The 4th Asia Pacific Mediation Conference

The Role of Mediation in the Development of Integration Processes in the Asia–Pacific Rim

October 4 (Friday), 2019
Far Eastern Federal University
Vladivostok City, Russia

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REGULATION WORK OF CONFERENCE IV ASIA PACIFIC MEDIATION CONFERENCE (FEFU, HALL “SOPKA”)

14.00–14.05 **Natalia Lykova** (President of Association of mediators and intermediaries of the Asia–Pacific region)

GREETINGS CONFERENCE PARTICIPANTS

14.05–14.15 **Talabaeva Lyudmila Zaumovna** (Member of the Federation Council, Member of the Federation Council Committee on Agrarian and Food policy and Environmental Management, Russia)

14.15–14.25 **Berezhnaya Tatiana Aleksandrovna** (Deputy head of the administration of Vladivostok city, Russia)

14.25.–14.35 **Dorozhkina Violetta Aleksandrovna** (Senior assistant Prosecutor of Primorsky Krai)

14.35–14.40 **Ugarov Aleksandr Sergeevich** (Acting Director of the Federal state budgetary institution “Federal Institute of mediation” of the Ministry of education of the Russian Federation, Russia) – read the welcome word Lykova N. (President of Association of mediators and intermediaries of the Asia–Pacific region)

SECTION 1 Singapore Convention on Mediation (Relevance and problems of implementation)

14.40–14.50 Speaker 1 – **Athita Komindr** (Head, UNCITRAL Regional Centre for Asia and the Pacific (UNCITRAL RCAP), United Nations Commission on International Trade Law International Trade Law Division, Office of Legal Affairs)
Topic: The Singapore Convention on Mediation and Post–Signing Ceremony Updates.

14.50–15.00 Speaker 2 – **Sejun KIM** (professor, Kyounggi University, Korean Republic)
Topic: Main Contents of “Commercial Mediation Basic Law”: Acceptance of Singapore Convention and Model Law in Korea

15.00–15.10 Speaker 3 – **Rajesh Sharma** (professor, Royal Melbourne University of Technology, Australia)
Topic: The Settlement Agreement–As a Sword and The Shield in the Singapore Convention

15.10–15.20	Speaker 4– Igor Khrushchev (Head of the Vladivostok branch of Federal state treasury office of Rosgranstroy, The Ministry of Transportation of the Russian Federation, Russia) Topic: Socio–political context of mediation in the challenges of the XXI century.
15.20–15.25	Discussant 1 – Natalia Prisekina (Vice Dean School of Law Far Eastern Federal University, honorary Consul of Chile, Russia)
15.25–15.30	Discussant 2 – Elena Romashko (Chief of staff of the Commissioner for the protection of the rights of entrepreneurs in Primorsky Krai, Russia)
15.30–15.40	DISCUSSION, QUESTIONS
15.40–16.00	COFFEE–BREAK

SECTION 2

The role of the APR countries in the peaceful settlement of international and private disputes. International instruments and the international system for the peaceful settlement of disputes

16.00–16.10	Speaker 1 – Natalia Lykova (President of Association of mediators and intermediaries of the Asia–Pacific region, the General Director of «Vincere» Co. Ltd, Russia, a managing partner «Premier» collegium of advocates, Arbitrator of Russian Arbitration Center of the Russian Institute of Contemporary Arbitration, Arbitrator of the Fifth Harbin Arbitration Commission) Topic: Russia's role in peaceful settlement of disputes in the Asia–Pacific region
16.10–16.20	Speaker 2 – Shusuke Kakiuchi (professor, University of Tokyo, Japan) Topic: Significance of Mediation for Domestic and International Dispute Resolution: A Perspective from Japan
16.20–16.30	Speaker 3 – Sung Kyu (Scott) Lee (Senior Partner of Kim & Chang, member of the Korean and New York Bars, Republic of Korea) Topic: Korean perspective in the peaceful settlement of international and private disputes
16.30–16.40	Speaker 4 – Hugo Humberto Soler Moreno (lawyer, Colombia) Topic: Mediation As An Instrument For Peace Building, The Colombian experience
16.40–16.50	Speaker 5 – Natalia Chekhovskaya (professional mediator, business consultant, coach in the field of business technology and personal development, Russia) Topic: Tools for resolving interethnic disputes in a multinational environment
16.50–16.55	Discussant 1 – Yuri Melnikov (Commissioner for human rights In Primorsky Krai, Russia)
16.55–17.00	Discussant 2 – Stanislav Primachenko (Deputy of the Duma of Vladivostok, Committee on social policy and veterans Affairs, Russia)
17.10–17.20	DISCUSSION, QUESTIONS
17.20–17.40	COFFEE–BREAK

SECTION 3

The current state of affairs in connection with the activation of international mediation and improvement measures.

-
- 17.40–17.50** Speaker 1 – **Edwin L. Felter** (Senior Administrative Law Judge, founder of the administrative justice system of Colorado USA, Denver, Colorado USA)
Topic: A Credible Mechanism for Resolving Disputes Between Businesses and the Government: Several Modalities.
-
- 17.50–18.00** Speaker 2 – **Ruslan Skryagin** (Judge of the Arbitration court of Primorsky Krai, Russia)
Topic: Mediation in the system of arbitration courts of Russia. Are there prospects?
-
- 18.00–18.10** Speaker 3 – **Dr. Helmut Kury** (senior researcher at Max–Planck Institute for foreign and International penal Law – Department of Criminology, Prof. at the University of Freiburg, Germany)
Topic: What is more effective to prevent crime – Mediation or Sharp (er) Punishment? International Research Results.
-
- 18.10–18.20** Speaker 4 – **Jae Seog CHOI** (BG(retired), Member of K BA & NYB, Standing Mediator, KLAC, Republic of Korea)
Topic: How to promote Mediation – from the perspective of Korean mediation practitioner
-
- 18.20–18.30** Speaker 5 – **Maxim Beloborodov** (professional mediator, candidate of legal sciences, docent of Department «Civil law and process» of Law school of FEFU, member of Scientific– methodical Council of educational organizations and departments competition law and antitrust regulation of the Federal Antimonopoly service of Russia)
Topic: Factors hindering the development of mediation in Russia in disputes involving competition authorities.
-
- 18.30–18.35** Discussant 1 – **Kyonghwa CHUNG** (lawyer, partner at BKL, Republic of Korea)
-
- 18.35–18.40** Discussant 2 – **Jewoo LEE** (professor, Kangnam University, Republic of Korea)
-
- 18.40–18.50** DISCUSSION, QUESTIONS
-
- 18.50–19.00** SUMMING UP, CLOSING OF THE CONFERENCE
-

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GREETINGS

Talabaeva Lyudmila Zaumovna

Member of the Federation Council,
Member of the Federation Council Committee on
Agrarian and Food policy and Environmental Management,
Russian Federation

Berezhnaya Tatiana Aleksandrovna

Deputy head of the administration of Vladivostok city, Russian Federation

Dorozhkina Violetta Aleksandrovna

Senior assistant Prosecutor of Primorsky Krai, Russian Federation

Ugarov Aleksandr Sergeevich

Acting Director of the
Federal State Budgetary Institution "Federal Institute of Mediation",
The Ministry of Education, Russian Federation

GREETINGS

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Talabaeva Lyudmila Zaumovna

Member of the Federation Council,
Member of the Federation Council Committee on
Agrarian and Food policy and Environmental Management,
Russian Federation

Russian politician, representative of the legislative (representative) public authority of the Primorsky Territory in the Federation Council of the Federal Assembly of the Russian Federation, member of the Federation Council Committee on Agrarian and Food Policy and Environmental Management.

Earlier in 2007, she won the parliamentary elections to the Vladivostok city Duma of the III convocation. She served as Chairman of the Committee on Social Policy and Veterans Affairs of the Vladivostok city Duma. In 2012, she was re-elected.

For services to the state and long-term conscientious work she was awarded the Honorary title "Honored worker of the fishing industry of the Russian Federation" (April 2010).

Awarded:

- Medal "For Merits in the Development of Russian Fisheries of the 2nd Degree" (May – 2012);
- Breastplate "Honorary Worker of Russian Fisheries" (July 2002)
- Star of the Order "Pride of the Nation" (February 2010)
- Breastplate "70 years of the Primorsky Territory" (October 2008);
- Certificate of honor of the Governor of Primorsky Territory (July 2008).

Good day, dear guests, the participants of the Russia's first Asia Pacific Mediation Conference!

It is a pleasure for me to note that today more and more countries become conscious of the need to live in peace and unity and to know how to resolve disputes in a civilized way. All around the world people want to live without violence, wars and broken fortunes, and no one needs conflicts between countries, families or individuals.

This is the reason why mediation has been on the rise in the recent decades and is more and more frequently recognized by the world community as a general approach to resolution of disputes which meets the challenges of the present-day world.

Relying on its experience, knowledge, expertise in conflict settlement, mediator helps the parties to a dispute to reconcile their views and to reach an understanding and in this manner facilitates the development of agreements without putting any pressure on the parties.

Nowadays, negotiations are increasingly becoming the basis for the national, political and social

life. The more and more frequent use of negotiations promotes growth of mutual understanding between countries, political and social forces, various structures and individuals.

The same principles are taken as a basis for the international activities of the upper chamber of the Russian Parliament, a member of which I am.

I represent the Primorsky region and the interests of its citizens in the Council of Federation of the Federal Assembly of the Russian Federation.

The present-day Primorsky region is one of the consistently developing constituent entities of the Russian Federation. Our region is the gate to the Asian-Pacific Region. So, being a representative of the Primorsky region, I became a member of the agencies of the Council of Federation in charge of contacts with the parliaments of the neighbouring countries: I am the Head of the Working Group on Cooperation with the Senate of the Congress of the Republic of Philippines and a member of the Advisory Council for the Promotion of Russian-Japanese Interparliamentary and Interregional Cooperation. The Working Group on Cooperation of the Council of Federation with the Senate of the Congress of the Republic of Philippines consists of 23 senators representing the broad geography and de facto each committee of the Council of Federation. This is one of the most numerous friendship groups in the upper chamber of the Russian Parliament.

Let me brief you on some recent international events which I attended and which promote dialogue, mutual understanding and development of trust-based and good neighbor relations between the countries.

In July 2019 I participated in the 29th Global Summit of Women in **Basel** where over 1,200 women from 70 countries were present. The Russian delegation was officially represented at the forum for the first time in the last 29 years.

Being the Head of the Working Group on Cooperation with the Senate of the Congress of the Republic of Philippines, as a part of the summit I held a meeting with the representatives of the Philippine Women's Economic Network.

The Philippines delegation was composed of the women representing the business elite, whose activities were aimed at the protection of interests of the entrepreneurs and CEOs of the companies where women are members of the boards of directors.

During the meeting, we discussed the issues related to the financial and economic cooperation between our countries which will contribute to the creation of favorable conditions for maintenance and expansion of business cooperation.

The Philippines delegation delivered a long and comprehensive report of information and analytic nature concerning the economic, financial and social and political state of affairs in the country. It was thoroughly analyzed and presented to all concerned members of the Working Group on Cooperation with the Senate of the Congress of the Republic of Philippines for further use in preparation of subsequent meetings and contacts.

On July 24 in Moscow I organized the meeting of senators being the members of the Working

Group on Cooperation with the Senate of the Congress of the Republic of Philippines with the Ambassador Extraordinary and Plenipotentiary of the Republic of Philippines in the Russian Federation Mr. Carlos Sorreta, where we discussed the issues of interparliamentary interaction and bilateral cooperation of our countries.

Mr. Carlos Sorreta informed that the Philippine–Russian Parliament Friendship Association was also formed in the Senate of the Congress of the Republic of Philippines.

The parties expressed their common views on further development of the Russian–Philippine relationships, including expansion of parliamentary contacts and commercial and economic cooperation. Currently, the negotiations with the RF Ministry of Agriculture for fish supply by the Russian companies to the Philippines are underway.

As a part of the past meetings, I drew our Philippine colleagues' attention to the fact that Russia and the Philippines share some important historical events. During the Second World War over half a million Filipinos were killed in stiff battle for the islands in 1941–1942 and later from 1944 till 1945. It was one of the most large-scale losses in the Pacific region.

In this connection, I informed our Philippine colleagues that in May 2020 Moscow and other Russian cities would host ceremonial events dedicated to celebration of the 75th anniversary of the Victory in the Second World War, and invited them to come to Russia in order to participate in these events and to meet the members of the Working Group on Cooperation with the Senate of the Congress of the Republic of Philippines.

Acting on behalf of the Federal Assembly of the Russian Federation, I took part in the **40th General Assembly of the ASEAN Inter-Parliamentary Assembly, which was held on August 26–29, 2019 in Bangkok.**

National delegations of all 10 member countries of ASEAN were present at the General Assembly. The purpose of the event was strengthening of parliamentary cooperation for the sustainable development of the ASEAN community and building of trust between the countries.

After the Third ASEAN–Russia Summit held in November 2018 in Singapore the dialog-oriented partnership of ASEAN and Russia became strategic. This is why in my speech at the General Assembly I focused on the opportunities created by our interaction. For the purposes of sustainable development of the Asian–Pacific Region, I suggested that the parliamentarians of the ASEAN countries consider the Russian proposal on the possibility to use the national payment system MIR in the ASEAN countries, and in future – to introduce the national currencies settlement system.

In addition, I pointed out that application of any sanctions in respect of parliamentarians is inadmissible and made an appeal to our colleagues to support the Russian stance.

We also had a chance to discuss and communicate to our partners the Russian party's stance toward the recently adopted law about cancellation of discounted rate on palm oil.

In the course of our dialogue with the parliamentarians of the ASEAN countries I invited them to take active part in the events held in the Far Eastern Federal District.

We had a separate meeting with the Malaysian parliamentarians where the idea of creating a group on cooperation of the Council of Federation with the Parliament of Malaysia was suggested.

On the sidelines of the General Assembly we had a friendly and meaningful talk with the members of Thai-Russian Parliamentary Friendship Group, during which we discussed the issues of interparliamentary cooperation. My proposal concerning the development of interregional contacts between Thailand and the Russian Far East aroused much interest.

Being the leader of the Primorsky regional division of the “United Russia” Party, I would like to turn your attention to the importance of the party-based international cooperation.

In May 2019, **the delegation of the “United Russia” Party made an official visit to Japan.** Japan is one of the principal strategic partners of the Primorsky region. There are successful active Russian-Japanese investment projects and the developing cultural relations in the region. The interparliamentary and interparty contacts are crucial for solving the problems identified by the leaders of Russia and Japan. In particular, for this purpose the “United Russia” Party opened in Vladivostok the International Centre for interaction with the political parties from the APR countries, which will become a “bridge” between Russia and Japan, the “United Russia” Party and the Liberal Democratic Party of Japan. Also, meetings with the party delegations from Singapore, Vietnam, China, and Korea were held at the venue of the international centre.

Summing up what has been said above, I want to stress that in the course of our interparliamentary and interparty contacts with foreign partners and friends we discuss the topics which are common to our countries. Our meetings, exchange of views, and interaction stimulate the establishment of long-lasting relations, better understanding and search for areas of common interest and solutions to the most pressing problems.

I believe that the today’s meeting is another opportunity to look at the present-day world in the context of people-to-people ties and creation of good neighbour relations between countries and people. We may speak different languages, practice different religions, have different political view, but one thing we do have in common is our wish to live in peace and to have the opportunity to negotiate. This is the most important thing and the reason why we all gathered here today.

GREETINGS

Berezhnaya Tatiana Aleksandrovna

Deputy head of the administration of Vladivostok city, Russian Federation

In May 2000 graduated from the Far Eastern State University with a degree in journalism, and was awarded the qualification "journalist". In June 2007 graduated from the Far Eastern State University with a degree in state and municipal administration, and was awarded the qualification of "Manager".

From 1995 to 2001 she worked as a correspondent of Non-Profit Partnership TV Company "Faces-23". From 2001 to 2003 she was a host of the program in the Directorate of information programs of the Closed Joint Stock company "Joint stock television company "Vostok-TV".

From 2003 to 2008 she worked as a managing editor and chief editor of LLC TV Company "New Wave".

From 2008 to 2009 she was the chief editor of information programmes for television and radio broadcasting, the flagship program of Department of information programs of TV and radio broadcast, the Deputy chief of information programmes for television and radio broadcasting of Federal State Unitary Enterprise "Russian state television and radio broadcasting company GTRK "Vladivostok". In February 2019, she began working as a referent of the Department for work with the media of the Vladivostok city Administration. In April 2019, she began to hold the position of Deputy head of the Vladivostok city administration.

In 2015 she was awarded the Gratitude of the Governor of Primorsky Krai, in 2017 she was awarded the honorary badge "For services to the professional community of the Union of journalists of Russia". In 2017 she was also awarded the Gratitude of the Governor of Primorsky Krai.

Dear participants of the 4th International Asia Pacific Mediation Forum Conference, I am glad to welcome you in Vladivostok!

Over the past years our city more often hosts high level international arrangements of various subjects, however Asia Pacific Mediation Forum Conference is taking place for the first time not only here in Vladivostok, but in overall Russia. Let me express the gratitude to organizations of the forum for your trust, and note that the spirit of the forum is completely on a par with the strategic objective of turning our city into the gates between Russia and Asia Pacific Region.

In the condition of modern globalized world in the context of intensification of interaction between representatives of different countries, mediation, as the global practice shows, has a number of undeniable advantages over traditional dispute resolution through legal action, being an effective, fast and peaceful way to settle a dispute, allowing to comply with the interest of the parties, save their relationships for the future.

I warrant that the conference will strengthen the implementation of mediation practice in resolving legal conflicts in various fields, and that means – improve the legal culture and enhance the investment environment of Vladivostok.

To conclude, let me wish all participants fruitful work and effective communication in the frames of the forum events, and also a pleasant stay in the city.

GREETINGS

Dorozhkina Violetta Aleksandrovna

Senior assistant Prosecutor of Primorsky Krai, Russian Federation

Education: higher law, from 1998 to 2003 she studied at the Far Eastern State University (currently – the Far Eastern Federal University). In 2009, she improved her skills at the Academy of the General Prosecutor's Office of the Russian Federation.

From the moment of graduation to the present, he has been serving in the prosecution authorities of the Primorsky Territory, successively replacing the posts of assistant district prosecutor, department prosecutor, deputy head of the Department for ensuring the participation of prosecutors in the civil and arbitration process of the regional prosecutor's office.

He is the author of "Termination of the direct participation of the Russian Federation in the authorized capital of a party to a transaction in the context of the powers of a prosecutor to appeal to an arbitration court".

She was awarded the badge "For Impeccable Service."

DEAR PARTICIPANTS OF THE CONFERENCE!

Let me express my sincere appreciation for invitation to such a high-profile and very important event. The fact that the conference is held in Russia and especially in Vladivostok is very significant.

The present-day stage of the development of international economic and political relationships of Russia within the Asian-Pacific Region is characterized by strengthening of foreign economic relations.

The Russia's need to participate in the political life of the Asian-Pacific Region depends largely on the processes of financial interconnections and multilateral cooperation which are on the rise in the APR nowadays, and this makes a significant impact on the economic development of the Asian-Pacific Region and economy of Russia on the whole.

The evidence of this is the orientation of our country toward the Far East declared by the President. The fifth already World Economic Forum took place not long ago and resulted in signing of many contracts. We are actively engaging foreign partners, including by using the mechanisms of advanced development zones and Free Port of Vladivostok, which are new to us.

Development of market-oriented economy, changes in life conditions led to the significant increase in the number of conflicts in various spheres, such increase being especially high in the international commercial relations. As the number of disputes increases, the new ways of their resolution, previously untypical for our country, appear.

While public prosecution bodies maintain continuous supervision, and the special focus is made on protection of the entrepreneurs' interests, the judicial dispute resolution, obviously, have been predominant until recently. Nevertheless, the entrepreneurs are more and more frequently using the new alternative methods, such as mediation.

