Artificial Intelligence within the Field of Law – Chances and Risks

Waseda University, Tōkyō, 10 June 2022

The conference "Artificial Intelligence within the Field of Law – Chances and Risks" was held at the Ono Auditorium of Waseda University and broadcast live on YouTube on the 10th of June 2022.[1] This German-Japanese legal conference was organized by the DJJV (German-Japanese Association of Jurists), the JDZB (Japanese-German Center Berlin), the DWIH Tōkyō (German Center for Research and Innovation Tōkyō), the Bundesrechtsanwaltskammer (German Federal Bar), the RCLIP (Research Center for the Legal System of Intellectual Property), the ICL (Institute of Comparative Law), and the School of Law of Waseda University.

One objective of this conference was enhancing the exchange between German and Japanese legal professionals. Furthermore, the subject of artificial intelligence has gained importance within recent years and is expected to continue doing so. Therefore, it was very interesting to discuss this topic within different areas of law and exchange professional opinions from the German and Japanese perspectives. In order to enable this exchange, simultaneous interpretation of the whole conference was offered from Japanese to German and vice versa. It was the first time in more than two years that a legal conference of this size could be organized in-person in Japan due to the various entrance restrictions imposed since the COVID-19 pandemic broke out in 2020. Accordingly, the response to the conference from the large audience in the Ono Auditorium (about 60 people) was very positive, and many interesting questions were asked proactively during the Q&A sessions. Additionally, the live broadcast on YouTube was viewed by numerous people in German and in Japanese (more than 500 people on the conference day and several hundred afterwards).

The conference was officially opened by Prof. Takashi HAKOI (Dean of the School of Law of Waseda University) and Dr. Jan GROTHEER (Honorary President of the DJJV), representing the two main organizers of the event. This was then followed by welcoming speeches made by Tokiko KIYOTA (Deputy Secretary General of the JDZB), Swetlana SCHAWORONKOWA (Senior Legal Advisor at the German Federal Bar), Dr. Laura BLECKEN

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1   Conference in German: *https://www.youtube.com/watch?v=EHyuNtBmELM.* Conference in Japanese: *https://www.youtube.com/watch?v=kOh0SMt8AsU.* Conference material: *http://rclip.jp/germanseminar/.*

(Deputy Director of the DAAD Office Tōkyō and Program Manager of the DWIH Tōkyō), and Prof. Dr. Christoph RADEMACHER (Professor of Law at Waseda University), representing the other institutions involved in the organization of this conference.

The first part of the conference focused on the impact of artificial intelligence on business law in Japan and Germany. The first presentation was delivered by Masataka OGASAWARA (Representative Director and Co-Founder of Legal Force, Inc.) on the impact in Japan. He explained how artificial intelligence is currently used around the world in order to provide and optimize legal assistance and other services. The main purpose of using artificial intelligence in legal services is document review, but it also plays an important role in services like legal research, managing the life cycles of contracts, document automation, and billing. Most of the largest companies in this field come from the US. Also in Japan these services are assuming increasing importance, especially for document review. It needs to be awaited whether AI's role in contract life cycle management will also grow in the future as it did in the US. Currently in Japan, AI plays an important function for automatic pricing, which might lead to frictions with antitrust law. Another legal area which is affected by AI is data protection law due to the automatized processing of personal data.

The second presentation, which was held by Dr. Christian LEMKE (Vice President of the German Federal Bar), dealt with the impact of artificial intelligence on business law in Germany. He explained that AI affects many different areas of law, e.g. data protection law, product liability law, competition law, and human rights. Currently the EU is in the process of preparing a law for the regulation of artificial intelligence. Important purposes of this law are the protection of European fundamental rights and of the EU internal market and at the same time the promotion of the use of AI for the facilitation of investments and innovations in the framework of a safe and clear set of rules. The initial draft of this AI act addresses the level of risk of a violation. For example, social scoring or real-time facial recognition systems are regarded as being likely to constitute violations. Such discussions and evaluations of risk are being conducted especially with regard to the use of AI in fields such as criminal prosecution and migration. The first part of the conference was then concluded with a discussion moderated by Prof. Tatsuhiro UENO (Professor of Law at Waseda University).

Subsequently, the second part of the conference, which was on the effect of artificial intelligence on civil law, started with a presentation made by Prof. Nariaki YAMAGUCHI (Professor of Law at Waseda University) on the impact in Japan. He focused his presentation on cases where the use of AI caused personal damages and the resulting civil liability was in question. Here he focused on self-driving cars and on the use of AI in the medical

field. In Japan, it is the prevailing opinion that the controller or user of AI generally carries the civil liability for damages caused by errors or the like. Constructing a liability scheme where AI itself is responsible for damage finds, at present, only minimal support in Japan because the damaged party would not be able to claim any damages. However, in cases where no one can be assigned liability and a fund or different financial source for the purpose of compensation exists, it might be possible to create such a civil responsibility for the AI entity itself in the future as is being discussed for AI in the medical field.

