出國報告(出國類別:國際會議)

赴馬尼拉參加「第十四屆亞洲法學會 年會」國際會議報告

服務機關:國立中正大學財經法律學系 姓名職稱:林韋仲 助理教授 派赴國家:菲律賓 出國期間:2017年5月17日~2017年5月19日 報告日期:2017年6月4日

摘要

本次參加活動為第十四屆亞洲法學會(The Asian Law Institute, ASLI)年會。亞洲法 學會為新加坡國立大學於 2003 年所籌設,目前為亞洲地區規模最大並且跨不同 法律學科的學術性非政府組織。其每年所舉辦的亞洲法學會年會,提供全球法律 學者交流與分享有關亞洲地區議題研究成果的重要舞台。我國歷年以來均有法律 學者參與會議發表論文,惟屬國際法領域者尚屬少數。此次為報告人第一次參加 是項會議,就甫於 2016 年成立的亞洲基礎設施投資銀行(The Asian Infrastructure Investment Bank, AIIB)其環境與社會架構(Environmental and Social Framework, ESF)與國際環境法的關聯性進行專題報告。報告人希望藉由參與本次會議,提升 中正大學與我國在國際法與多邊開發銀行法律之研究上於亞洲地區的能見度。

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一、目的

報告人近年的研究主軸涉及到在國際法體系下,投資活動與環境保護兩者的衝突 與相關爭端的解決。此次所報告的議題為多邊開發銀行在進行投資行為時,可能 會涉及的環境問題。具體的關注焦點則為近年剛成立的亞洲基礎設施開發銀行, 其環境與社會架構於何種程度上已經將國際環境法規則納入考慮,以及其後續值 得觀察的法律問題。涉及亞洲基礎設施開發銀行法律問題的研究,不論是在亞洲 地區或是全球仍屬少見,報告人期待透過此次參與會議,將個人研究成果首次分 享於亞洲學術同儕,並增進中正大學於國際法研究的能見度。

二、過程

本人參加會議之經過與各學術分場之重點如下:

- 1. 5/17 上午從高雄搭機出發抵達菲律賓馬尼拉。
- 2. 5/18 上午為開幕式,專題演講者為菲律賓籍國際刑事法庭法官 Raul Pangalangan。
- 5/18 上午第一場分場,本人參與亞太地區的投資法與仲裁場次,報告人所討 論議題包括:亞太地區投資法與投資政策的區域化、中國於亞太地區投資規 則制定上所扮演的領導者地位,以及如何突破國際投資爭端解決中心在投資 仲裁中具壟斷地位的問題。
- 5/18 上午第二分場,本人參與對於移民的制度性與規範性回應場次,報告人 所討論議題包括:漁業人口販運中亞洲價值與東南亞國家國協行為模式的衝 突、婚姻移民的管制問題。
- 5. 5/18 下午場次,本人參與憲法與行政法場次,報告人所討論議題包括:印尼 政黨間爭議的解決、公司是否享有隱私權(台灣法與美國法的比較)、印尼 褻瀆神明法的司法審查與宗教上少數族群的保護,以及印尼反褻瀆神明法的 問題。傍晚由主辦單位安排前往菲律賓大學參訪,晚間於該大學校園中舉行 晚宴。
- 5/19 上午場次,本人參與人權場次,報告人所討論議題包括:中國宗教自由、 印尼同性戀法律問題,以及從越南觀點評析亞洲價值對於人權的影響。

- 7. 5/19下午第一場次,為本人發表場次「跨境與世界貿易」場次,本人發表: 「將國際環境法結合於多邊發展銀行的活動:對於亞洲基礎設施開發銀行環 境與社會架構的分析」(相關簡報檔如附件),其他同場報告議題包括:馬來 西亞離岸風險的法律管理,以及中國水資源管理的立法機制。
- 8. 5/19下午第二場次,本人參與跨境、世界貿易組織與貿易法場次,報告人所 討論議題包括:全球治理與中國的哲學思想和實踐、巴黎協議後的貿易與能 源問題,以及中國網路管控的法律問題。傍晚舉行大會的閉幕式。
- 9. 5/20 為週六假日,自費停留一天。
- 10.5/21 上午搭機返台並於中午抵達高雄。

三、心得與建議

- 本次會議有超過兩百位以上的學者、專家與博士生,分別來自超過二十餘 國以上國家與地區。與會者所探討的議題多與亞洲有關,且範圍含括廣 泛,包括憲法與行政法、投資法與國際仲裁、公司法與公司治理、刑法、 環境法、銀行、金融與保險、法律與經濟發展、兒童、家庭與婦女法、智 慧財產權、勞動法與法律多元主義等,內容不可調不豐富,且十分切合區 域性法律發展。
- 我國學界參加本次亞洲法學會年會發表論文,除本人之外,尚有國立政治 大學法學院許耀明副教授、張冠群教授,以及國立交通大學科技法律研究 所張兆恬助理教授。惟相較於亞洲其他國家仍屬少數。除此之外,尚有我 國目前正就讀於加拿大 McGill 大學博士班的林榮光先生。
- 3. 由於此項會議舉行已超過十屆以上,十分具有指標與代表性,因此在我國國內得鼓勵學者與博士生與會發表論文,以與亞洲法學者有更密切的交流、意見交換與學術合作。除此之外,我國亦得鼓勵與會者將會議論文於嗣後發表於學會所發行的亞洲比較法期刊(Asian Journal of Comparative Law),以增加我國法學者於研究亞洲區域性議題上的影響力與能見度。