The non-judicial dispute resolution is a basic concept, applicable, inter alia, in the sphere of international public law. In case any disagreements arise, the countries may accomplish their identified goals only by applying the documented procedures not violating the rights and lawful interests of other countries. In this connection, the use of the most efficient dispute resolution mechanisms, which are able to promote the development and strengthening of diplomatic contacts, becomes particularly topical.

The institute of mediation is a method of non-judicial dispute resolution.

In its turn, the Russian Federation seeks to create favourable conditions for comfortable settlement of disputes.

In order to facilitate the development of partnership, to form the business ethics and to create legal framework for application in the Russian Federation of alternative dispute resolution procedure with participation of an independent person (mediator) as an intermediary (mediation procedure), the Law "On alternative Procedure for Dispute Settlement with Participation of a Mediator (Mediation Procedure)" was passed in the Russian Federation in 2010.

Adoption of this law, first of all, was indicative of the State's intention to give a new impetus to the formation of fundamentals of the rule of law and development of alternative dispute resolution procedures and became a compulsory condition of the Russia's integration into the European community, as well as a motivating factor for further advancement of mediation.

The institute of mediation can be fairly seen as a component of the governmental policies in the sphere of protection of the rights and lawful interests of individuals and legal entities.

Today, dispute settlement via mediation is widely used in many countries of the world. The primary advantage of this procedure is that, unlike litigation, it enables the parties control the course of the procedure themselves, and its result is the decision elaborated by the disputant subject to interests of each party.

For the successful integration of the mediation procedures and methods in the Russian Federation, we undoubtedly need to develop an integrated approach based on the interaction between the State, representatives of legal community and society as a whole.

I am sure that the today's event will be rewarding and will enable us to share our experience and to develop the practical measures for more efficient resolution of the international and personal conflicts.

GREETINGS

Ugarov Alexander Sergeevich

Acting Director of the
Federal State Budgetary Institution "Federal Institute of Mediation",
The Ministry of Education, Russian Federation

He graduated from the National Research Nuclear University "MEPhI" (Moscow Institute of engineering and physics), the Institute of Finance and Banking Technologies, the Russian State Tax Academy. He worked as an advisor in the staff of the Committee on budget and taxes of the state Duma of the Russian Federation. Since 2015 he is the acting Director of the Federal state budgetary institution "Federal Institute of mediation".

Good afternoon, dear colleagues!

I am pleased to welcome, on behalf of the Federal Institute of mediation and myself, all participants of the Fourth international conference of mediators of the Asia-Pacific region, dedicated to the peaceful settlement of international and private disputes.

It is very important to note the significance of the fact that the Conference is held in Russia and in Vladivostok on the basis of the Far Eastern Federal University, which annually hosts various Forums, Conferences, international intergovernmental meetings aimed at the development and deep integration of political, economic, social and scientific cooperation in the Asia-Pacific region. Interstate meetings on the peaceful resolution of various conflicts and disputes arising between the countries of the Asian Pacific region are held annually at the venues of Vladivostok. That is why it is of particular importance that today the Far Eastern Federal University hosts a Conference on the peaceful settlement of international and private disputes, each of the participants of which will contribute to the strengthening of international interstate relations and the search for solutions to the peaceful settlement of disputes, as well as give impetus to the further development of mediation in Russia. I want to express special gratitude to the initiators and organizers of the Conference – Association of mediators and intermediaries of the Asia-Pacific region, Korean Society of Mediation Studies, Law school of FEFU, for the well done work that made it possible to hold this Conference. It is very important that the Conference is attended by representatives of Russian state authorities who support such events and listen to the views of the Conference participants in their activities. I would like to wish all participants of the Conference fruitful work. Ensuring the security, stability and prosperity of our countries is our common and certainly achievable task. It is only necessary to unite efforts, and today's meeting is another practical step in achieving this goal. I hope that your discussions at the Conference will have an impact on the development of mediation in general and the strengthening of business contacts between mediators from different countries.

Section 1

Speaker 1: Athita Komindr

Head, UNCITRAL Regional Centre for Asia and the Pacific (UNCITRAL RCAP)

Speaker 2: Sejun KIM

Professor, Kyonggi University, Republic of Korea

Speaker 3: Rajesh Sharma

Professor, Royal Melbourne University of Technology, Australia

Speaker 4: Igor Khrushchev

Head of the Vladivostok branch of the
Federal state treasury office of Rosgranstroy,
The Ministry of Transportation, Russian Federation

Discussant 1: Natalia Prisekina

Vice Dean School of Law, Far Eastern Federal University,
Russian Federation

Discussant 2: Elena Romashko

Chief of staff of the Commissioner
for the protection of the rights of entrepreneurs in Primorsky Krai,
Russian Federation

Section 1

Speaker 1

Athita Komindr

Athita is Head of the UNCITRAL Regional Centre for Asia and the Pacific (UNCITRAL RCAP), managing technical assistance and capacity building programming available to over 50 States in Asia and the Pacific in key areas of commercial law, including dispute resolution, MSMEs, international contract practices, sale of goods, electronic commerce, transport, insolvency, international payments, secured transactions, and procurement. In that capacity, she coordinates with Governments and international and regional organizations with respect to trade law reform activities aimed at achieving the Sustainable Development Goals. Athita has over a decade of experience in the fields of international trade and economic law, arbitration, multilateral dispute resolution, and the rule of law and development. Prior to joining the United Nations, Athita mainly advised and worked with numerous Thai agencies, including the Thailand Institute of Justice, the Thai Ministry of Science and Technology, and the Thailand Arbitration Center where she managed the Arbitration and Legal Affairs Divisions. She also worked for the Thai Ministry of Commerce in Bangkok (2002–2005) and Geneva (2005–2010), representing Thailand in bilateral, regional, and multilateral trade negotiations, WTO dispute settlement, and treaty drafting.

Admitted to the New York Bar since 2002, Athita has experience in both common and civil law traditions in the public and private sectors, and holds degrees from Harvard College, Georgetown University Law Center, and Harvard Law School.

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Section 1

Speaker 2

Sejun Kim

Assistant Professor, Faculty of Law in Kyonggi University (Suwon, Korea)

- Education :
 - BEc(Bachelor of Economics), in Korea University
 - LL.M.(Civil Law), in Dongguk University
 - LL.D.(Civil Law), in Dongguk University

- Academic Activities :
 - Member of Korean Association of Civil Law
 - Member of Korean Association of Comparative Private Law
 - Director of Korea Consumer Law Society
 - Director of Korean Society of Mediation Studies
 - etc.

Main Contents of “Commercial Mediation Basic Law” : Acceptance of Singapore Convention and Model Law in Korea

Sejun Kim
Professor, Kyounggi University

Significance of Basic Law

- ▶ In Korea, there is no basic law covering the entire mediation system.
- ▶ Mediation is only governed by each individual law.
- ▶ In order for the Singapore Convention and Model Law, which is intended to give enforcement power to the settlement agreement by mediation, to be effective in Korea, it is necessary to have a means of reflecting it in the domestic legal system.
- ▶ Therefore, as the legislative means, “Commercial Mediation Basic Law” should be enacted. And the main contents are proposed as follows.

Main Contents of Basic Law

1. Scope of application

- ▶ The Basic Law applies to the mediation on a commercial dispute.
(Convention Art.1(1))
- ▶ It does not apply to disputes about consumers, family, inheritance or employment laws. (Convention Art.1(2))
- ▶ Furthermore, in order to avoid conflicts with domestic law, detailed scope should be considered in the legislation process.

Main Contents of Basic Law

2. Fundamental principles of mediation, etc.

- ▶ Fundamental principles such as ‘the agreement by self determination of the parties’ and ‘the guarantee of free communication’ shall be defined.
- ▶ And the rules about independence and impartiality of a mediator(Model Law Art.6(4)) and about role of a mediator(Model Law Art.7(1)(2)) shall be also needed.

Main Contents of Basic Law

3. Appointment of mediators

- ▶ “There shall be one mediator, unless the parties agree that there shall be two or more mediators.” (Model Law Art.6(1))
- ▶ The method of appointment is, in principle, agreed upon by the parties.
- ▶ And regulations on the period are also required.

Main Contents of Basic Law

4. Qualification of mediators

- ▶ There are no rules about the qualification of mediators in UNCITRAL Model Law.
- ▶ In other words, mediators do not necessarily have to be a legal attorney.
- ▶ In Korea, however, conflicts with the Attorneys Law may arise.
- ▶ Therefore, harmonized exceptions should be prepared through the coordination of the Attorney Law and the Basic Law : For example, a person who is certified by the Minister of Justice can be a mediator even if he is not a lawyer.

Main Contents of Basic Law

5. Training and evaluation of mediators

- ▶ There is no provision in the Model Act. However, the basis and method of the mediator training and the evaluation of the mediation results should be defined. This is related to the quality of mediators.
- ▶ It is also important to have a mediation institute(or organization), designated or certified by the Basic Law, form a pool of trained mediators and to have the parties choose a mediator among them.

Main Contents of Basic Law

6. Settlement of disputes

- ▶ Each party shall be able to present the settlement independently or at the recommendation of the mediator.
- ▶ The mediator also can propose a settlement. (Model Law Art.7(4))
However, it should be stated that the mediator is forbidden to force an agreement. (Convention Art.2(3))
- ▶ If the parties sign an agreement for settlement of the dispute, the mediation terminates. The agreement shall give legal binding force and enforcement power to the parties. (Model Law Art.15)

Main Contents of Basic Law

7. Other terminations of mediation proceedings

- ▶ The mediation proceedings are terminated,
“by a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified” (Model Law Art.12 b.),
or “by a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are terminated.” (Model Law Art.12 d.)

Main Contents of Basic Law

8. Effects of mediation

- ▶ The effect of mediation under the Basic Law shall, in principle, be defined in the same meaning as the agreement between the parties. In other words, granting the effect of excluding further litigation may violate the right to a trial.
- ▶ However, enforcement power must be recognized, and this is the basic intent of the Convention and the Model Law. Through this, we can expect actual and final dispute resolution.

Main Contents of Basic Law

9. Costs

- ▶ There are no rules about costs in the Model Law.
- ▶ However, the provision of costs in the basic law can increase the utility of the system.

Conclusion

- ▶ In Korea, the utilization of mediation is still relatively low.
Therefore it is important to preserve the intent of the Singapore Convention and Model Law, in order to raise its utility value as a dispute resolution procedure.
- ▶ “Commercial Mediation Basic Law” could be a legislative instrument for the mediation system. We look forward to continued discussion on this.

Section 1

Speaker 3

Dr. Rajesh Sharma

Senior Lecturer, Legal and Dispute Studies, Criminology and Justice, RMIT University, Melbourne, Australia, Adjunct Professor at Academy of International Dispute Resolution and Professional Negotiation (AIDRN)

Dr. Rajesh Sharma is currently teaching at RMIT University, Melbourne, Australia. He is an Honorary Professor at Xiangtan University Law School. Before coming to Australia, he was Assistant Professor at School of Law, City University of Hong Kong.

Dr. Sharma has given training and taught courses on arbitration, mediation, negotiation, foreign investment arbitration, WTO Law, international trade, banking law, foreign investment in Hong Kong, Macao, India, Australia, China and Africa (where he is associated with the Institute for Legal Excellence in Uganda). He has served as the Legal Advisor to the Macau University of Science and Technology. He has advised transnational companies on trade and investment policy in China and has done training courses with and for the WTO and UNITAR. Dr. Sharma is the Finalists for the ADR Teacher Award 2019 in Australia.

Dr. Sharma is the first Indian to hold PhD in Law from China. He holds PhD from the Chinese University of Political Science and Law, Beijing, a Master of Business Law from Monash University, Australia, an M.Phil from City University of Hong Kong and the Bachelor of Laws from the University of Delhi. He has received training for arbitrators from the World Intellectual Property Organization (WIPO), Geneva; and International Chamber of Commerce, Vienna. Dr. Sharma has received training of a mediator for community conflict resolution by the Plowshares Institute, USA and the Accord Group of Australia. He has also obtained professional training in negotiation at Harvard Law School. He has received training for teachers of WTO organized by UNU-IAS.

Dr. Sharma has researched extensively on the arbitration laws of China and India and other Asian countries, Investment Arbitration, Dispute Settlement in FTAs, WTO related issues, investment law and mediation. He has publications in the areas of WTO law, international trade, arbitration and dispute resolution, commercial law, and banking law. Recently he has published a book with Wolters Kluwer titled "Dispute Settlement Mechanism in the FTAs of Asia".

Dr. Sharma has also conducted research and provided expert comments to UNCITRAL on mediation and conciliation. These works include conducting "An Evaluation of Mediation Law in Asia", provided expert comments on "Draft Instrument on Enforcement of Settlement Agreement Across-boarder" and reported on "Possible Amendments in UNCITRAL Model Law on International

Commercial Conciliations". Currently, Dr. Sharma is working on the preparation of commentary on the Singapore Convention.

At CityU, Dr. Sharma was the Director of Mooting and coach of VIS Arbitration Moot at CityU. The team coached by Dr. Sharma has won the VIS (East) and VIS (Vienna) Championship in 2012 and 2013 respectively. He also designed the International ADR Moot Competition which is unique in the world because it combines arbitration and mediation where a student also takes part in as a mediator.

Dr. Sharma is the Associate Director of the Hong Kong WTO Research Institute, a member of Asian WTO Research Network; a panel arbitrator of Korean Commercial Arbitration Board (KCAB), a panel arbitrator at Indian Institutes of Arbitrators, a member and secretary of Hong Kong Basic Law Education Association, a member of the Centre for Global Studies and a Researcher at China-Latin America Legal Research Centre, Shanghai. Dr. Sharma is a Research Fellow of the International Academy of Belt and Road, a member of the Drafting Committee of the Dispute Resolution Rules for the Belt and Road, a member of the Working Group for the establishment of Asian Regional Mediation Organization (ARMO) and a member of the Drafting Committee for the Rules of Mediation for ARMO and lead drafter of the Arbitration Rules of Asia Pacific Centre for Arbitration and Mediation . He is a core member (representing Australia) on the Committee for the Establishment of the Centre of Excellence for Dispute Resolution for Indian Ocean Regional Association. Dr. Sharma has been appointed as the International Expert Mediator at the Hong Kong-Mainland Joint Mediation Centre and Japan International Mediation Centre-Kyoto. Dr. Sharma is an elected Associate Member of Academy of Comparative Law.

A Settlement Agreement–As a Sword and a Shield Under the Singapore Convention

Rajesh Sharma*

The United Nation Convention on International Settlement Agreements Resulting from Mediation also known as the Singapore Convention will be open for signature by State parties on 7 August 2019 in Singapore. The Singapore Convention has filled in the long awaited and much needed gap relating to enforcement of settlement agreement resulting from mediation across the border. At the time of making proposal for the future work of UNCITRAL, it was noted that “one obstacle to greater use of conciliation, however, is that settlement agreements reached through conciliation may be more difficult to enforce than arbitral awards, if a party that agrees to a settlement agreement later fails to comply”¹⁾. The Singapore Convention is akin to the New York Convention and it provides “uniform and efficient framework for the enforcement of international settlement agreements resulting from mediation and for allowing parties to invoke such agreements”²⁾. UNCITRAL is “convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations”³⁾. It is expected that the Singapore Convention “to become an essential instrument in the facilitation of international trade and in the promotion of mediation as an alternative and effective method of resolving trade disputes” because it “ensures that a settlement agreement reached by parties becomes binding and enforceable in accordance with a simplified and streamlined procedure”⁴⁾.

However, the enforcement under the Singapore Convention has to be executed by a domestic court in a country like a foreign arbitral award is enforced by domestic courts. Once the matter goes to court, the control of parties becomes minimal and judges and lawyers dominate the outcome of the settlement. Although the Singapore Conventions is based on the principle of “direct enforcement”, uncertainty in courts cannot be ruled out. In addition to that in the mind of theorists, it is difficult to digest as to how an agreement could be given “direct enforcement” in a foreign court and should such agreement create a “res judicata” effect with regards to finality of a dispute. This paper argues that theorists are looking at the settlement agreement from the same glasses as they see a general contract which is a wrong approach. In order to prove the

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1) US Proposal, A/CN.9/822, P.2

2) Judith Knieper & Corinne Montineri, “UNCITRAL and a New International Legislative Framework on Mediation”, *Special TMD Dutch–Belgian Mediation Quarterly*, 2018 (22) 4, p. 27.

3) The Preamble of the Singapore Convention.

4) Judith Knieper & Corinne Montineri, at p.27.

point this paper looks into the discussions with regards to how the Singapore Convention has dealt with the issue of “recognition”, “finality” and “binding” nature of the settlement agreement. The ultimate aim of this paper is to educate lawyers, judges and professionals and other users as to how a settlement agreement could be used as a “sword” and a “shield”.

The Singapore Convention allows use of any international settlement agreements for two purposes: 1. For enforcement and 2. For use as a defense if the same issues or case is raised again in a court or before the arbitral tribunal. These two usages of an international settlement agreements is collective termed as “seeking relief” by parties and “granting relief” by courts.

The Settlement Agreement as a Sword

Article 3 (1) of the Singapore Convention represents the “sword” effect of the settlement agreements as it states, *“Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.”* This process is commonly known as “enforcement” proceeding which is quite known among lawyers, judges and professionals. A party of the settlement agreement can use the settlement agreement before the enforcement court to enforce terms of the settlement if the other party voluntarily does not fulfill the terms of the settlement agreement. This settlement agreement is not a regular contract as theorists misunderstood it. This settlement agreement is resulted out of a mediation and not just simple “offer” and “acceptance” which is required to form a “contract”. This may be understood in this simple way—two parties (businessmen) negotiated a contract after negotiation. However, later one party alleged to breach a term of the contract and claim damages, but the breaching party denies. In order to resolve this issue, they go to mediation. After mediation they reach of an agreement. This agreement is subject to the Singapore Convention because it is resulted from mediation. This agreement is different from the initial agreement negotiated among parties before the said agreement was breached. Therefore, the settlement agreement is different from the contract which was the subject matter of dispute. Theorists are having psychological difficulty to differentiate between the two agreements.

The Singapore Convention requires that in order to enforce the settlement agreement resulting from mediation should satisfy three general conditions: (1) it must be resulting from mediation; (2) it is commercial; (3) it is international. A general contract does not have to satisfy that it was resulting from mediation.

In order to prove that the settlement agreement is resulted from mediation a party invoking the Singapore Convention needs to provide any of the following evidences: (a) the mediator’s signature on the settlement agreement or (b) a document signed (separately) by the mediator indicating that the mediation was carried out or (c) an attestation by the institution that administered the mediation.⁵⁾ Any one of the evidences will be sufficient for the court to conclude that there was mediation which resulted the international settlement agreement presented before the court. For some reason if the above three evidences could not be furnished then a party

5) The Singapore Convention, Article 4(1).

may present “any other evidence acceptable” to the court.⁶⁾

It is important to note that the court where a party seeks relief based on the international settlement resulting from mediation, the court does not have to dwell upon the definition or style of mediation. Though the Singapore defines mediation as “a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (‘the mediator’) lacking the authority to impose a solution upon the parties to the dispute”.⁷⁾ The same definition was earlier used to define “conciliation” in the Model Law on Conciliation which is not retitled as the Model Law on Mediation.

Since the Singapore Convention applies on the commercial disputes, it is important that an international settlement agreement resulting from mediation is related to commercial disputes.⁸⁾ Like the New York Convention, the Singapore Convention also does not define “commercial” but there was consensus that same wide interpretation should be given to the word “commercial”. Courts have several years of experience of using the New York Convention therefore how to determine whether an international settlement agreement is related to a commercial dispute or not. In this regard courts experience with UNCITRAL Model Law on International Commercial Arbitration will be useful too as it explains term commercial. In footnote 2 it is stated “the term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.” The same explanation is also included in the footnote 1 of the UNCITRAL Model Law on International Mediation.

