Anselmo Reyes
Justice, Singapore International Commercial Court
https://doi.org/10.47689/978-9943-7818-6-3/iss1-pp10-12

UNIFORMITY AND DIVERSITY IN INTERNATIONAL COMMERCIAL ARBITRATION LAW OF UZBEKISTAN

Fellow judges, Vice Rector, distinguished guests, ladies, and gentlemen. Let me pick up a theme of capacity building that Christina introduced in her opening remarks.

In developing countries, capacity-building among judges, lawyers, policymakers, and other stakeholders will be an important means of maintaining sustainable diversity in international commercial arbitration (ICA). In remarks delivered at a Hong Kong University conference on arbitration reform in the Asia-Pacific, which took place on 27 October 2015, Judge Renaud Sorieul, then UNCITRAL Secretary, observed that the Model Law was not intended to set up identical systems of ICA law globally. While the adoption of the Model Law can ensure a degree of uniformity and harmonization among ICA regimes, there can still be significant differences between one Model Law state and another.

It follows from this that to the question of whether diversity is possible or sustainable in ICA, the answer must be "yes". "Diversity" in the way that ICA is regulated in different Model Law countries is certainly permissible. That is subject only to any differences in the approach being "sustainable". In other words, a country's ICA regime should not diverge so widely from the underlying principles of the Model Law that the country cannot be characterized as a full-fledged or even quasi-Model Law jurisdiction.

But there is more. Implicit in Judge Sorieul's remark is the insight that diversity is not merely something to be tolerated. Provided it is sustainable, diversity is also something to be encouraged. It enables a jurisdiction (such as Uzbekistan) to offer alternative approaches to ICA questions and thereby compete with other jurisdictions, including well-established ICA jurisdictions, to become a go-to seat for dispute resolution.

Unfortunately, the Model Law's capacity for a diversity of approaches is often overlooked in seminars or workshops to introduce ICA in countries that (like Uzbekistan) have adopted, or in countries that are queueing up to adopt, the Model Law for their ICA regimes. Stress is instead placed on uniformity or harmonization. The potential for diversity is too frequently played down or even ignored. A reason for this may be that there is a trade-off.

Highlighting the possibility of a diversity of approaches can lead to confusion and obscure the message that there is a need for basic uniformity among Model Law jurisdictions. Consultants and academics advising Model Law jurisdictions may thus

feel that, in the first instance, when organizing capacity-building sessions for judges, lawyers, and policymakers with little prior experience of ICA or the Model Law, it would be better to focus on the need for uniformity. Sustainable diversity is consequently relegated to a secondary consideration or frill, nice to have but not strictly necessary, especially at the outset. It will therefore often happen that, in the interests of efficiency and clarity, a diversity of approaches is left until later (if at all), to a time when stakeholders have gained experience in dealing with ICA and Model Law cases. I am not sure whether this is a wise course.

Many developing countries (like Uzbekistan) are currently reforming or streamlining their ICA regimes in ambitious bids to attract greater foreign direct investment (FDI) or market themselves as regional and quasi-regional dispute resolution hubs or both. Achieving either goal will require that certain components fall into place within a country:

(1) The country will need to have acceded to the 1958 New York Convention.

(2) The country will need to have revised its ICA legislation along the lines of the Model Law.

(3) The country should ideally have a national institution or international center for the administration of arbitrations.

(4) The country will need to ensure that it has judges who are knowledgeable about ICA and able to handle efficiently applications made to the court in relation to ICA matters.

(5) The country should support a regular stream of activities (workshops, seminars, conferences) to promote ICA among domestic and international stakeholders (external and internal counsel, business community, and academics) as a means of resolving disputes.

Of these elements, critical ones for ensuring the continuing development of ICA in a jurisdiction are components (3), (4), and (5). Today's conference on the Prospects of the Development of International Commercial Arbitration in Uzbekistan is an example of component (5). But, as a judge, I would like to say a few words about component (4) and sustainable diversity.

There are essentially five functions in which a country's judiciary will be called on to support ICA. The five functions are:

(a) the enforcement of arbitration agreements;

(b) the review of arbitral tribunals' rulings on their jurisdiction;

(c) the granting of interim measures in support of ICAs;

(d) the setting aside of arbitral awards;

(e) the recognition and enforcement of arbitral awards.

Prior to the reform of the ICA regime in a country, it is unlikely that its courts would have had extensive experience with ICA. If the country is to support ICA and to project itself as being "arbitration-friendly" when its ICA legislation comes into effect, judges will need to undergo intensive prior capacity-building in the five functions. The problem is that there is a multitude of situations that can arise in a

Model Law jurisdiction in connection with the five functions. The Model Law itself is often sketchy and does not clearly spell out how such situations should be handled. While judges in Model Law countries are to "have regard to" the decisions of other jurisdictions where the Model Law is silent on a matter, they must still be persuaded of the validity of reasoning underpinning such decisions. The application of general principles underlying the Model Law therefore easily leads to conflicting views as to the "right" approach on an ICA matter.

All this implies that judicial capacity-building should be directed, not just to advocating a "harmonized" Model Law view on specific issues, but also to identifying the different approaches that courts can take on paradigm issues and the rationales, merits, and downsides of those approaches. In other words, judicial capacity-building (respectfully suggest) needs to focus from the beginning on the potential and prospect for sustainable diversity.

The upshot is that, while the contours of ICA in one Model Law state may roughly be the same as those in any other, there is space for a diversity of options on specific questions. It is those differences in approach that businesses will take into account when deciding which state should be designated in their international commercial contracts as the seat of any arbitrations that might arise.

I congratulate the University of World Economy and Diplomacy on organizing today's event to explore the different trajectories that international dispute resolution can take in Uzbekistan. I thank the university for inviting me to make a speech. I take the occasion to wish everyone success in mapping out Uzbekistan's prospects of becoming an international commercial, financial, and investment dispute resolution hub.