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A Study on the Tasks and Prospects of International Commercial Arbitration in Northeast Asia

동북아시아 국제상사중재의 과제와 전망에 관한 연구

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Ⅰ. Introduction

The rapid expansion of global trade in the 21st century has brought new dynamism to international trade in Asia. The growth in trade of goods and services, electronic commerce, information technology and multinational commercial structure has made business relationships complex. As a result, there has been a rise in such disputes as in the field of intellectual property rights, international investment, insolvency, unfair competition and online business[1]. I think there is now a vital need for business people to choose methods of dispute resolution. To what extent is it better to resort to arbitration than to use ADR methods. This is completely different from the choice between state courts and arbitration. An arbitration agreement excludes state courts intervention on the merits of a case.[2] ADR is a relatively new but already widely used acronym. It is understood differently in various parts in the world. The development of international commercial arbitration in Asia is hardly surprisingly given the enormous economic and commercial development of countries in this region [3]

Asia is a very large contingent. Arbitration within the region can be broken down into three sub-regions. There are South Asia , East Asia and Northeast Asia which comprises China, Russia, Japan, Kazakhastan, North Korea, Mongolia and the Republic of Korea. In each region there are ADR Institutions and Associations. Among the available dispute resolution alternative to the courts, arbitration is by far the most commonly used internationally . The reasons for this are clear; final, binding decisions, international recognition of arbitral awards, neutrality, specialized competence of arbitrators, speedy, economy and confidentiality.[4] Within Northeast Asia itself, there are significant developments in some countries but in another countries have not been so . Especially the Republic of Korea is emerging as a significant player in international arbitration in term of its case load and expertise. The lack of sufficient information about international commercial arbitration should be problem to parties concerned in the region. With this caveat, this thesis will be focused on the following three topics : (1) A survey of Main International Arbitral Institutions in Northeast Asia; (2) Current Activities

1) United Nations General Assembly(official records sixty-first session supplement No,17, A/61/17), Report of the United Nations Commission on International Trade law on the work of its thirty-ninth Session, 19 June - 7 July 2006, p. 32

2) International Trade Centre(UNCTAD/WTO), Arbitration and Alternative Dispute Resolution, How to Settle International Business Disputes, 2005, p. 51.

3) Michael Pryles, Arbitration in East Asia, East Asia and International Commercial Arbitration, ICC/KCAB/ KOCIA Conference, 26-27th October 2006, ICC. KCAB, KOCIA, p.1

4) ICC, International Court of Arbitration, ICC, 2006, p.4-p.5

and Arbitration Practice of the Korean Commercial Arbitration Board(KCAB); and (3) Tasks and Prospects of International Arbitral Institutions in Northeast Asia

Ⅱ. A survey of Main International Arbitral Institutions in Northeast Asia

This chapter surveys several prominent and representative institutions in Northeast Asia involved in the administration of international arbitration or its refinement, or both. It is not an exhaustive comparison of competing institutions, but rather a sampling of institutions falling into several, somewhat overlapping, categories. The goal of this chapter is to identify central characteristics, common features and distinguishing attributes. The well-known arbitral institutions have promulgated rules of procedure to govern the conduct of the proceedings, including the selection of arbitrators, if not specially provided in the parties' agreement.[5]

1. CIETAC(CHINA)

China has emerged as an economic power and a major player in international trade in the past quarter century. Along with the increase of both domestic and international trade activities, disputes have risen in frequency and commercial arbitration has gradually become a preferred dispute resolution. China's history of arbitration can be traced back to 1950's, when two foreign-related arbitration institutions, currently known as China International Economic and Trade Arbitration Commission(CIETAC) and China Maritime Arbitration Commission(CMAC) were founded. Domestic arbitration also evolved during the years, but there is no uniform legislation on arbitration until mid 1990s. In 1994, China promulgated its first arbitration statute, which has embraced most modern principles underlying commercial arbitration and is regarded as a milestone in China's history of arbitration. Under the statute, as many as 183 local arbitration commissions have been founded across China. So currently there are as many as 185 arbitration commissions in China. The past ten years have witnessed a fast increase of the arbitration caseload. Recent statistics show that overall caseload of all the 185 arbitration commissions in 2004 amounted to around 17,000 cases,

5) Claude R. Thompson, Annie M.K. Finn, "Managing an Int'l Arbitration", AAA, May-June 2005, p.77.

involving as high as RMB 50 billion yuan. The success shall be attributed to the introduction of the arbitration statute and China's policy in favor of resolving disputes through arbitration.

