The Efforts and Prospective Cooperation of UNCITRAL in Asia:
Taking International Commercial Arbitration as Example

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On 25 June 2010, the United Nations Commission on International Trade Law (UNCITRAL) adopted the revised UNCITRAL Arbitration Rules. The rules have been commenced on 15 August 2010 and apply to any arbitration agreements concluded after the date. Given UNCITRAL performs the task to further the progressive harmonization and modernization of the law of international trade, and observing the complex situations and diverse legal systems in Asia, a study of UNCITRAL’s work in arbitration field in Asia will enable to better understand the efforts of UNCITRAL in promoting the international commercial arbitration in the region. Meanwhile, a discussion about prospective cooperation of UNCITRAL in Asia could be an interesting work of inspiration. Cooperation conducted or coordinated by UNCITRAL and introduction of interactive programmes would probably contribute to improve the regional arbitral professional quality and credibility, which will enhance the harmonization of regional legal environment along with the process of the economic development and globalization in Asia.

I. The Work of UNCITRAL and its Asian Response

UNCITRAL was established by the United Nations (UN) General Assembly in 1966 aimed at elimination of legal obstacles in international society and harmonization of international business laws. Since its establishment, UNCITRAL has been recognized as the core legal body of the United Nations system in the field of international trade law. Some well-known and widely acknowledged international legal conventions and model laws were prepared and issued by UNCITRAL, such as the United Nations...
Convention on Contracts for the International Sale of Goods (GISG, 1980), Model Law on International Commercial Arbitration (1985), UNCITRAL Arbitration Rules (as revised in 2010), etc. Alongside drafting and preparing legislative and non-legislative documents, UNCITRAL gives efforts to promote the adopting and to widen the acceptance of these instruments, and to ensure a uniform interpretation and application of international conventions and uniform laws in the field of international trade law. These efforts safeguard international trade, help to harmonize legal systems and provide a basis for international development.

In line with the original mandate of UNCITRAL from UN General Assembly, the UNCITRAL adopted nine subject areas as the basis of its work programmes at its first session in 1968, namely international sale of goods; international commercial arbitration; transportation; insurance; international payments; intellectual property; elimination of discrimination in laws affecting international trade; agency; and legalization of documents. Among others, priority status initially was accorded to international sale of goods and international commercial arbitration. The Commission has afterwards considered and revised its work programmes on the basis of new developments in technology, changes in business practices, international trends and developments,

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2 UNCITRAL plays an important role in developing that framework in pursuance of its mandate to further the progressive harmonization and modernization of the law of international trade by preparing and promoting the use and adoption of legislative and non-legislative instruments in a number of key areas of commercial law as it indicates in the paragraph below, here lists only typical legislation as examples. What needs to be mentioned is, The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 "New York" Convention) adopted by diplomatic conference on 10 June 1958, was prepared by the United Nations prior to the establishment of UNCITRAL, yet promotion of the Convention is an integral part of programme of work of the UNCITRAL. See the UNCITRAL Guide: Basic Facts about the United Nations Commission on International Trade Law.


4 International payments was also accorded priority status, with trade financing contracts, transportation, electronic commerce, government contracts and insolvency subsequently being afterwards added into its programme. See UN, the UNCITRAL Guide: Basic Facts about the United Nations Commission on International Trade Law, pp. 8-9, para. 21, available at http://www.uncitral.org/pdf/english/texts/general/06-50941_Ebook.pdf. Yet the article concentrates only on the core sector of UNCITRAL programmes namely international commercial arbitration, and makes brief comparison with the work of international sale of goods sector.
economic and financial crises and other forces affecting and shaping international trade. However, facing a large scope of initiatives and proposals from the world wide, whether list a particular topics as a programme in a certain period, many factors should be taken into account, among them global significance, special interest to developing countries, developments in technology and changing trends in commercial practice have to be evaluated.