Only “international” commercial settlement resulting from mediation can be enforced directly. However, in the Singapore Convention the criteria of “international” must be satisfied “at the time of conclusion” of the settlement.⁹⁾ It is important to consider the international criteria at the time of conclusion of the settlement agreement and not before or after. Whether a settlement agreement is “an international” depends on the identities of parties to the mediation. In order to satisfy the criteria of international the place of business of disputing parties must be in two different States. In a multi parties disputes, at least two parties must have their place of businesses in a different State. A domestic mediation may become international or international mediation may become domestic if parties moves from one State to different State or from different State to the same State. Therefore, the place of business of the disputing parties at the time of conclusion of the settlement agreement will be very important for courts facing enforcement of settlement agreements. However, if the disputing parties are from the same

6) The Singapore Convention, Article 4(1)(iv).

7) The Singapore Convention, Article 2(3).

8) The Singapore Convention, Article 1(1).

9) The Singapore Convention, Article 1(1).

State then if the substantial part of the settlement agreement is performed in a different State or the subject matter of the settlement agreement is closely connected with a different State then also the condition of “international” will be met and the Singapore Convention can be invoked on those settlement agreements. Moreover, if a party has more than one place of businesses, “the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regards to the circumstances known to, or contemplated, by the parties at the time of the conclusion of the settlement agreement”.¹⁰⁾ In case if party does not have a place of business, reference is to be made to the party’s habitual residence.¹¹⁾

In the international contracts (CISG) the concept of international have been used for long time and courts have experience of determining the place of business of a party and such experience will be helpful in determining the international criteria for the settlement agreements. For example, “closest connection” test, or how to determine the place of business etc. It should also be noted that in the Model Law of Mediation, parties may agree to make their mediation international even if conditions of international in not satisfied. However, parties cannot make their settlement agreement international by mere agreement.

Moreover, those who have experience of applying “seat” theory or concept in relation to the enforcement of arbitral award need to appreciate that for the purpose of the Singapore Convention a mediation settlement agreement is not tied to any place or seat and therefore it is not subject to any domestic law and hence no one State can set aside the settlement agreement. It is also supported by the evidence that there is no ground of refusal of a settlement agreement based on the fact that the settlement agreement has been set aside at the place of mediation. By removing the seat concept from the Singapore Convention, the practicality of mediation has been recognized. For example, a mediation settlement agreement could be reached by e-mail or sessions of mediation may be conducted at different places. The flexibility and parties’ autonomy in mediation has been fully respected and reflected by dropping the idea of “seat” in the Singapore Convention.

In sum, an international commercial settlement agreement resulting from mediation is not a contract as such and that settlement agreement if satisfies the general condition of “resulting from mediation”, “commercial” and “international” can be directly enforced directly under the Singapore Convention.

The Settlement Agreement as a Shield

Article 3(2) of the Singapore Convention states “*Is a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved.*” It means a settlement agreement can be brought before a court or an arbitral tribunal to prove that the subject matter of litigation or arbitration has already been resolved

10) The Singapore Convention, Article 2(1)(a).

11) The Singapore Convention, Article 2(1)(b).

through mediation. This concept is widely known as “recognition” which is familiar among arbitration lawyers. In the New York Convention, courts have to go through the process of “recognizing” an international settlement but in the Singapore Convention this particular concept was deliberately dropped by the drafters of the Convention. However, the functional approach of the “recognition” is retained so that an international settlement could be used as an evidence before a court to prove that the alleged issue before a court in litigation has already been mediated and a final and binding settlement has been reached between the parties.¹²⁾ The effect of this provision is that at the very outset the court or arbitral tribunal will strike out the case because the same issue has already been resolved through mediation. This provision also re-emphasizes the integrity of mediation as a process of dispute resolution and thus a settlement agreement can have *res judicata* effect. Thus a mediated settlement can be used as an “evidence” and if it is in accordance with the rules of procedure as laid down a State and if it meets the conditions of the Singapore Convention then it proves that the subject matter of litigation or arbitration has already been resolved thus making the settlement agreement a complete defence before the court or the arbitral tribunal.

Though the Singapore Convention does not use word “recognition” but in essence it has encompassed all practical function of a recognition process. The correlation to this function may be seen from the ground of refusal of seeking relief in Article 5(1)(b)(iii) which allows courts to refuse relief if the settlement agreement “is not binding, or is not final, according to its terms”. Moreover, as contrary to the New York Convention, courts are obliged to “act expeditiously” when considering the request for relief.

Conclusion

The Singapore Convention paves the way for the international commercial settlement agreement resulting from mediation to be enforced directly across the countries. It has also made it possible to use the settlement agreement as a complete defense against litigation or arbitration of the same dispute which has been resolved already through mediation thus creating a *res judicata* effect. In short, a settlement agreement can be used as a sword and as a shield under the Singapore Convention even though it has not used words like “recognition” and “enforcement”. However, the Singapore Convention has adopted the practical aspects of recognition and enforcement. Therefore, a settlement agreement resulting from mediation is not and should not be treated as a mere contract by theorists and it should be accepted as a document capable of direct enforcement, and as an evidence to prove a dispute has been resolved through mediation in the Singapore Convention.

12) Timothy Schnabel, “ The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements”, *Pepperdine Dispute Resolution Journal*, Vol.19, No.1, pp 1–60. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3239527

Section 1

Speaker 4

Igor Khrushchev

Igor Khrushchev was born on September 2, 1964, in the city of Mogilev, Byelorussian Soviet Socialist Republic in the family of navy officer and agronomist. At the age of 14, after graduation from secondary school in 1979, he decided to follow the career track of his father and moved to the Far East for entering the Far Eastern Naval College. In 1983, he graduated with honors and received a Navigator Degree, Diploma of a Long-Distance Navigator, Officer Rank of Lieutenant Reservist of Russian Navy. He started his career in Vladivostok working in the largest Russian company for the transportation of frozen fish products named "VOSTOKRYBKHOLODFLOT". Moving up through the ranks, Igor Khrushchev had a career advancement from the 4-th Captain Assistant to Sea Captain. From 1998 to 2001 he moved to a leading position in the shipping company and got the position of the First Deputy General Director for Economics and Business.

He enriched his experience in the Russian state-owned company being in charge of top management of joint Russian and Korean shipping company named "COSMOS MARITIME Co. LTD", which Igor Khrushchev ran in the period of 1994–1998. The main activity was opening and operation of commercial lines along the route Vladivostok – Busan, and other international trade and economic projects in the field of shipping and commerce. The gained experience and knowledge in business and international projects allowed to start a new career path. From 2001 to the present, he is an active leader in various areas of public administration.

Igor Khrushchev headed municipal enterprises and institutions working in the Administration of Vladivostok in 2001–2005. In 2005–2008 he led the International Center for Russian–Korean Cooperation at Far Eastern State University. In 2008–2012 he worked in the Administration of Primorsky Region and was responsible for the development of transport and industrial sectors in the region. He has gained tremendous experience and afterward was responsible for preparing the transport and logistics infrastructure of Primorsky Region for the Asia–Pacific Economic Cooperation Summit in 2012.

Assessing the experience and professionalism of Igor Khrushchev, the Leadership of the Ministry of Transport of the Russian Federation appointed him to the position of Director of "Rosavtotrans" Federal State–Funded Institution Far Eastern Branch Office. From 2016 to the present, Igor Khrushchev is the Director of "Rosgranstroy" Federal State–Owned Institution of the Ministry of Transport of the Russian Federation in the Far Eastern Federal District. The area of responsibility includes checkpoints construction, equipping and operating. Previously and currently, Igor Khrushchev is one of the leading experts in the field of transport and logistics.

Regardless of the busy schedule, he received additional higher education at Far Eastern State University with a Degree in Public Administration. In 2006 he deepened his knowledge at the Russian Academy of Public Administration in Moscow. In 2007 he advanced his professional competences at the Graduate School of Far Eastern State University with a Degree in Political Science, Political Institutes and Political Processes. The acquired knowledge in the field of political education made it possible to get leading positions in the Regional Branch of the “United Russia” (“Edinaya Rossiya”), Ruling Party while remaining a member of its Presidium. Since March 2019, by the Decree of the Party Leadership, Igor Khrushchev has been appointed as the Director of the International Party center in the Far East.

Social and political background of mediation development in response to challenges of XXI century

Khrushchev Igor Eduardovich

Economy is inseparable from politics in the same way as politics is inseparable from economy. Intensification of present-day political processes only strengthens their inherent interconnection with economic processes and relationships. The evidence of this fact was the third wave of global democratization (from early 1970s till mid 2010s), during which the number of countries representing the global democratic community increased from 35 to over 110. This community was based on electoral democracy, as well as liberal economic structures, the functioning of which is called “globalization”.

Globalization showed fundamental irregularity and imperfection of current politics resulting in crisis destabilization of various types of relations between countries and nations. The problems arising in this connection have their roots in the legal sphere of each particular country actively designed by the politicians in the course of law-making conflicts, which smoothly transform into law-enforcement oppositions or alliance not always meeting the interests of positive interstate relationships. As a result, the laws and other regulations being passed frequently initially fail to meet the universal criteria of law-making of the globalization era. Instead of developing the state-to-state and nation-to-nation relations, they just unbalance them.

Moreover, international and supranational institutions constantly operate on the individual countries demanding from them to bring their national legislations in line with the regulatory requirements of the globalization era. This shaky ground sometimes becomes the basis for appearance of informal rules for settlement of any arising disagreements. This complicates the processes of relations between countries and nations, especially the economic ones, which are already complex enough. It's no secret that any political problem will automatically impact the rhythms of functioning of the real economy and not only reduce the economic growth rate but also most adversely affect the individuals' personal wealth and thus considerably changing their political views and principles.

In view of the above, we should understand mediation as a very serious political process of settlement of international conflicts, the economic nature of which is as evident as their political background, rather than an alternative and effective method of commercial disputes settlement.

Liberal economic structures, such as the World Trade Organization, the European Union and the North American Free Trade Agreement theoretically were designed to play a crucial part in mediation, i.e. development of amicable agreements and control over their implementation. The range of tools required for that is provided for in the United Nations Convention on International

Settlement Agreements Resulting from Mediation (New York, 2018), also known as Singapore Convention on Mediation.

The essential liberal economic structures involved in the international mediation processes are the authoritative sources of economic, political and sociocultural dynamics of human civilization development in the present-day world. Their activities constitute an important factor for social transformations. However, these international institutions do not always succeed in keeping up with their responsibilities in the mediation sphere. The main reason for this is that the administration and coordination of the globalizing world is not the politicians' business anymore. The real power today is in the hands of network structures of the global market setting the pace of decay of traditional political and sociocultural institutions, for which the politicians are just ordinary "economic men" with deformed identity employed by such structures.

As a result, the countries whose lawful rights and interests more and more frequently and blatantly trampled by the above-mentioned centres of mediation – the World Trade Organization, the European Union and the North American Free Trade Agreement, are compelled to create the alternative international structures which harmoniously complement the existing organizations instead of replacing them. Among such new global centres of mediation are the Shanghai Cooperation Organization (SCO) and BRICS. The Singapore Convention on Mediation adopted in 2018 has completely legitimated the functional load of these organizations which reflect the interests of the majority of countries and assist them in resolving of practical matters of economic cooperation, energetic partnership, scientific and cultural interaction.

Mediation was meant to develop such universally accepted rules of relations between countries and nations which would ensure that clarity of the principles of interaction and cooperation minimizes the negative impact made on them by any concerned structures, especially if the latter are not directly involved in such relations. Mediation cannot be considered a conventional doctrine implemented only by the leaders of world economy and only globally. A good example of regional-level mediation is the intergovernmental organization Extended Tumanan Initiative created back in 1995 and uniting 5 countries – the PRC, the DPRK, the Republic of Korea, Mongolia and Russia, which are really interested in increasing of economic attractiveness of the mainland part of the North-East Asia.

For global community, mediation is an important means of resolving the international problems, and this means, in particular, creation of conditions for the global community's successful opposition to various challenges and threats, which most frequently also include the globalization process generating the main challenges of the XXI century. Due to globalization only, the problem of uneven development of the world countries, which resulted in faster economic development of a relatively small number of the leading countries of the world at the expense of numerous less developed states, has become much more pressing. At present, the political manifestation of economic ambitions is the Western elites' pursuance of planetary domination under the pretext of protection of their interests. At the same time, they pointedly ignore anyone else's rights and interests, even the most lawful and natural ones.

In the current context, mediation must become the most important component of normalization

of the relations between countries and nations. The tools of mediation can be used for resolving of the problems of correlation between the interests of globalization and the same of nation states and communities. Creation of global markets does not always require the unification of the sociocultural sphere. Suffice it to recall the Great Silk Way, which for many centuries connected the Eurasian civilizations with apparently incompatible ideologies by the most various political and economic relationships. This historical phenomenon would be impossible without successful application of ancient mediation technologies which made it possible to develop economic relationships without hurting the national and cultural areas.

Present-day globalization creates the challenges which are dangerous due to their unpredictability, and not only in respect of identity of each particular person. It also poses real threats to the state represented by its traditional institutions which more and more frequently demonstrate their inability to confront complex and controversial processes occurring in the economy and accompanied by centrifugal tendencies and sensationalization of national interests.

Nature abhors the vacuum, and the political institutions showing their incompetence and interstate structures weltered in primitive bureaucracy are, as a rule, replaced by the new forms of organization and coordination of the global order. They establish the qualitatively more advanced principles of mutual relationships within a network as a part of global economic system based on the exclusive right to use violence or constraint in imposing of their world order. The system of globalization-era global connections also promotes appearance of governing bodies necessary for it operation, which as a rule are non-institutional and as such independent from the civil society and its institutions.

Today, mediation is intended not to outcompete or to eliminate any basic elements of previous world order, but to facilitate their harmonious adaptation to new conditions and integration into the current political and economic processes. This is necessary in order to preserve the key social and political achievement of the humanity – democracy – and to ensure the development of new political, economic and public global centres, the most important of which should be Asia where the axis of world development has already shifted.

It is quite doubtful that mediation in the conditions of globalization can be successfully performed by those international organizations which were brought to life by the globalization itself. For instance, in resolving of the problems of settlement of the conflict in the Korean Peninsula the similar organizations showed their helplessness, while the above-mentioned Extended Tumangan Initiative was able to implement a number of successful infrastructure projects in this area and considerably improved the mutual understanding and interaction between its participants. Strengthening of efforts aimed at the development of international trade and economic cooperation of the member states of this organization encouraged the Japanese leaders to take an active part in its activity as an observer State.

The humanity may have to use as alternative and efficient methods of trade conflict settlement not only the existing international organizations. The fundamental principles of mediation can be also successfully implemented under the control of international associations of reputable civil society institutions having real political influence and exercising a really determinative effect on

their members' (supporters') political behaviour and participation. Such institutions should include political parties and national and religious movements.

For instance, an example of very good and positive potential is the International Conference of Asian Political Parties. It unites the representatives of over 70 political parties of the world and in its activities takes decisive actions to avoid repetition of mistakes made by other international structures (especially Euro-Atlantic ones) imposing the principles of single-mindedness and solidarity, which are foreign to democracy, and forcing out the elementary principles of political, sociocultural and economic variety from the social life practice.

The efficiency of mediation procedure greatly depends on the venue where it takes place. Experience has shown that such efficiency increases when the negotiation processes are moved to the states having the reputation of strong advocates of polycentric world – such as Russia, which for decades has been acting as an intermediary in settlement of many international conflicts arising both in political and in economic spheres. The Russian national leader, President Vladimir Putin is the author of the concept of the Greater Eurasian Partnership aimed at natural convergence of the integration processes in Europe and Asia. It's no coincidence that the jubilee 10th General Assembly of the above-mentioned International Conference of Asian Political Parties established at the initiative of the prominent Philippine politician Mr. Jose de Venecia, was held in 2018 in the Russian capital – Moscow.

It is worth emphasizing that the political consensus, unrestricted exchange of views and development of agreed strategies on the main track of international negotiation processes in Russia is provided for and guaranteed by the political party with parliamentary majority – “United Russia”. As the Secretary of the General Council of this most influential Russian political party Andrey Turchak rightly pointed out in his speech at the jubilee 10th General Assembly of International Conference of Asian Political Parties, true security in Asia, like all around the world, may be only universal in nature, and security for one people cannot be achieved at the expense of the others' security. Being conscious of this, the “United Russia” offers all concerned political parties the open and comprehensive cooperation, inter alia, in the mediation process related to the search for the ways of settlement of disputable matters.

The nature of globalization is alien to democracy. Its ideology violates the fundamental ideological guidelines on which the United Nations Organization is based. This is why in future the global community guided by the elementary instinct for self-preservation must change the vector of evolution of the human civilization toward the competitive and polycentric global system which is able to provide for real rather than declaratory coexistence of alternative strategies of social development.

In fact, the creation itself of the Singapore Convention on Mediation should be qualified as a manifestation of the positive international law-making intended to improve the relations between countries rather than to serve as a proxy for economic and political expansionism. Its text lacks significant defects creating objective or subjective obstacles for its successful international implementation.

It is beyond argument that the Singapore Convention on Mediation will share the fate of other

UN official documents at the stage of transformation of international legal rules into the national laws and regulations. Even in terms of its spirit and content, it cannot serve the interests of those accustomed to negotiating from the position of strength and constraint. This is the reason why we should expect the implementation of the Singapore Convention on Mediation primarily by those countries which brought this Convention to life for the purpose of their struggle for competitive and polycentric world. And the political parties with parliamentary majority of the concerned countries must play a significant role in this process.

It seems symbolic that the creation of the future polycentric world system will be possible only if it is based on the modernization and globalist consensus which can be reached only as a result of a number of international treaties and agreements, including those ones which will pass the mediation procedure in accordance with the Singapore Convention once again confirming its special political significance.

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Section 1

Discussant 1

Natalia Prisekina

NATALIA G. PRISEKINA, LL.M., Ph.D. in Law, Partner and Head of the Russian Far Eastern Office of a leading Russian law firm “Pepeliaev Group”; Vice Dean on Research and Innovations, School of Law, Far Eastern Federal University; Professor of International Public and Private Law, School of Law, Far Eastern Federal University; Honorary Consul of the Republic of Chile in Vladivostok; Head of the Far Eastern Branch Office of the Arbitration Center of Russian Union of Industrialists and Entrepreneurs.

Natalia G. Prisekina is a 1991 graduate of the Law Institute at the Far Eastern National University (currently – Far Eastern Federal University, FEFU). In 1994, Ms. Prisekina was competitively selected to study in the United States at McGeorge School of Law, University of the Pacific under a Muskie Fellowship Program. Following completion of her studies in 1995 and receiving her LL.M. in Transnational Business Practice, she practiced international and commercial law at a private firm in Sacramento, California. In 2002, she defended her dissertation "Problems of Discrimination in International Labor Law" and earned a Ph.D. from the Law Institute at the Far Eastern National University.

Ms. Prisekina has extensive experience in international commercial and corporate transactions, maritime, transportation and labor law, as well as in civil and international litigation, and personally has handled many substantial transactions in the Russian Far East. Before joining law firm “Pepeliaev Group”, she served as a senior partner of Russin and Vecchi LLC International Legal Counsellors and headed the firm's office in Vladivostok, where she worked since 1995.

Ms. Prisekina’s consular jurisdiction covers Primorye, Sakhalin, Kamchatka, Khabarovsk and Amur regions.

Ms. Prisekina is Member and Expert of the Association of Lawyers of Russia, Expert Council under the Ministry of Justice of the Russian Federation on Monitoring of Law Enforcement; Deputy Chairman on International Relations of the Circuit Council of the Association of Lawyers of Russia on the Far Eastern Federal Circuit; Expert of the Competition and Certification Commissions of the Administration of Primorsky Region; Member of the Competition Commission of the Ministry of Justice of the Russian Federation in Primorsky Region; Member of the Competition Commission of the Investigation Department of the Investigative Committee of the Russian Federation for Primorsky Region; Member of the International Panel on Arctic Environmental Responsibility (c/o the Norwegian Institute of International Affairs) for the period 2018-2019;

External Consultant and Empowered Representative of the Primorsky Regional Notary Chamber in the Republic of Chile; Arbitrator of the Arbitration Court of the Primorsky Regional Chamber of Commerce and Industry; Arbitrator of the Russian Arbitration Center of the Russian Institute of Contemporary Arbitration; Arbitrator of Harbin Arbitration Commission (PRC); Arbitrator of Asian International Arbitration Centre (Kuala Lumpur, Malaysia); Certified Mediator of International Commercial Mediation Center for Belt and Road Initiative (Beijing, China); Certified Mediator and Member of the Association of Mediators and Intermediaries of Asia-Pacific Rim (in charge of international affairs); Expert of the Business Ombudsman in Primorsky Region; Member of Editorial Board of "Asian Pacific Mediation Journal"; Member of Editorial Board of journal "Asia Pacific Rim: Economics, Politics, Law"; President of the Rotary Club "Vladivostok" in 2004/2005 and 2010/2011 and Co-President of Russia-United States Intercountry Committee of Rotary International 2018/2019.

Natalia G. Prisekina is one of few Russians and the only in Vladivostok who was honored with such exotic award as the Order of Bernardo O'Higgins, class "Caballero", for "Excellence in Development and Extension of Consular and Cultural Relations for Strengthening of Chilean – Russian Ties".

Ms. Prisekina is fluent in Russian and English with basic knowledge of French and Spanish.

Section 1

Discussant 2

Elena Romashko

From 2015 to the present Head of the Office of the Commissioner for the protection of entrepreneurs' Rights in the Primorsky Territory

Previously exercised powers:

- Deputy Director of the Department of Economics and Enterprise Development of the Primorsky Territory (Administration of the Primorsky Territory), Head of Enterprise Support.

Carried out (concurrently) teaching activities in higher educational institutions of the region.

Has a higher education (financial and economic, and in public administration). She underwent retraining and advanced training of personnel for public service (Primorsky Branch of the Academy of Public Administration under the President of the Russian Federation), specializing in crisis management.

He has the highest class rank of state civil servant of the Primorsky Territory – Acting State Advisor to Primorsky Territory 1st class.

He has experience in strategic planning and forecasting, negotiation and meetings, public speaking, non-standard management decisions, the ability to delegate authority and exercise control.

Section 2

Speaker 1: Natalia Lykova

President of Association of mediators and intermediaries of the Asia-Pacific region,
General Director of «Vincere» Co. Ltd, Russia,
managing partner «Premier» collegium of advocates,
Arbitrator of Russian Arbitration Center of
the Russian Institute of Contemporary Arbitration,
Arbitrator of the Fifth Harbin Arbitration Commission

Speaker 2: Shusuke Kakiuchi

Professor, University of Tokyo, Japan

Speaker 3: Sung Kyu (Scott) LEE

Senior Partner of Kim & Chang,
member of the Korean and New York Bars, Republic of Korea

Speaker 4: Hugo Humberto Soler Moreno

Lawyer, Colombia

Speaker 5: Natalia Chekhovskaya

Professional mediator, business consultant,
coach in the field of business technology and personal development,
Russian Federation

Iosif Pavlovich Shtitelman

Professional mediator, business consultant,
coach in the field of business technology and personal development,
Russian Federation

Discussant 1: Yuri Melnikov

Commissioner for human rights in Primorsky Krai, Russian Federation

Section 2

Speaker 1

Natalia Lykova

Biography Lykova Natalia

Natalia Lykova is the President of the Association of mediators and intermediaries of the Asia-Pacific region, the General Director and founder of the legal company «Vincere» Co Ltd., a managing partner “Premier” collegium of advocates, Arbitrator of Russian Arbitration Center of the Russian Institute of Contemporary Arbitration, Arbitrator of the Fifth Harbin Arbitration Commission, an official expert of the Office of the Ombudsman for protection of entrepreneurs' rights of Primorsky Territory Administration (pro-bono), a teacher of mediation and negotiation processes in the Far Eastern Federal University, practicing professional mediator and lawyer, PhD program student at the Far Eastern Federal University.

In 2008, she graduated from the Law Institute of the Far Eastern National University (now – Far Eastern Federal University) – specializing in international law. She has practical personal experience of more than 11 years in various fields of civil, administrative and criminal law. She has numerous court precedents in the field of land, corporate, family, labor, insurance law and property disputes.

From 2015 to 2016, she underwent professional retraining at the Russian National University of Justice (The Ministry of Justice of Russia) and received a Diploma granting her right to conduct professional activities in the field of dispute settlement with the participation of an intermediary (mediation procedure), teaching mediation.

She has completed advanced training at the Russian Presidential Academy of national economy and public administration under the professional program «Security of interethnic and interreligious relations».

Awarded the honorary diploma of the Duma of Vladivostok city for impeccable work, high professionalism, active participation in social and political life of Vladivostok. The first and so far the only mediator who has been awarded the diploma of the Duma of Vladivostok for the introduction, organization and development of mediation in Primorsky Krai. She has multiple letters of gratitude from the Head of Vladivostok for her professionalism and active participation in the social and political life of Vladivostok. She was awarded a diploma of the Legislative Assembly of Primorsky Krai for her great contribution to the protection of the rights and legitimate interests of citizens.

The founder of the award and the city action of school mediation services "Vladivostok–the city

of peace and goodness". She was awarded a letter of appreciation of the Department for work with municipal educational institutions of the Vladivostok city administration for the introduction of mediation practices in educational institutions of the city, fruitful cooperation and improving the level of competence of managers, teachers and students. The first mediator in Primorsky Krai to manage and resolve disputes through mediation and conclude mediation agreements that are under consideration in the courts of General jurisdiction and the Arbitration court of the Primorsky Krai. One of the most experienced mediators of Primorsky Krai. She is actively developing and implementing new areas of mediation in Primorsky Krai and Russia, developing new forms and methods of dispute resolution.

Russia's Role in Peaceful Settlement of Disputes in Asia Pacific region

Natalia Lykova

When discussing Russia's role in peaceful settlement of disputes, we should note our country's unique geopolitical position between Europe and Asia. Historically, such geopolitical position was a source of heated debates between political and intellectual elites. One grouping always supported and continues supporting the European vector of development. The other grouping, on the contrary, believes that Russia should build up closer contacts with Asian and Oriental countries. However, upon review of previous historical geopolitical mistakes made by the elites of the Russian Empire, USSR and Russian Federation and with consideration for geographic, historical, religious and economic specific features, a group of politicians emerged in recent years who declare that Russia has its own unique way of development through combining interests of all Russian regions and establishing friendly relationships with all countries of the world borrowing their progressive and positive experiences of historical, political and economic development.

It happened so that after the end of the World War II many Western and Asian analysts and politicians historically tended to understate and underestimate Russia's importance and great role in peaceful settlement of international disputes, particularly in the Asia Pacific region. This is largely due to the fact that some countries believe that an ideal international democratic system of checks and balances has been created and is based on military and economic power, globalization and multiculturalism, strong information and political influence on those countries which do not fit into the proposed model of world order and established system of security. Within this model, any country pursuing a sovereign policy and going its own civilization cultural way becomes isolated. Furthermore, such attitude to Russia has been supported by stereotypes about our country's backwardness and perceptions of Russia as an "aggressor" fostered largely by the cinema industry, and nationalist ideas of some countries that the Russian people has hardly any moral, historical and cultural rights to behave as one of global leaders in assurance of stability, peace and security. However, anyone who takes a look at the map of the world and Asia Pacific countries will become aware of the importance of Russia's role in building up of international peace and security.

Russia has strengthened its role in the international diplomacy and mediation activities during recent years. For instance, Russia mediated in negotiations between the Taliban and the Afghanistan High Peace Council on military activities and civil war; between political groupings in Central African Republic on efforts to achieve peace, stop war and terrorist attacks; between the Syrian government and political groupings and warlords, between Syria and a number of

countries such as USA, Turkey, Israel on stopping war; between Iran and USA on nuclear research programs and oil production; between India and Pakistan, India and China on relief of tension in their inter-relationships; between DPRK and South Korea, between DPRK and USA on denuclearization issues (many could have remembered Kim Jong-un's visit to Vladivostok in this connection); and so on.

By doing so, Russia signals that, amid the emerging crisis of political trust, it is ready to be more actively involved as a mediator and take initiative in encouraging peace-contributing processes.

Everybody understands today that the world is undergoing a crisis at all levels of human and inter-country relations. The world of today is a world of global war. This is a war inside every individual, between political, religious and financial groups, between nations, ethnicities, national and supra-national structures. To win in this war (any kind of war – trade, political, religious one), different tools are used varying from classical tools (such as armed conflicts, social manipulations, information and trade wars) to newest ones (ultrasonic, biological, light, climatic and nuclear weapons, genetic engineering, new techniques for psychological manipulation of individuals via social media). In this connection, any escalation of tension may lead to unpredictable consequences for the whole international community. Today, more than ever, we see in international policies a tendency to arising conflicts and controversies due to buildup of nationalist spirits, identity and protection of state sovereignty in many countries which results in critical divergence in the international agenda of national interests leading to military confrontation, territorial and trade wars.

At the same time, the policy aimed at establishment of a certain global model of the world based primarily on European concepts and values, pursued by a number of countries during many decades, surely fails to take into account historical, political, economic, cultural, religious, social and territorial specifics, realities and interests of emergence, development and existence of sovereign statehood and civilizations of Asia Pacific countries. Due to this reason, tension in the Asia Pacific region has noticeably grown during several last years. China, Venezuela, Malaysia, Indonesia, South Korea, Japan, North Korea, Philippines, Vietnam, Russia and other countries are currently involved in international, inter-country, domestic political and economic, and territorial disputes. The toughest confrontation is observed between USA and China. There is no point in hopes that these conflicts, even trade ones, would not escalate to real military activities sooner or later because it is assumed that financial interests of global elites are focused on stabilization of the world economy. There is a global grouping of financial elites welcoming and using war at any level, not necessarily military, as a means for getting gains and benefits. According to assessments made by the Stockholm International Peace Research Institute, Asia Pacific has become a region with fastest growth of military expenses, both in absolute terms and in proportion to GDP. Still, it should be noted that another grouping of financial and political elites, believing that conflicts and wars do not help business doing and consistently supporting the model of economic and political stability for existence and development of the world countries, still holds its position and tries to use negotiations as a means for dispute settlement in case of conflicts.

More and more people understand today that the existing model and system of political, economic,

social and international organization of states as well as the system of international peace and security is not suitable for all countries and civilizations, particularly for Asia Pacific countries and Russia. The existing intergovernmental organizations are not always capable of peaceful settlement of disputes, easing of tension, de-escalation of conflicts and assurance of security, as the growing number of countries do not listen to and do not adhere to collegial decisions made by the supreme managing bodies of these supra-national organizations and in some cases even assume an exclusive moral right to be above the whole world system and promote only their viewpoints and national interests. Also, many analysts and official governmental representatives say that there is a factor of over-politicization and corruption in existing supra-national organizations resulting in biased lobbying of interests of a certain group of countries to disadvantage of national interests of other member countries of international organizations.

The international and intra-country institute of diplomacy and mediation is currently in crisis as well because it lacks proper authority and trust. To a great extent, this is explained by the fact that this institute of mediation as a tool for peaceful settlement of disputes is used by politicians and business to their self-serving interests. We could highlight some factors of mistrust to the institute of mediation in the international arena – meddlesome and biased mediation (when a mediating country imitates its neutrality), mediating country's interestedness in a particular outcome of the situation (e.g. prevention of a situation when one of the parties becomes stronger which would be dangerous for mediator itself).

It is especially important today for all countries to acknowledge new geopolitical realities and recognize the right of all countries including the Asia Pacific region for their unique ways of development and existence. For this purpose, a new model of interfacing and arrangement of the world, security and inter-country relations should be designed, in which Russia should play one of key roles as an instrument of checks and balances between other countries. Any exclusion or underestimation of Russia's role, influence and interests in Asia Pacific would always be a factor and circumstance precluding stabilization and creation of a system of international peace and security in this region. Any ongoing attempts to isolate Russia would aggravate international conflicts and create tension inevitably taking toll on business development and welfare of each conflicting party's citizens.

We believe that it is exactly today that Russia, assisted by Asia Pacific countries, may become a staging area for creation of a new system of world order and revival of trust in international institutes of peaceful settlement such as diplomacy, negotiations, mediation and good offices. Russia is a center of concentration of all world cultures including European and Asian cultures. New models for inter-country interfacing may be a system built around regional interests and regional security – Asia Pacific interests and security in our case. Such system would look like a pyramid. It is always easier for neighboring countries, having something common in their cultures and attitudes, to come to terms in politics as well. In this case, it would be easier for regional players to harmonize and protect their interests in relations with countries of other regions because they will be backed by the whole region's political and economic might. Potential for disregard of national interests of small and economically weak countries would be minimized. Both existing and newly established supranational unions of countries in regions could become

a basis for such model.

An important role in establishment of a new model of the world and security should be assigned to organization of an international corps of independent and recognized diplomats, mediators and middlemen, financially and politically depending as little as possible on national elites of countries and having no relation to criminal circles and law enforcement agencies. In this connection, standard rules of conduct for such mediators, rules for negotiations, responsibility for their violations and a new system of diplomatic approaches should be developed and adopted on an international level. The world should reinstate centuries-old practices of gentleman's word and reputation and work out a new uniform concept of diplomatic law, right for mediation and negotiations. A system of soft law and soft power could possibly be developed.

Many assert that, unlike European countries and USA, Russia has no national idea. I believe that the national idea and mission has already emerged and been formulated, although many politicians and citizens of our country fail to be aware of it for the time being. The national idea and Russia's role in the world is mediation, peaceful settlement of disputes via diverse dispute settling institutes. It is in this connection that institutes for mediation and negotiations are currently developing in Russia with increasing intensity. I believe that over many decades Russia has showed itself as a reliable partner with its activities based on principles of inseparable security, inalienable sovereignty and integrity of countries, respect for international law and peaceful settlement of disputes.

International analysts speak about "Russia's U-turn to Asia". It is not unlikely that such U-turn may become a milestone in creation of a new world order and establishment of a new system of mediation and diplomacy aimed at setup of a complex of measures for building confidence.

Section 2

Speaker 2

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CV

- Born in 1973 in Tokyo, Japan. Studies in law at the University of Tokyo (1992–1996). Qualified in State Examination in Law (1995). Research Assistant at the University of Tokyo (1996–1999). Associate Professor of Law at the Graduate Schools for Law and Politics of the University of Tokyo (1999–2012). Professor of Law at the Graduate Schools for Law and Politics of the University of Tokyo (2012–).
- Visiting Scholar: University of Hamburg and Max Planck Institute for Comparative and International Private Law (Hamburg)(2003–2005), Yale Law School (Fulbright Scholar)(2005), University of Frankfurt am Main (visiting professor, LOEWE Fellow)(2013–2014).
- Membership in Governmental Advisory Committees: Associate Member of the Legislative Council of the Ministry of Justice (2008–2009, 2010–2011, 2015–), ADR Certification Advisor of the Ministry of Justice (2017–), Associate Member of the Advisory Committee for Drafting of Supreme Court Civil Rules (2019–).
- Membership in Academies: Member of Executive Board of the Japan Association of the Law of Arbitration and Alternative Dispute Resolution (2010–). Member of Japanese Association of the Law of Civil Procedure (1996–), Japan Association of Private Law (1996–), Société franco-japonaise de science juridique (2007–), Japanese Association of Sociology of Law (2008–).
- Other Activities: Member of Conciliator Committee of the Automotive Dispute Resolution Center (2013–), Executive Board of the Japan ADR Association (2014–), Procedure Consultative Committee of the Japan Commercial Arbitration Association (2014–), ADR Committee of the National Consumer Affairs Center (2015–), Arbitration Advisory Committee of the Life Insurance Association of Japan (2017–), Executive Board of the Japan Financial Services Association (2019–).
- Main Areas of Research: Law of Civil Procedure, Alternative Dispute Resolution, Insolvency Law.
- Main Publications in European Languages:
 - Médiation et droit des contrats : une perspective japonaise, in: Zeitschrift für Japanisches Recht, Nr. 17 (2004), pp. 97–114
 - Reform des Zivilprozessrechts in Japan, in: Zeitschrift für Zivilprozess International (ZZPInt), 9. Bd. (2005), SS. 267–291
 - Médiation et droit des contrats : une perspective japonaise, in: Loïc Cadiet (dir.), Médiation

- et arbitrage : Alternative à la justice ou justice alternative ? Perspectives comparatives (Litec, 2005), pp. 411–413
- Struktur des Zivilprozeßverfahrens und "Rechtsangleichung", in: Karl Riesenhuber/Kanako Takayama (Hrsg.), Rechtsangleichung: Grundlagen, Methoden und Inhalte (De Gruyter Recht, 2006), SS. 541–549
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 - Austerity in Civil Procedure and the Role of Simplified Procedures, in: Erasmus Law Review 2015–4 (2016), pp. 139–146 (Co-authored with Xandra Kramer)
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Significance of Mediation for Domestic and International Dispute Resolution:

A Perspective from Japan

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Introduction

Mediation is a process through which parties to a dispute seek, with the involvement of a third party, a resolution of the dispute by way of agreement. Its main advantage consists in providing a quite flexible way to resolve disputes. Because the whole process is based on parties' agreement, neither the process nor its outcome are not strictly bound by law. This nature, which is essential to mediation, gives it a unique importance in the context of international dispute resolution. Unlike domestic court proceedings, which is, both in terms of process and outcome, governed by domestic law of a specific state, mediation is independent from any specific state law. Although the law of a specific jurisdiction needs to be referred to in case that a new dispute arises regarding the validity and enforceability of the agreement, as far as the outcome of a mediation is followed voluntarily by the dispute parties, there is no room for such an intervention by state law. This means that mediation could be quite beneficial for international dispute resolution. However, its potential has not been fully developed so far.

In the following presentation, I will first explain the significance of mediation in today's Japan and then discuss how mediation can be used more in the international context.

1. Significance of Mediation in Today's Japan

The idea of resolving disputes by way of parties' agreement is not new at all. In many countries, this type of agreement is qualified as a kind of contract, called "settlement" or "transaction", and has been integrated in their private law system. Also, in many countries, the legislator has been trying to promote dispute resolution through such agreements.

1.1. Mediation/Conciliation in Court

In the case of Japan, the court has been playing traditionally a very important role in settling parties. Since the reception of the modern European legal system at the end of 19th century, the authority of judges to recommend parties to settle has been admitted explicitly by law.¹⁾

1) Art. 89, Code of Civil Procedure. This provision has its origin in Art. 269 of the German Code of Civil Procedure of 1877, which was adopted by the Japanese legislator as Art. 221 of the Japanese Code of civil procedure of 1890.

Until today, judges have been making active use of this possibility and more than one third of cases²⁾ are terminated by settlements. Although this process is often referred to as “conciliation” or “judicial conciliation”, its nature is the same as mediation in the broad sense, except that it’s judges, who would otherwise render the judgment on the case, who conciliate or mediate parties.

In addition, there are several special court-annexed procedures for conciliating parties, among which the most important are the civil matter conciliation procedure and the family matter conciliation procedure. Unlike conciliation by judge, these procedures can be used independent of any lawsuits, in other words, before filing lawsuits, and the proceedings are conducted by a special committee composed of a professional judge and at least two private persons. Although the use of civil conciliation procedure is recently decreasing, some thirty thousand cases are treated annually and over one third of them are terminated through a successful settlement agreement.

