

UNIDROIT CENTENARY
International Workshop on Transnational Law and
Cooperation of International Organizations

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Panel IV - Horizontal Cooperation between International Organizations

The Approach of the Asia-Pacific Economic Cooperation (APEC)

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Professor Kronke, Distinguished Guests, Ladies and Gentlemen,

It is my honour to speak at this Workshop to celebrate UNIDROIT Centenary. I am here to share some of my thoughts and experience from the perspective of the Economic Committee of the Asia Pacific Economic Cooperation (APEC).

2. For those who are not familiar with APEC, I will begin my presentation with a quick introduction to APEC and the approach adopted by APEC with reference to a recent example. I will then highlight the horizontal cooperation that APEC has with other international organisations, in particular, UNIDROIT, and how we see this synergetic relationship may continue to build for the betterment of the Asia Pacific region and beyond in the years to come.

3. APEC is the premier Asia-Pacific economic and trade forum set up in 1989 for high level government-to-government dialogue to promote free trade, investment and economic growth among its 21 member economies around the Pacific Rim, over half of which are also UNIDROIT members.

4. APEC member economies represent around 40% of the world's population and over 60% of the global GDP, with their share of international trade generally expanding in both goods and services.

5. APEC operates as a cooperative, multilateral forum, committed to reducing barriers to trade and investment without imposing legally binding obligations on members.
6. The current work of APEC is guided by the Putrajaya Vision 2040, which is an economic road map adopted at the APEC Leaders' Meeting in 2020, where all members committed to the vision of an open, dynamic, resilient and peaceful Asia-Pacific community by 2040, for the prosperity of all people and future generations.
7. APEC takes a rather "soft" approach premised on the principles of voluntary cooperation and consensus building. Decisions made at APEC are non-binding, but even such non-binding decisions have to be made by consensus. This allows economies with diverse economic and social systems and different levels of development to work together in a flexible and pragmatic manner, by promoting open dialogue and giving equal weight to the views of all members in the process.
8. One of the three core standing committees under APEC is the Economic Committee which leads APEC's structural reform agenda to assist APEC members in areas such as removing barriers, boosting innovation and improving domestic business environments and ease of doing business.
9. The strategic direction for structural reform is set during the Structural Reform Ministerial Meeting (SRMM), which generally meets every five years. At the SRMM meeting held in Korea last October, which the Secretary General of UNIDROIT also attended in person, the Strengthened and Enhanced APEC Agenda for Structural Reform (SEAASR) was adopted by all APEC members for the next five years. It composes four pillars of work, namely, enabling fair, market-oriented competition; enabling environment for doing business; promoting innovation and digitalization; and empowering all to achieve their economic potential for sustainable economic growth. Some or all of the pillars are also of relevance or interest to other international organizations including UNIDROIT.
10. Over the years, the APEC Economic Committee has developed various tools to assist members to implement structural reform. A recent example is the **APEC Collaborative Framework for Online Dispute Resolution (ODR) for Cross-Border Business-to-Business Disputes**. This Framework was developed to address the lack of cost-effective and timely access to

commercial justice for micro, small and medium enterprises (MSMEs) in the region, which accounts for over 97% of all businesses in APEC member economies.

11. Under the Framework, any APEC member may opt-in to the Framework with no legally binding obligations. The Economic Committee will list those ODR providers from member economies which have opted into the Framework. Participating ODR providers have to self-certify their willingness to use the Model Procedural Rules under the Framework, offering affordable online negotiation, mediation and arbitration services to APEC businesses, especially MSMEs, to help them resolve their cross-border commercial disputes in a speedy and cost-effective manner. To date, one-third of APEC members have already opted into the Framework and eight ODR providers have been listed under the Framework.

12. The Framework provides a good illustration of the “softer” approach for law reform under APEC and its horizontal cooperation with other international organisations. About ten years ago, some APEC members noted that another international organisation has developed the Technical Note on ODR and considered that the use of ODR could be useful for APEC economies. They therefore advocated for the development of the Framework under the Economic Committee, and various workshops and meetings were organised to discuss a range of existing international legal instruments. For instance, UNIDROIT shared at an APEC workshop in 2019 on how the UNIDROIT instruments may be complementary to the use of ODR. As a result of these workshops and meetings, a draft Framework including its Model Procedural Rules were prepared by a few economies for adoption by all members of the Economic Committee.