As far as the topic of this article is concerned, Asia is a developing region, which comprises more than 4 billion people (60% of the world population) living in 46 different states. Fascinating development has been achieved over past years in Asia, and a long run economic growth is foreseen.\(^5\) Except Japan, South Korea and Singapore, countries like China and India- the two fastest growing major economies in the world, as well as major counties in the Association of Southeast Asian Nations (ASEAN) are typical developing countries, are currently undergoing rapid industrialization and social changes. At the same time, Asian countries, due to the huge range of differing cultures, environments, historical ties and government systems, are characterized with a very complex legal plurality. Among them, China, Japan and India as the largest economic entities exist different historical backgrounds and industrial modernization patterns, implement diverse legal systems. Likewise, other Asian countries have completely different situations influenced by different legal traditions.\(^6\)

Because of the divergence in legal system in Asia, it is impossible to harmonize the legal rules in private international law sector in Asia through the domestic legislations in each country in a visible period, thus harmonization and cooperation in international arbitration as an main dispute resolution instrument is essential for building up a sound environment in Asian countries, to eliminate the legal obstacles and to facilitate the

\(^5\) Some 52 countries and states (regions) are located in Asia, among them six states lie partly in Asia, but are considered to belong to another region economically and politically. Asia has the third largest nominal GDP of all continents, after North America and Europe, but the largest when measured in PPP (purchasing power parity). See http://en.wikipedia.org/wiki/Asia, last visited on 1 November 2010.

regional trade, investment as well as social development. This falls right into the authority of UNCITRAL.\(^7\) In recent years, however, despite the fact that arbitration is of ever increasing importance as a means of resolving international disputes, situations concerning the international arbitration in Asia needed to be further improved.

Firstly, substantive laws can not be applied correctly without fair legal procedure. In some cases of international arbitration, although very rare, debates such as the insufficient in transparency, low efficient in arbitral proceeding, shortage in internal administration etc. worth to be noticed and further improved.\(^8\) Needless to say, the proper understanding and conduction of arbitral rules together with strict internal administration of avoidance from any possible corruption in international commercial arbitration play significant roles and safeguard the appropriate implementation of international laws by international arbitral institutions. Given several arbitral institutions are booming themselves along with the regional economic blooming, how to introduce appropriate competition and at same time improve the administration of international arbitral institutions in a complex legal cultural and traditional background in Asia, needs to be paid attention.

\(^7\) Many international Organizations take the mission to improve implementation and adoption of international laws; the article discusses the prospective cooperation of UNCITRAL in Asia.

\(^8\) As an example, criticism has been made in pointing out some insufficiency and existing procedural problems of arbitration institute, the transparency and institutional integrity of the tribunals in it are also suspected, See e.g. Jerome Cohen, *International Commercial Arbitration: Some Reflections of Personal Experiences*, translated by Xiao Kai, *Law Science*, 2005, Vol. 7, p. 44 (杰罗姆·柯恩：《中国的国际商事仲裁:个人经验的一些思考》，萧凯译，载《法学》2005年第7期，第44页). Furthermore, some cases were cited in scattered works. For example, with regard to low efficiency, the lack of interim measure could be a factor, relevant analyses and case cited see China National Metal Products Import Export Company v. Apex Digital, Inc., (175 F. 3d 716 9th.Cir. 1999), see Du Xinli, *International Commercial Arbitration: Theory and Practice*, China University of Political Science and Law Press, Beijing, 2009, pp.184-194; With regard to the need to improve transparency in arbitration, case is cited such as Aguas Provinciales de Santa Fe, S.A, Suez, Socieded General de Aguas de Barcelona S.A. and Interaguas Servicios del Agua v. Argentine Republic (ICSID Case ARB/03/19), the question arose in which the tribunal denied the petition of amicus curiae to have access to and attend the arbitration hearings. See Ignacio Torterola, *The transparency requirement in the new UNCITRAL Arbitration Rules: A premonitory view*, available at http://www.investmenttreatynews.org/cms/news/, last visited on 1 November 2010.
Secondly, the original UNCITRAL Arbitration Rules adopted in 1976 have been used for the settlement of a broad range of disputes arising from international trade and investment transactions, and have been recognized as one of the most successful international instruments in the field of international arbitration. In 2006, the UNCITRAL working group II decided to revise and update the rules, aimed to reflect changes in international arbitration practice over the last thirty years and to solve problems that have arisen in practice and new developments. This revised rules deal with matters untouched previously, amongst others, multiple parties arbitration and joinder, liability, and a procedure to object to experts appointed by the arbitral tribunal. A number of innovative features contained in the rules aim to enhance procedural efficiency, including revised procedures for the replacement of an arbitrator, the requirement for reasonableness of costs and a review mechanism regarding the costs of arbitration. They also include more detailed provisions on interim measures. As a hopeful result, the revisions to the rules will assist in maintaining the UNCITRAL Arbitration Rules as a useful, efficient and effective procedure for dispute resolution. Such results, however, rely on the endeavor of UNCITRAL on constant advocacy, training as well as relevant technical assistance provided in practice, so as to enhance the comprehension of these rules by arbitral institutions, arbitrators, lawyers as well as other participants in arbitration.