CIETAC was set up in 1956 under the China Council for the Promotion of International Trade(CCPIT). It handled only foreign-related(international) disputes before 1998, but has accepted both domestic and foreign-related disputes since then. CIETAC has two sub-commissions in Shanghai and Shenzhen respectively and 19 liaison offices across China. In this history of half century, CIETAC has handled 10,000 cases in total, most of them being foreign-related(international) cases. "CIETAC has revised its procedural Rules in the beginning of 2005. The new Rules came into force on May 1, 2005." [6]The changes made are designed to respect the party autonomy at a higher level, to streamline the procedure for greater efficiency and economy and to fill in certain gaps. They also serve to increase the transparency of the arbitral process for the benefit of the parties. The new Rules have not only been warmly welcomed by the legal community, but also set an example for other Chinese arbitration institutions. The changes appear in almost every important stage of the arbitral procedure, including the jurisdiction, the composition of the tribunal, the conduct of hearings and the making of the award, etc.

2. ICAC(RUSSIA)

International Commercial Arbitration Court(ICAC) at the Russian Chamber of Commerce and Industry four years ago celebrated its 70th anniversary. The predecessor of ICAC, Foreign Trade Arbitration Commission(FTAC) at the All-Union Chamber of Commerce was established by a Decree of the Central Executive Committee and the Council of the People's Commissars dated 17 July 1932 as a permanent non-state body for settling by arbitration disputes arising from foreign trade transactions. The first award of FTAC was rendered on 15 November 1933. For decades FTAC remained de jure and de facto the exclusive foreign trade institutional arbitration in the former USSR which by providing effective services in the arbitration field gained considerable reputation both domestically and internationally.[7] In 1987 FTAC was renamed into the Arbitration Court at the USSR Chamber of Commerce and Industry. Later in 1992 this Arbitration Court due to the collapse of the USSR was attached

6) lijun Cao Latest Development of Arbitration in China, Harbin International Commercial Arbitration Conference, CIETAC, October 28, 2005. p.5.

7) Alexy Kostin, Recent Practice in International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry, Harbin International Commercial Arbitration Conference, CIETAC, October 28, 2005. p.15.

to the Russian Chamber of Commerce and Industry. Finally by virtue of adoption in 1993 of the Law on international commercial arbitration ICAC received its present name. Prior to entry into force of the aforementioned law there was no general regulation pertaining to international commercial arbitration in the country and consequently no legal possibility to establish other arbitration centers besides FTAC and Maritime Arbitration Commission (established in 1930 by the analogous Decree). When drafting the Law of 1993 the legislators deemed it appropriate to pay special attention to the oldest foreign trade arbitration institutions by introducing two Annexes to the Law; Annex 1-containing the Charter of ICAC and Annex 2- containing the Charter of MAC. Annex 1 constituting the foundation of ICAC's status defines it as independent permanently functioning arbitral institution which is the successor of the Arbitration Court(FTAC) established in 1932. This clearly defined succession gives ICAC the authority to settle disputes under agreements of the parties referring to previous names of the Court. The Present Rules of ICAC introduced from 1 May 1995 are based on the provisions of the Law of 1993 as well as UNCITRAL Arbitration Rules and previous ICAC Rules.

In 2004 ICAC received 162 claims from companies coming from 42 countries. In the proceedings comprising Russian participants opponent parties were coming from CIS and Baltic states(65 cases), Eastern Europe(14), Western Europe(45), North and South Americas(27), Asia(20), Africa(2). In 30 cases both disputing parties were non-Russian. In 24 claims filed by entities incorporated under Russian legislation the opponent was an organization with foreign investments. As to the nature of the disputes most of them were related to the international sale of goods contracts(57%), loans and credits(21%), labor and works contracts(6%). During 9 months of 2005 ICAC received 111 claims from companies coming from 36 states. Foreign participants to the disputes originated from CIS and the Baltics - 27, former Eastern Europe - 13, Western Europe - 38, North and South Americas - 14, Asia - 7, Africa - 1. Besides traditional criteria of independence and impartiality, ICAC arbitrators must possess adequate special knowledge in resolving disputes related to ICAC jurisdiction(para. 2. 1 of the Rules).

