



China Analysis 44
June 2005
www.chinapolitik.de

**U.S.-China Legal Cooperation – Part III:
An Overview of Private American-Chinese
Legal Cooperation Programs**

Nicole Schulte-Kulkmann

Ph.D. candidate, Research Group on the Political Economy of China, Trier University

and

Sebastian Heilmann

Professor of Government / Political Economy of China, