

Research on the Construction of the Arbitration System of China-Russia-Mongolia Economic Corridor

Zihui An^{1*}

¹ Manzhouli College, Inner Mongolia University, Inner Mongolia, China

Email Address

99296340@qq.com (Zihui An)

*Correspondence: 99296340@qq.com

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Abstract:

With the construction of the economic corridor between China, Russia and Mongolia entering a new era, the economic construction and commercial cooperation between the three countries are gradually on the rise. At the same time, China's arbitration system has also ushered in new opportunities and challenges. In order to improve the competitiveness of China's arbitration institutions, this paper starts from the strategic thinking of opening up the regional structure transformation, introduces a diversified legal framework and methods, and constructs an arbitration mechanism that is in line with the international standards, so as to find a new way for the promotion of China's economic corridor strategy and the settlement of related contradictions and disputes.

Keywords:

China-Russia-Mongolia Economic Corridor, Arbitration system, Arbitration Law

1. Introduction

In September 2014, the heads of state of China, Russia, and Mongolia held their first meeting. President Xi Jinping proposed to link the "Silk Road Economic Belt" with Russia's "Trans-Eurasian Development Belt" and Mongolia's "Prairie Road" to jointly build a China-Mongolia-Russia economic corridor. This initiative has received a positive response from the heads of state of Russia and Mongolia. Since then, the China-Mongolia-Russia Economic Corridor has been included in the overall framework of the "Belt and Road" construction, becoming one of the six economic corridors of the "Belt and Road". With the continuous development of economic construction and economic and trade cooperation between the three countries in recent years, the number of foreign-related arbitration cases has increased significantly, and new arbitration institutions and arbitration rules have continued to emerge. The development and innovation of China's arbitration system has also ushered in new opportunities and challenges. The construction of the China-Russia-Mongolia Economic Corridor has entered a new era. It needs to face how to build an arbitration dispute settlement mechanism that is highly in line with the latest international rules and can meet the strategic requirements of the "Belt and Road" strategy. This article

starts from the strategic thinking of structural transformation of the opening-up region, introduces a diversified legal framework, and clarifies the idea of constructing an arbitration settlement mechanism. It finds a new way for the advancement of the China-Russia-Mongolia economic corridor strategy and the resolution of related contradictions and disputes.

2. Practical Requirements for the Arbitration System of the China-Russia-Mongolia Economic Corridor

2.1. Relieve Stress and Promote Development

Data show that in 2019, China-Russia bilateral trade volume was 110.757 billion US dollars, an increase of 3.4% year-on-year; from January to September 2019, China-Mongolia bilateral trade value was 6.32 billion US dollars, an increase of 6.2% year-on-year. China continues to maintain Russia and Mongolia's status as the largest trading partner. At the same time as the trade volume has increased, the way of trade has also undergone tremendous changes. At first, the single trade mode changed to today's diversified cash exchange trade, processing trade, tourism trade, online shopping trade and technology trade. This puts all provinces and autonomous regions under pressure to manage new conflicts and disputes. China received 3333 cases in 2019 (a year-on-year increase of 12.53%), of which 2,716 were domestic cases (a year-on-year increase of 11.31%) and 617 foreign-related cases (a year-on-year increase of 18.20%), including 66 international cases where both parties are foreign parties (an increase of 83.33% year-on-year). The amount of disputes amounted to RMB 122,04345 million (a year-on-year increase of 20.13%), the amount of disputes in foreign-related cases amounted to RMB 38,078.9 million (a year-on-year increase of 30.79%), and 211 cases of 100 million yuan (a year-on-year increase of 23.39%), of which cases were more than 1 billion yuan¹⁹ The parties came from 72 countries and regions (12 more than last year and 20% year-on-year). There were 2347 cases in progress (up 16.07% year-on-year), and 3146 cases concluded (up 24.64% year-on-year). [1] In the face of the growing number of arbitration acceptance cases, it is imminent to build an arbitration dispute settlement mechanism with the characteristics of the China-Russia-Mongolia economic corridor and in line with the spirit of the socialist rule of law with Chinese characteristics.

2.2. China's Active Participation in Global Governance

Since the construction of the China-Russia-Mongolia Economic Corridor, China, Russia, and Mongolia have strengthened the construction of railways, highways, and other interconnections, promoted transport facilitation, and promoted transit transport cooperation. The three parties have carried out many practical cooperation in the construction of cross-border power transmission networks, tourism, think tanks, media, environmental protection, disaster reduction and relief. The transformation of China's economy requires China to develop a new global perspective and strategic thinking in the future, and to complete the "going out" of products from "going out" to services. The China-Russia-Mongolia Economic Corridor is one of the bridges. The globalization of economy and trade has brought opportunities for the development of China's arbitration cause. Constructing an arbitration institution with Chinese characteristics will help China to master the right to speak in international dispute resolution, establish communication and cooperation relationships, and enhance China's credibility and international competitiveness in the world. [2]

2.3. Establish the foundation of the “Trinity” dispute settlement mechanism

The confidentiality, informality, flexibility, economy, professionalism, and authority of arbitration make it one of the core elements of international economic dispute resolution. It is imperative to build a “Trinity” dispute settlement center and arbitration mechanism for the China-Russia-Mongolia economic corridor. At present, China’s international commercial arbitration is facing the best development opportunity in history, and at the same time, it is facing huge challenges in international market competition. China’s arbitration should serve the country’s strategy of comprehensive opening up and development, enhance international competitiveness, and strive to open up a new situation in the era of socialist arbitration with Chinese characteristics. [3] The China-Russia-Mongolia Economic Corridor bears an important economic strategic position in the “Belt and Road”. Creating a dispute settlement center with arbitration as the center, regulation as the priority and judicial protection as the trinity, complementary advantages and organic connection is the most important.

3. The Difficulties in Building the Arbitration System of the China-Russia-Mongolia Economic Corridor

Since the establishment of the Shanghai Pilot Free Trade Zone in August 2013, the number of free trade zones in China has increased to 18. The sound and stable development of the free trade zone is inseparable from an innovative and rule-of-law arbitration mechanism. Most of our free trade zones have specialized arbitration institutions. As an efficient and convenient dispute settlement mechanism, arbitration institutions provide targeted resolution measures for new disputes that are constantly emerging in the free trade zone. The China-Russia-Mongolia Economic Corridor serves as the basis and platform for China’s construction of the “Belt and Road” initiative, and plays the role of promoting the circulation of goods and goods in the same way as the free trade zone. However, compared with the increasingly perfect arbitration mechanism in the free trade zone, the China-Russia-Mongolia Economic Corridor has not yet established an arbitration mechanism in line with the characteristics of the economic development of the three countries. Moreover, China’s foreign-related commercial arbitration institutions are mainly concentrated in developed eastern regions such as Beijing, Shanghai, and Shenzhen. The central and western regions, northeast China, and many border open port areas lack internationally influential foreign-related commercial arbitration institutions. In the context of economic globalization, building an arbitration mechanism, absorbing legal talents, providing supporting legal services, and strengthening the construction of legal services are the inevitable moves for the construction of the China-Russia-Mongolia Economic Corridor to participate in the "Belt and Road" diversified dispute settlement mechanism.

In judicial practice, ad hoc arbitration has become the most popular model due to its flexibility, efficiency, relevance, and innovation, and it also greatly complements the shortcomings of institutional arbitration. As a state party to the New York Convention, China’s existing Arbitration Law and the provisions of the New York Convention on ad hoc arbitration have contradictions and conflicts. [4] This institutional disconnect can lead to unequal interim arbitration rights. The case where the arbitration award belongs to China can be divided into two situations: one is an arbitral award conducted in China (in accordance with Article 237 of the Civil Procedure Law); the other is China’s foreign-related arbitration Award (in accordance with Article 274 of

the Civil Procedure Law). However, both provisions emphasize the awards rendered by the arbitral body. Article 16 (2) of China's "Arbitration Law" stipulates that the selected arbitration institution is a necessary element of an effective arbitration agreement. This provision has legislatively denied the legal effect of the arbitration agreement for ad hoc arbitration in China. [5] In the China-Russia-Mongolia Economic Corridor Economic Union, international commercial arbitration should provide high-quality legal services in various industries, resolve legislative conflicts, reduce the cost of dispute resolution, and attract more parties to come to China for commercial arbitration.

The China-Russia-Mongolia economic corridor lacks a unified long-term strategic plan and lacks talent reserves. Throughout the development of China's international commercial arbitration industry, major foreign-related arbitration institutions have sought out their own ways and lacked long-term strategic planning and guidance. [6] At the same time, there is a serious shortage of highly qualified personnel familiar with international commercial arbitration in the border areas of China, Russia, and Mongolia. At present, China's international commercial arbitration industry mainly provides services in English. International commercial arbitrators who are proficient in other languages such as Russian and Mongolian are very scarce and cannot provide a variety of arbitration services.

Arbitration is based on autonomy. A stable and well-functioning arbitration mechanism should protect the parties' autonomy to the greatest extent possible. China's "Arbitration Law" provides some protection to the autonomy of the parties, but it does not give the parties sufficient freedom of autonomy in terms of the subject of arbitration. Article 13 of China's "Arbitration Law" has strict rules on the selection of arbitrators. Not only does the arbitrator have a limited number of years of employment, he must also consider the arbitrator's occupation, title, professional level and fairness. In addition, the "Arbitration Law" also requires arbitrators to set up a roster of arbitrators according to different professions. If they want to serve as arbitrators, they must be members of the arbitration roster. Demanding selection rules and a mandatory roster system have limited the scope of arbitrator selection in China. Not only that, the international treaties to which China is a party have clearly given the parties the right to determine the qualification requirements for arbitrators. [7] This will cause our current arbitration law to conflict with international treaties. To establish an advanced arbitration mechanism, we must establish a perfect arbitrator system. Improving the innovative arbitrator selection system will help the arbitration mechanism to play an international regulatory role.