This requirement is tightly linked with the tradition, started already since 1932, of maintaining the list of arbitrators(open to the public) endorsed by the Chamber of Commerce and Industry. Prior to 1995 the list comprised only Russian citizens and it was impossible to elect an arbitrator outside the list. ICAC Rules of 1995 introduced a dual change in this direction; foreigners were included in the list and parties were free to elect a non-listed

arbitrator.

The present list of arbitrators comprises about 170 persons of whom more than one-third are prominent foreign lawyers, some of them residing in Moscow. The tribunal normally consists of three arbitrators. The parties however can agree that a case be handled by a sole arbitrator thus reducing the arbitration fee by 15%.

3. JCAA(JAPAN)

The Commercial Arbitration for either international or domestic had not been frequently used in Japan. The majority of commercial disputes had been resolved by litigation. Japan's arbitration system had lagged behind the international standards as symbolized by its century old arbitration law.

"However, a New Arbitration Law has been enforced in March 1, 2004, which is based on the UNCITRAL Model Arbitration Law with a few amendments." [8] Except for arbitrations involving consumer contracts and individual labor contracts, the Arbitration Law has essentially adopted , with respect to most issues , the same provisions as those under the UNCITRAL Model Law.[9] The Japan Commercial Arbitration Association(JCAA) updated its Commercial Arbitration Rules in conformity with Japan's New Arbitration Law. And ADR basic law(law relating to promotion of use of processes of dispute resolution outside court) has been promulgated and will come into force in the beginning of 2005. This Law applies mainly to mediation by the authenticated non-arbitration ADR service providers. To meet with ADR basic law and also with government efforts to improve the ADR mechanisms, the JCAA enacted the new mediation rules for resolving mainly domestic business disputes, and has set up a mediation center to provide the mediation services and promote mediation in collaboration with the chambers of commerce and industry across the nation. The JCAA has four regional offices in Osaka, Kobe, Nagaya, and Yokohama. The JCAA has signed cooperation agreements on arbitration and other ADR services with 43 international ADR institutions, and established a stable and cooperative relationship with them. According to statistical data on arbitration cases for the past five years(2001-2005), the JCAA has received

8) Masaharu Onuki, International Commercial Arbitration, Harbin International Commercial Arbitration Conference, CIETAC, October 28, 2005. p.24.

9) Hiroyuki Tezuka, Jurisdiction to determine jurisdiction : The effect of arbitral authority and the timing of judicial review; japan's approach under its new arbitration law based upon the UNCITRAL Model law, ICCA Montrel 2006, 18th Congress International Arbitration 2006 : Back to Basics?, May 31 to June 3, 2006.

20 arbitration cases more or less per year involving various kinds of disputes, such as disputes relating to import and export, agency and/or distributorship agreements, licensing agreements for patents, know-how and other IP, joint venture agreement, construction & engineering agreements, international loan agreements and other types of contracts. About 60% of the cases involved a disputed amount of over 100 million Yen(about One Million US Dollars), and 20% of the cases involved a disputed amount of over 1 billion Yen(about One Hundred Million US Dollars). [10]The various nationalities of the parties have included Japan, China, Korea, Russia, USA, Canada, England, France, Germany, and many other nationalities. The JCAA has updated its commercial arbitration rules and practices in conformity with Japan's New Arbitration Law and also international norms. Effective from March 1, 2004, the JCAA has implemented its amended Commercial Arbitration Rules.

