THE FUTURE LEADER
——The First China International Legal Elite Camp,
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Theme Salon Project
——Promoting Economy through the Unification of Dispute Resolution Mechanisms

By Team Three: Komamon

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Promoting Economy through the Unification of Dispute Resolution Mechanisms

Delivered by Junyuan Deng

Background

China and Japan are Asia's two largest economies pivotal, since the 1980s, the global economy has two notable trends: one is the rapid development of global economic integration, the other is bilateral economic and trade cooperation zone leaps and bounds, and thus the rise of a number of regional trade agreements signed wave. The 1990s, Japanese and South Korean scholars proposed building the idea of Japan and South Korea FTA. Really touched the East Asian countries to accelerate regional cooperation thing 1997 outbreaks of the financial crisis, which forced the East Asian leaders have to consider how to deal with and to cooperate. Because we understand that the only union to self-improvement, in order to meet the recovery and development of East Asian economies, economic globalization and the challenges of regional blocs.

Recalling occurred between Japan and South Korea trade disputes, in 2000 South Korea's imports of Chinese garlic levy 315 percent of the high tariffs on Chinese imports in Japan in 2001 green onions, fresh mushrooms, rushes three kinds of vegetables implement emergency restrictions that led to a trade dispute. In addition, the integration process in East Asia, we are still faced with many problems to be solved, such as: environment and energy issues, historical issues and so on.

In the 21st century, NAFTA, the EU continues to develop, in the global economy in the larger context, the trend is clearly to strengthen regional integration in East Asia requirements. East Asian integration, not only can promote rapid economic development of East Asian countries, but also conducive to the full mediation economic model. As the saying goes: the economic base determines the superstructure. The East Asian economic integration is inseparable from the law, and ultimately wants to achieve integration of East Asia inevitable legal coordination.

Today, according to the Japanese Asahi Shimbun reported that China recently in the eastern part of air pollution situation worse. From China, "border" of a contaminant in Japan is less than or equal to 2.5 microns in diameter particles. Hereinafter referred to as "PM2.5", also called particulate matter into the lungs. Typical of which is a diesel engine and the exhaust gas discharged from the factory contained dust. Its diameter is about hair diameter of 1/30, once they are inhaled into the lungs rapidly, causing a variety of inflammation, asthma, and other symptoms of arrhythmia, may also cause lung cancer. Meanwhile, the Japanese nuclear accident, an environment for China Northeast also has a certain impact. Between China and Japan, however, does not regard the relevant resolution mechanism. Accordingly, we can learn about the EU-related dispute settlement mechanism.

Delivered by Xuan Shao:

Force(voilence or war) to Diplomacy to law

EU'S DISPUTE SETTLEMENT PRACTICE

Specialty——Judicialization

Common standard made through treaties

INSTITUTIONS ABOVE DIFFERENT COUNTRIES

European Court of Justice

European Court of First Instance

European Free Trade Association Court

EUROPEAN COURT OF JUSTICE'S MODEL

Composed of 15 judges and 8 prosecutor.

Judges' decisions is out of the control of voters and they are not exposed to the politic pressure from the government.

This system is trying to make the court independent from all the goverrntment.

PRINCIPLES OF THE LEGAL PROCEDURE

EU's Law owns the highest effectiveness beyond any single countries' law.

Clauses of EU's Law can be cited directly by the court. That means people can ask court of any member state to protect their right written in this law and ask member government to comply with their duties.People can file at the EU's court against a member state to ask it to pay for their lose.

FUNCTIONS OF INDUSTRY ASSOCIATIONS

In EU countries, industry associations provide lots of information about trade and technology to European Commission and EU member states' government.

In commerce diputes, industry associations may give the companies stronger power to help them to defence their rights. That may help promote the vitality of this mechanism

FEASIBILITY OF THIS MODEL

To follow this model, member countries need to share a simmilar legal and political background, and they need to have cultural and historical identity.