The second presentation of this part, which dealt with the impact in Germany, was delivered by Prof. Dr. Wolf-Georg RINGE (Professor of Law at the University of Hamburg). His talk focused on algorithms and their important role within today's financial markets. The rapid development of algorithms makes the wide expansion of self-learning AI – i.e. AI which is able to make autonomous decisions – only a question of time. Within civil law, especially the legal personality of AI as well as civil liability are at question. Prof. RINGE finds the idea of ascribing AI a legal personality of its own as rather problematic and urges legislators to resolve the problem by introducing a system of strict liability for the producers of AI. However, such strict liability should be restricted by the condition of foreseeability. Furthermore, situations in which the user can be held liable should be outside the scope of any such liability. The new system should not discourage developers of AI, as AI is likely to innovate our economies in the future. The second round of discussions was moderated by Prof. Tadao KOEZUKA (Professor of Law at Waseda University).

In the third part of the conference, the impact of artificial intelligence on criminal law was discussed. Prof. Sōta ENDŌ (Professor of Law at Waseda University) gave the first presentation on Japan. He focused on the discussion on the criminal responsibility of AI itself as well as the protection obligations of producers of AI. What is problematic about AI in criminal law is that proving the criminal causality of events caused by AI is likely to become increasingly difficult as the decision-making process might be inaccessible. However, the use of AI should still be allowed as long as it is for the social well-being. Therefore, clearer criteria on the permissibility of using AI should be discussed and common ground should be sought. Such criteria could then constitute protection obligations whose breach would be necessary to establish criminal responsibility for the producers in respect of a negligence-based crime. Right now, discussing the protection obligations to be fulfilled by producers before and after market entry and finding a balance between allowing the use of AI and protecting social well-being seem to be the most urgent issues in preparing for a future in which AI will gain more and more importance.

Thereafter, Prof. Dr. Prof. h.c. Arndt SINN (Professor of Law at the University of Osnabrück) delivered his presentation on the impact of artificial intelligence on criminal law in Germany. His presentation was focused on the use of AI within criminal justice. AI has the potential to facilitate criminal justice in many aspects. It could even make final decisions on behalf of prosecutors or judges. However, although AI could facilitate many processes, AI does not have the ability to experience living as a human-being or to understand human thought processes like human prosecutors or judges. Therefore, it could be problematic to let AI make such invasive decisions, e.g. deciding if a suspect should be prosecuted or even rendering a final criminal judgment. Therefore, the use of AI within criminal justice can only be considered in a supporting role, especially when considering the rights of suspects as well as the founding principles of criminal procedure law and constitutional law. The ensuing discussion was then led by Prof. Dr. Dres. h.c. Makoto IDA (Professor of Law at Chūō University).

The fourth part of the conference dealt with the impact of artificial intelligence on public law. The first presentation on the impact in Japan was made by Prof. Tatsuhisa TAMURA (Professor of Law at Waseda University). He explained the chances and risks of using AI within the Japanese administrative system and discussed possible frictions with Japanese constitutional law. On the one hand, AI could facilitate the work of many officials in Japan. On the other hand, the Japanese administrative authorities are bound to the constitutional principles of guaranteeing appropriate procedures, making decisions aligned with the public will, and promoting academic freedom. In order to use AI in accordance with these principles, a clearer set of rules will be required in the future, as legislation regarding AI has not been undertaken to the necessary extent yet.

The second presentation in this part was given by Prof. Dr. Silja VÖNEKY (Professor of Law at the University of Freiburg) on the impact of artificial intelligence on public law in Germany. She focused on the regulations of AI systems produced and used by private actors in public law (including European and international law), e.g. the regulation of medical products or self-driving cars. In international law there is still no binding treaty regarding the regulation of AI. However, there are several soft law norms, e.g. the OECD AI Recommendations. Furthermore, the EU is in the process of enacting a regulation having binding character for its member states. This regulation is, however, not expected to include a binding authorization system for AI systems even where they might present a high risk of violating fundamental rights. In the future, states might consider concluding binding treaties in order to identify and reduce risks of AI systems on a broader level. Additionally, an authorization mechanism for systems likely to violate fundamental rights could be reconsidered. The final

round of discussions was moderated by Prof. Dr. Masanori OKADA (Professor of Law at Waseda University).

The conference was concluded by the closing remarks of Dr. Jan GROTHEER.

On the whole, the conference can be evaluated as very successful. It was the first in-person conference of this kind since the beginning of the COVID-19 pandemic despite the still ongoing restrictive entrance procedures in place in Japan. The discussions and the exchange of opinions were very fruitful as the audience in live attendance was proactively involved in the Q&A sessions. At the same time, viewers were able to take part by means of the conference's live online broadcast, which enabled many more people to enjoy the conference than the number of seats available in the Ono Auditorium, which was still limited due to COVID-19 measures. All in all, the conference showed that the legal issues concerning artificial intelligence in Germany and Japan are quite similar. Therefore, it was helpful and interesting to become more familiar with each other's opinions and experiences as well as ideas regarding solutions for legal issues that may arise in the future.

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