PACL: an Endeavour of Regional Harmonization of Contract Law in East Asia

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1. Introduction

2. The First Step to a PACL

3. Why the PACL?

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5. Some Basic Issues about the PACL

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2. The First Step to a PACL

- October 2009, international symposium named “Unification of Private Law in Europe and its Impact in East Asia” in Tsinghua University School of Law.
- Beijing Agreement of a Partnership on PACL
- Professor Zejian Wang (Taiwan)
- Professor Young Jun Lee (South Korea)
- Professors Naoki Kanayama & Naoko Kano (Japan)
- Professor Shiyuan Han (China)
3. Why the PACL?

• First, the CISG covers only sales contract. For other kinds of contracts, it is still necessary to have a PACL as a set of common general rule.
• Second, even with sales contract, the CISG does not cover every aspect of the contract. For example, validity and transfer of ownership have not been regulated by the CISG.
• Third, the CISG is more than 30 years old. In the past 30 years the world changed quite a lot. New challenges call for new rules.
• Fourth, the CISG is a masterpiece of European and American scholars and specialists. It reflects mainly the experiences of western world. For East Asia people, it is still necessary for Asian scholars to product an Asian voice.
First, the PACL is not a Convention. It does not have any binding force of law. It regulates the general part of contract law, including the validity of contract. From these points, the PACL may be a good supply to the CISG in practice.

Second, the differences in content of the PACL comparing with the CISG, if there is any, should be analyzed carefully. This will be good both for the PACL and the CISG. For the PACL, the drafter must show enough reasons to support the position. For the CISG, it may be a good point for re-thinking. For example, if the PACL’s position is following the custom of Asia and different from the position of the CISG, we should re-think whether the CISG had sufficiently consulted the Asian custom.
Eight PACL Forums have been organized:

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<th>Date</th>
<th>Location</th>
<th>Topic</th>
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<tbody>
<tr>
<td>1</td>
<td>Mar. 7-8, 2010</td>
<td>Keio University, Japan</td>
<td>General Principle; Interpretation of Contract</td>
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<td>2</td>
<td>Aug. 25-26, 2010</td>
<td>Ho Chi Minh University, Vietnam</td>
<td>Formation of Contract</td>
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<td>3</td>
<td>Dec. 14-15, 2010</td>
<td>Seoul University, South Korea</td>
<td>Non-performance</td>
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<td>4</td>
<td>May 21-22, 2011</td>
<td>Osaka, Japan</td>
<td>Validity of Contract</td>
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<td>5</td>
<td>Sep. 17-18, 2011</td>
<td>Tsinghua University, China</td>
<td>Performance</td>
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<td>6</td>
<td>Dec. 17-18, 2011</td>
<td>Seoul University, South Korea</td>
<td>Non-performance</td>
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<td>7</td>
<td>Mar. 4-6, 2012</td>
<td>Keio University, Japan</td>
<td>General Maters, Performance and Non-performance</td>
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<td>8</td>
<td>Dec. 14-15, 2012</td>
<td>Seoul University, South Korea</td>
<td>Performance and Non-performance</td>
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4. What has been done about the PACL

PACL Forum (Osaka, Japan, 2011 May)
4. What has been done about the PACL

PACL Forum (Beijing China, 2011 September)
4. What has been done about the PACL

PACL Forum (Seoul, South Korea, 2012 December)
5. Some Basic Issues about the PACL

5.1 The Nature of the PACL

- 5.1.1 Nongovernmental and private initiative
- 5.1.2 Academic product
5. Some Basic Issues about the PACL

5.2 The Aimed Position of the PACL
5.3 Work Methods of the PACL

5.3.1 Sketch of Work Methods of the PACL

- three Chairmen and some national/regional teams plus voting-system.
- English is the working language from the very beginning.

5.3.2 Efforts to Improve the Work Methods of the PACL

- “National Reporter” has been re-labeled as “Jurisdictional Reporter” so as to take into account the status of Hong Kong, Taiwan and Macau.
- “Nominated Reporter” has been instituted to review the current drafts.
5. Some Basic Issues about the PACL

5.4 Strategies of the PACL

5.4.1 A quick draft?
5.4.2 Brief principles or detailed rules?
5.4.3 Restatement or innovation?
The "distinguishing Asian feature" of the PACL is no more than illusions?
No!
Some examples.
the creditor’s right of subrogation and right of revocation
Where to find the distinguishing Asian features of the PACL if there is any?
The PACL is not only a set of rules and principles. The PACL should be viewed as a whole, and the black letter rules are only an integral part of the whole.

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<th>the black letter rules of the PACL</th>
<th>not so much</th>
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<td>other parts of the PACL, including the commentary, the notes, the national reports etc.</td>
<td>This part of the PACL could and should have its distinguishing Asian feature.</td>
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The PACL is a part of the academic discourse in Asia.

It is possible and practicable to realize harmonization of national contract laws in at least East Asia by following an Asian model law.

The PACL may also be expected to play a role in both arbitration and judicial trial.
Thank you for your attention
Comments and suggestions welcome

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