1.2. Mediation Services by Administrative Organs

In some area of disputes, mediation services are offered by administrative organs, too. Unlike judicial conciliation procedures, which are available for all types of civil disputes, these administrative services are specialized to specific field of disputes such as consumer disputes, environmental disputes and labor disputes. One of the recent examples is the Dispute Resolution Center for Nuclear Damage Compensation, which was established as a result of March 2011 earthquake and the subsequent nuclear accidents in Fukushima.

1.3. Private Mediation Services

In contrast to these conciliation or mediation procedures provided by public sector such as court and administrative authorities, the role of private mediation services has been comparatively small in Japan. Thus, to promote the use of private mediation mechanisms has been a major concern of the legislator for the last few decades.

As a result, the so-called “ADR Act”, Act on Promotion of Use of Alternative Dispute Resolution, was enacted in 2004 and entered into force in 2007. This law introduced a certification system for private mediation procedures: Persons who carry out mediation services may obtain certification by the Minister of Justice if their services satisfy the certification standards provided by law. The most important legal effect of this certification is that mediators of certified ADR providers may receive fees for their activities, which is otherwise prohibited if they are not qualified as attorneys at law. However, the impact of this law as regards the number of cases dealt with by private mediation organizations has been yet limited.

1.4. Role of Mediation in International Disputes

So far, we saw the important role of conciliation/mediation, provided often by court or other public

2) The number refers to the cases terminated in district courts, which are the courts of general jurisdiction at the first instance.

authorities in Japan. It should be noted, however, that most of the disputes which are dealt with by such mechanisms are of a domestic nature. In other words, the role of mediation in international, cross-border disputes has been still very limited. Considering the potential of mediation, which I mentioned at the beginning, we need to discuss how we can promote the use of mediation in cross-border disputes.

2. Promotion of Mediation in Cross-border Disputes

To discuss how to promote mediation in international context, it is necessary to distinguish the types of disputes. In the following, I will discuss distinguishing three types of disputes, namely, (a) consumer disputes, (b) family disputes and (c) business disputes.

2.1. Cross-border Consumer Disputes and Mediation

In consumer disputes, the amount of the claim is usually very small and therefore the time and cost available for dispute resolution is quite limited. At the same time, most of the claims can be classified into a limited number of categories, such as nondelivery or defect of the product. Accordingly, online, standardized and automated dispute resolution process fits very well for this type of disputes, so that the involvement of a mediator is not always necessary. However, in exceptionally complicated or serious cases, mediation on an online basis could be used, if some practical issues such as the language and mediator's fee can be well arranged. Also, the cooperation among public authorities in charge of consumer affairs is important in this field and to be developed further.

2.2. Cross-border Family Disputes and Mediation

Family disputes are one of the dispute areas where mediation approach is particularly suitable and this applies to cross-border disputes as well as domestic ones. Indeed, the Japanese legislator was aware of its advantage, when it introduced a mediation scheme for international child abduction cases in 2014 at the time of the adoption of the Hague Convention on the Civil Aspects of International Child Abduction. In this scheme, the Ministry of Foreign Affairs commissions several mediation institutions to carry out the mediation process. It is also worth mentioning that some of Japanese mediation institutions established co-mediation frameworks with foreign institutions, for example Co-mediation agreement between Aichi Bar Association and SMC (Singapore) or Reunite (UK). This kind of cooperation among mediation institutions is expected to play an important role in this field and to be promoted more.

2.3. Cross-border Business Disputes and Mediation

Finally, as regards cross-border business disputes, arbitration has been often chosen so far as dispute resolution process independent of specific state law. However, as mentioned at the

beginning, mediation could be even more flexible both in terms of process and outcome and therefore bring more benefits to business parties.

If, nevertheless, parties to a business dispute hesitate to try mediation instead of arbitration, two reasons may explain such hesitation. First, unlike arbitration, mediation process does not guarantee to reach a solution because parties can always say no to agree. Second, at least so far, the issue of enforceability has not been so clear as in the case of arbitration.

Concerning the first point, it is crucial that parties gain experience of successful mediation and realize its benefits. To make this possible, it is necessary to change the mind of lawyers, who represent and advise parties. Education is the keyword in this regard. Also, the competition among mediation institutions is important to guarantee the quality of mediation services. As for the second point, enforceability, the Singapore Convention is starting to change the situation and is expected to give positive impact to the behavior of parties and their lawyers.

3. Concluding remarks

Dispute resolution on a voluntary basis is sometimes called “amicable” settlement. In international context, where amicable spirit is needed more than ever, the role mediation should play is becoming more and more important. As I mentioned above, cooperation among concerned authorities and institutions is particularly expected to make this possible. I hope that this forum will be a good opportunity for such a cooperation, too.

Section 2

Speaker 3

Scott LEE Attorney

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Bio

Scott Lee is an attorney in Kim & Chang's Corporate Investigations & White Collar Defense Practice. Mr. Lee joined the firm after his distinguished 20-year career as a prosecutor where he handled a broad range of legal disputes including white collar crimes.

With the extensive experience he gained during his career as a prosecutor, Mr. Lee handles cases that arise from internal audits of client companies by conducting interviews and investigating documents, and resolves anti-corruption cases that pose material risk to the management and its integrity. He has also dealt with various labor law issues including employment contract disputes.

Mr. Lee was the first ever prosecutor to be named as a legal counsel for the Korean Mission to the United Nations. He was also appointed as an arbitrator for the Permanent Court of Arbitration in the Hague. He is currently the conciliator of ICSID under the World Bank and is also the Mediator of Seoul Southern District Court.

Furthermore, Mr. Lee was in charge of environment and construction regulation legislation tasks during his service at the Ministry of Justice. In addition to his proven skillful legislative analysis, he possesses a vast wealth of knowledge and experience in defending clients in circumstances in which they have been implicated under unreasonable regulations. Mr. Lee has particularly been successfully in handling white collar criminal defense cases and HR cases involving multinational financial institutions, IT companies, defense industries, and pharmaceutical companies.

Experience

- Arbitrator, Far East Division of Arbitration Center, Russian Union of Industrialists and Entrepreneurs (RUIE) (2019-Present)
- Vice President, Korean Society of Mediation Studies (2019-Present)
- Arbitrator, Korea Commercial Arbitration Board (2018-Present)
- Member, Advisory Committee of ACRC (2018-Present)

- Member of BOD, Australian Chamber of Commerce (2018-Present)
- Mediator, Seoul Southern District Court (2016-Present)
- Conciliator, ICSID World Bank (2015-Present)
- Lecturer, Foreign Civil Servant Invitation Program, Anti-Corruption & Civil Rights Commission (2014-Present)
- Vice Chair, FTA Special Committee, Seoul Bar Association (2012-2013)
- Lecturer of Prosecution Practice, Sebitlaw Academy (2012.6.-2012.10.)
- Representative Member of Korea, Roxin Alliance (Global Network of Criminal Defense Experts) (2011.7.-Present)
- Member, Regulation Review Committee, Ministry of Foreign Affairs and Trade (MOFAT) (2006-Present)
- Kim & Chang (2005-Present)
- Senior Prosecutor, Busan High Prosecutors' Office (2004-2005)
- Senior Prosecutor, Seoul Eastern District Prosecutors' Office (Economic Crimes) (2003-2004)
- Lecturer (International Trade Law), Judicial Research and Training Institute of the Supreme Court of Korea (JRTI) (2002-2010)
- Lecturer, Foreign Lawyers Invitation Program co-hosted by Ministry of Justice (MOJ) & KOICA (2001-present)
- Arbitrator, Permanent Court of Arbitration in the Hague (2001-2008)
- Senior Legal Counsel (as a senior prosecutor), Ministry of Justice (2001-2003)
- Professor (prosecution practice) (as a senior prosecutor of Suwon), JRTI (1999-2001)
- Prosecutor, Seoul District Prosecutors' Office (1998-1999)
- Legal Counsel, Korean Mission to UN (1996-1998)
- Prosecutor, Daegu District Prosecutors' Office (1995-1996)
- Legal Counsel, MOJ (1993-1995)
- Prosecutor (OSHA), Suwon District Prosecutors' Office (1992-1993)
- Washington D.C. US District Attorney's Office Training (1991)
- Leichler & Soble Exchange Attorney Program (1991)
- MOJ Overseas Training Program (1990-1992)
- Prosecutor, Seoul Northern District/Cheonan/Suwon District Prosecutors' Office (1985-1990)

Representative Activities

Awards

- Leading Lawyer, Who's Who Legal: Korea, Business Crime Defense & Investigations (Who's Who Legal, 2019)
- Leading Lawyer, Who's Who Legal, Business Crime Defense (Who's Who Legal, 2018)
- Civil Merit Medal (Contribution to Real Property Registration Transparency)
- Minister's Citation (Ministry of Justice)

Publications/Activities

- Legal Research on UR (Co-author)
- Some Problems on DWI

Profile

Education

- Chung-Ang University (Completed coursework, Ph.D., 2008)
- George Washington University (LL.M., 1992)
- Judicial Research and Training Institute of the Supreme Court of Korea (1984)
- College of Law, Seoul National University (LL.B., 1982)

Qualifications

- Admitted to bar, Korea, 1984; New York, 1992

Languages

- Korean and English

Areas of Expertise

Corporate Investigations & White Collar Defense, International Trade & Customs, France and French Speaking Countries, Health, Shipping, Europe

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Korean Perspective in the Peaceful Settlement of International Private Disputes

Oct. 2019

Scott Sung-Kyu LEE

Senior Partner of Kim & Chang

Seoul KOREA

KIM & CHANG

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- I. Mediation Types
- II. Court Annexed Mediation
- III. Current Status
- IV. Process
- V. Issues
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- IX. Points to Consider

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I. Mediation Types

- Court annexed mediation
- Administrative mediation
- Private mediation

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II. Court Annexed Mediation

- Civil, Family and Criminal
- Labor commission mediation

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III. Current Status

- Mediation after argument/hearing -> Mediation before argument/hearing
- Judge mediation -> Non judge mediation
 - 450 Non judge mediators in Seoul Central Court
 - 40% lawyers
 - Several Full time mediator
 - Affiliated Institution mediation
 - Korea Commercial Arbitration Board, Lawyers Association, Law Schools... 20 institutions
 - 30% success rate

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IV. Process

- Settlement done : same effect of court judgement
- Settlement failed -> Court's mediation terms -> enforceable unless objected within 2 weeks
 - Objection -> return to Court proceeding

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V. Issues

- Petition for mediation 1%
- Settlement 9%
 - Judge settlement 80%
 - Non judge settlement 20%
- Exchange of views between judge and mediator

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VI. Administrative Mediation

- 40 plus Dispute Resolution Commissions
 - Inside Agency
 - Inside subsidiary
- Civil Society participation in the Government business
- Feed back for future Policy direction

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VII. Issues

- Overlapping Jurisdiction
- Exercising Executive Power
- Jobs for retirees
- No case

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VIII. Private Mediation

- Korea Commercial Arbitration
 - Insignificant case filings
- Similar Mediation Activities
 - Public Dispute Resolution Centers
 - Academic
 - NGO
 - Family Counselling

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IX. Points to Consider

1. Educate and promote

- Pros and Cons of Mediation
- Who will be present at the mediation session
 - Knowing the facts
 - Full authority

2. Training for Mediators

- KCAB
- Lawyers' Association
- Commercial Training Courses

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IX. Points to Consider

3. New Bills for Legislation

- Non lawyer participation
- Government support

4. Sufficient payment for mediators

- Diversified mediators and fee range

5. Separation of Arbitrators and Mediators

- Different skill set required

6. Mediation class in Law School curriculum

7. Wholistic approach

- Settlement for several related disputes

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IX. Points to Consider

8. Function of Legal Counsel

- Benefit of Quick resolution
- Balanced prediction of litigation result
- Comparable fee

9. Certification for mediator

- KCAB
- Korea Mediation Society

10. International Mediator Pool

- Overcoming cultural difference

11. Singapore Convention

- Expedited domestic legislation required

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Questions & Answers

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Thank you

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Section 2

Speaker 4

Hugo Humberto

Soler Moreno

A lawyer graduated from the "Universidad Libre de Colombia" and LL.M from FEFU, I worked in the Ministry of Health and Social Protection and in the Secretariat of the Habitat of the Mayor's Office of Bogotá.

Mediation As An Instrument For Peace Building

The Colombian experience

Hugo Humberto

Dear colleagues, assistants to the forum good afternoon, first of all I want to thank my advisor Dr. Natalia Prisekina for this wonderful invitation to participate in this interesting forum and FEFU for been my home during last 3 years of my career.

When the Dr. Prisekina said me that I will have the opportunity to give some words about the current situation of the mediation in Colombia, I thought great! It is my favorite alternative disputes resolution mechanism, because all my life as lawyer I have been convinced that the people must know and feel the constitution and laws as part of their daily lives.

And the mediation is perfect to give the opportunity to the parties involved in a conflict to seek and propose solutions that end it, creating a culture of resolving our disputes without resorting to the courts.

The implementation of the culture of «solve it yourself», is of vital importance at the moment in my country, and I am going to tell you why.

The last 26 of September 2016, after 4 years of dialogues, the colombian government and the FARC guerrillas signed a peace agreement, which ended the internal conflict that we Colombians lived for 50 years. The governments of Cuba and Norway participated as mediators in this agreement.

But, when a peace process is signed, it is only the beginning of a long process that requires create an atmosphere of reconciliation that allows citizens to heal wounds and regain trust and hope.

It is here, where the mediation can serve as a tool to generate scenarios for dialogue and search solutions to conflicts that may arise, in almost all areas of human life.

Actually in Colombia we don't have a specific or general Mediation Law, but we have some Decrees that regulates it, for example the Decree 2137 of 4th November 2015¹⁾, which regulates the mediation of conflicts between public entities, or the Decree 1818 of 1998²⁾ which establishes the Statute of alternative dispute resolution mechanisms. This last mentioned norm was issued with the purpose of decongesting judicial courts, of lawsuits that can be resolved through any ADR.

Nevertheless, in the law practice the mediation is used for ended conflicts non-judicial or litigation in courts, so much so that the arbitration law (Law 1563 de 2012) establishes in its article 103

1) <https://www.minjusticia.gov.co/Portals/0/Ministerio/decreto%20unico/%23%20decretos/11.%20Decreto%202137%20del%204%20de%20Noviembre%20de%202015.pdf>

2) <https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6668>

that: «If during the arbitration proceedings the parties reach a transaction or a conciliation or mediation that resolves the dispute, the court will terminate the proceedings».³⁾

On the other hand, in order to given that Colombia is a country interested in promoting foreign investment and improving international trade relations, the government decided to participate as a signatory country of the Singapore Convention on Mediation issued last 7th August in the city-state of Southeast Asia.⁴⁾

It means, that the “United Nations Convention on International Transaction Agreements Resulting from Mediation” has full effects in the Colombian territory, and all the international companies will be able to access the benefits offered by mediation.

It's very important to note that this regulation applies to an agreement resulting from mediation and concluded in writing by parties to resolve a comercial dispute on the international scope (Art.1). The requirement that is written can be met with the signatures of the agreement electronically (Art. 4 (2)).

The implementation of this Convention will have significant effects in the way of resolving international commercial conflicts, since it provides the parties agility and economy, two of the main characteristics that modern entrepreneurs are looking for.

According to the figures of the Singapore Mediation Center, 70% of the conflicts that are aired before that institution reach an agreement between the parties, and of them, 90% is resolved in just one day. They also point out that 94% of the parties that came to resolve conflicts through mediation would recommend the process to third parties, 84% of them reported having saved costs and 88% said they had saved time.⁵⁾

As we can see, the panorama in relation to international commercial mediation is exciting, and we will see the results once this convention begins to take effect.

Now, returning to the issue of mediation at the national level in Colombia, it is the case to point out, that the Colombian government is currently preparing a justice reform project, which would be a great opportunity to create a specific regulatory framework that regulates national mediation processes in labor, family, commercial and criminal matters.

This would generate, on the one hand, a decrease in lawsuits in judicial courts (judicial decongestion), and on the other hand it would contribute to the development of the culture of dialogue and the resolution of conflicts by those involved.

In my opinion, this is a scenario that would bring very good results to building and maintain the peace in my beloved country.

3) <https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=48366>

4) <https://www.singaporeconvention.org/official-signatories.html>

5) Rojas M., La mediación en Colombia un camello por descubrir, Blog de negocios Universidad Externado de Colombia, 29 de Octubre de 2018, Bogotá D.C. URL:<https://dernegocios.uexternado.edu.co/negociacion/la-mediacion-en-colombia-un-camello-por-descubrir/> (Accessed on September 12, 2019).

Section 2

Speaker 5

Natalia Vladimirovna Chekhovskaya

Mediator, business advisor, business technology and personality development coach

Education:

2017 – Pacific National University (Khabarovsk city) “Mediation. Basic Course”

1992 – Institute of Youth (Moscow city), Psychology Department.

1980 – FESU (Vladivostok city): biologist.

Training in the field of business consulting:

Training according to the Programme of Effective Small and Medium Business Management at the University of Alaska, the USA

Morozov Project Programme of Training Small and Medium Business Management Advisors, David Wood and John Wolfinger. SEGAL QUINCE WICKSTEED LIMITED CAMBRIDGE, UNITED KINGDOM IN CONJUNCTION WITH THE MOROZOV PROJECT

WORK EXPERIENCE:

More than 1,300 training programmes have been conducted since 1991. I have worked in cooperation with Iosif Shtitelman since 1992.

ARC, RAEC, Vladivostok City, 2003–2009.

More than 1,300 training programmes have been conducted. Among them are long-term /more than 2 years/, middle-term /1–2 years/ and short-term consulting programmes and projects in more than 120 companies, such as: Exxon Neftegas Limited, Universal Sodexho /Sakhalin, the Khabarovsk Territory.

DVEC /Far-Eastern Energy Company, the cities of Vladivostok, Khabarovsk and Blagoveshchensk Khabarovsk Eastern Regional Autocentre of KamAZ

Far-Eastern and North-Eastern Branches of Sberbank of Russia

Vladivostok Commercial Port and others

LEADER OF INTERNATIONAL CONSULTING PROGRAMMES

1. “Modern Management Techniques: Motivation Management” for those who have completed the SABIT programme, a Special American one
2. Project of Sustainable Development of Small and Medium Business in the Far East of Russia, USAID /ARC, the USA

3. BAS Programme, Programme of Consulting Promotion for Enterprises of the Far East of Russia, Great Britain
4. Author of Management Leader training course within the framework of the M B A programme of the Graduate School of Management of the VSUES, Vladivostok city
5. Author of Communication Skills Necessary for Mediators training course.

ACTIVITY AREAS OF THE CLIENT COMPANIES

Development and extraction of natural resources, energy industry, production and sale, transportation, logistics, construction, education, innovation technologies, communications, credit and financial area (banks, credit cooperatives and associations), insurance; food production, pharmacy, medicine, retail and wholesale trade, jewelry

GEOGRAPHICAL SPREAD OF WORK IN COMPANIES

Primorsky region, Vladivostok, Nakhodka, Khabarovsk, Magadan, Yuzhno-Sakhalinsk, Petropavlovsk-Kamchatsky, Yakutsk, Chita, Yekaterinburg, Kazan, Moscow

Section 2

Speaker 5

Iosif Pavlovich Shtitelman

Mediator, business advisor, business technology and personality development coach

Education:

2017 – Pacific National University (Khabarovsk city) “Mediation. Basic Course”

1989 – Engineering Psychology Special Department of the LSU (St. Petersburg): psychologist

1985 – Construction Engineering Department of the FEPI (Vladivostok city): construction engineer.

