Preface

THE LAUNCH OF THE ARMO INITIATIVE AND A FOOD FOR THOUGHT FOR THE DEBATES ON THE MOST SUITABLE DISPUTE SETTLEMENT MECHANISM FOR THE ASIA-PACIFIC REGION

Chang-fa Lo*

In the Asia-Pacific region, there is no court-style mechanism for States/Economies to resort to for the purpose of resolving their regional disputes. Although discussions have been going on for a long time as to whether to have an Asia regional court, the idea of having such regional mechanism is still very far from reality. The inexistence of a regional court does not prevent Asian disputes from constantly occurring. In 2017, the Asia WTO Research Network (hereinafter "AWRN") discussed the desirability of having a permanent regional mechanism to address the problem and the possibility of creating a friendly and peaceful regional dispute settlement mechanism, i.e., the Asia-Pacific Regional Mediation Organization (hereinafter "ARMO"), to serve the purpose of friendly and peaceful resolution. The AWRN established a Working Group in the same year to elaborate and promote the idea. The Working Group members decided to prepare two most fundamental legal documents: The Draft "Agreement on the Establishment of the Asia-Pacific Regional Mediation Organization" (hereinafter "ARMO Agreement") and its supplementary Draft "Rules of Procedure for Mediation Conducted Under the Asia-Pacific Regional Mediation Organization" (hereinafter "ARMO Rules of Procedure"). The coauthors of these documents believe that such drafts would provide concrete basis for further discussions and comments from

* Chairperson, the Asian WTO Research Network (AWRN); Justice, Constitutional Court of R.O.C. (Taiwan). The author can be reached at: lochangfa@gmail.com.

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the Asia-Pacific community and beyond.

In order to elaborate the ARMO idea, the Asian Center of WTO and International Health Law and Policy (ACWH) of National Taiwan University College of Law and its Asian Journal of WTO & International Health Law and Policy (AJWH) decide to publish a special issue to specifically address the possible regional mediation organization. The ultimate purpose is to give more inputs on the overall idea and the specific aspects of the current proposal.

There are three Parts in this special issue: The first Part includes the draft ARMO Agreement and the draft ARMO Rules of Procedure. The drafters understand that there could still be various aspects that need to be improved. However, they consider that an earlier disclosure of these documents would benefit the dissemination and further discussion of the idea. The drafters do not exclude possible future revisions.

The second Part includes six elaboration papers. Chang-fa Lo and Janice Lee provide an elaboration on the overall idea of the ARMO and on some specific principles adopted in the ARMO Agreement in their paper "*A New Approach for the Settlement of Regional Dispute to Maintain Dynamic Stability—A Selective Elaboration of the Draft Agreement on the Establishment of the Asia-Pacific Regional Mediation Organization*". They discuss some functions (including achieving a dynamic and prosperous stability in the region) and features (including the broad scope of its jurisdiction; the maintenance of ultimate control by the parties; its complementary functions to support other international agreements; the elements of impartiality, efficiency, flexibility and quality assurance underlying the mechanism; and the "minimalism" in its institutional and financial arrangements) of the ARMO initiative. The authors are of the view that the new ARMO mechanism should be useful for the Asia-Pacific community to resolve their disputes.

Rajesh Sharma highlights the salient as well as the unique features of ARMO Rules of Procedure in his paper "*Mediation Rules of the ARMO for State-to-State Disputes: Effective, Efficient and Practical*". He argues that, as widely accepted in the Asian culture, mediation is the best way to resolve such disputes. In this regard, the ARMO has proposed a set of effective, efficient and practical mediation rules, which are guided by the principle of maintaining friendly relationships as well as reaching a peaceful resolution of disputes between members of the ARMO.

Lisa Toohey examines the interaction of the ARMO Agreement and its Rules of Procedure with existing treaty regimes and dispute settlement mechanisms presently available to the region in her paper "*Enhancing Mediation in the Asia-Pacific: The Interaction of the ARMO Regime with Existing Dispute Settlement Mechanisms*". She points out that the Asia-Pacific region is home to some of the world's most complex and

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difficult international disputes. The region is well-served by international legal mechanisms for the resolution of these disputes. However, at the same time, there is increasing awareness of the importance of non-determinative dispute settlement processes, especially mediation, and a growing tide of attention paid by international organizations to broader and more effective use of mediation to address the full range of international law disputes. She considers the treaty initiative for the creation of the proposed ARMO is as timely as it is significant.

