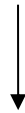


Promoting Economy through the Unification of Dispute Resolution Mechanisms

1980s

**Booming of Global Economy Integration
Booming of Bilateral Economic Relations
Cooperation**



1990s

Conceive the Establishment of



1997

Financial Crisis in East Asia



East Asian Integration



○ Japan and South Korea trade disputes

1、 **South Korea**



China

Japan



China

other problems :
environment
and energy
issues, historical
issues and so
on.



- 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
- conducive to the full mediation economic model.





- However, China and Japan did not pay attention to the relevant resolution mechanism.
- Accordingly, we can learn about the EU-related dispute settlement mechanism.



THE GENERAL TREND IN INTERNATIONAL DISPUTE SETTLEMENT

Power Oriented → Rule Oriented

Force (violence or war) → Diplomacy → 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 tring to make the court independent from all the governtment.



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 disputes, industry associations may give the companies stronger power to help them to defend 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 similar 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 positively 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 single government, when come to the process of execution, member countries sovereign rights are against EU's power.
- Because of the absence of executive 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 countries 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 settlement scheme. There are 6 different schemes in NAFTA's agreement in 6 separate fields. These schemes are the basis of negotiations and discussions.
- Bind political strategy and legal strategy together, and highlight the function of negotiation 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 countries 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 negotiation and discussion as our solution.



- Thanks to the common values, costumes as well as common culture in these countries, it's easier for us to reach an agreement through negotiation.
- But learned from NAFTA's model, a detailed schemes and rules to deal with these disputes should be esdablished.



DEFECT OF THIS MODEL

- Negotiations 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.





SOLUTIONS TO DISPUTES

Two Categories Four Approaches



DISPUTES

- First, disputes concerning public law issues
- Second, disputes over private law issues



PUBLIC LAW DISPUTES

- Principle of sovereignty
- Treaties
- Explicit consent
- Negotiation



PRIVATE LAW DISPUTES

- Treaties + Conflict of laws
- Centralized institute or organization (EU, but with East Asian characteristics)
- Arbitration (mandatory, treaties, private law disputes with East Asian characteristics)



SUMMARY

We have three points .

1 . Many disputes, such as environmental problems have no border.

2 . We should cooperate as a whole East Asia.

3 . The relation between this presentation and this camp.



1 . MANY DISPUTES, SUCH AS ENVIRONMENTAL PROBLEMS HAVE NO BORDER.

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.

2 . WE SHOULD COOPERATE AS A WHOLE EAST ASIA.

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.



3 . THE RELATION BETWEEN THIS PRESENTATION AND THIS CAMP.

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.