13. Instead of creating a centralized APEC ODR provider, APEC partnered with individual ODR providers in different member economies, which will be regulated by the applicable laws and regulations of the respective members. Parties are free to choose any ODR providers listed by APEC. The Model Procedural Rules under the Framework may also be modified by consent of the parties.

14. Since the launch of the Framework, through various capacity building workshops, policy dialogues and studies, we continued to promote the

Framework so as to facilitate implementation of the Framework and to attract more members to opt into the Framework on a voluntary basis.

Benefits

15. The softer approach of APEC has the benefit of flexibility. There is no fixed timetable for opting in or implementation. There is no need to wait for all members to be able to join the Framework before its launch. This flexibility allows APEC to accommodate different stages of developmental needs, diverged systems and economic interests under one roof. The Model Procedural Rules may also be amended by consent, which may adapt to the needs of different parties.

16. Moreover, instead of creating a centralized APEC ODR provider, APEC partnered with individual ODR providers from member economies, which is much faster and more cost effective. This is a pragmatic approach which helps to build consensus as there is no need for uniform regulation of these ODR providers, which will be regulated by the respective laws and regulations in their economies.

Drawbacks

17. On the other hand, leaving the implementation to individual economies and their ODR providers could cause fragmented oversight, and giving the parties full liberty to amend the Model Procedural Rules may cause hurdles to harmonization. Moreover, as there is no binding obligation under the Framework, there is a lack of certainty of the level of commitments. There is also no enforcement powers by APEC under the Framework except the power to remove those ODR providers which are found to be non-compliant with the Framework.

18. Having said that, given the diverse membership of APEC and the very different culture, tradition, economic development and systems, such softer approach is probably the only feasible way for reaching a consensus. It is considered better to start with something than having nothing at all so that some businesses in APEC (especially MSMEs) may start to benefit from the implementation of Framework. Besides, technical assistance and capacity building after the launch fosters dialogues and builds expertise for stakeholders, which may tackle some of the drawbacks mentioned. More importantly, a review of the Framework will be conducted by the Economic

Committee this year so that further improvement or development could still be made.

19. Apart from the Framework, we also see the softer approach adopted by APEC in other areas ranging from privacy protection to trade and investment. This softer approach has supported APEC to continue to be an essential forum in the region to put forward important agenda, foster exchanges and capacity building.

20. APEC does not work alone. APEC actively collaborate with a wide range of international and regional organisations, including UNIDROIT.

21. Notably, UNIDROIT has been an accredited guest of the APEC Economic Committee since 2017, which allows UNIDROIT to attend meetings and other work of the Economic Committee.

22. APEC gives UNIDROIT and other international organisations a useful platform to promote their legal instruments. Through such promotional efforts, the value of international legal instruments for APEC has been well recognized. In October last year, the SRMM Statement particularly acknowledged the usefulness of international law instruments developed by various international organisations, including UNIDROIT, as “effective tools for structural reform”.

23. In fact, a number of APEC workshops have been organized to enhance APEC members’ understanding of UNIDROIT instruments, and build the capacity of APEC members to improve their current regimes by making good use of some key UNIDROIT instruments, including the Mining, Agriculture, and Construction (MAC) Protocol to the Cape Town Convention, the UNIDROIT Principles of International Commercial Contracts (PICC), and Model Laws on Factoring and Warehouse Receipts.

24. All of these efforts have helped promote greater awareness of the value and importance of UNIDROIT instruments in the region, which APEC members are encouraged to adopt for law reform.

25. I believe that there is very strong potential for UNIDROIT to continue raising its visibility and profile, especially in the APEC region. In this connection, I very much look forward to the establishment of the UNIDROIT Liaison Office in Hong Kong later this year, which would allow for even more

efficient communication and effective cooperation between UNIDROIT and APEC, and beyond.

26. Lastly, I wish to offer my heartfelt congratulations to UNIDROIT on its centenary. Thank you.