Jaemin Lee discusses jurisdictional issues in his paper "*Settling International Disputes Through Mediation—Establishing a New International Organization in Asia-Pacific and Jurisdictional Issues*". He suggests that introducing mediation through a regional international organization requires interested states to look into a wide range of associated legal issues, most notably issues relating to the jurisdiction of the organization and/or mediation panels. All these jurisdictional issues require careful consideration and analyses. He observes that with careful consideration and proper preparation, jurisdictional issues can be addressed properly in a way that sets the tone for a successful launch of the ARMO.

Tomohiko Kobayashi discusses ARMO's institutional aspects in his paper "*If You Build It, They Will Come: On the Institutional Arrangements of the ARMO*". He observes that for the ARMO to function effectively, the administration of internal affairs is of utmost importance. He raised some potential legal issues of systemic concern in the administration of the ARMO, including decision-making and representation. He argues that there is room for improvement in the current draft Agreement, such as uncertain role of consensus as well as the difficulty of continuous appointment of government officials. By sophisticating provisions to address these issues, the ARMO could be a viable alternative to solve international disputes in trade and investment in the Asia-Pacific region.

Tsai-yu Lin discusses the enforcement issues in her paper "*Making It a Treaty Obligation: Enforcement of Mediated Settlement Agreements Under the ARMO*". She observes that the ARMO Agreement's provision about the binding effect of a settlement agreement under the ARMO mechanism indicates that non-compliance with the settlement agreement will constitute a violation of the ARMO Agreement and trigger a state responsibility. This provision is an exclusive feature of the ARMO. Although there is no specific enforcement mechanism for the ARMO facilitated settlement agreements, the binding obligation could have an important effect of deterring a state's non-compliance in the future, and thus enhance the legal security of the outcome reached in ARMO mediation.

In the third Part of this special issue, there are four papers discussing country-specific perspectives. R. Rajesh Babu & R.V. Anuradha discuss the State-to-State mediation and the significance of ARMO from an Indian

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stand point in their paper "*State-to-State Mediation: Perspectives from India*". They argue that State-to-state mediation has significant potential as a reliable alternative to the predominantly adversarial system of international dispute resolution. In their observation, India has historically shown an aversion towards litigation and has preferred softer techniques and diplomatic resolution of state conflicts. They suggest that India may be open to the idea of exploring the availability of neutral third party mediation processes, as is sought to be presented under the ARMO.

Joseph Wira Koesnaidi discusses the Indonesia perspective in his paper "*The Assessment of Asia-Pacific Regional Mediation Organization (ARMO): From the Perspective of Indonesia*". The central point of this paper is how Indonesia can use ARMO as the platform to resolves disputes in the future since it is more suitable for Asian cultures which prefer to settle disputes in friendlier and more amicable manner in order to maintain long-term relationship between neighbors, friends or trading partners.

Chang-fa Lo, Chih-yuan Lo, Xin-Wei Huang and Yu-Fang Shih discuss the possibility of Chinese participation in the ARMO in their paper "*Outsiders' Perspective on China's Possible Participation in the Asia-Pacific Regional Mediation Organization—Toward Peaceful and Prosperous Coexistence*". They argue that the idea of resorting to mediation to settle regional disputes is in line with the tradition of Chinese society's preference of maintaining harmonious relations and with the Chinese foreign policy of Five Principles of Peaceful Coexistence. The mediation mechanism can even help achieve prosperous coexistence among Asian economies. There are many good reasons for China to be part of the ARMO operation.

Ching-wen Hsueh and Mao-wei Lo discuss Taiwan's perspective in their paper "*An Assessment of ARMO from the Perspective of Taiwan*". They assess the possible influences of the ARMO from Taiwan's perspective and analyze and compare the differences of the mediation mechanisms between the domestic and international levels. They observe that the ARMO might be a promising platform for Taiwan to settle a wide range of disputes. If the ARMO could strike a balance between efficiency and the parties' autonomy with respect to the proceedings and the effect of the settlement, the ARMO could be more acceptable for Asia-Pacific region.

It is hoped that the special issue is a starting point in the launch of the ARMO initiative and that the draft documents and the discussion papers will provide not only clarification and elaboration of the contents of the initiative, but also a food for thought for further debates on the most suitable approach/mechanism for members in the Asia-Pacific region to resolve their regional disputes and to achieve peace and prosperity.

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