4. KIA(KAZAKHSTAN)

Kazakhstan International Arbitrage(KIA) is permanent arbitration institution. On 28 December 2004 Law of the republic of Kazakhstan "On Arbitral Tribunals", Law "On International Commercial Arbitration", as well Law of the Republic of Kazakhstan "On amendments and additions to certain legislative acts of the Republic of Kazakhstan on the issues of activity of arbitral tribunals"have been adopted. The arbitration court is a non-governmental body created by the parties of dispute for the settlement of the latter. Arbitration tribunals can be permanent(institutional) or ad hoc. Distribution of powers among arbitral tribunal and international commercial arbitration is not drawn among certain arbitration bodies(one is only national arbitral tribunal, other only international arbitration), but on the basis of the nature of a dispute. In other words any arbitration court is able to consider both local and international disputes, any individual or legal entity(both resident and non-resident)are able to apply to any arbitration court independently of its name "arbitral tribunal" or "international commercial arbitration". In this case depending on the nature of the dispute either Law on Arbitral Tribunals or Law On International Commercial Arbitration will apply.[11]

If the law of the Republic of Kazakhstan is applicable to the activity of such

10) Masaharu Onuki, The Role of Arbitral Institutions for Asian International Arbitration, ICC/KCAB/KOCIA Conference, 26-27th October 2006, ICC. KCAB, KOCIA, p.2

11) Maidan Suleimenov, New legislation of the Republic of kazakhastan on arbitration, Harbin International Commercial Arbitration Conference, CIETAC, October 28, 2005. p.43.

organizations, the rules of civil code regulating activity of persons being commercial organizations is applied if other is not provided by the legislation of the Republic of Kazakhstan or from the essence of liability.

5. KITAC (North Korea)

As of July 21, 1999 North Korea adopted the <<DPRK Law on External Economic Arbitration>> as one separate law, thus providing the country with the stable legal ground, on which various disputes arising out of the process of external economic transactions are able to be resolved and settled in a professional manner. Under the <<DPRK Law on External Economic Arbitration>>, Korea International Trade Arbitration Committee (KITAC) has enacted its own separate arbitration regulations on the procedures of dispute settlement. In accordance with the arbitration regulations, it settles the international trade arbitration cases, providing legal protection for the parties to a dispute with respect to their rights and interests, and thus, greatly contributes to further amicable and positive progress in economic cooperation and exchanges between the DPRK institutions, enterprises and organizations on the one hand, and a number of foreign corporations and enterprises on the other. Under the DPRK Law on External Economic Arbitration and the Arbitration Regulations of the Korea International Trade Arbitration Committee, any party to a dispute may apply for arbitration to protect its rights and interests. The claimant may apply for arbitration proceedings by submitting to the Korea International Trade Arbitration Committee the written application which includes its name and legal address, its legal representative, the arbitration agreement, the claim, the amount involved and other details, accompanied by the original or copy of the contract, the evidences of violation of contractual obligations by the respondent and other relevant documents. The arbitration committee reviews the arbitration applications in 10 days after its receipt and decides upon acceptance or rejection, and in case of acceptance, the arbitration committee sends the panel of arbitrators, within 30 days after the receipt of the notice of acceptance of arbitration application, and the respondent submits to the arbitration committee the response and evidences together with the selection of his/her arbitrators.

Even if the respondent fails to submit counter-claim, the arbitration proceedings continue. Under the law and regulations the respondent has the right to submit counter-claim, while the claimant may change, cancel ore withdraw his/her claim at any stage of the arbitration proceedings.

The arbitral tribunal composed of a sole arbitrator or three arbitrators hears the arbitration case. Where the parties to the dispute fail to agree on the number of arbitrators or to make their own choice from the panel of arbitrators to nominate the arbitrators , the arbitration committee is authorized to select the arbitrators for the parties , who have the right to request the committee to replace any of the nominated arbitrators.

The date, time and place of arbitration hearing shall be decided by the tribunal of arbitrators in consultation with the arbitration committee, which notifies the parties of the decision at least 30 days before the hearing.