Thirdly, arbitrators listed by arbitral institutions should be familiar with disputes arising from international commercial transactions, and qualified as having a high legal attainment as well as professional ethic. Arbitrators in a tribunal should apply the relevant laws, including conventions, Model laws and effective provisions of UNCITRAL and other international organization accurately. For UNCITRAL, for

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instance, only if its texts can be interpreted and applied correctly in arbitration tribunals, the aim of its mandates is achieved. However, there is no denying the factor that some arbitrators in some circumstances are not able to understand and apply international conventions and rules exactly in dealing with cases.\(^\text{11}\)

It goes without saying that the prestige of international arbitration has been undermined, rather only to illustrate that the importance of making efforts to stabilize the quality and efficiency of arbitral tribunals should be emphasized as an indispensable guarantee for appropriate implementation of international laws. In Asia, where the traditional customs overweight the respect to the spirit of rule of law in many areas, such effort is especially needed. Based upon above considerations, there are necessity and practical significance in Asia to reinforce the work in the field of international commercial arbitration. Correspondingly, for UNCITRAL, efforts worth to be taken to promote international arbitration and relevant cooperation projects in Asia.\(^\text{12}\)

**II. Suggested Cooperation of Providing Technical Assistsances in Asia**

UNCITRAL undertakes a range of cooperation programmes and technical assistance activities to accomplish its task of promoting the unification and modernization of international trade laws.\(^\text{13}\) Those activities include organizing briefing, seminars and


\(^{12}\) Comparing to other work fields, e.g. CISG is one of the successful conventions drafted by UNCITRAL so far, which has been ratified by 76 countries and States and paved an optimism and benign road for the advance implementation and ratifications of the convention. Nevertheless, UNCITRAL is provided a large mandate by UN General Assembly, and its working areas focus on a number of sectors, the article only discusses the work of arbitration and makes no compare in this context.

\(^{13}\) See UN, *The UNCITRAL Guide*, p.22. UNCITRAL adopts a pro-active approach and undertakes its technical assistance activities in cooperation with many other organizations. The Secretariat of UNCITRAL took continuous steps to engage in bilateral cooperation with a number of organizations, including the Common Market for Eastern and Southern Africa (COMESA), the Hague Conference on Private International Law, the International Council for
participating in conferences to familiarize participants with UNCITRAL texts and their use; providing advice and assistance to international and other organizations, such as professional associations, organizations of attorneys, chambers of commerce and arbitration centers, on the use of UNCITRAL non-legislative texts; and organizing group training activities to facilitate the implementation and interpretation of modern commercial legislation based on UNCITRAL texts by judiciaries and legal practitioners, etc. However, in recent years, notwithstanding a number of activities around the world, comparably few projects in arbitration field such as training programme and academic seminar cooperated with UNCITRAL have been carried out in Asia. As mentioned


These are all regular forms of technical assistances provided by international organizations, according official publications of UNCITRAL and some other international organizations such as UNDP and World Bank. For example, OLA also organized programme in forms of training and seminars to promote the use of UNCITRAL texts, see Strategy for an Era of Application of International Law, available at http://untreaty.un.org/ola-internet/action_plan.htm, last visited on 1 November 2010.

