



上海论坛 2012 学术简报

Academic Bulletin of Shanghai Forum 2012

Legal Cooperation in Asia for 2011-2020 I

May 26, 2012

On the afternoon of May 26, 2012, the Legal Sub-Forum “Legal Cooperation in Asia for 2011-2012” of Shanghai Forum 2012 was held in the Green Hall, No.2 Building, Xijiao State Guest Hotel. The topic of this session is “History and Status Quo of Asia’s Legal Cooperation”, which was presided over by Professor Wang Zhiqiang from Fudan University School of Law.

First, the Chair of the Legal Sub-Forum of Shanghai Forum 2012, Professor Sun Xiaoxia from Fudan University School of Law made an introduction of the theme of the Legal Sub-Forum. Then, scholars from China, Japan, Korea, Hong Kong (China) made keynote reports.

Professor Zhang Wenxian, Director of Steering Committee of Legal Education of Ministry of Education, Vice-President of China Law Society, professor from Jilin University, President of Higher People’s Court of Jilin Province made a keynote report of “Legal Diplomacy in the Era of Globalization”. Professor Zhang Wenxian believed that as globalization has a great impact on human society and international relationship, legal diplomacy which means diplomatic activities with law as the content, mechanism and medium is an important strategy for China to control the discourse power and take the initiative in the foreign relations and the development of the international pattern. He also stressed that legal diplomacy conforms to the world’s trend of the rule of law, reflects China’s efforts to establish the socialist country under the rule of law, enhances China’s international influence and the international community’s understanding of China, and contributes to China’s development. Then, Professor Zhang Wenxian put forward the main ways of carrying out legal diplomacy: (1) To meet the requirements of legal diplomacy in both system and mechanism. (2) To take active and effective participation in the international legislation, enforcement of international law and international justice. (3) To promote legal diplomatic activities.

Professor Deng Zhenglai, the Dean of Fudan Institute for Advanced Study in Social Sciences delivered his report with the title of “The Future of Asian Rule of Law and the New World Order”. He laid emphasis on the issue that the legal workers and professors should cooperate with each other for the establishment of the new world order. According to him, the current world is in the world order of first modernity, which was established on Westphalian system. Such an order enjoys a western philosophy and view of world, and it was imposed on the oriental world. However, the order is in trouble now, because it is unable to respond to the global environmental protection, global terrorism, global financial integration and related political economic and social problems. Thus, it is time to establish a new world order of the second modernity. As no basic consensus in the world order of the second modernity has ever been formed, Asia should take its role in the establishment of the new world order. Prof. Deng drove to a conclusion that Asian legal workers and law professors should cooperate together so as to contribute their understanding of the world and the relation between human and world to the new world order in the future.

Mr. Takahashi Yuki, the Second Secretary of Embassy of Japan in China and Judge of Supreme Court of Japan focused on the exchange of legal professionals between China and Japan on governmental level. Mr. Takahashi Yuki mainly introduced the history about exchange of legal professionals between China and Japan and technical issues in management of exchange programs. Since China joined WTO in 2001, the cooperation and exchange in legal area between Chinese and Japanese government have been strengthened. Japan has given China great legal technical assistance in three stages. The first stage is using “Technical Assistance Project” from 2004-2010. Japan International Cooperation Agency (JICA) has launched two long-term projects in the form of Official Development Assistance (ODA) in this stage: Economic Legal Infrastructure Development Project (2004-2008) and Improvement of Civil Procedure Law and Arbitration Law Project (2007-2010). These projects played significant roles in developing Chinese legal system, but in this process, many problems have appeared. For example, it is hard to meet China’s needs of legislation and change the subject



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area of law and some Chinese officers request “exchange” rather than “assistance” or “cooperation”. The second stage is using Individual Assistance Items and non-ODA Exchanges from 2010 to the present, including Civil Procedure Law and Other Private Laws Project (2010-2013), Judicial Capacity Building Project (2010-2012), Training Program on Prevention of Crime and Criminal Justice (2009-2012) and Individual Exchange Programs for the Institutes between Both Countries (non-ODA). These projects are all good platforms for exchange and cooperation between Japan and China. The third stage is still in consideration. Mr. Takahashi Yuki believed that it is necessary to enhance the exchange and cooperation at the legal technical level and to seek the possibility of exchanges outside the ODA framework.

Professor Jisoo Kim from the George Washington University analyzed China’s Confucian justice’s influence on judicial practice in early modern Korea before the western legal system was implemented in East Asia from a comparative perspective. By examining Chosŏn Dynasty’s (1392-1910) procedure and modes of appeal, the kind of grievances addressed to the state, and how the Korean legal codes and the Great Ming Code were applied in legal cases. Professor Jisoo Kim demonstrated the influence of China’s Neo-Confucian legal thought on the judicial practice of early modern Korea and the similarities and differences of legal practices in Korea and China.

Professor Li Yahong from University of Hong Kong mainly talked about the challenges and possibilities of IP Law cooperation in Asia. She expounded the topic in five aspects. Firstly, she introduced the backgrounds of IP cooperation in Asia. Next, she analyzed the necessity of IP cooperation, the challenges it is faced with, and the possibilities of IP cooperation. Finally, she raised some potential models and concerns in forming regional IP institution in Asia. According to Prof. Li, it is global trend for Asian countries to cooperate in IP law, and some difficulties such as cultural diversity, historical mistrust and the disparities in IP law system should be overcome in cooperation.

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In the end, the guests attending this session had a further discussion about the topic. Prof. Donald Clarke and Prof. Zhang Guangjie raised their comments on the issue of “Legal Diplomacy”. In the commentary part, Professor Shen Guoming, the Secretary of the Party Committee of Shanghai Federation of Social Sciences Community and Professor Dong Maoyun from Fudan University School of Law made the commentaries. They concluded the achievements gained and problems still existing in Asia's Legal Cooperation, and emphasized the importance and necessity of this issue. The first session of the legal sub-forum ended with great success.