Training in the field of business consulting:

Training according to the Programme of Effective Small and Medium Business Management at the University of Alaska, the USA

Morozov Project Programme of Training Small and Medium Business Management Advisors, David Wood and John Wolfinger. SEGAL QUINCE WICKSTEED LIMITED CAMBRIDGE, UNITED KINGDOM IN CONJUNCTION WITH THE MOROZOV PROJECT,

WORK EXPERIENCE:

More than 1,500 training programmes have been conducted since 1989.

I have worked in cooperation with Natalia Chekhovskaya since 1992.

ARC, RAEC, Vladivostok City, 2003–2009.

More than 1,500 training programmes have been conducted. Among them are long-term /more than 2 years/, middle-term /1–2 years/ and short-term consulting programmes and projects in more than 120 companies, such as: Exxon Neftegas Limited, Universal Sodexho /Sakhalin, Khabarovsk Territory.

DVEC /Far-Eastern Energy Company, the cities of Vladivostok, Khabarovsk and Blagoveshchensk Khabarovsk Eastern Regional Autocentre of KamAZ

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LEADER OF INTERNATIONAL CONSULTING PROGRAMMES

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the SABIT programme, a Special American one

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5. Author of Communication Skills Necessary for Mediators training course.

ACTIVITY AREAS OF THE CLIENT COMPANIES

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GEOGRAPHICAL SPREAD OF WORK IN COMPANIES

Primorsky region, Vladivostok, Nakhodka, Khabarovsk, Magadan, Yuzhno-Sakhalinsk, Petropavlovsk-Kamchatsky, Yakutsk, Chita, Yekaterinburg, Kazan, Moscow

INSTRUMENTS FOR RESOLUTION OF INTER-ETHNIC DISPUTES IN A MULTINATIONAL COMMUNITY

I.P. Shtitelman, N.V. Chekhovskaya

Mediator, business advisor, business technology and personality development coach

Vladivostok has historically been a multinational city from the day of its foundation. Since the nineteenth century, both representatives of European and Asian peoples have lived here. Within the territory of Primorsky region only, 128 ethnic communities live in the first decade of the twenty-first century. As reported by the Stockholm International Peace Research Institute, 2/3 of all conflicts in the middle of the nineties of the twentieth century were inter-ethnic. The situation in the world and the Asian and Pacific Rim has changed little by the second decade of the twenty-first century. The existing problem raises a set of questions: Is it possible to reduce the number of ethnic-based conflicts? Which methods and instruments may be applied in this case? What is their effectiveness?

We have participated in several international projects: cooperation with the American Russian Center (ARC), the university of Anchorage, Alaska, the USA; as tutors and coaches in the course of training the coordinators of Sakhalin-1 project of Exxon Neftegas Limited (the territories of Sakhalin region and Ulchsky district of Khabarovsk Territory); as coaches when training chiefs of Sakhalin region and transnational companies from among the small indigenous peoples of the North. We have acted as mediators when solving complicated conflict situations. In the course of dealing with multinational groups of the Sakhalin Region, Khabarovsk Territory and Primorsky region we used successfully such an instrument as creation of committees for prevention of national conflicts and settlement of arising disputes. Both representatives of small indigenous peoples of the North living in this territory, representatives of administrative authorities of the regions and representatives of foreign companies operating within these territories (for example, Exxon Neftegas Limited) were engaged in their work. All problems in the territory which affect interests of the participating parties were settled in the form of dialogue and discussion between the participants.

Between meetings of the committee, coordinators acted as mediators between all the participants and monitored the level of conflict tension. Also, they acted as skilled mediators when dealing with routine controversial situations. Such a comprehensive approach made it possible to keep the number of inter-ethnic conflicts low.

To maintain an acceptable level of inter-ethnic tension, it is possible to use the following instruments: creation of committees, holding collective inter-ethnic events (contests, festivals, and holidays); collective implementation of social projects (summer camps, hospitals and schools). An effective method of prevention of inter-ethnic conflicts is collective training of ethnic group leaders in management of conflict, mediation as a method of resolving conflicts, negotiating and effective communication. Thus, leaders who have mastered methods of mediatory resolution of disputes and conflicts are able not only to solve such problems, but also become sources

of special atmosphere of respect and trust in their communities.

The work we did in the form of a training session in 2011 for Primorsky region Government before the preparatory period preceding the 2012 APEC Summit can be used as an example of inter-ethnic conflict prevention. 26 people presenting different social groups participated in the training session, namely, active members of ethnic social organisations, representatives of local self-government bodies and executive authorities of the Primorsky region, mass media, the Directorate of the Ministry of Internal Affairs of Russia within the Primorsky region, the Directorate of the Federal Migration Service of Russia within Primorsky region and representatives of business community.

It was suggested that participants who split into several groups should discuss and formulate tasks for future work. The following was mentioned as priorities: to gain new knowledge in settlement and prevention of conflicts, to find an algorithm of settlement and prevention of inter-ethnic conflicts; to develop an effective interaction in a conflict situation at three stages: forecast, prevention, and settlement; to become familiar with theory and practice of religious factors of conflict development, influence of national self-determination on a conflict situation; to understand how to prevent an inter-ethnic conflict in a certain group, how ethnic self-consciousness influences life and to talk about self-consciousness in a conflict situation.

For development of recommendations on how to prevent inter-ethnic conflicts within the territory of Primorye, four key points were defined: reduction of inter-ethnic tension on Russky Island; acclimation of labour migrants; interaction of mass media and ethnic communities for purposes of recession of conflictogenic tension level; adoption of measures for keeping conflict tension within the inter-ethnic space of Primorsky region at a low level.

Participants of this event brought specific proposals about determination of measures aimed at keeping conflict tension within the inter-ethnic space of Primorsky region at a low level. For example, one of the proposals was to create a International Friendship Centre. It is the opinion of the participants that educational and religious activities necessary for maintaining a conflict-free space should be carried out in close coordination with ethnic organisations. Importance of club activities, preservation of languages, culture, traditions, crafts, as well as awareness-raising work in educational institutions, mass media and families was proved.

National communities and other social organisations participating in the session expressed readiness to develop cooperation with public authorities, to interact with mass media, to put forward proposals for expanding the regional legal framework. The participants discovered that it is necessary to improve the pattern of attracting labour resources from the CIS and outlined prospects of creation of an acclimation centre for labour migrants.

After the end of the training session, many participants noticed emotional uplift, a clearer understanding of topical issues and a desire to continue work.

The event itself became a model of conflict-free inter-ethnic communication.

Thus, we can see that there is a number of methods helping to overcome conflicts. All the same, if incidents occur, one of the most effective extrajudicial methods of resolving ethnic conflicts is mediation.

Section 2

Discussant 1

Yuri Melnikov

About 30 years, Yuri Borisovich worked in the prosecutor's office of the Primorsky Territory, more than 25 years of them in senior positions – from the district prosecutor to the prosecutor of Vladivostok and the deputy prosecutor of the Primorsky Territory, where he oversaw issues of monitoring the observance of human and civil rights and freedoms. PhD in Law. Currently holds the position of Commissioner for human rights In Primorsky Krai.

Section 3

Speaker 1: Edwin L. Felter

Senior Administrative Law Judge,
founder of the administrative justice system of Colorado USA,
Denver, Colorado USA

Speaker 2: Ruslan Skryagin

Judge of the Arbitration court of Primorsky Krai, Russian Federation

Speaker 3: Helmut Kury

Senior researcher at Max-Planck Institute for Foreign and International Penal Law
Professor, Department of Criminology, University of Freiburg, Germany

Speaker 4: Jae Seog CHOI

BG(retired), member of the Korean and New York Bars,
Standing Mediator, KLAC, Republic of Korea

Speaker 5: Maxim Beloborodov

Professional mediator, candidate of legal sciences,
docent of Department «Civil law and process» of Law school of FEPU,
member of Scientific-methodical Council of educational organizations and departments,
competition law and antitrust regulation of the Federal Antimonopoly Service,
Russian Federation

Discussant 1: Kyonghwa CHUNG

Lawyer, partner at BKL, Republic of Korea

Discussant 2: Jewoo LEE

Professor, Kangnam University, Republic of Korea

Section 3

Speaker 1

Edwin Felter

JUDGE EDWIN L. FELTER, JR. is the Senior Administrative Law Judge with the Colorado Office of Administrative Courts, one of the first central panels in the United States. He has been an administrative law judge since 1980. He has also been an Adjunct Professor of Law at the University of Denver, Sturm College of Law, since 2006. He was the chief administrative law judge in Colorado from 1983 through 1998, and in that role he established Colorado's independent central panel, based on the judicial model of adjudication organizations. Judge Felter is currently responsible for the in-house training in his Office (including ethics training), and for the law clerk program (since 2001). Prior to becoming an ALJ, Judge Felter served as an assistant attorney general for Colorado, handling civil trials in state and federal courts, as the disciplinary prosecutor for the Supreme Court Grievance Committee, and as a Deputy Colorado State Public Defender. He received his law degree from the Catholic University of America, Columbus School of Law, in Washington, D.C.

He is past chair of the National Conference of the Administrative Law Judiciary (NCALJ), Judicial Division, American Bar Association (ABA), 2000/2001. During his term as chair, he successfully guided Resolution 101B (judicial independence and accountability of ALJs) through final passage by the ABA House of Delegates by a vote of 279 to 2. Judge Felter presented the Resolution on the House floor prior to passage. He was Chair of the ABA Government and Public Sector Lawyers' Division (GPSLD) 2012/2013. He has served as Co-Chair of the GPSLD Ethics Committee, 2007-present. In 2016, he received the GPSLD Nelson Award for outstanding service to the ABA by a public lawyer. The GPSLD is the 12th largest entity in the ABA, with a membership of over 9,500. From 2006-2009, Judge Felter served on the ABA Standing Committee on Ethics and Professional Responsibility, an ABA Presidential appointment.

Judge Felter is a consultant in administrative law for the STAR Viet Nam Project, and spent the months of December 2003 and March 2006 in Viet Nam, assisting the Drafting Committee of the Government Inspectorate (GI) in revising the Law of Complaints and Denunciations (Viet Nam's version of an Administrative Procedure Act). The project involved a proposal for the creation of a Central Administrative Tribunal of Viet Nam. He has consulted with the States of Hawaii, Alaska and Pennsylvania on the establishment of central panels; with the Republic of Panama on judicial administration; and, with the workers' compensation judges in Rio de Janeiro, Brazil. In 2009, Judge Felter was a guest speaker at the Queensland Law Society's (Australia) annual meeting in Brisbane, Queensland. In March 2016, the ABA Center for Human Rights sent Judge

Felter to Lesotho, South Africa, to observe the impeachment trial of High Court Judge Kananelo Mosito. In October 2019, Judge Felter will be a guest speaker at an international administrative law conference in Vladivostok, Russian Far East. Thereafter, he will deliver joint lectures with a Russian law professor on comparative administrative law at the Ural State University Law School in Yekaterinburg, Russia.

His article entitled "Special Problems of State Administrative Law Judges," 53 Admin. L. Rev. 403 (2001) [re-published in 8-10 Law and Justice: Journal of the United Lawyers Association 41 (2001-2003), New Delhi, India], surveys ethical structures for state ALJs in the United States. His article, "Accountability in the Administrative Law Judiciary: The Right and the Wrong Kind," 86 Denv. U.L.Rev.157 (2008) [reprinted in 30 J.NAALJ 19 (2010)] explores the reasons why political accountability is not appropriate.

He won the 1994 National Association of the Administrative Law Judiciary (NAALJ) Fellowship in Administrative Law for his paper, "Adjudication Quality: The Only Way to Reduce Costs and Delays," 15 Journal of the National Association of Administrative Law Judges [15 J.NAALJ 5 (1995)]. He co-authored an article with a former law clerk, Sarah Hubbard, entitled, "Erosion of the Exclusive Remedy in Workers' Compensation," 31 The Colorado Lawyer 83 (December 2002). In 2018, Judge Felter co-authored an article with Professor Oyku Didem Aydin (Professor of Constitutional Law at Hacettepe University Law School in Ankara, Turkey), entitled "The Death of Judicial Independence in Turkey: A Lesson for Others," 38 J.NAALJ 34 (2018); online at <https://digitalcommons.pepperdine.edu/naalj/>

In his spare time, Judge Felter enjoys reading mystery novels, hiking, and international travel. In the summer of 2016, he traveled to Iceland, Denmark, Poland, Austria and the Czech Republic. He spent one month in Italy in the summer of 2017. In the summer of 2018, he spent one month in Poland, Hungary and Italy. In October 2019, he will be a guest speaker at a conference in Vladivostok, Russian Far East. Afterwards, he will deliver joint lectures with a Russian law professor at the Ural State University Law School in Yekaterinburg, Russia.

A Credible Mechanism for Resolving Disputes Between Businesses and the Government

Edwin L. Felter, Jr. [Colorado, USA]

INTRODUCTION

The system of jurisprudence and the rule of law in the U.S. is premised on a system of checks and balances in a government with three separate but equal branches of government (the legislative, the executive and the judicial branches). The legislative branch makes the laws and the executive branch enforces the laws. The judicial branch interprets the laws by resolving disputes. The legislative branch holds the power of the “purse strings.” The executive branch possesses the enforcement mechanisms. The judicial branch cannot appropriate money and it doesn’t have a police force to enforce its judgments. It is the weakest branch of government, yet it is the last word because the people, so far, accept the legitimacy of the Supreme Court and the courts below it. It is the unseen glue which holds our system together.

- Agencies are created to implement specific legislative purposes.
- As such, agencies have a combination of functions:
 1. EXECUTIVE – Enforcement
 2. LEGISLATIVE –Rulemaking
 3. JUDICIAL – Adjudications

Where does the “Guidance Document”¹⁾ (Federal) fit? Under the Executive (function) or Legislative (function)?

ADMINISTRATIVE LAW ADJUDICATIONS

DUE PROCESS ANALYSIS FACTORS

DEPRIVATION

Immediate

Threatened

Direct

Indirect

- PROPERTY
 - Entitlement
 - Expectation
 - Sources

1) Prepared by the U.S. Attorney General to guide agencies in the performance of their functions.

- LIBERTY
Stigma
GoodName
Honor-Integrity
OpportunitiesForeclosed
- PROCESS
Hearing
Timing-Scope
Lawsuit

AGENCY PROGRAM –RIGHT TO ADJUDICATION

- Regulatory Agencies/e.g. the EPA (Environmental Protection Agency)
Enforcementinitiatedbyagency
Enforcementinitiatedbyprivateparty
- Benefits Agencies, e.g. SSA, UI, Workers' Comp. (between two private parties)
Application for benefits
Terminationofbenefits

Licensing Boards
Application, *e.g.*, denial
Suspensionorrevocation

POWERS OF ADJUDICATOR AT HEARING

- Administer oaths and affirmations
- Sign and issue subpoenas
- Rule upon offers of proof and receive evidence
- Dispose of motions relating to discovery

****REGULATE THE COURSE OF THE HEARING**

- Fix the time for filing briefs and other documents
- Convene pre-hearing conferences to simplify issues
- Issue orders that control the course of proceedings
- Dispose of motions, including motions to dismiss, intervene or similar matters
- Reprimand or exclude from hearing any person for indecorous conduct

- Award attorney fees for discovery abuses when permitted by statutory law.

THE NEED DECISIONAL INDEPENDENCE

**ALJ=Administrative Law Judge=Adjudicator

- The “Application” Section of the 2007 ABA Model Code of Judicial Conduct refers to the Administrative Law Judiciary.
- Canon 1 states: A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary...
- The late Chief Justice William H. Rehnquist said that an independent judiciary is the “crown jewel of our democracy.”
- The administrative law judiciary, unlike constitutional judges, must deal with accommodating legitimate agency objectives without compromising judicial independence.
- Structural Independence [statutory frameworks that assure the ALJs judicial/decisional independence]
- Functional Independence [the ALJ’s insistence on being decisionally independent, sometimes despite a statutory framework to the contrary.
- Job Security is the bedrock of judicial independence
- ALJs, Quasi-Judicial Officers or Employees? Or, both?

ACCOUNTABILITY IN THE ADMINISTRATIVE LAW JUDICIARY²⁾

Ordinarily, the administrative law judiciary likes to fly under the radar.

- There are several appropriate forms of accountability. None include political accountability.
- There is a constant interplay between judicial independence and accountability.

APPROPRIATE FORMS OF JUDICIAL ACCOUNTABILITY

- Accountability to “reasoned elaboration” [having to give legal reasons for a decision].
- Accountability to precedent *a/k/a stare decisis* [the SSA has a policy of non-acquiescence (in opinions of other U.S. circuit courts of appeal if they conflict with SSA policy). Senior U.S. District Judge John L. Kane (Colorado) calls this a recipe for anarchy.
- Accountability to codes of judicial conduct, rules of professional conduct.

2) “Accountability in the Administrative Law Judiciary: The Right and the Wrong Kind,” 86 *Denv.U.L. Rev.* 157 (2008) [reprinted in 30 *J. NAALJ* 19 (2010); Felter, Edwin L. Jr. [explores the reasons why political accountability is not appropriate]

- For the administrative law judiciary, accountability to supervisory performance evaluations mandated by state personnel systems. There are two types:
 1. Judgmental (affects pay, status, tenure)
 2. Developmental (for self-improvement only)
- Right to Judicial Review.
- Public Performance Evaluations (developmental) [by commissions, public surveys.

CENTRAL HEARING AGENCIES (CENTRAL PANELS) vs. **ADJUDICATORS IN THE AGENCIES**

- Perceptions can be everything. A perceived lack of independence and impartiality can, in and of itself, amount to a lack of both.
- If the adjudicator is within the agency, and impenetrable wall between it and the adjudicator must be constructed to foster public perceptions of fairness, *e.g.*, the federal ALJs, who hear Social Security cases are in the Office of Hearings and Appeals of the Social Security Administration (SSA) and are physically separate from the administration.
- The best impenetrable wall is a central panel, an organization of adjudicators that is a separate agency from the agencies that are required to provide a fair hearing at the end of the administrative line.
- Now, there are 25 state central panels, 3 city central panels (NYC, Chicago, and D.C.), and one county central panel (Cook County, Illinois).³⁾

CENTRAL PANELS – A GOOD GOVERNMENT IDEA

Maryland was the first central panel established for a purely good government idea. It was established in 1989. The first two years were more expensive than all the confederated adjudicators existing before 1989. After the third year, costs were less.

- Alaska established a central panel in 2004 – for good government reasons. Acentralpaneloffersanefficiencyofscale.
- Its only function is to hear and decide contested cases.
- Thus, public perceptions of fairness are similar to perceptions of the judicial branch.
- The central panel still offers ALJs with specialized expertise, without compromising perceptions of fairness, i.e., coziness with the agency is not a factor.

³⁾ The State of Illinois now has a central panel.

FORMS OF ADR (Alternative Dispute Resolution)

- Settlement Conference by a Judge --- judge discusses merits of positions to encourage settlement (can be heavy handed)
- Non-binding Arbitration (by a private arbitrator or arbitrators) ---a neutral selected by the parties hears the evidence and issues a court-like decision for the purpose of facilitating settlement.
- Binding Arbitration -same as nonbinding but the neutral's decision resolves the matter and it is not subject to appeal.
- Early Neutral Evaluation - a neutral evaluates what will happen at trial and issues a report on strengths and weaknesses of each side's position in order to facilitate settlement.
- Mini-Trial --- an abbreviated trial where the parties agree to be bound by the neutral's decision.

REMEDIES

For Administrative Tribunals (Central Panel Tribunals)

****Statutory Authority is Required**

- Order cease and desist from certain practices (injunction)
- Order specific performance of a contract
- Impose statutory fines and penalties
- Order revocation, suspension or probation of a business license
- Order discontinuance of doing business

For Mediation

- The successful end-product is an enforceable settlement agreement (Enforceable in the same manner as a tribunal order or judgment is enforceable.