The UNCITRAL activities in arbitration field in Asia could be tracked from documents published (online) by main arbitration centers in Asia as well as the publications of UNCITRAL. From 2008 to 2010 e.g., all activities of UNCITRAL in Asia relating to arbitration and conciliation and classified as technical cooperation and assistance include: In 2007-2008, UNCITRAL participated at the International Seminar on the Interpretation and Application of the Convention on Contracts for the International Sale of Goods (CISG) with emphasis on litigation and arbitration in China, organized by the Wuhan University Institute of International Law, The Pace University School of Law Institute of International Commercial Law, and the China Society of Private International Law (Wuhan, China, 13-14 October 2007); participated in an international arbitration conference organized by the Qatar International Center of Arbitration (Doha, 20-22 January 2008); In 2008-2009, the UNCITRAL Secretariat participated in the annual tripartite meeting of the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation, Mongolian National Arbitration Centre and China International Economic and Trade Arbitration Commission to discuss the contribution of UNCITRAL to the development of an international commercial arbitration framework in Central Asia (Ulan Bator, 9-10 October 2008); participate in the international conference “Activating Commercial Arbitration” supported by the Dubai International Arbitration Centre to lecture on the UNCITRAL Model Law on International Commercial Arbitration (Dubai, United Arab Emirates, 11-14 November 2008); The Secretariat also participated in a conference on “The 50th Anniversary of the New York Convention: Challenges to the Judiciary”, to address Asian judges on the implementation of the Convention and on the recently published reports, upon invitation of the National Judges College of China and Cheung Kong Centre for Negotiation & Dispute Resolution (Beijing, 10-13 December 2008); In 2009-2010, UNCITRAL Participated in an Experts Meeting on the
above, it might be necessary for UNCITRAL to continue setting up cooperation in Asia, programmes either in regular forms of training, briefing, seminars or in any other innovative forms, should be welcome. Concerning the function of UNCITRAL as a coordinator of programmes on international laws on the one hand, and the complexities in Asia as analyzed on the other hand, there are two practical proposals we would like to formulate for the arrangement of technical assistances activities.

One proposal is expanding information dissemination and setting up information exchange system for arbitrators, which could be an easy and effective means of advocacy and briefing, given the fact that arbitrators in an arbitral institute are generally scattered in different industry sectors and geographical locations. An online system, in addition to the existing website and press release of UNCITRAL, can disseminate, or send, necessary and detailed information beyond geographical and scheduling barriers directly. As it demonstrated, the website of UNCITRAL, available in the six official languages of the United Nations, provides access to full-text UNCITRAL documentation and other materials relating to the work of UNCITRAL, such as publications, treaty status information, press releases, latest events and news, is one of the main resources for information dissemination. At the same time, UNCITRAL has made efforts to ensure that press releases are issued when treaty actions are taken or information is received on the adoption of a model law. These press releases are provided to interested parties by e-mail and are posted on the UNCITRAL website. See A/CN.9/695, p.17. What is brought forward in this article as a proposal is yet a more active and interactive way of information spread and exchange, such as the mentioned electronic mailing list, which is characterize for real-time, enables users exchange and share information transversally.

Another proposal is utilizing E-learning course and schooling which become a popular method to deliver training programmes. As an example, UN organizations such as United Nations Conference on Trade and Development (UNCTAD) provide E-course to address and provide a comprehensive survey of recent approaches of the organization, see

UNCITRAL performs the function of collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of international trade law, it is also possible for UNCITRAL to set up own information distribution channel. Certainly, it is imaginable that an arbitrator or a scholar in the field of international commercial law would be pleased to receive emails from UNCITRAL briefing a typical arbitral awards, or have chance to take part in E-learning course and discuss common concerned topics, such as the topic about the preparation of the UNCITRAL Guide on the New York Convention.18

Since UNCITRAL have appointed national correspondents in many countries,19 these correspondents could assume the work of establishing and maintaining such mailing lists, and collecting demands on learning programmes in particular subjects. By means of expanded utilization of interactive electronic communication, UNCITRAL conventions, model laws, legislative proposals and model contracts, as well as important cases (Case Law on UNCITRAL Texts, CLOUT) and interpretations could be widely distributed and iterated. Again, based on such idea, further application segmentation can be designed to carry out the function of UNCITRAL. In detail for instance, a newsletter mailing list group for general researchers, students, enterprises legal counselors, etc. could be set up for posting the current work of UNCITRAL, while a discussion mailing list group enabling E-learning, online case study and research could be developed for arbitrators, judges, lawyers and scholars. Expectably, the advantages of such technical assistance programme scheme are cost efficient and interactive friendly. In addition, it can possibly lay a good foundation for further

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18 The UNCITRAL Guide on the New York Convention is under preparation. The Secretariat of UNCITRAL is working on a draft text in collaboration with two experts, Professors George Bermann and Emmanuel Gaillard. It is hoped that the draft text can be presented to the Commission in 2012 or 2013, available at http://www.uncitral.org/uncitral/en/index.html, last visited on 1 November 2010.

19 See UNCITRAL, A/CN.9/SER.C/Correspondents/1/Rev.1.

www.unctad.org; Similarly, e.g. International Development Law Organization (IDLO), which is a permanent observer of the UN, introduced E-learning course for people including government officials and policymakers as well as legal professionals recently to address an effective response to HIV and AIDS, see www.idlo.org; international organizations like WHO, World Bank, IMF provide also active E-learning course in several topics for better policy comprehension or capacity building.
networking and other projects.