The arbitration takes the form of closed hearing, but open to the public if so required by the parties to the dispute. In the hearing, the claimant makes a statement about his/her claim and then the respondent gives response to it. The statements are followed by cross-examination. When requested by the parties to the dispute, the award may be made not through oral hearing, but through the examination of the written arbitration application and claim, and the statement of defense. The parties to the dispute may apply to the arbitration committee for preservation of evidences, disposal of property security and experts' comments on the case. Award is made within 30 days after the end of hearing. The award is final and binding to the parties to dispute. The party held responsible should immediately execute the awards unless stated otherwise in the award. In case he/she fails to execute the award in time, or the execution is not satisfactory, one can request enforcement to the local court whose jurisdiction covers the place of his/her residence or the property to be executed. [12)]

6. MNAC (MONGOLIA)

Mongolian National Arbitration Court(MNAC) has been running its activities in the field of private dispute resolution for 45 years. The new Law on Arbitration which is based on the UNCITRAL Model law on International Commercial Arbitration has been fixed following some essential changes.[13)]

In order to implement the new law on Arbitration and improve private dispute resolution in Mongolia, MNAC is cooperation with the state organizations such as Ministry of Home

12) YUN Son Ho, The International Trade Arbitration System In the Democratic People's Republic of Korea, Harbin International Commercial Arbitration Conference, CIETAC, October 28, 2005. p.57. Kim Kwang-Soo's interview with YUN Son Ho made during the said Harbin Conference.

13) The difference between domestic and international arbitration is not relevant under the law
The new law accepted court intervention, court support in arbitration and according to the new law the parties are apt to choose institutional or ad hoc arbitration

Affairs and Justice, state courts and legal research institutions and international arbitration institutions. "MNAC has jointly drafted the recommendation to courts of appeal for implementation of Law on Arbitration and Interpretation to Law on Arbitration".[14]

Furthermore MNAC should not allow having bureaucracy or misleading in court procedure for recognition and enforcement of arbitral awards. In beginning of October, 2005 MNAC held the workshop meeting with arbitrators, judges of the state court and advocates. As a result of this workshop meeting they reached cooperation agreement on which practice have to establish in issues of court intervention in arbitration proceeding.

"In order to expand its activities MNAC set up their regional branches in 21 provinces. Recently, MNAC adopted Rules on Financial Disputes and its fee charts."[15] These rules are primarily recommended for financial disputes such as disputes regarding to letter of credit, bank guarantees, consumer loans, and other financial disputes where the parties desire a speedy and inexpensive procedure. The Rules on financial disputes are an alternative to the Rules on arbitration of Mongolian National Arbitration Court. The parties themselves choose which set of rules they wish to apply.[16] In addition, now MNAC are working out the Rules of Expedited Arbitration for minor disputes. The main purpose of these rules is to resolve the minor dispute speedily by one arbitrator. MNAC selects reliable and respected persons with high academic level and strong working ability who could decide the cases impartially and independently as arbitrators in their panel of arbitrators. MNAC frequently trains the arbitrators at high starting point and high level within a limited period of time. During 45 years history, most of arbitrators has held cautious attitude towards work, kept a spirit of independency, fairness and self discipline, making great contributions to the progress of MNAC,

14) The contents are "circumstances exist that give rise to justifiable doubts as to impartiality or independence of arbitrators", "place of arbitration" "not provided the right to be heard of the party", "the arbitral tribunal breached the term of references, which is agreed by parties", "the award is in conflict with the public policy of the State"

15) Altantsetseg, Latest Developments of International Commercial Arbitration in Mongolia,Harbin International Commercial Arbitration Conference, CIETAC, October 28, 2005. p.60.

16) The salient features of the Rules on financial disputes are as follows.
- oral preOhearing shall be held only if a party so requests and if the arbitrator deems it necessary.
- the award must be rendered within 45 days.

Ⅲ. Current Activities and Arbitration Practice of The Korean Commercial Arbitration Board(KCAB)

