



# 上海论坛 2012 学术简报

## Academic Bulletin of Shanghai Forum 2012

### Legal Cooperation in Asia for 2011-2020 (IV)

May 27, 2012

The panel of “The Financial Legal Order in Asia” was held in the Room 2201, West Main Building of Guanghai Towers, Fudan University on the afternoon of May. 27th. Scholars from America, Russia, Hong Kong and Mainland China attended this conference and made reports, which is hosted by Professor Hu Honggao from Fudan University School of Law.

Prof. Zhang Xianchu, the Deputy Dean of the Faculty of law of the University of Hong Kong, made a report of “Legal Institutional Cooperation in Asia’s Integration”, in which he pointed out the concept of “Asian Century” due to the rapid development of Asian economy. Prof. Zhang considered that despite the disagreements on this concept as well as regional and domestic conflicts and disorder in which weakened the concept, it seems clear nonetheless that a consensus has been built up that governance reform is the most or ultimate serious challenge to, and an emerging priority for, Asia’s future development. In the report, Prof. Zhang introduced the achievement gained in the aspects of trade and economy, justice and finance through Asian legal cooperation, and highlighted some major challenging areas facing the governance reform and its regional implications, and examined some concerns of institutional integration from legal perspective. He emphasized the importance of good governance to the development of economy. As Asia is a pluralistic society, Governance reform and system update is important to the sustainable development of Asian Integration in the future. Further research should be made in these aspects, and it demands more participation and political will of governments of Asian countries.

Prof. Donald. C. Clarke from George Washington University made a report mainly concerned about the local government financing vehicles as well as the problems behind them. His report began with a brief overview of the Chinese LGFV financing landscape, then analyzed in detail the three types of backing offered for LGFV debt and concluded with a summary of the main risks. Prof. Clarke held that local governments in China are not allowed to issue bonds directly. Instead, they raise funds through local government financing vehicles (“LGFVs”): companies that are wholly owned by local government and that raise money through bond issues. LGFVs played a major role in the Chinese government’s credit-fuelled economic stimulus program. As a result, however, LGFV debt has piled up quickly. Prof. Clarke undertook that examination here using a sample of twenty LGFV bond prospectuses from various parts of the country, and finally found that current practices vary. In some bond issues, land use rights belonging to the issuer serve as collateral. In others, there is a government promise to repay the debt. In still others, another company guarantees the debt. According to Prof. Clarke, as several problems exist in these 3 models, further research is needed on this question.

Prof. Yury Garmaev from Law Faculty, Buryat State University made a report of “Characteristic of Combating Banking Crimes in the Russian Federation and Other Countries of the Asian-Pacific Region”. In his speech, he mainly introduced the characteristics of banking crimes in the Russian Federation and the experience of China in combating banking crimes that Russia can learn from. Prof. Yury Garmaev believed that the banking crimes in the Russian Federation are characterized by constantly modified and growing complex criminal methods of their preparation, commission and concealment, increasing crimes committed by electronic means of access and the growth of abuses of promissory notes and insurance. Therefore, it is of great importance for Russia to develop and implement effective measures against banking sector crimes in Russia and get aid from other countries. Then, Prof. Yury Garmaev put forward the opinion that China’s experience in combating financial crimes including banking crimes can be followed by Russia due to closeness between



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China and Russia not only in geography but also cultural, ideological and ethnic point of view. He mentioned that China's view of fighting crime as both a social and political task, the strategy of the "severe impact" on crime, close link between combating crime and corruption, severe penalties and active mass propaganda in fighting crimes in China are all of great help for the practice of Russia.

Prof. Zhang Jianwei from Fudan University School of Law stated his opinion and analysis on "Asian Financial Governance and Construction of Legal Cooperation". Prof. Zhang thought that the Eurozone debt crisis weakened the recovery of the global economy, and the highly respected Anglo-Saxon financial system model confronted with wide challenges. However, the Asian economy is rising with unbelievable speed, and the global monetary system will be reconstructed and turn into a new order. It is recognized by Asian countries that only through financial cooperation can Eastern Asian Countries effectively prevent the regional financial crisis. In the long run, this cooperation still needs to form an institutionalized and normalized legal cooperation mechanism to stabilize Asian countries' cooperation. In the next 10 years, we can make continuous efforts in improving policy dialogue, crisis rescue, regulatory cooperation in the framework of Asia regional financial governance and legal cooperation, including strengthening the function of Executive Meeting of East Asia Pacific (EMRAP) as a dialogue platform, strengthening the communication of financial supervision information and the multilateral dialogue and cooperation on laws and policies about finance, reforming the governance structure of the Asian Development Bank and carrying out the full dialogue and cooperation with the EMRAP, the Chiang Mai Initiative and the Asian bond market development initiative as the platform in order to promote the Asian monetary and economic integration, in which China should play a more important role, enjoy more rights to speak and make efforts to establish Chinese single currency area mode. With the opportunity to

construct Shanghai as an international financial center, we should strengthen the construction of international financial centers in China and gradually acquire the discourse power on the Asian and international financial governance through combining bilateralism and Asian regionalism.

After the reporters and audience made a heated discussion on the reports, Prof. Chen Li as well as Prof. Wang Mingliang from Fudan University School of Law made their commentaries to the conference. Prof. Chen concluded the speech of the guests, and Prof. Wang made additional explanation about Prof. Yury's report. He pointed out that China has replaced the severe criminal policy with the "Alternate Leniency with Severity" policy, and Chinese government has restricted the application of the death penalty.