In history, most of the East Asia belongs to Chinese legal system, which have a deep influence on the legal system today.

And in modern times, most East Asia countries suffered from the colonization of western countries, and we transplanted western law either possitively or passively.

Especially, our process of legislation was greatly influenced by Japan, so that we have a lot in common, thus it's easier for us to share one legal system to deal with disputes among East Asia countries.

DIFFICULTIES IN ESTABLISHING AN INDEPENDENT INSTITUTION

But since we are in different level both in technological development and legislation development, it's no easy job for us to find a common sandard for all the countries to follow.

And taking political disputes among this reigion into consideration, it seems unrealistic for us to establish a independant institution to solve commecial distutes. Further integration still needs a long way to go.

PROBLEMS IN EXECUTION

Although EU's courts are beyond the power of every sigle government, when come to the process of execution, member countries sovereign rights are against EU's power. Because of the absence of evecutive organ, governments still often resort to retaliatory measures to deal with disputes, in which process comparably backward countries are in disadvantages.

PROBLEMS ABOUT TRADE BARRIERS

To make a common standard to be based on when dealing with disputes, EU countries have made lots of treaties for member countries to follow.

Taking EU's environmental law as an example, the standard made by developed countries is difficult for developing contries to follow. Thus their cost will rise, otherwise they have to suffer from punishment, which will badly attack their economy.

NAFTA'S MODEL

Great disparities exist among NAFTA's member States, and taking historical matters as well as differences in their legal systems into consideration, it's unrealistic for them to establish an institution like EU's courts to solve their commercial disputes. So they choose a more flexible way.

INSTITUTIONS

Free Trade Commission

When disputes appears, any members can apply to start the conference, which must be open in 10 days.

The Commission doesn't act as a neutral judge, its obligation is to promote the discussion and coordination. The discussion is restricted within 30 days which can be prolonged if the dispute can't be solved.

The Arbitration Panel

Be composed of 5 experts who are agreed by all the member states. They can come from either NAFTA member states or other countries.

There are strict regulations for them to follow when unify their opinions.

The decisions are made according to NAFTA's agreement and other standards in certain fields.

The Panel's agreement can provide a solution to the dispute.

If one country refuse to give a plan to deal with it according to the solution, the opposite site may resort to economic sanctions in a suitable way.

FEATURES OF NAFTA'S MODEL

No Legal Institution to deal with disputes.

But detailed dispute settelment scheme. There are 6 different schemes in NAFTA's agreement in 6 seperate fields. These schemes are the basis of negociations and discussions.

Bind political strategy and legal strategy together, and highlight the function of negociation and discussion, which is pretty flexible and free.

FEASIBILITY OF THIS MODEL IN EAST ASIA

In history, East Asian countries are under great influence of Chinese culture. Confucian morality is shared by many contries like China, Japan and Korea.

In East Asia, people share the common value of "He", which may partly explain why people in these countries won't make legal actions as their first choice confronted with disputes. Thus mostly we prefer negociation and discussion as our solution.

Thanks to the common values, costums as well as common culture in these countries, it's easier for us to reach an agreement through negociation.

But learned from NAFTA's model, a detailed schemes and rules to deal with these disputes should be esdablished.

DEFECT OF THIS MODEL

Negociations and discussions are more flexible and this may lead to the problem that countries which are stronger economically may indulge their power in these

process, and other countries may be at disadvantage.

Delivered by Haifan Hu:

Till now, we have been aware of the facts that a great number of disputes exist among East Asian countries like environmental problems, the PM 2.5, the nuclear pollution and so on. Also, we have got a basic sense of the methods adopted by the EU. Now, we would like to present our thoughts about the ways we can go in East Asian countries.

We believe, the foundation to start to talk about the solution to the disputes between East Asian countries is to clarify or classify the concept, disputes.

For the sake of this presentation, we divide disputes into two major categories: First, the disputes concerning public law issues, for instance, territory, natural resources and other issues involving sovereignty; second, the disputes over private law issues, such as contract law, torts and so forth.