附錄

1. 與會照片與出席證明







14" Asian La Board of Governors Me Theme: A Uniting Ford	
CERTIFICATE OF	PARTICIPATION
Present	ed to
Mr Wei-Ch	ung Lin
National Chung C	heng University
for attending and press	onting a paper in the
14 th Asian Law Institut	e (ASLI) Conference
keld	at
Novotel Manila Araneta	Center, Quezon City
18 ^m & 19 ^m 1	May 2017
Associate Professor Gary F Bell Director Asian Law Institute	Deen Danio L. Concepcion President
Asian Law Institute National University of Singapore	University of the Philippines

2. 個人 PPT 簡報

Integrating International Environmental Law into the Activities of a Multilateral Development Bank: An Analysis of the Environmental and Social Framework of the Asian Infrastructure Investment Bank

Wei-Chung Lin Assistant Professor, National Chung Cheng University, Taiwan Ph.D., The University of Nottingham, UK

The Adoption of Social and Environmental Standards in IFIs

- > The establishment of international financial institutions (IFIs)
- The World Bank Group: The International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); the International Finance Corporation (IFC)
- Regional IFIs: The European Bank for Reconstruction and Development (EBRD); the Asian Development Bank (ADB); the Inter-American Development Bank (IDB); the African Development Bank (AfDB)
- The adoption of social and environmental safeguard policies
- The establishment of accountability mechanisms in IFIs
 E.g. The World Bank Inspection Panel; Compliance Advisor Ombudsman (CAO)



The AIIB's Environmental and Social Framework (ESF)

- Introduction and Vision:
- The Introduction and Vision "provide an overview of the Bank, the Environmental and Social Framework's structure and objectives and aspirations of the Bank concerning: (a) environmental and social sustainability; and (b) its role in meeting the challenge of sustainable development in Asia."
- The implementation of environmental treaty obligations through domestic legislation
- Article 5: To "support clients, through Bank financing of Projects, to implement their obligations under national environmental and social legislation"



The AIIB's Environmental and Social Framework (ESF)

- Introduction and Vision
- The principle of integration
- Article 7: "... Consistent with the Sustainable Development Goals (SDGs), the Bank recognizes the need to address the three dimensions of sustainable development – economic, social and environmental – in a balanced and integrated manner."
- Article 9: "For the principles of environmental and social sustainability to be effectively integrated into policies and Projects, the Bank believes that they should become part of routine decision-making processes and that environmental and social risks and impacts should receive full consideration in the identification, preparation, implementation and evaluation of all Projects.

The AIIB's ESF

- > Environmental and Social Policy (ESP)
- > The ESP describes compulsory environmental and social requirements for each project that the AIIB supports.
- > The principle of integration
- Article 1: "The objective of this overarching policy is to facilitate achievement of these development outcomes, through a system that integrates sound environmental and social management into Projects."
- The fulfillment of MEA obligations during project activities - Article 4: "... The Bank believes that the application of the ESP and ESSs ... will ... assist Clients in fulfilling their national and international obligations relating to environmental and social risks and impacts"



The AIIB's ESF

- Environmental and Social Policy (ESP)
- The fulfillment of MEA obligations in the client's environmental and social management system
- Article 54: The client's environmental and social management system should include "those aspects of the policy, legal and institutional framework of the country in which the Project is located, which are relevant to the environmental and social risks and impacts of the Project. This includes ... the international agreements to which the member is a party."



The AIIB's ESF

- Environmental and Social Exclusion List
- The AllB will not finance a project if it involves the activities or items on the Exclusion List.
- Article 1(ii): The production of, or trade in, any product or activity deemed illegal under... international conventions and agreements, or subject to international phase out or bans, such as:

 - Production of, or trade in hazardous substances subject to international phase-outs or bans (Rotterdam Convention, Stockholm Convention).
 Production of, or trade in, ozone depleting substances subject to international phase out (Montreal Protocol).
- > Article 1 (iii): Trade in wildlife or production of, or trade in, wildlife products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).



- Environmental and Social Exclusion List
- > Article 1(iv): "project involving trans-boundary movements of waste prohibited under international law (Basel Convention).'
- > Article 1(x): "activities prohibited by international conventions relating to the protection of biodiversity resources or cultural resources, such as, Bonn Convention, Ramsar Convention, World Heritage Convention and Convention on Biological Diversity.