1. International Arbitration Convention, Arbitration Laws and Regulations.

As for international commercial arbitration, the imminent tasks that KCAB can implement at present can be divided largely into two kinds : first, it's increasing the number of international arbitration cases and maintaining large-scale cases, and second, it's coping well with new business fields, arbitrations for free economic zones (FEZs) and South-North Korea, etc. As Korea entered the international convention regarding arbitration, we can say that there exists no problem in terms of legal or systematic aspect. Korea joined Geneva Protocol on Arbitration Clauses on February 26, 1929, and also signed Geneva Convention on the Execution of Foreign Arbitral Awards on March 4, 1968. Korea also entered UN Convention on the Recognition and Enforcement of Foreign Arbitral Award of 1958 : New York Convention on February 8, 1973. When joining this convention, Korea made a declaration of reservation that it would apply the convention for reciprocity and commercial arbitration only. On March 23, 1967, the nation also signed Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Since an arbitration act was enacted in 1966, Korea has made no fundamental revision of the act. Starting from January 1, 2000, the present Commercial Arbitration Act has been implemented after its enactment with reference to the legislation practices of arbitration acts in advanced countries, Germany and the U.K., etc. and after active adoption of UNCITRAL model law. According to Korea's arbitration act, provisons for both international and domestic arbitrations are being stipulated together. [17]The Korea's act enables processing of ad hoc arbitration or institutional arbitration and civil affairs-related cases as well as commercial arbitration.

17) Kwang-Soo Kim, Latest Developments of International Commercial Arbitration and Management of Arbitration Proceedings of KCAB, Harbin International Commercial Arbitration Conference, CIETAC, October 28, 2005. p.32.

2. Current Activities and Arbitration Practice of KCAB

In Korea, the Korean Commercial Arbitration Board (KCAB) is operating business as a unique and independent organization. Last year, KCAB celebrated the 40th anniversary of its founding. At the early part of its establishment, KCAB received two arbitration cases, but in 2006, it received as many as 215 arbitration applications. In order to invigorate international commercial arbitration, KCAB is staging various kinds of projects : first, newly installed a maritime arbitration team in 2005; second, it dispatches one employee every year to American Arbitration Association for training since 2005; third, it enacted new international arbitration rules; fourth, it set up a liason office at Incheon Free Economic Zone to resolve disputes that can occur in the zone; and fifth, it promotes business related to South-North Korea commercial arbitration to prepare a systematic foundation.[18] Especially, KCAB held 2006 ICC/KCAB/KOCIA Arbitration Conference on October 26-27 on international arbitration. To activate international commercial arbitration in North-East Asia, I think that the role and the efforts of leading agencies like KCAB are more important than anything else. As mentioned, KCAB received 215 arbitration applications in 2006. Among them, international arbitration cases numbered 47, showing an decrease of 11.3% compared with 53 in the preceding year. The international arbitration applications consisted mainly of trade cases with 36 and Last year, maritime affairs-related cases increased sharply. Those cases, which were six cases for the whole year of 2005, recorded 18 cases in 2004. To develop international arbitrations further, however, KCAB will have to be able to induce large-scale arbitration cases in the new areas of international finance, M&A, etc. More often than not, there exist many who are questioning about KCAB's international commercial arbitration procedures. KCAB's international commercial arbitration procedures are not so different from those of other international arbitration agencies. The reason is because KCAB has accommodated the content of UNCITRAL's arbitration rules broadly. KCAB's international arbitrations proceed largely with four stages : first, an applicant must prepare and file an application with its secretariat along with arbitration expenses; second, the secretariat notifies the applicant of its reception of the application and send a notice with attachment of the application to the corresponding party requesting submission of a letter of answer; third, the secretariat organizes an arbitral panel after receiving the letter of answer and notices on the selection of arbitrators from both

18) Kwang-Soo Kim, International Commercial Arbitration in East Asia ; Issues, Challenges and Prospects, ICC/KCAB/KOCIA Conference, 26-27th October 2006, ICC. KCAB, KOCIA, p.3.

parties; and finally, the arbitral panel rules an arbitral decision after having gone through examinations. In 2006, KCAB processed 41 international arbitration cases (Average Processing Period was 241 days), and the board shortened the average processing period per case by 2 days compared with 2005. As for international arbitration cases, KCAB has applied one arbitration rule after integration of domestic and overseas rules without installing any separate arbitration rules. But, it has been pointed out that due to the method of selecting arbitrators, low arbitrator allowances, etc., the systemic inefficiency exists processing international arbitration cases. Reflecting KCAB'client-oriented policy in the global era , last year KCAB promoted enactment of new international arbitration rules that can match the international arbitration trend.[19] The New International Arbitration Rules will be enacted as of February 1, 2007 with approval of Supreme Court of Korea as of January 25, 2007. As a result, the board changed the arbitrator selection method from selecting among those from the arbitrator list of its secretariat to a way enabling each party to select one arbitrator freely and also increased arbitrator allowances greatly.