Another tentative proposal is developing peer-to-peer method to strengthen the cooperation between arbitrators from developed and less-developed areas and between arbitral institutions, in order to achieve a balanced development in global and regional arbitration. Although the past decade has seen a strong growth in the use of international commercial arbitration, there are few competitive and viable venues for arbitration in Asia comparing to their counterparts in Europe and America when the population and trade volume are taken into account. Many parties involved in international commercial disputes tend to choose those well known significant arbitral institutions like International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and American Arbitration Association (AAA), rather than to choose those near but new arbitral institutions, despite the latter might apply the same arbitration rules as the former and have capable experts to deal with the case, whereas less expensive and more convenient for parties involved.20

At present, the Hong Kong International Arbitration Centre (HKIAC) and the Singapore International Arbitration Centre (SIAC) have gradually attained reputation for efficiency and neutrality as centers for dispute resolution in Asia; Mainland China, Japan, Korea and Malaysia have also been taken steps to promote arbitration, but the development level of arbitration in Asia as a whole is still low.21 Along with the economic growth and expansion of free trade areas in Asia, “increasingly Asian disputes are resolved in Asia” is encouraged, at least it will benefit large amount of local middle-small international trade participants. To this end, it is meaningful to make efforts to improve the quality as well as infrastructure of certain local arbitral institutions, and among them especially to

improve the necessary skills of national arbitrators, advocates as well as lawyers participating in international arbitration.

This aim could be reached through traditional methods such as exchange programme, study tour between arbitral institutions, though these methods are sometimes costly and inefficient. For unlike domestic litigation skills, it is not the case with respect to international commercial arbitration, where traditional methods of training have limited effect in development of professional competence.22 From such point of view, we would like further suggest a project establishing peer to peer linkage between arbitrators from arbitral institutions at different development levels. That means to introduce a mentorship programme, like a directly demand-to-supply mechanism, allowing an arbitrator or an advocate from less-developed Asian country or arbitral institution to find needed resources and practicing experiences directly from an experienced counterpart in London or Stockholm.

Although competition exists among arbitral institutions, sharing professional experiences will not violate the order of arbitral community. In contrast, because the appointed arbitrator in an international arbitral panel determines the right implementation of international laws in a single case from a micro perspective, therefore increased number of qualified arbitrators would improve quality and efficiency as a certain consequence, and further brings growing confidence and credibility of arbitration from clients around the world in resolving disputes arising out of international commercial transactions from a macro perspective. Such an wide-range cooperation programme among arbitrators and arbitral institutions located in various corners in the world, when there is one, can only be coordinated and pushed forward by organization like UNCITRAL due to its appropriate authority and influential capability of harmonization, for an important part of the mandate of UNCITRAL is to coordinate the work of organizations both within and outside the United Nations system, in order to encourage cooperation between them, and UNCITRAL has kept intimate relationship

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with many organizations such as the Association for International Arbitration (AIA), the International Bar Association (IBA), chambers of commerce and major arbitration centres around the world.  

III. Conclusion

In Asia, where characterizes with the world's most populous region but very diverse developing levels as well as legal systems, strengthening the impact and implementation of international commercial laws by means of strengthening international arbitration has significant meaning, which facilitates and enables Asian countries and local enterprises to participate in global trade and commercial competition as well as to resolve commercial disputes more effectively. The harmonization of international commercial laws in Asian countries might be a long process, therefore there could be a common wish in Asia, to develop regional international commercial arbitration institutions; to train arbitrators and lawyers to obtain high quality and practical experiences; to improve the credibility and confidence of local arbitration institutions; and to solve international and regional commercial disputes by tribunals applying relatively uniform procedural rules.

In order to achieve a cooperative and interactive effect and fulfill its task, UNCITRAL may strengthen cooperation with governments, arbitral institutions and academic institutes with a more positive way and provide necessary technical assistances. For arbitral institutions and practitioners in Asian countries, some routine projects in a cooperative framework are certainly preferred. Meanwhile, innovated wide-range and interactive projects on information exchange and capacity building for institutions as well as to individual arbitrators might be also warmly welcome. The good conduction of international commercial arbitration could be better achieved through cooperation at different levels of international organizations, state governments, implementing agencies and arbitral practitioners. It is yet a possible prospect, that international

commercial arbitration in Asia could achieve a new era through a series of efforts taken and coordinated by UNCITRAL.