

## “Legal and Policy Perspectives on the Japanese Crisis”

### Event Summary

On April 6, 2011, the Center for Japanese Legal Studies (CJLS) at Columbia Law School and the Center on Japanese Economy and Business (CJEB) at Columbia Business School presented a panel to discuss the global legal and policy implications of the earthquake, tsunami and nuclear crises in Japan. The panel consisted, in speaking order, of Masayoshi Arai, Special Advisor to the Ministry of Economy, Trade, and Industry (METI) of Japan and Director of the Japan External Trade Organization, New York; Michael Gerrard, Andrew Sabin Professor of Professional Practice and Director of the Center for Climate Change Law at Columbia Law School; Curtis J. Milhaupt, Fuyo Professor of Japanese Law, Parker Professor of Comparative Corporate Law, and Vice Dean at Columbia Law School; and Hajime Matsuura, Senior Columnist at Sankei Shimbun.

Mr. Arai focused his portion of the discussion around the recent developments at the Fukushima Daiichi nuclear power plant. He said that while Japanese and Western media sources have resorted to splashy headlines and utilized scare tactics to gain readership, the reactor situation is more stable than people perceive it to be. Arai noted that it was not the Tohoku earthquake that caused most of the damage to the plant, but the ensuing tsunami which destroyed the electricity power supply that was stored for emergencies. The Japanese government had underestimated the strength of the tsunami, making adequate safeguards for a 30-foot tsunami rather than the 50-foot one that was generated by the earthquake. Although some Japanese residents are still living in school gymnasiums, Arai asserted that with global aid assistance, basic necessities are being provided. Over 130 countries and 30 international institutions have offered support, with the United States offering the largest contribution.

Arai went on to say that Japan’s current priority is to continue cooling the fuel rods within the Fukushima Daiichi reactor by engulfing it in sea water while simultaneously containing the contaminated water leaking out of the plant. Next, the government hopes to build a storage tank to remove the contaminated water. The Japanese government has established six teams, consisting of Tokyo Electric Power Company (TEPCO) management, METI ministers, and the Prime Minister’s advisors, to run separate recovery projects, including disposal of the highly radiated water, removal of spent fuel rods, and assessment of the environmental impact of the crisis. The most recent data show that all radiation levels are under their limits and food distribution restrictions will soon be lifted. Given recovery cost estimates of \$200-300 billion and a private sector loss of \$15-30 billion, Arai believes that economic production may be negatively impacted for the next few years. He then asserted that this disaster is not the end of

nuclear energy but rather the start of a new era of nuclear energy policy—one that will gain significant lessons from Japan's experience.

Professor Gerrard focused his talk around the domestic (U.S.) and international regulations of the nuclear power industry. He referred to the 1979 nuclear plant accident on Three Mile Island in Pennsylvania, explaining that it had led to a three-decade period in which no new nuclear power plants were ordered in the United States. Up until the recent crisis in Japan, a slow revival of support for nuclear power had grown in the United States in light of climate change considerations. Yet, there were three primary concerns among critics: the declining price and growing supply of natural gas; the nervousness in the financial community toward financing nuclear plant facilities after the Three Mile Island accident; and the uncertainty about what to do with spent fuel from power plants. The situation in Fukushima now adds a new safety concern as well as deepening the second and third concerns outlined above. The events in Fukushima, combined with the Deepwater Horizon oil spill, have also had a negative impact on President Obama's climate and energy policies. Gerrard argued that the prospects for legislation enacting climate regulation in the U.S. Congress will likely come to a standstill for the next two years.

Another consequence of the situation in Japan is a greater awareness of the vulnerability of coastlines and the limitations of coastal protection. Although extensive attention has been devoted in Japan to sea walls, the Tohoku incident has shown the limitations of many experts' predictions so far. As a result, there is now an urgent need to develop emergency preparedness procedures in the context of revised worst case analyses. However, Gerrard believes this will be difficult as many emergency policies may overlap or contradict each other in the development process.

Professor Milhaupt then situated the Japanese crisis in the context of corporate governance. He found that the events unfolding in Fukushima have parallels with other global disasters, including the financial crisis and the Deepwater Horizon oil spill. All three events were characterized by catastrophic failures in risk assessment, inadequate crisis management systems, regulatory gaps, massive externalizations of risk, weak corporate leadership in the face of crisis, and government bailouts.

In the case of Japan, while TEPCO may apply the 1961 Act on Nuclear Damage Compensation and successfully claim in court that the natural disaster exception applies, it is unlikely to sue. At the same time, TEPCO's assets will be insufficient to cover claims and the company may be either nationalized or saved through capital injections. In either case, the Japanese government will need to support TEPCO in some capacity for years to come. Milhaupt also predicted as plausible a derivative suit made by shareholders against TEPCO directors for a breach of duty

(i.e. gross negligence). Milhaupt explained that recent corporate governance failures are not limited to any specific industry and/or technology, not confined to a single national style of regulation, and not linked to a specific managerial incentive/compensation system. As a result, major international and comprehensive advances in corporate governance are absolutely crucial for the advancement of the health and prosperity of society.

Lastly, Mr. Matsuura spoke on the role of Japanese media in the midst of crises. Matsuura observed that during the coverage of the Tohoku earthquake and its ensuing catastrophes, significant linguistic and terminology barriers resulted in conflicting reports from Japanese and Western media. In fact, he believes that many articles submitted by Western media from Tokyo required far more accuracy. At the same time, Matsuura acknowledged that the Japanese media had inherent reporting flaws and must accept criticism from the West. In Japan, there is a strong press club system with close ties to large corporations or authorities. As a result, there is less incentive for the Japanese media to report corporate scandals such as TEPCO's failure in corporate governance. In addition, he said that some journalists even landed on public committees that promoted the safety of nuclear plants. As a parallel with "regulatory capture," in which a regulator becomes inferior to the industry being relegated, Matsuura called this conflicted relationship "media capture."

However, Matsuura believes that the system is slowly changing and media channels have begun reporting on TEPCO's ignorance of obvious red flags regarding their business operations. He is optimistic that, with time and experience, the Japanese media will play a larger role in keeping business and the government accountable for their behavior and actions during crises and disasters.

This event was co-sponsored by the Nihonho Kenkyukai (NHK) student organization at Columbia Law School. Professor Milhaupt moderated the discussion.