Ⅳ. Tasks and Prospects of International Arbitral Institutions in Northeast Asia

1. Issues and Challenges

For activation of international arbitrations in Northeast Asia, anyway, I think that arbitration agencies of respective countries in the region should spearhead in invigorating arbitration systems and cooperate with each other. To this end, there is also the need to revamp related laws and systems, nurture the secretariat personnel of the arbitration agencies, and identify and foster excellent arbitrators. And bold investments and researches in the new areas should follow as well. In my opinion, arbitrations for free economic zones and South-North Korea might be those new areas. I expect that the successful progress of these two tasks will contribute greatly to the development of international arbitrations in Northeast Asia.

Recently, Northeast Asia is growing into one of world's top three trade spheres along with

19) KCAB, Arbitration News from Korea, 2006 September, p.6.

the EU and NAFTA. The Incheon Free Economic Zone can provide advantageous business environments to those multinational enterprises intending to advance into China. The zone has a geographical advantage linking North America and Europe with an air and sea complex logistics system also integrating Incheon International Airport and Incheon Seaport. Another advantage that can not be excluded among reasons for the zone suitable as a bridgehead for advance into China is abundant manpower in the IT field. In 2003, Korea designated three regions, Incheon, etc. as free economic zones. Of particular note, Incheon induced a total of 33 foreign investment cases valued at US$29.6 billion as of the end of August 2006. With development of the free economic zones, world-renowned enterprises will invest in the Incheon economic block and conduct economic activities, business operation, marketing, logistics, financing, etc. Diverse types of commercial disputes are expected to occur between foreign companies entering those free economic zones and Korean firms from the stage of concluding MOUs and LOIs through signing main contracts. Considering this, the Korean government is providing installation of arbitration organizations in its free economic zone-related laws to resolve commercial disputes that take place in the zones. Investment arbitration is destined to become more important as economic globalization brings about the free movement of more goods and services.[20]

In this connection, KCAB has been operating its liason office in the Incheon Free Economic Zone since October, 2004. Nevertheless, I think that to meet the increasing arbitration demand in the zone, it will be necessary to enhance the functions of the office furthermore.

Although South-North Korea economic cooperation is likely to shrink for the time being due to North Korea's nuclear bomb test on October 9, the North-South economic cooperation exceeded US$1 billion in 2005. With South-North economic exchanges being activated as such, possibility that commercial disputes regarding non-implementation of contract, delivery delay, quality defect, etc. may increase is becoming greater. To prepare for such disputes, South and North Korea has already concluded an agreement on the resolution procedures of commercial disputes and a follow-up agreement on the operation of South-North Commercial Arbitration Council.

According to the South-North commercial arbitration agreement, the Commercial Arbitration Council will be composed of five members and 30 arbitrator group from each side and resolve commercial disputes with arbitration in accordance with common arbitration

20) Bernardo M. Cremades, "Investor Protection and Legal Security in Int'l Arbitration", AAA, May June 2005, p.84.

regulations after designation of an arbitration affairs processing agency. At present, however, the further progress is being delayed except that both sides exchanged the member lists of the Arbitration Council on July 4 2006. Therefore, follow-up measures will have to be made at an early date.

2. Prospects

In view that international commercial arbitration has been recognized by the business and legal communities as the preferable means for resolving transnational disputes, and that past years have witnessed the rapid development of cross-border trade and economic cooperation among countries in North-East Asia and there is still huge potential for development in light of the emerging economic globalization , each international arbitral bodies in Northeast share the view that further cooperation among these institutions will not only advance cooperation of the countries with regard to enforcement of arbitration agreement and awards, but also further encourage the regional economic cooperation and trade development among the countries. In this connection, each institution will endeavor to improve the knowledge about arbitration and perception in its own country. [21] The international enforcement of arbitral awards is covered by various international convention and generally the process is easier than the international enforcement of state court decisions . This is largely owing to the fact that the main convention on this subject , the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention, for short)has been ratified by 139 countries and the number is rising every year. The Republic of Korea and another countries in Northeast Asia encourage North korea to ratify the New york Convention. V. Conclusion