As a matter of fact, we should admit that the first category, namely the disputes concerning public law issues is very sensitive and usually involves the core interests of some countries. Therefore, it is our position that this kind of dispute should be resolved in accordance with the principle of sovereignty and every country cannot be forced to settle the dispute based on any country's domestic law, unless, there are existing binding treaties between the disputed countries or the disputed countries reach an agreement. That is the solution to disputes involving public law.

Our focus is on the solution to private law disputes and, that, is the kind of dispute can be resolved successfully through the process of legal integration.?

Through our research on how the European Union resolve the conflicts between member states, we have thought of three possible ways:

First, treaties. It is universally acknowledged that countries should obey the treaties which they have agreed to be bound. Hence, if countries can reach an agreement and finally create a treaty, then the subject matter of the treaty can be settled successfully. And this way is very possible since countries may not have such huge differences in the private law area as public law does. But, what if countries cannot have a treaty? Our thought is to engage the conflict of laws rules. Using conflict of laws actually is not very fair and efficient, but it indeed can play the supplementary role. Maybe a way to refine it is to confirm some fundamental choice of law rules or even like EU, create a convention to unify the choice of law rules.

Second, the establishment of an powerful institute or organization. Like EU, East Asian countries may establish a central organization to hear the disputes between countries from this area and make a binding decision. Or, a number of organizations can be established. For example, electricity association, maritime association and so on. But we do know a few problems may exist. Who can be the leader of these organizations, how to distribute the expenses, how to enforce the decisions of these organizations. These problems may need to be studied further.

Last but not least, arbitration. Nowadays, arbitration has been a major method of dispute resolution. It has many shining advantages. Such as neutrality, the disputes can be decided by the tribunal but not the court of any country. Moreover, the disputed parties can select the arbitrator they trust. Flexibility and efficiency are also of great value. Someone may ask, which law should the tribunal apply to decide the case. Well, the paramount principle is party autonomy, therefore, the law should be the one chosen

by the disputed parties with mutual consent. Assuming that the parties cannot reach consensus, it is our position that the tribunal can select the law to be applied to the case. The rationale is that parties have consented to arbitration and it is themselves who choose the arbitrator they trust. Parties should be consistent with what themselves have done or promised.

To conclude the solution, we have put forward three methods to settle the disputes over private law. First, to conclude treaties supplemented by choice of law approach. Second, to establish some powerful institutes or organizations. Third, to refer the disputes to arbitration.

Delivered by Yuuka:

We have three points.

First, many disputes,such as environmental problems,have no border.

Second, we should cooperate as a whole East Asia.

Finally, we refer to the relation between this presentation and this camp.

Now,in East Asia,three countries-China,Japan,and South Korea are developing extremely fast.

Besides,we are faced with many problems.But these problems don’t just involve these three countries.Considering the extent of these influence,we can’t draw a clear boundary.

So we must not ignore countries in neighboring area regardless of their power.We should cooperate by the establishment of an organization as a whole East Asia,or conclude more treaties or refer the disputes to arbitration.By the improvement of dispute resolution,investment may develop on a fast track.

As well,we think this camp plays a very important role.In this camp,many students who intend to be lawyers assemble,study and argue here.This is very meaningful.At the first day of this camp,Dean Han said that we wanted to widen the circle of membership in East Asia.It is indeed significant for East Asia to achieve integration on the methods of dispute resolution.

This is all our presentation.Thank you for all listening.

Comments:

1. The team three has a pretty clear logic. The presentation of each member is well-organized. The issue of integration is performed in a profound and professional way.
2. Team three has a mutual presentation. Everybody has a good attitude and is well-prepared. To use EU and NAFTA as examples is creative and really a typical sampling.
3. Generally a good presentation but there is an additional advice that you should emphasize on different features of different disputes and also different occasions of different countries.
4. Pretty good job for your presentation. You've chosen a good point to start your show. But you could have done better if you could dig a little bit more into the topic.