

國際合作發展法草案評析

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摘 要

對外援助為一國外交之重要工具，甚至是唯一有效的政策工具，既可影響受援國的決策與政治立場，又可建構援助國之國際地位，確保其國家利益。台灣的對外援助史已超過四十二年，迄今缺乏一部成文母法作為決策與執行單位的指導規範，無形中造成行政部門大權獨攬，外界難以一窺究竟，當然也就談不上有效監督。

本文以行政院九十一年五月六日函請立法院審議之「國際合作發展法草案」為對象，從立法目的、立法原則以及國際間公認的對外援助理念等關鍵性之立法因素切入，參酌美國、日本等先進援外大國之立法例與援助模式，分總論與逐條分析兩層次，深入解構分析行政院版條文草案之優缺利弊，進而提供具前瞻性之修正建議，期望協助本法立法過程更為周延審慎，進而促使本法落實援外制度化、專業化、透明化等三大目標。

本文特色之一為大規模進行國際援外機構當事人之深度訪談，汲取第一手經驗。從學理、日美立法例與實務運作、學者專家見解綜合分析可知，國際合作發展法之制定乃是前瞻性的作法，也符合法治國依法行政原則，如果完成立法程序，將是台灣第一部成文法典規範對外援助，乃台灣援外法制之里程碑。惟外交部的保守心態與台灣長期的援外黑箱作業，具體反應在部份條文的保守內容，行政部門對於推動本法案之立法程序也抱持可有可無的消極心態，以至於延宕至今仍在立法院審議中，甚為可惜。

關鍵詞：對外援助、國際合作、外交、法制

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An Assessment on the Draft of Taiwan's International Cooperation Development Law

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Abstract

Foreign aid is a key instrument to implement a country's foreign policy. To some extent, it often becomes the only effective policy leverage, which affects recipient country's policy-making and political stance on the one hand and ensures donor country's international status and its national interests on the other hand. Although Taiwan has conducted foreign aid for more than forty-two years, it lacks of a legislative statute to guide and direct its overall policy and implementation. The down side of the legislative vacuum, therefore, is that executive branch dominates the foreign aid operation while all others are kept in dark, not mention effective supervision from outsiders.

This paper aims at providing an objective analysis of the draft of International Cooperation Development Law (ICDL), which was sent to the Legislative Yuan for enactment by the Executive Yuan on May 6, 2002. Considering key legislative factors, such as purposes, aid principles, and internationally recognized aid philosophy, this paper makes comparative studies by taking USA and Japan's legislation and practice into account. The analytical structure of this paper divides into general discussions and individual provision discussions. This paper not only examines the pros and cons of the Executive Yuan' draft but also provides recommendations to revise the draft so as to envision a systematic, professional, and transparent foreign aid system in Taiwan.

One of the characteristics of this paper is to conduct comprehensive in-depth interviews with key person in international aid agencies. Based on academic study, experts' opinions, and foreign legislations and practice, this paper finds that the draft

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of ICDL is an advanced legislative proposal and compatible with the rule of law. If enacted, it will mark a milestone of Taiwan's foreign aid. However, due to the conservative nature of the bureaucracy within Taiwan's Ministry of Foreign Affairs and its black box operation in practice, current draft's provisions, which lacks of phasing out classified budget, are incompatible with the general practice in most of the advanced countries. In addition, the executive branch shows little, if any, political pressure and desires to push the bill in a timely fashion. Ss far (as of October, 2003) the bill is still in the process of congressional review.

Key words: ODA, Foreign Aid, International Cooperation, Legislation, Assistance Law