4. Construction of China-Russia-Mongolia Economic Corridor Arbitration System

4.1. Emphasis on the Introduction of the ad hoc Arbitration System

Modern commercial arbitration originated in Europe. So far, ad hoc arbitration still has strong vitality and has been recognized by many countries in practice. Ad hoc arbitration means that the parties can establish their own rules of procedure and conduct arbitration accordingly, and can also choose existing arbitration rules for arbitration. [8] In order to resolve this conflict, the Supreme People's Court explicitly guaranteed the application of the temporary arbitration system in the free trade zone in the Opinions on Providing Judicial Guarantee for the Construction of Pilot Free Trade Zones. The promulgation of the "Temporary Arbitration Rules for the Hengqin Free

Trade Pilot Zone” also means that the ad hoc arbitration has actually landed in China. “Ad hoc arbitration” has become an important institutional innovation in dispute settlement in the free trade zone. [9] The China-Russia-Mongolia Economic Corridor, as a window for reform and opening up, should learn from the experience of China's free trade zone already under construction.

4.2. Change from Compulsory Roster System to Open Roster System

Subject to the open roster system, arbitrators selected outside the arbitration roster should be reviewed as follows: (1) The parties often know the arbitrators through introductions and online inquiries. The method of selecting arbitrators will inevitably be insufficient. In order to fully understand the arbitrator, before the arbitration, both parties should submit the arbitrator's identity information to the arbitration institution for review and record, so as to ensure the authenticity of the information and the fairness of the arbitration, and improve the efficiency of arbitration. (2) As the first free trade zone established by China, the Shanghai Free Trade Zone provides a lesson for other regions. First, Article 27 of the Shanghai Free Trade Zone Arbitration Rules stipulates that the parties “may” select arbitrators from the arbitrator's roster or outside the roster. The word “may” is not a mandatory norm, and it perfects the “open roster system”. [10] Secondly, Article 27 stipulates that the parties can agree to jointly recommend a person outside the arbitrator's roster as the lead arbitrator, and in Article 28 (5) stipulates the procedure for recommending the lead arbitrator to be confirmed and agreed by the Arbitration Commission. [11] The Shanghai Free Trade Zone Arbitration Rules give considerable freedom to the selection of arbitrators, but there is no provision for the qualification review of arbitrators. The arbitrator system is the soul of the arbitration mechanism. In order to ensure the reasonableness, legality, fairness and impartiality of the arbitration, both parties should submit the basic information of the arbitrator, such as their employment status, arbitration experience and reasons for selection, to the secretariat according to the provisions of the Arbitration Law.

4.3. Establish an Internationally Arbitrated Mechanism

The China-Russia-Mongolia Economic Corridor needs to establish arbitration institutions and systems in line with international standards. Arbitration institutions and their arbitration rules in many countries today require internationalization and professionalism of arbitrators. The Singapore International Arbitration Centre's arbitrator pool (SIAC's panel of arbitrator) includes a number of celebrities from around the world. The Kazakhstan International Arbitration Centre (KIA) offers a pool of arbitrators with professionals from more than 20 countries to choose from. Whether an arbitrator is international and professional will determine the internationality and professionalism of an arbitration institution to a great extent, which will affect the strength and competitiveness of the arbitration institution. China can expand the source of arbitrators through the open roster system of arbitrators, introduce international talents and industry experts, and promote the internationalization and professionalization of our arbitration industry.

4.4. Building Long-Term Strategic Planning Leadership

According to the construction experience of the FTA arbitration system, the formation and operation of the system cannot be separated from the support and guidance of the state. Relevant state departments should raise the arbitration

mechanism of the China-Russia-Mongolia Economic Corridor to a strategic level and promote the orderly development of the arbitration mechanism. The border cities of the China-Russia-Mongolia Economic Corridor are mainly distributed in the central and northeast of China. Legal resources in the northeast are weaker than those in southeast coastal cities and megacities. However, the construction of the China-Russia-Mongolia Economic Corridor alone is an urgent task. This article suggests that the relevant national departments may focus on the free trade zone and first-tier cities, and take into account the international commercial arbitration system in the central and northeast regions.

5. Conclusions

In the context of economic globalization, the arbitration industry with service characteristics is undergoing unprecedented changes in China. With the increase of economic and trade and the increasing complexity of commercial disputes, arbitration is loved by people for its flexibility, efficiency and convenience, and domestic and foreign arbitration institutions have also shown fierce competition. Therefore, in order to improve the competitiveness of China's arbitration institutions, it is necessary to build an international commercial arbitration center belonging to China. This requires that the amendments to the Arbitration Law be initiated as soon as possible, improve the online arbitration system, and standardize the selection of arbitrators in order to create a first-class arbitration environment for the parties.

Conflicts of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

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