

(The AIIB) China Could Stimulate the Global Economic Governance Quest

Rule of Law: The Cultural Balance between China and the West and the New Possibilities of the Asian Infrastructure Investment

On a rainy afternoon in March 2015 in Amsterdam a group came together in a seminar on the cultural backgrounds of Rule of Law. The participants consisted of lawyers, social scientists and Chinese overseas scholars and students in The Netherlands. This intensive seminar with lively discussions lasted for 4, 5 hours and in the end, for me, two mayor conclusions became apparent.

- The old economic contradictions between socialist and capitalist economic systems have prevented the world to overcome cultural barriers within international representation (such as exist within the UN, WTO, World Bank and such).
- The concepts of rule by and of law are many times dominated by Western concepts of private property which can (in the hands of merciless opportunists) be easily manipulated as a means of economic exclusion and irresponsible economic practices. The cause of this problem partly lies within the lack of economic governance in the world's financial sectors, partly in the powerful legal status of

international corporations and partly in the absence of a clear idea on global economic governance and development.

These are fairly explicit conclusions, I am very much aware, but, time and again, the international financial world has been shocked by Western bank practices which are destructive to the world economy. Products like derivatives, bonus culture on faulty financial products sales caused the world crisis of 2008, while still shielding exorbitant rewards for managers with no sense of social responsibility, which only recently again has shocked public opinion.

Meanwhile a newly published report on the audit commission of the United Nation's World Bank again warned that the World Bank is still unaware, as it was in 2013, that 40% of its money lending through the IFC portfolio does not undergo any assessment on the environmental and social requirements concerning the results of its projects[i]. Also, the work of Thomas Piketty and others (Piketty, 2014)[ii] shows that the income gap between the superrich and the very poor will have increased exponentially by 2030.

Next Western SME's, which could bridge this growing gap, in spite of their innovative role have increasing problems on receiving bank loans for small projects (loans of the IMF, IFC start with 500.000 or higher). As a result for Western SME's procurement and bidding on large infrastructural projects can only be accomplished through complicated business cooperation structures, or projects are too small to guarantee a return on investment. From the individual to the state level to international organizations and international corporations the distances are becoming incomprehensible. Maybe by now it is time to introduce a new concept: commercial opportunity inequality resulting from volume and network dependency.

National States and International Corporations

As a result of this problem it is justified to conclude that within the world financial sector transparent governance is missing completely. States govern, but international corporations travel to avoid taxes and do so successfully and with the help of business banks. Many times the legal status of corporate actions seems determined by law, but not of law. Yet in the West we claim out laws are impartial. Public opinion in terms of stakeholders have very little effect on the decisions of large corporations, neither in the



West it seems, but certainly not in Bric and Asian regions (the case of Monsanto is still out, but it does not look good). As a result large international corporations seem to overhaul the structure of state legislation and therefore escape not only taxes, but also the processes of civil representation. International corporations can legally pretend to be acting as responsible civilians, but their stockholders remain shielded from the public eye.

But what we tend to forget is the legal status of corporations originates from the United States. The corporation as a legal entity dates back to the implementation of the 14th

amendment, which states: "14th amendment; 1868: No state can deprive any person of life, liberty or property without due process of law". Basically this amendment implied protection of the private property of African Americans against misappropriation of by the state. Ironically, only 1890-1910 from the 307 cases brought to the courts, 288 were in by corporations only 19 cases were brought forward by African Americans. Since then corporation have a legal status of a person, a corporate citizen.[iii] This legal status is of cultural descend is by no means 'of law', as it stems from a very distinct U.S. economic culture.

Within our perception of business styles economically, we have become so used this Americanization that lawyers even think an economy without this legal structure would be unthinkable. Yet, the concept of a corporations pertaining the same rights as 'ordinary' citizens has enormous consequences for the division of wealth, income inequality and, equally important, environmental and social corporate responsibility. Investors can legally claim their right, in spite of the consequences for the pursuit of "live, liberty and happiness" and investors warn that leaving behind this legal structure would result in 'no investment ever in any business endeavor". Developmental projects therefore have become the domain and "economic responsibility" of the development banks, which, ironically, have a great return on investment, implying that other organizational principles are indeed possible. Why would investors not be responsible for the chain of production?

AIIB: New Bank, New Opportunity to Amend Rules Concerning CSR?

The Asian Infrastructure Investment Bank (AIIB) has been established in 2014 by China. The aim of this new development bank is to finance infrastructure projects in the Asia-Pacific Region; its headquarters will be in Beijing. The initial subscribed capital of AIIB will be \$50 billion and is planned to be increased to \$100 billion. This will imply that China would own 50% of the AIIB shares. China intention for good governance should be clear if we realize that it told for instance North Korea, if this country wants to participate, it needs far more financial transparence [iv] (The Diplomat). The majority interest of China is remarkable if compared to the shares China maintains in other development banks, for instance: 6, 47 % shares (Asian Development Bank) 5, 17% (World Bank) 3, 81% (International Monetary Fund).

