



ขอเชิญเข้าฟังการสอบวิทยานิพนธ์

ระดับปริญญาเอก สาขานิติศาสตร์ดุษฎีบัณฑิต

เรื่อง

ASEAN LEGAL FRAMEWORK FOR EQUAL ACCESS TO AND FAIR BENEFIT SHARING OF
PLANT GENETIC RESOURCES IN SOUTHEAST ASIA THROUGH ESTABLISHMENT OF THE
GENE BANK

ผู้สอบ นายวรพจน์ สืบประเสริฐกุล

กรรมการสอบ ศาสตราจารย์ ดร. จุมพต สายสุนทร

อาจารย์ ดร. นวรัตน์ ไกรพานนท์

ศาสตราจารย์ ดร. บุญศรี มีวงศ์อุโฆษ

ศาสตราจารย์ ดร. อำนาจ วงศ์บัณฑิต

อาจารย์ ดร. สุนทรียา เหมือนพะวงศ์

วัน-เวลา วันพุธที่ ๒๕ กรกฎาคม ๒๕๖๑

เวลา ๑๗.๐๐ น.

สถานที่ ณ ห้องประชุม 414 ชั้น 4 คณะนิติศาสตร์ มธ

ABSTRACT

As a consequence of the convention-protocol approach under the present international environmental regulatory regimes, a permutation of the overlapping subject matters in the multilateral environmental treaties (“METs”) and their protocols brings about legal inconsistency. Supposed to be solved by Vienna

Convention on the Law of Treaties (“VCLT”), this issue of inconsistency instead causes several problematic legal issues. Principally, conflict of obligations, imposed on states being parties to the overlapping METs where no conflict clauses exist, is left without the applicable provision. Norms and doctrines enshrined in those METs are thus sought for in order to determine which obligation – as called an integral obligation – overrules which. Unfortunately, there is no existence of hierarchy of such norms, thus giving rise to necessity in paving the way for solving the problems, that is, approaches of treaty interpretation – as interpreted both within and without VCLT despite its ambiguity – and reliance on other principles with soft-law connotations and general international law. As such, the problematic issues – potentially a ground for a breach and repudiation of the treaty – are not dispelled as long as there is no applicability of concrete laws relevant. Additionally, the problems include the ineffectiveness of the existing METs in preventing free-riders from obtaining positive externality from treaty compliance of the other parties, and state cooperation in treaty-making.

Due to the aforementioned problems, ineffective enforcement under the international environmental regulatory regimes precipitates states’ incompletion of and inability to implement the METs, inevitably leaving an adverse impact on our environment. Bearing in mind that biodiversity is crucial for environmental sustainability, this study – based on Immanuel Kant’s Deontological Liberalism as its approach – is intended to be a case study to solve the abovementioned problems and to make a contribution to development of international environmental law. Precisely, this study proposes an international legal framework for equal access to and fair benefit sharing of plant genetic resources (“PGRs”) in particular under ASEAN in a treaty form with the purpose of not only an alternative solution to the aforementioned problems under the existing METs, but also positioning the PGRs in the positive and inclusive area in the common space where every ASEAN member state can access and utilise the PGRs in the manner that sustains biodiversity.

In conjunction with Game Theory, Kant's conception is not only in agreement with certain principles – legal and environmental – but also directs us to the economic formulae applied for design of the legal framework in a self-enforcing treaty format with trade restrictions together with compliance tools. Within the bound of ASEAN region, the legal framework particularly aims to deter free riding – a main factor for lack of states' participation in METs, pinpointing ineffectiveness of the environmental legal field. Accordingly, the proposed mechanisms make workable this legal framework by means of, firstly, regional exchange of PGRs – regardless of whether or not they are instrumentally valued; and secondly, the gene bank with its quota and trading regulations, based on the equilibrium where the marginal compliance costs equate with the gains of PGRs and biodiversity.

Through its legal framework, this study, humbly yet ultimately, aims to make a contribution to our regional cooperation according to sustainable development and international environmental law to, hopefully, the extent that the ASEAN states and we all can act with appreciation of intrinsic value of PGRs and the environment at large.

Keywords: International Environmental Law, Overlapping Subject Matters under Environmental Treaties, Conflict of Obligations under Multilateral Environmental Treaties, Legal Framework for Plant Genetic Resource Diversity, Biodiversity, ASEAN