In conclusion, the economies in Northeast Asia, including Korea, are expected to achieve sustainable development, and as an alternative means of resolving subsequent disputes, the demand for international arbitrations also will increase. Therefore, respective arbitration

21) Another possible measure are; 1) Each institutions will recommend to business entities in its own country to resolve disputes between those entities from any other country; 2) These institutions will further strengthen cooperation and offer convenience for conduct of arbitration in its own country by another participating institution whenever possible ; 3) Each institution will make full use of its own potentiality in the field of international arbitration , and foster cooperation with other bodies in exploring of international commercial arbitration in North-South Asia; 4) Each institution will share with others information such as legislation on commercial arbitration, development of institutional arbitration and activities of arbitration institutions , and provide channels, including adding friendly link on their websites ; 5) these institutions have to agree to regularize the international commercial arbitration conference among them and to expend the format and sphere of the conference when necessary.

agencies will have to provide not only services that can satisfy arbitration parties but also need to conduct researches and make efforts so that arbitrations can be utilized in new areas. And, regional arbitral bodies for Northeast Asian international arbitration should provide the high quality services to the users of international commercial arbitration and improving and harmonizing the arbitral and legal environments in Asian region. In order for arbitrations to prepare a systematic foundation in new fields as free economic zones and South-North Korea commercial arbitration, the government authority's positive support and special consideration also will be required. I expect that the successful progress of these two tasks of Korea will contribute to the development of international arbitration in Northeast Asia. At any rate the economy in East Asia are expected to achieve development, and the demand for ADR including international commercial arbitration also will increase. I suggest that such four possible initiatives as stated below can be considered for developments of ADR in the area of Northeast Asia. 1) Promotion of advantages of ADR, 2) Education and training program to CEO and COO, 3) Encouraging business people and professional advisors to consider using ADR methods, 4) Positive support and special consideration from government authorities will also be required

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국문요약

동북아시아 국제상사중재의 과제와 전망에 관한 연구

김 광 수

동북아시아 국가들은 세계 무역 및 투자에 중요한 역할을 담당하고 있다. 동북아시아 역내 및 역외 국가들과의 경제교류는 앞으로 계속 늘어날 것으로 전망되며, 이로 인한 국제상사분쟁은 국제상사중재 등 ADR에 의해 해결될 수밖에 없을 것이다. 동북아시아에서 ADR 제도가 발전되기 위해서는 무엇보다도 한국의 대한상사중재원, 북한의 조선국제무역중재위원회, 중국의 중국국제경재무역중재위원회, 일본의 일본상사중재협회, 러시아의 러시아상공회의소 부설 국제상사중재법정, 카자흐스탄의 카자흐스탄국제중재기관, 몽골국가중재법정 상호간의 중재 업무 전반에 관한 협력제제가 구축되어야 할 것이다.

국제상사중재에 관하여 동북아시아에 새로운 바람이 불고 있다. 경제자유구역 및 남북간 경제교류와 관련한 상사분쟁이 상사중재로 해결될 수 있는 법,제도적 기반이 마련되었기 때문이다. 지난 해 한국에서는 대한상사중재원 주도하에 무역클레임 센서스가 실시되고 국제중재세미나가 개최되었으며 국제중재규칙이 제정(2007년도 2월 1일 시행 예정)된 바 있다.

동북아시아 지역에서 국제상사중재제도가 발전되고 저변이 확대되기 위해서는 중재기관들 간의 협조체제가 구축되어야 할 것이다. 한편 한국도 동북아시아의 중재허브로 성장하기 위해서는 국제금융, M&A 등 중재 영역을 확대하고 경제자유구역 및 남북상사중재 등과 같은 새로운 영역에 대처를 잘 해야 할 것이다. 아울러 정부 당국의 재정적 지원과 행정적 배려도 수반되어야 할 것이다.

주제어 : 동북아시아 국제상사중재, 남북상사중재, 경제자유구역상사중재, 동북아시아 국제상사중재기관