At this moment 57 countries have requested to be founding members of the new AIIB, among them the Netherlands, on which Mark Rutte enthusiastically proclaimed it would bring grata opportunities to businesses in the Netherlands, and minister Koenders recently

informed the 2th chamber on the Dutch request of becoming a prospective funding member.

In spite of the many prejudices mostly coming from the U.S.A. Allan Beattle of the Financial Times [v] approaches the founding of the AIIB in a rather positive way. He writes that China has been shying away from a leading role in the existing multinational institutions, and that it now starts unilateral lending, because it found that bilateral investment treaties have a difficult common ground for existence. Yet we are of course warned that China is becoming a super power, that Russia will have a grand input in this new bank, that the whole initiative is threatening the status of the dollar, In which the dominating role of the Renminbi could become the new international reserve and that China merely needs Western countries for the sake of legitimacy. Is there threat of a currency war? Non-Asian countries will hold no more than 25%, so how can their interests be guaranteed?

Fighting Inequality and Unequal Representation beyond the Cold War

Yet amidst all these “Cold War” rhetoric, there is a tendency to overlook one very important factor, and this factor has little to do with East or West. The global fight against corruption with development and investment loans should have a much higher priority. Very recently it turned out that (according to Oxfam Novib)[vi] that from 2009 to 2013, World Bank Group lenders pumped \$50 billion into projects graded the highest risk for “irreversible or unprecedented” social or environmental impacts — more than twice as much as the previous five-year span. The Netherlands recently terminated development subsidiary to Benin[vii], as a result of the disappearance of 4 million Euros at its ministry of Water.

Another pressing danger is the power of international corporations which many times manipulate funding in such a way that it affects the international economic well-being of millions of people. Thomas Piketty, in his recent book, capital of the 21th century, warned for the gap in income between rich and poor, which for a very high percentage is based on the return of investment and commercial exclusion from investment as e result of poverty. Power more and more seems to be in the hands of investors, not with the general public, nor even by national states.

With the new AIIB first of all the founding members have the right to establish the rules guiding the banks activities, which implies Western countries do not need to fall “victim”

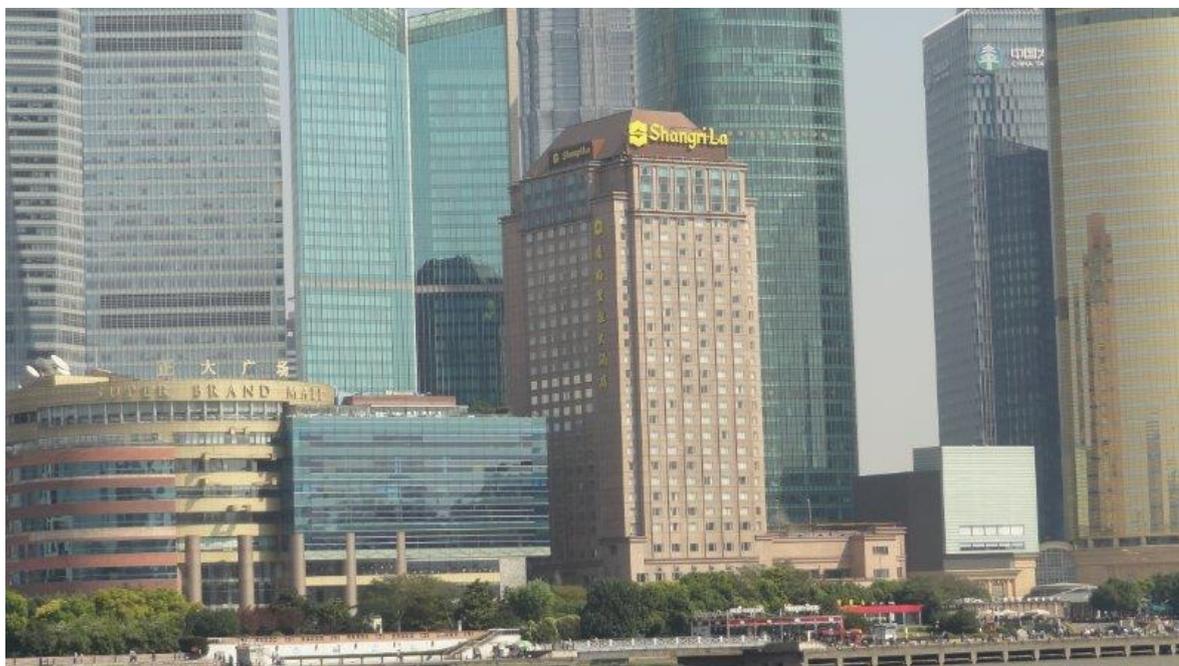
to whims and quirks of the non-Western countries. But there could be more advantages to this Chinese initiative. China is at this moment developing a law system which is called “a Socialist Rule of Law with Chinese Characteristics”.