Enforcement

- Can consist of:
 1. forfeitures
 2. attachment and seizure of property and bank accounts⁴⁾

⁴⁾ Usually the administrative tribunal must request a judicial branch court of general jurisdiction to perform enforcement proceedings.

Section 3

Speaker 2

Ruslan Skryagin

In 2002 he graduated from the Far Eastern Academy of Public Administration, majoring in jurisprudence.

Before being appointed to the post of judge of the Arbitration Court of the Primorsky Territory, he worked: from August 2002 to January 2016 in the Arbitration Court of the Far Eastern District (until 06.08.2015 – the Federal Arbitration Court of the Far Eastern District), successively replacing the posts of leading specialist, assistant judge, chief of staff – court administrator, assistant judge.

From January 2016 to the present, he has been serving as a judge of the Arbitration Court of the Primorsky Territory. Judicial board for the consideration of disputes arising from civil and other legal relations.

Total legal experience more than 16 years. Work experience as a judge for more than 3 years.

By the decision of the qualification board of the Primorsky Territory dated 01.26.2017, №1/8, the fifth qualification class was assigned.

Section 3

Speaker 3

Prof. Dr. habil. Dipl. Psych. Helmut Kury, Prof. h.c. mult.

Former (meanwhile pensioner): Senior Researcher at Max-Planck-Institute for foreign and International penal Law – Department of Criminology – and Prof. at the University of Freiburg/Germany

born: 4.12.1941 in Glottental, near Freiburg/Germany

1964–1970 studies in Psychology, Philosophy and Economics, University of Freiburg

1970 graduated in Psychology

1970–1973 Junior researcher
Institute of Psychology, University Freiburg. Education in Behavioral Psychotherapy and Non-directive-Psychotherapy. Expert testimonies for the penal courts in questions of criminal prognosis and credibility.

1973–1980 Senior researcher Max Planck Institute for Foreign and International Penal Law – Criminological Research Group, Freiburg

1974 Ph.D. in Psychology, University of Freiburg

1980–1987 First Director of the Criminological Research Institute of Lower Saxony, Hannover/Germany

1986 Habilitation (Professor) in Psychology, University of Freiburg

since 1988 Senior Researcher Max Planck Institute for Foreign and International Penal Law, Freiburg and Professor of Psychology, University of Freiburg, Specialisation in Forensic Psychology and Criminology.

End 2006 Retirement from the MPI, teaching at the University of Freiburg about Forensic Psychology and special topics in Criminology

Since 2006 Teaching criminology at the University in Hamburg/Germany, especially Social Science Methodology, Attitudes to Punishment and Fear of Crime.

Main Research topics:

Research in resocialisation of offenders, Evaluation of different treatments of offenders, crime prognosis, juvenile delinquency, psychological diagnostic in prison, diversion, sex offenders, expert testimonies in court, victimization, victimization surveys, Pre-trial detention and alternatives, Fear of crime, community crime prevention, methods of empirical, criminological research, international comparisons of crime development and punitiveness, attitudes to crime and punishment, stigmatization of victims, efficacy of sanctions, family violence and interventions to reduce the problem, family violence and offending. Round about 680 publications in national and international journals about these topics.

The last years broad comparative research projects, especial in former Soviet-Countries about fear of crime, punitiveness and stigmatization of victims, development of criminology, crime statistics, methodology of empirical research. Engaged in research projects about risk assessment (prognosis of further criminality). Member of international research groups, cooperation with EU and other institutions.

Topics of the teaching courses at the Universities: Forensic Psychology, Criminology, Crime Prevention, Family and crime, Research Methodology.

Experiences in teaching at different universities in Germany and Switzerland.

Editor of Several books about crime, criminology, forensic psychology, Family and criminal behavior. Member of expert groups of the European Union in East European countries about several topics of criminology.

Member of international Research Societies, presentation of results on international conferences. Professor honoris Causa in Kasachstan, Georgia and Ukraine.

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What is more effective to prevent crime – Mediation or sharper punishment? International Research Results.

Helmut Kury

International comparisons of punishment and crime rates in a country clearly show that more severe penal reactions on criminal behaviour has not much to do with the crime rate, countries with sharper punishment, for example the death penalty, has not automatically less crime. On the background of the complex relations of punishment with the situation in a society it is extremely difficult to predict further trends. “What is clear is that punishment is linked not just to economic upturns and downturns, but also to changes in the degree of cohesiveness and divisiveness in societies. It seems to be clear that scales of inequality and feelings of belonging to the same community are basic to the appointment of blame, the extent to which risks are seen as shared, and whether or not the principal modes of punishment and control will be inclusionary or exclusionary. Punishment and control are not merely reflections of crime rates but are also reflections of the political climate, feelings of solidarity and division, atmospheres of welcome or hostility to strangers; and that strategies for dealing with crime, disorder, and difference will reflect both technological and cultural possibilities available to those with power” (Hudson 2002, p. 258). Waller (2019, p. 186) points out that being “smart on crime” is more effective in reducing crime and especially much cheaper for governments. He presents a lot of examples how realizing a more preventive and cheaper crime policy.

Most people are not very well informed about crime and development of crime rates in a country. The media inform people often not valid about crime, media have their own interests in reporting about crime, they want to be seen (TV) or to be bought (Newspapers), so their reports will be very often “dramatic” and selective (Hestermann 2016). If people are asked about crime and punishment most of them express the attitude that crime is increasing and that the best measure to reduce criminal behaviour is to sharpen the punishment – and if it does not help, increase the punishment. Winterdyk and King (2011, p. 101) emphasize on the background of experiences from Canada: “One explanation that has been used to explain this attitude is the fact that the public is naïve when it comes to understanding the complexity of sentencing and the processes that are involved in judges reaching a decision about what type of sanction best fits the crime being addressed (see Roberts and Hough 2005). In addition, the media plays a skewed role in what it covers in terms of crimes, their sentences, and the context in which a sentence has been reached”.

International empirical criminological research shows meanwhile clearly that an increasing of the severity of punishment has no or only a very limited effect on crime reduction. Countries with high imprisonment rates or more severe punishment do not have automatically lower crime rates than those using imprisonment only as a last resort (Harrendorf and Smit 2010; Walmsley 2010). One of the best examples are the USA. They have the world highest imprisonment rate, use

in 30 States the death penalty (since 2000 the number of executions is decreasing), the same time they have a very high rate of violent crime. Experts see the background more in the regulation of weapons in the country and the social inequality of different groups, so between Blacks and Whites, than in the severe punishment (Alexander 2010). Winterdyk and King (2011, p. 103f.) emphasize on the background of comparing Canada with USA “that while the rate of violent crime has increased marginally between 1983 and 2000 in Canada, the rate of violent crime in the United States experienced a dramatic spike throughout the early 1990s but then dropped over the ensuing years to actually be below the 1983 rate. While in the United States violent crime rate is over doubled that found in Canada, the differences in the overall property crime rate between the two countries, Canada is negligible” (see also Waller 2019, p. 196).

Kuhlmann (2011, p. 61) emphasizes concerning USA: “Imprisonment rates soared in the 1980s amidst stabilizing or declining crime rates and were largely due to new penal policies. The management of correctional institutions increasingly abandoned goals of rehabilitation and, instead, focused on managing the new ‘warehouse’ population. The increasingly dehumanizing treatment of prisoners left them ill-prepared to re-enter society after completion of their sentences. The people who inhabit these prisons are predominantly poor, minorities, and increasingly women. At the same time as incarceration rates increased, changes in the socio-economic structure of the society became more wide-spread, causing anxieties in the general population. Under these circumstances a punitive ideology was promoted that held the individual person responsible for his/her poverty or criminal behaviour while ignoring the structural contexts. This ideology formed penal practices and policies that pervaded the criminal justice system and shaped its organization such as preparatory release programs, the treatment of women, juvenile justice, supermax facilities, and, ultimately, the death penalty”.

Andrews and Bonta (2010, p. 39) emphasize on the background of the development in USA: “For over 30 years, criminal justice policy has been dominated by a ‘get tough’ approach to offenders. Increasing punitive measures have failed to reduce criminal recidivism and instead have led to a rapidly growing correctional system that has strained government budgets” (see also Christie 1993; Pratt 2007). The development in the USA, especially criminological research results, are discussed critically in Western European countries like Germany.

If rehabilitative measures and preparation for release as well as aftercare after an incarceration are neglected, and if imprisonment is primarily or exclusively used as a punitive sanction, the negative side effects increase rather than reduce the risk of recidivism. Incarceration is exclusion but should be an inclusion in society. The German Law for imprisonment states in § 2 as task for imprisonment: “In the execution of the custodial sentence, the prisoner should be able to live a life without criminal offences in the future under social responsibility”. Collateral damages for the families and communities, and the high costs of keeping offenders in prison should also be taken into account (Clear 2008; Kury 2003; Kury and Kern 2003). The exclusion of offenders in prisons to include them in society can work, but is significantly hampered by the sanctions system and requires special measures to support those affected, in particular preparation for release from prison and care and assistance after being released. Investing money in these measures is cheaper than doing nothing – but politicians are often uninformed or follow the wishes

of an uninformed public to be (re-)elected (Waller 2019).

So much more important than “just punish” is what happened with the offender after the court decision, for example does he/she has the chance to participate in treatment programs, does the offender receive any help to integrate in the society, for example an acceptable job and support if necessary. Kunst (2011, p. 311) demonstrates the “limits of attempting to influence a person’s behaviour by punishment alone. The ‘target location’ for the punishment, i.e. the respective person’s psyche, is such a complex construct that its effect cannot readily be anticipated and in some cases even may turn into the opposite of what we intended ... The question of whether punishment is in order remains an ethical one. Regarding the question of how to punish (if it is to be done), the relatively new field of research of criminal psychology, has some sound answers to offer even today”. The time of imprisonment should be used for example also to train the offenders in jobs and to present the chance to work.

Dölling et al. (2011) realized a huge and excellent meta-analysis of international previous studies about the effects of punishment (see also Hermann and Dölling 2016). The authors proofed 9.422 criminological, sociological and economic literature references about the results about effects of punishment. After several selection stages on the background of methodological standards of the studies 700 resulted which formed the basis of the big meta-analysis, this sample size significantly exceeded the extent of previous studies on questions dealing with deterrence problems (2011, p. 320). The authors point out: “Moreover it appears that deterrent effects depend on the risk of being discovered and not on the severity of punishment and that they appear more often with minor infringements of norms. The deterring effect of criminal law must thus be looked at in a differentiating model” (2011, p. 315). The study shows clearly that the death penalty obviously has no deterrent effect on severe crimes (2011, p. 374).

While attitudes investigations on critical criminal policy issues are also carried out again and again in Western European countries, this is rather less the case in the countries of the former Soviet Union. A discussion and critical questioning on the effectiveness of (hard) criminal penalties to combat crime is less developed. The media coverage on the subject is also generally less critical. As a result, traditional attitudes to combating crime and deviant behavior are even more important than in Western industrialized countries. This can also be seen in Germany, for example, in a comparison of West German with the East German länder of the former German Democratic Republic (see Ludwig and Kräupl 2005; Kury et al. 1999). International research has shown that more critical information to the public about the background to crime and the limited impact of criminal sentences leads to a reduction in punitive attitudes (see Doob and Roberts 1983; Roberts and Hough 2005; Sato 2014; Pratt et al. 2005). But nevertheless Sato (2014, p. 29) emphasizes: “On a practical level, critics who question the relevance of public opinion to the death penalty also argue that, historically, public opinion has never been the driver for abolition. Rather, almost all countries that abolished the death penalty did so through judicial or political leadership – despite public support for it”. On the other side, “this does not mean that public opinion can be completely ignored and will have no consequences. The interdependence of law and public opinion, and the need for legal systems to command popular support, have long been recognised”.

If there are engaged political decisions about crime policy on the background of empirical criminological research the attitudes of the public can change over time. For example the German Government (“Parlamentarischer Rat”) abolished 1949 the death penalty in Germany on the background of the terrible crimes in the country during the Second World War. That time this decision was clearly contra the attitude of the majority of the public: in 1948 round about 80 % of the German population supported the death penalty. After the abolition the rate decreased to round about 55 % in the 1950s, meanwhile only round about 20 to 25 % support the death penalty in Germany, the rate increased after very severe crimes, for example in the 1970s on the background of the murders of the Red Army Fraction – RAF. People “learned” meanwhile that the death penalty is not necessary to control severe crime.

On the background of a critical discussion of the effectiveness of sharp punishment to reduce crime, historical practices such as Mediation and Restorative Justice have re-emerged (see. Johnstone and Van Ness 2007; Kury and Kuhlmann 2016; Kury 2017a). London (2011, p. 13) has characterized the shift thus: “Restorative justice as both a philosophy and an implementation strategy developed from the convergence of several trends in criminal justice: the loss of confidence in rehabilitation and deterrence theory, the rediscovery of the victim as a necessary party, and the rise of interest in community-based justice”. Empirical criminological research presented more and more results about the non-effectiveness of sharp punishment, especially in the United States. “Reparation has been a vehicle for justice throughout human history” (Sharpe 2007, p. 26). As Waller (2019, p. 107) suggests: “Restorative justice takes different forms, but the basic approach involves providing a context in which victim and offender can understand each other’s perspectives; process the emotion; and, hopefully, arrive at a genuine apology and possible restitution”.

According to Walgrave (2007, p. 559) the difference between restorative and criminal justice can be seen especially in the distinguishing characteristics: “Crime in restorative justice is defined not as a transgression of an abstract legal disposition, but as social harm caused by the offence. In criminal justice, the principal collective agent is the state, while collectivity in restorative justice is mainly seen through community. The response to crime is not ruled by a top-down imposed set of procedures but by a deliberative bottom-up input from those with a direct stake in the aftermath”.

In many instances, this approach has shown itself to be successful through lower recidivism rates redressing of the victims’ grievances through addressing their material and financial needs, healing for the communities involved, and fostering of a greater sense of overall satisfaction with the process among the participants (Kury 2016; 2017a; 2017b; Kury and Ilchenko 2015). International empirical research shows clearly that most victims, with the possible exception of some of those victimised via very serious crimes, are more interested in restitution for the harm caused than they are in severe punishment of the offender (Sessar 1995; Waller 2019). Gromet (2015, p. 40) states: “Restorative justice presents a different approach to achieving justice than the traditional court system. Whereas court systems depend on punitive measures and do not attend to victim concerns, restorative justice focuses on repairing the harm caused by an offence, bringing the offender back into society, and giving all actors affected by the crime (the offender,

the victim and the community) a direct voice in the justice process”.

The last 70 years, especially in a process accelerating in the 1960s and 1970s, legitimate discussion about more comprehensive ways to include the interests of victims in criminal prosecution has promoted the rediscovery and rapid growth in importance of victimology. In traditional, state-regulated penal procedures, the victims’ role is limited to that of witness – compensation for the harm they have suffered is seen as their personal problem. Traditional criminal law is not concerned with the victims’ needs and instead focuses solely on the sanctioning of offenders. In light of this, it is not surprising that many victims are unsatisfied with the results of the penal procedure. They have only the “satisfaction” that the offender is punished, more or less severely. This result, in turn, promotes a desire for harsh punishment (Kury and Obergfell-Fuchs 2011). Modern penal policy is predominantly focused on the restoration of “penal peace” (the German concept is *Rechtsfrieden*), which does not automatically re-create social peace. According to the British Crime Survey, even in 1984, 51 % of the victims interviewed said that they would be willing to meet the offender outside the courtroom, accompanied by an official “helper”, to speak about restitution (Kury 2017a, p. 98). London (2011, p. 315) points out that all parties profit from successful mediation: “For the victim, the restoration of trust approach offers the prospect of genuine repair for the material and emotional harm ... For the community, the restoration of trust offers the prospect of involvement in problem solving toward the goal of achieving safety and resolving ongoing conflicts. For the offender, the restoration of trust approach enhances the likelihood of regaining acceptance into the moral community of law-abiding people by the demonstration of accountability both for the material losses and the moral transgression involved in the crime”.

Initially, mediation was established to help victims, to improve their condition in the wake of the victimisation and to give them better chances of receiving restitution for the damages. The plethora of research results now available shows clearly that this aim can be reached if the measure is taken in a professional manner. Most victims find that their situation has improved after participation in mediation and that they have gained greater chances of overcoming the harm caused by the crime than with classical penal procedures.

With respect to the effects on the offenders, especially in terms of their re-socialisation, the results are not as unanimous. This is not surprising. Mediation is usually a brief process, lasting a few hours; therefore it would be hoping for too much to expect to see long-lasting effects on offenders, especially incarcerated offenders – who often have marked deficits in social skills. Nonetheless, as one part of a comprehensive rehabilitation programme, mediation plays a very important role, and its use should be extended in light of this. The classical approach to criminal justice has obvious disadvantages as far as the reintegration of offenders is concerned, and these shortcomings could be reduced, at least to some extent, via professional mediation which is also much cheaper than incarceration.

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Section 3

Speaker 4

Biography of Jae Seog CHOI

Jae Seog CHOI

BG(retired),
Member of K BA & NYB
Standing Mediator, KLAC, Korea

(formerly)
Standing Mediator, Seoul Southern District Court
Managing Partner, HANSHIN Law Firm
Partner, LOGOS Law Firm(LLC)
Inspector, Korean Veterans' Association
Member of Committee of Appeals for Procurement Dispute, Ministry of Administration
Legal Counsel for Korean Water Works Assn
Professor of Chodang U. & Youngsan U.

Chief of the High Court for the Armed Forces of Korea
Judge Advocate General of Korean Army
Prosecutor General, Ministry of National Defense(MND), Korea
Principal Deputy General Counsel, MND, Korea
Director of Legal Affairs Bureau, the Defense Procurement Agency(DPA), Korea
Chief of Legislative Affairs, Army HQs, Korea
Contract Counsel & Litigation Attorney, DPA, Korea
Judge, Court for Armed Forces, Korea
Prosecutor, Prosecutors' Office for Armed Forces, Korea

(scholastic background)
Korea University College of Law(LL.B)
Graduate School of Korean Studies(M.A.)
Institute of Judicial Research & Training, Supreme Court, Korea(legal internship)
Southern Methodist University School of Law, Dallas, Texas, US (LL.M)

How to promote Mediation

-from the perspective of Korean mediation practitioner

Jae Seog CHOI,
Standing Mediator, KLAC, Korea

Table of Contents

- I. Current Situation of Mediation Framework in Korea
- II. Futuristic Plan for Korean Mediation
- III. Substantial efforts to promote mediation
- IV. Conclusion

I. Current Situation of Mediation Framework in Korea

- **A. Court-driven Mediation**

- Since 1990 grown much
- criticized as not autonomous, genuine mediation but merely sort of quasi-judgement, easy substitutes for judgments
- decision order in lieu of mediation
- With authority direct or indirect to impose a solution upon the parties

I. Current Situation of Mediation Framework in Korea(contd)

- **B. Administration-leading Mediation**

- more than 70 mediation systems dominated by administrative bodies
- With administrative authority upon one side or both sides of the parties
- decision order in lieu of mediation
- mostly the effect of 'res judicata' just same as judgment of the court given

I. Current Situation of Mediation Framework in Korea(contd)

- **C. Underdevelopment of Civilian, Non-institutional Mediation**
- not prohibited by law nor stipulated distinctively and so neither actively applied so far
- non-lawyers mediate may not charge
- not enforceable by itself
- most important for the future of entire dispute resolution structure

I. Current Situation of Mediation Framework in Korea(contd)

- **D. Arbitration mechanism**
- since 1966, not so many cases of domestic disputes as well as cross-border cases
- not successfully operating as efficient ADR tool
- parties do not want to lose autonomy and discretion in the process
- fees not lower & no chances to appeal

I. Current Situation of Mediation Framework in Korea(contd)

- **E. Mixed concept of Mediation and Arbitration**
- failed to differentiate mediation from arbitration
- decision order in lieu of mediation close to arbitration award with the option to appeal
- lead to distorted concept of mediation far from autonomy and amicability

I. Current Situation of Mediation Framework in Korea(contd)

- **F. Lack of long-term plan for mediation development**
- National Assembly(NA) w/o big picture of ADR
- no interest or will to develop entire mediation system in society
- no certain direction and consistency
- the judiciary w/ passive attitude or indifference

II. Futuristic Plan for Korean Mediation

- **A. Multi-approaches to mediation development required**
- necessary to mobilize some combined, integral approaches
- All concerned authorities and groups should share common responsibility and be involved together in the works for buildup of ideal mediation system

II. Futuristic Plan for Korean Mediation(contd)

- **B. Legislation process**
- future-orienting and well-balanced structure of mediations
- thorough research about related international standards including Singapore Convention, EU Directive
- Legislation, monitoring, feedback

II. Futuristic Plan for Korean Mediation(contd)

- **C. Idealistic shape of mediation in the structure of dispute resolution**
- mediation on which mediator may assist and facilitate parties' settlement
- essence and pursuing value of mediation : parties' autonomy, social trust, self-abilities to problem solution, mutual communication, respect, patience

II. Futuristic Plan for Korean Mediation(contd)

- **D. Suggested contents of legislation**
- **1. Basic act of civilian and non-institutional mediation**
- a basic, comprehensive act for civilian and non-institutional mediation system which covers any types of civil and commercial disputes irrespective of the place of residence or business

D. Suggested contents of legislation(contd)

- **2. qualification and evaluation of mediators**
- reliability and trustworthiness of civilian mediators will be very essential
- evaluation and qualification of mediators would be inevitable
- enforcement based upon the presence & involvement of reliable, impartial mediator

D. Suggested contents of legislation(contd)

- **3. establishment of independent mediation organization**
- 'Korean Mediation Board(KMB)'
- clearly separated from KCAB
- 'Rules of Mediation'
- 'Code of Conduct for Mediators'
- mediators' independence and impartiality

D. Suggested contents of legislation(contd)

- **4. effect of enforcement given to local mediation results**
- MSA distinctively different from the mere settlement agreement b/w parties w/o any involvement or observation of 3rd P
- Mediator, more than Notary Public
- has to be enforceable of itself, without additional procedures

D. Suggested contents of legislation(contd)

- **5. Confirmation procedure for the enforcement of cross-border mediations**
- judicial checks and filtering before enforcement of MSA
- Concise authentication or approval process of courts
- Not too cumbersome in the sense of time and money to get approval

D. Suggested contents of legislation(contd)

- **6. Necessity to readjustment of legal effect of other mediation results**
- 'res judicata' normally given to MSA by administrative mediation
- advisable to give legal effect of enforceability, short of res judicata, to entire administrative mediation results

D. Suggested contents of legislation(contd)

- **7. documentation and execution of settlement**
- MSA as execution title
- Balance b/w enforceability & flexibility
- issuance (delivery or service) of the authentic copies
- Issuance of 'succeeded execution clauses' in case of succession of the parties

D. Suggested contents of legislation(contd)

- **8. balance of local mediation and cross-border mediation**
- basic mediation law for domestic disputes must be a sub-structure for the implementation of Singapore Convention for cross-border mediation
- To prevent any argument of inequality

D. Suggested contents of legislation(contd)

- **9. provisions to implement 'mediation first' doctrine**
- responsibility of the executive branch & governmental agencies to faithfully implement principle of 'mediation first'
- legal obligations or ethics of attorneys & judges to suggest mediation in advance of the start of litigation

III. Substantial efforts to promote mediation

- **A. courts' responsibility to support mediation**
- to form the balanced structure of dispute resolution mechanisms including trial, arbitration and mediation
- to handle mediation cases according to principle of autonomy and lead culture of mediation in entire society

III. Substantial efforts to promote mediation(contd)

- **B. government's responsibility to boost mediation**
- To understand the meaning & necessity of the global paradigm shift of dispute resolution structure
- To cooperate intensively with NA and the judiciary for the restructuring of the entire civil dispute resolution systems

III. Substantial efforts to promote mediation(contd)

- **C. lawyers' responsibility to support mediation**
- to respect the real interest of clients and achieve it fast and efficiently through mechanism of mediation
- Bar Association needs to encourage
- arbitrators and KCAB should respect the difference b/w mediation & arbitration

III. Substantial efforts to promote mediation(contd)

- **D. schools' responsibility to support mediation**
- Law schools
- high, middle and primary schools
- Initial and further training of mediators provided by the private sector

III. Substantial efforts to promote mediation(contd)

- **E. Local government and civil community's role to familiarization of mediation**
- to make the concept of mediation familiarized and applied in daily lives
- To install & manage village mediation centers in the vicinity of neighborhood

III. Substantial efforts to promote mediation(contd)

- **F. corporations' active demand and application of mediation**
- market-based and user-based solutions
- much benefit by way of mediations on international or local transaction disputes
- Cooperation of Bar Assn & Chamber of Commerce

III. Substantial efforts to promote mediation(contd)

- **G. consolidated efforts of scholars and professionals**
- to share knowledge and experience for balanced development of mediation local and global
- cross-influence & mutual developments b/w local mediation mechanisms & global mediation regimes

III. Substantial efforts to promote mediation(contd)

- **H. mediators' balancing of legitimacy and efficiency**
- To Keep the core principle of mediation, ie, autonomy and self-regulation of the parties
- not to lead a process of mediation closing to that of litigation or arbitration
- To keep enough flexibilities in entire process as well as in result of mediation

IV. Conclusion

- Many disputes successfully resolved by mediators of candor and wisdom
- To optimize mediation system by adopting global standard models
- Active communication and cooperation in non-governmental field may lead to development of legal system and culture of mediation in each nation

Pot with three legs

(鼎)

- Litigation + Arbitration + **Mediation**

• Thank you

Section 3

Speaker 5

Maxim Beloborodov

He is a professional mediator and a candidate of legal sciences. In 1992 he graduated from the Law Faculty of FENU, in 2007 – the Primorsky Institute of State and Municipal Administration with a degree in Finance and Credit. PhD in Economics. He defended his thesis on the topic “Formation of investment programs taking into account factors of social tension (on the example of the regions of the Far East)”, doctoral student of VSUES on the topic of the research study “Development of competition in the countries of the Asia-Pacific Region”.

From 1992 to 2006 he served in the prosecutor's office and was a judge, from the beginning of 2008 he worked in the administration of Vladivostok in the team of Igor Pushkarev.

He is a docent of Department «Civil law and process» of Law school of FEFU, member of Scientific-methodical Council of educational organizations and departments competition law and antitrust regulation of the Federal Antimonopoly service of Russia)

Possibilities of applying mediation in the settlement of disputes arising from the implementation of the contract system legislation

M.V. Beloborodov⁵⁾

More than eight years have passed since the enactment of the Federal Law No. 193-FZ of 27 July 2010 “On an Alternative Procedure for the Settlement of Disputes with the Participation of a Mediator (Mediation Procedure)” (hereinafter – the Law on Mediation)⁶⁾.

The Law can be called fundamentally progressive in the recent history of the Russian state, since after its adoption the parties got the legal opportunity to use the services of a professional intermediary (mediator) to settle partnerships arising from civil disputes in the exercise of entrepreneurial or other economic activity, as well as controversies in labor and family legislation.

However, in the original version of the Law on Mediation, it was impossible to apply the given procedure outside the court proceedings because the main idea was to facilitate the work of the courts. Also, it did not offer the opportunity for a professional mediator to participate in resolving disputes resulting from public legal relations, i.e. legal relations occurring from the actions of state authorities, local authorities, officials of state and municipal bodies.

The list of this category of disputes was established by the Article 245 of the Code of Civil Procedure of the Russian Federation and suggested cases:

- on applications by citizens, organizations, or the prosecutor for challenging regulatory legal acts in whole or in part, if the consideration of these applications is not referred by a federal law to the competence of other courts;
- on applications for challenging decisions and actions (inaction) of state authorities, local authorities, officials, state and municipal employees;
- on applications for protection of electoral rights or the right of the Russian citizens to participate in a referendum;
- other cases arising from public relations and referred by the federal law to the competence of a court⁷⁾.

Later, after the enactment of the Administrative Justice Code of the Russian Federation, the

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6) Federal Law No. 193-FZ of 27 July 2010 “On an Alternative Procedure for the Settlement of Disputes with the Participation of a Mediator (Mediation Procedure)” // – [Electronic source] – Mode of Access. – “Garant” law reference system (Date of Access 15.09.2015)

7) Code of Civil Procedure of the Russian Federation No. 138-FZ of 14 November 2002 [version of 26 July 2019] // “Consultant+” law reference system. – Last update 01 October 2019.

list of these cases was defined as – administrative cases on the protection of violated or disputed rights, freedoms and legitimate interests of citizens, rights and legitimate interests of organizations occurring from administrative and other public legal relations, including administrative cases:

- on challenging regulatory legal acts in whole or in part;
- on contesting decisions, actions (inaction) of state authorities, other state bodies, military administration bodies, local authorities, officials, state and municipal employees;
- on challenging decisions, actions (inaction) of non-profit organizations endowed with separate state or other public powers, including self-regulatory organizations;
- on contesting decisions, actions (inaction) of qualification boards of judges;
- on challenging decisions, actions (inaction) of the Higher Examination Board administering the qualifying examinations for judges and examination committees of the constituent entities of the Russian Federation administering the qualifying examinations for judges (hereinafter – examination boards);
- on the protection of electoral rights or the right of the Russian citizens to participate in a referendum;
- on awarding the compensation for a violation of the right to legal proceedings within a reasonable time in cases addressed by courts of general jurisdiction, or the right to enforce a judicial act of a court of general jurisdiction within a reasonable time⁸⁾.

In this regard, the implementation of mediation as a conflict-free method for resolving disputes seems to be the most relevant in scientific work, with the example of the Federal Antimonopoly Service activities.

In accordance with Art. 23 of the Federal Law "On Protection of Competition", the antimonopoly authority is given extensive powers to initiate and consider cases of the antimonopoly legislation's violation, issue orders, restore the situation that existed before the violation of the law, conclude agreements in favor of persons whose rights were violated by the actions of other entities, transfer funds that were received as a result of violation of the antimonopoly legislation to the Federal Budget, appeal to the arbitration court with claims for violation of the antimonopoly legislation, deal with complaints on the law violations, initiate and conduct administrative investigations, and carry out other control measures⁹⁾.

Accordingly, the Decree of the Government of the Russian Federation approved the Regulation on the Federal Antimonopoly Service of Russia, which is entrusted with the following functions: to adopt regulatory legal acts and to monitor compliance with antitrust laws, legislation in the field of natural monopolies' activities, in the field of state regulation of prices (tariffs) on goods (services) and advertising; with overseeing the implementation of foreign investment in business entities of strategic importance for state's defense and security, to control (supervise) the field of state defense contracts, the sphere of procurement of goods, constructions, services for state

8) Administrative Justice Code of the Russian Federation No. 21-FZ of 08 March 2015 [version of 27 December 2018] // "Consultant+" law reference system. – Last update 01 October 2019. – Last update 28 December 2018.

9) On Protection of Competition [Electronic source] : [Federal Law No. 135-FZ of 26 July 2006 in the version of 18 July 2019] http://www.consultant.ru/document/cons_doc_LAW_61763/55a3746dfde0a1bf154c63db656a823a81ec1a33/

and municipal needs, and the procurement of goods, constructions, services by certain types of legal entities, as well as by harmonizing the use of closed methods for identifying suppliers (contractors, performers)¹⁰.

As can be seen from the list above, the FAS Russia, as well as its territorial bodies, is endowed with extensive functions to identify and suppress violations of competition law, issue Orders to eliminate infringements, and impose administrative fines.

When following the Law on Mediation, the possibility of using conciliation procedures has also been established in the operations of the FAS Russia, especially in the areas of implementing legislation on the contract system, advertising and unfair competition, since the vast majority of these disputes arise as a result of appeals of business entities that consider their rights and legitimate interests violated by the actions of other entities or state (municipal) authorities.

However, the position of the Federal Antimonopoly Service, which is set out in the Antitrust Compliance Report 2018, presents certain interest. The content of the document lists the practice of the antimonopoly service in the field of achieving the effectiveness of antitrust regulation, in particular, activities related to the identification and suppression of violations: unfair competition, advertising, state and municipal procurement, monopolies' activities and abuse of dominant market position. However, not a single example is demonstrated when disputes were resolved with a mediator participating.

That suggested that the antimonopoly body does not apply mediation procedures for dispute resolution. Perhaps this is due to the goal of increasing the efficiency of state punishment of violators¹¹.

At the same time, information posted on the website of Journalists' Union of the Chelyabinsk region suggests that the 4th All-Russian Business Conference "Negotiations & Mediation 2018" was held on 20 October 2018, where the antimonopoly control department expert of the FAS of Chelyabinsk region Yulia Tarasova made a report on the need for peaceful settlement of disputes in the work of the antimonopoly body. This report attracted increased attention of the participants because it contained innovative ideas for introducing a mediation approach into the activities of the antimonopoly service on the example of the Chelyabinsk administration. The system that allows the use of conciliation procedures to resolve disputes without addressing them to the antimonopoly authority and the court, as well as reducing terms of their resolution and ensuring the interest of participants in the voluntary settlement of conflicts, is being created there. However, imperfection of the regulatory framework and contradictions in the legislation of the Russian Federation impede the implementation of this approach¹².

10) Decree of the Government of the Russian Federation No. 331 of 30 June 2004 "On the Approval of the Regulation on the Federal Antimonopoly Service" (with changes and additions) [version of 17 February, 30 November 2018] // <https://base.garant.ru/12136347/> – Date of access – 15 September 2019.

11) FAS Antitrust Compliance Report 2018 (approved by the Public Council at FAS Russia (Protocol No. 10 of 10 September 2019)) – URL: <https://fas.gov.ru/documents/685775>. Date of access – 21 September 2019.

12) "For the First Time in Russia, Chelyabinsk Antitrust Monitors Announced the Introduction of Mediation in the Performance of the FAS Bureau" (Materials of the 4th All-Russian Business Conference "Negotiations & Mediation 2018") // <https://pressunion.ru/press-relizy/vpervye-v-rossii-cheljabinsk-antimonopolshhiki-zajavili-o-vnedrenii-mediatsii-v-deyatelnost-ufas/>

For that reason, the author assumes that the peaceful resolution of conflicts within the operation of state control bodies is gradually attracting attention, since the settlement of disputes and conflicts through conciliation procedures is considered by experts to be the best way to reduce financial costs for disputing parties and to solve complicated and conflict situations in full confidentiality. Unlike court decisions, which each party is compelled to abide by, mediation provides an opportunity to come to a mutual agreement, based on the interests of everyone involved.

Regarding the efforts of the antimonopoly body, the application of the mentioned procedure seems most possible when considering complaints from participants in contract activities under the law on the contract system. This is because cases of breaching the law during state (municipal) procurements are initiated solely on appeals from participants in the order placement (Part 1 of Article 105), as well as terminated due to the lack of claims by the applicant¹³⁾.

The only difficulty in the process of pre-trial settlement of the dispute may be a legally shortened decision deadline, no later than five working days. Although, if the applicant withdrew his complaint within the specified period, the proceedings should be terminated.

With regard to the exercise of functions to consider complaints about either customer's actions in accordance with the law on procurement by certain types of legal entities, or acts (action, inaction) concerning legal entities in connection with the provision of state or municipal services, the procedure for dealing with complaints is regulated by Article 18.1 of the Law on Protection of Competition where a longer period for considering an appeal is defined by 7 working days; if necessary, this period can be extended up to 14 days¹⁴⁾.

In this context, at the regional level, it seems probable to offer participants of disputes the possibility to resolve the conflict peacefully when considering complaints in the regional office of FAS Russia, in line with Art. 138 of the Commercial Procedure Code of the Russian Federation.

Relating to the situation at the federal level, we consider it necessary to amend Article 106 of the Federal Law No. 44-FZ "On the Contract System in the Field of the Procurement of Goods, Constructions, Services to Ensure State and Municipal Needs" and Article 18.1 of the Federal Law No. 135-FZ "On Protection of Competition" by including the phrase: "When considering complaints, the antimonopoly body takes measures to reconcile the parties and assists them in resolving the dispute. The parties may resolve the controversy by concluding an amicable agreement or by applying other conciliation procedures, including mediation, if this is not contrary to federal law."

In addition to amending Federal Laws, the author assumes that it is necessary to include the abovementioned phrase into paragraph 3.28 of the FAS Russia Administrative Regulations for investigating claims in the field of procurement for state and municipal needs¹⁵⁾, and into

13) "On the Contract System in the Field of the Procurement of Goods, Constructions, Services to Ensure State and Municipal Needs" [Electronic source] (version of 27 June 2019) // "Consultant+" law reference system. – Last update 01 October 2019.

14) On Protection of Competition [Electronic source] : [Federal Law No. 135-FZ of 26 July 2006 in the version of 18 July 2019] // "Consultant+" law reference system. – Last update 18 July 2019.

15) On Approval of the Administrative Regulations of the Federal Antimonopoly Service for the Execution of the State Function

paragraph 3.91 of the FAS Russia Administrative Regulations for initiating and considering cases of Russian antitrust law violations¹⁶⁾.

As the second factor, except for the imperfection of the regulatory framework, the author also proposes the lack of official interest of the antimonopoly authorities to terminate the dispute prematurely. This reason, most likely, is associated with the annual completion of the regional administrations' rating chart, which results in allocating points for the best administering indicators in the field of holding perpetrators accountable.

Thus, it should be stated that the development of the domestic mediation system in the practice of state control bodies follows, both in the direction of improving the regulatory framework and changing the mentality of the service employees, by increasing their interest in the early disputes' resolution.

Perhaps one should take the advantage of foreign states' experience where the conflict-free dispute resolution procedures have been debugged for a long time.

to Consider Complaints about Actions (Inaction) of a Customer, an Authorized Body, a Specialized Organization, a Procurement Commission, Its Members, an Official of a Contract Service, a Contract Manager, an Electronic Platform Operator when Determining Suppliers (Contractors, Performers) to Ensure State and Municipal Needs [Electronic source] : [Order of the FAS Russia No. 727/14 of 19 November 2014 in the version of 19 November 2014] // "Consultant+" law reference system. – Last update 15 September 2019.

16) On Approval of the Administrative Regulations of the Federal Antimonopoly Service for the Execution of the State Function to Initiate and Consider Cases of Violations of the Antitrust Legislation of the Russian Federation [Electronic source] : [Order of the FAS Russia No. 339 of 25 May 2012 in the version of 16 February 2016] // "Consultant+" law reference system. – Last update 15 September 2019.

Section 3

Discussant 1

Kyongwha Chung

Kyongwha Chung is a Partner in International Arbitration & Litigation Practice Group of Bae, Kim & Lee LLC. Ms. Chung has acted as counsel in a number of significant international arbitrations (both commercial and investment) under various arbitration rules, including ICC, ICSID, UNCITRAL, KCAB, SIAC and HKIAC. In particular, Ms. Chung is representing the Republic of Korea in its first treaty-based multi-billion dollar arbitration initiated by Lone Star Funds. Ms. Chung also has substantial experience in Korean civil, criminal and administrative litigations. Ms. Chung's professional activities include serving as the regional representative of the ICC Young Arbitrators Forum (2017–2019) and the Secretary General of the Young Arbitration Practitioners' Forum under the Korean Council for International Arbitration (2010–2015). Ms. Chung is dual-qualified as a Korean attorney and a United States (New York) attorney. Ms. Chung received her law degree from Korea University (summa cum laude) and an LL.M. from Harvard Law School where she received Roger Fisher and Frank E.A. Sander prize for her thesis.

Section 3

Discussant 2

Jewoo Lee

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