important role in the real laws related to business and traditional legal education for legal scholars and lawyers could not effectively respond to the international law market where soft laws have a significant impact.

Tokyo University's Soft Law Project focuses on soft laws, a subject that traditional legal studies cannot sufficiently address. It is an attempt to broaden this horizon and expand the legal studies and education. From 2003 through 2007, the Soft Law Project as work of the 21st century COE program was led by Professor Nobuhiro Nakayama (currently a professor at Meiji University). Under his leadership, we engaged in activities from the viewpoint of promoting the studies and education of soft laws (hereinafter referred to as "the former project"). The creation of a database of soft laws was one of the main results of that former project. Law researchers can easily refer to hard laws, such as laws and regulations established by the State, using codes as well as by accessing the database of laws and regulations built by the Administrative Management Bureau of the Ministry of Internal Affairs and Communication. However, unlike the collection of hard laws and regulations issued by the State, soft laws are not compiled in reference materials. Accordingly, we collected soft laws and built a database for them. This database is made available at the National Institute of Informatics' repository of databases for academy and research.

In addition, conducting workshops and seminars can be counted as another major result of the former soft law project. In the former project, we advanced under a system that focused on the following three branches: the Public Regulation Section, the Commercial Transaction Section, and the Intellectual Property Section. For each of these Sections, project members and faculty members conducted workshops and seminars in which businesspersons and domestic and foreign researchers in other academic fields participated. As a result, the workshops and seminars greatly contributed to the advancement of the studies of soft laws. Specifically, at the end of each year of the former project, symposiums were held and attempts were made to review the research activities in that year. The results of these reviews have been presented in discussion papers and published in domestic and foreign magazines, including *The Soft Law Journal*, which was first published by this project. In fact, *The Soft Law Journal* has established credibility as the only specialized legal studies magazine in Japan and it is viewed as the only reference source that is handling soft laws. It frequently publishes articles written by scholars outside this university. Furthermore, as a summary of the research activities conducted in the former project, we published *The Soft Law Study Series*, which is a compilation of five volumes of *The Soft Law Study*.

Another thing that we cannot forget is education and human resource development. In the former project, we hired young researchers, including scholars from outside this university, as project researchers and research assistants and we provided them with opportunities to make studies at the Center. Since then, many young researchers have moved on and they are now playing active roles in various legal disciplines.

Beginning in 2008, the Soft Law Project by the Global COE launched a new phase of the project, which has been underway for five years (hereinafter referred to as “the latter project”). Masahiko Iwamura, the author of this report, is the leader of this phase of the project, which is the successor to the initial five-year Soft Law Project (the former project) and which continues the activities of the 21st century COE. In the latter project, we aimed to further develop the results gained from activities conducted during the former project’s five-year timeframe. First, as previously mentioned, the research activities during the former project had been conducted using the system of three sections; however, for the latter project, we established a new section, which we called the Basic Theory Section, thereby transforming the three-section system into a four-section system. The Basic Theory Section was based on the idea that the education and study of soft laws were not officially and systematically taken into account. Consequently, we needed to create a methodology for this study and develop basic

theories for soft laws. Concretely, this new section corresponds to the study of laws, economics, the sociology of law, etc. In terms of research activities, from the latter project, we started to tackle the fulfillment of the case studies related to each object case and to more positively deliver our results from this rare-in-the-world base of our study of soft laws.

As we did with the former project, we have also been deploying our research activities in the latter project by actively holding workshops, seminars, and extension lectures at each section and by inviting domestic and foreign researchers not only in the field of legal studies but also in other academic fields. In addition, at the end of each year, symposiums were held to summarize the studies of that year. At those symposiums, we addressed such themes as “Interaction between "Hard" and "Soft" in Depute Resolution”; “Observance of Norms in Business Society: The Limits of Voluntary Norms”; “Convergence of International Norms: Creating Norms without Hard”; and “Statistical and Econometrical Analysis and the Law” Furthermore, in the latter project, we are keeping an eye on East Asia, and in this connection we held the 2nd and the 5th BESETO Conferences, which were co-sponsored by the Graduate Schools for Law and Politics of the University of Tokyo, Peking University Law School, and Seoul National University College of Law. From time to time, the results gained from these research activities are being presented in discussion papers and published in *The Soft Law Journal* magazine. In terms of the international delivery of the research results, what is spectacular is the publication of *The UT Soft Law Review*, an English-language magazine. *UT Soft Law Review* has published the results of the 2nd and the 5th BESETO Conferences, and we are now proceeding with the publication of issue No. 5.

In terms of high-level human resource development, in the latter project we are building on what we did in the former project with regard to the theoretical education concerning soft laws. We are now focusing on train researchers who will expand the legal studies to include the study of norms as a social science, based on empirical studies, lawyers having international competitive power, and human resources that will be able to contribute not only to Japanese organizations but will also help establish international rules within international organizations, etc. With respect to the human resource development addressed in the former part of the project, as previously mentioned we will support studies of young researchers by employing them as project researchers and research assistants. We will recommend that these young researchers participate in the project-related workshops and seminars. We will also expand the types of subjects supplied by the Global CEO to include doctoral-level courses specializing in legal and political science in the postgraduate school program, which will be taught by

our colleagues at Graduate Schools for Law and Politics. With respect to the human resource development activities previously mentioned in relation to the latter part of the project, we will dispatch the students engaged in the doctoral course specializing in legal and political science and the graduates from the Postgraduate School of Law to overseas law firms and international organizations where they will serve as trainees for a period of one-to-two months. In particular, in this overseas dispatching program, we have dispatched 50 persons since 2008 and, according to the reports of the dispatched persons, we can state that they have had a very useful experience during their training periods. As a result, this dispatching program has been highly evaluated by advising commissioners outside the Global CEO.

However, because the budget for the latter project decreased, the focus of the latter project became narrower than what we had initially planned. We were forced to abandon the renewal of the soft law database that was built in the former project and the exchange with overseas researchers was leveled out. Furthermore, our ability to support the studies of project researchers and research assistants was significantly reduced, which became an obstacle to promoting human resource development. In addition, in 2012, as the budget allocation for the latter half of the year was temporarily suspended, much regretfully for us, we were faced with a significant challenge with regard to the advancement of the latter project in its final year.

The Soft Law Project as the activities of the Global GOE will end in 2013. However, because, in a sense, the study of soft laws has just begun and because soft laws themselves are constantly being made, developed, and changed, the end of the Soft Law Project itself does not mean the completion of the studies of soft laws. Our faculty has already obtained Grants-in-Aid for Scientific Research of Japan Society for the Promotion of Science and we have started the activities that will become the successor to part of the Soft Law Project. Furthermore, we are planning to enlarge these activities. With respect to human resource development, although the scale of our overseas dispatching program will be decreased, we intend to continue this program for the time being at least. I ask for your further cooperation and support of our Soft Law Project.