Now such system is a bold and daring enterprise and it is, of course, condescendingly diminished by many “liberal” economists. Yet, without the necessity of following China’s developments, it might be a healthy idea to review our own so called “positive” law system and within that, especially the status of corporate organizations in terms of legal entities. Why not have the courage to ask questions about the position of investors, their right to claim profit at all cost as well as their right to strive away from social corporate responsibility? Why not introduce the principle of ‘production chain’ responsibility?

The AIIB seems at least striving towards a new format: as Huang Wei writes in China Daily:

“One of the ultimate aims of the AIIB is to better reallocate resources, and this will no doubt improve the efficiency of capital utilization. On top of that, the AIIB also shoulders responsibilities in pushing for reforms in the international monetary system and improving the international governance of the world financial system.”[viii]

Global International Economic Governance?



Do we need global economic governance? Initiatives on global economic governance appeared in 2011 from the UN in 2011: If we emanate from the former cold war rhetoric such attempts are doomed to fail from the beginning. Yet it seems the most difficult barrier to overcome implies facing the decline of the

dominating role of the United States within the world economy. The differences between China's reaction on the UN proposals of 2011 and the United States reaction is striking enough to wonder on how East and West will ever be able to cooperate on global economic governance. [ix] China gave its views in a public reply to proposals in the following manner:

"It is in the shared interests of the international community to improve global economic governance and to ensure robust institutional underpinnings for stable and healthy global economic development. The new system of global economic governance must reflect changes in the world economy, and incorporate the following three principal features.

First, it must be representative. It must ensure the wide participation of all members and, as a matter of priority; it must boost the representation and the voice of developing countries, thus enabling them to play a greater role in global economic governance.

Second, it must be equitable. All countries should participate on an equal footing both in setting the agenda and in policymaking, to ensure a balanced reflection of the views and concerns of all parties.

Third, it must be effective. The system should be results-oriented, focused on tangible outcomes and geared towards problem-solving and it should eschew empty rhetoric." [x]

No, knowing the mandate through which the UN is organized it is clear China wants more equal representation than the existing structure allows for. It would mean a release of veto where economic affairs are concerned, which up so far, has only been lifted in cases of gross cruelty towards humans. And it is very interesting to see that the US, is clearly not in favor of equal representation where economic affairs are concerned, as its reply states: "The consensus that has prevailed recognizes the importance of continuing to respect the existing mandates and governing structures established by the member states on which we have built several remarkable decades of unprecedented economic growth, development and poverty alleviation[xi]. In short, the US wants to maintain the veto mandate.

Viewing the current state of affairs on economic growth, development and poverty alleviation both inside the US and in Bric countries, as well as Asia the answer from the US seems rather self-indulgent. I might appear an old cynic if I would conclude from the US viewpoint that: "By all means let's continue **not** to have equal representation, let's continue ensuring the power of international corporate organizations, and most of all, let's be blind to the growing income gap, the existing poverty and declining environment and most of all to the empty rhetoric, by which we protect our own interests."

Will China make a difference? Even if the non-Asian countries only have 25% of the shares of the new AIIB, this implies the responsibility to be honest in their motives for participation. Why participate if you believe the AIIB is only about the international politics of China as a super-power? Rather, be an active partner in to making a difference, that would be a challenge, would it not?

Yuan Gangming, a researcher at Tsinghua University's Center for China in the World Economy, told the Global Times: "But China will not dominate the AIIB, since China has criticized the US dominance of the World Bank. China will not do a similar thing," Yuan told the Global Times. "The AIIB will give more weight to the opinions and benefits of developing countries[xii]." If this is the case, the balance of world economic power would truly shift towards equal representation.

[i] Retrieved from: <https://www.oxfam.org/en/pressroom/pressreleases/2013-02-08/world-banks-private-sector-financing-arm-doesnt-know>

[ii] Thomas Piketty: 2014: Capital in the 21th century: President and Fellows of Harvard College

[iii] <http://www.thecorporation.com/>

[iv] Retrieved from: <http://thediplomat.com/2015/04/chinas-aiib-the-final-tally/>

[v] Retrieved from: <http://blogs.ft.com/beyond-brics/2015/03/26/europeans-in-the-aiib-a-sign-of-chinese-weakness/>

[vi] Retrieved from http://www.ciel.org/Intl_Financial_Inst/CAO_Audit_8Feb2013.html

[vii] Retrieved

from http://www.telegraaf.nl/binnenland/24008714/Hulp_aan_Benin_gestopt_wegens_fraude_.html

[vii] Retrieved from <http://www.un.org/esa/ffd/economicgovernance/US.pdf>

[viii] Retrieved from http://www.chinadaily.com.cn/opinion/2015-04/29/content_20571717.htm

[ix] Retrieved from <http://www.un.org/esa/ffd/economicgovernance/>

[x] Retrieved from http://www.un.org/esa/ffd/economicgovernance/China_UNTranslation.pdf

[xi] Ibid http://www.un.org/esa/ffd/economicgovernance_U.S..pdf

[xii] Retrieved from <http://www.globaltimes.cn/content/920491.shtml>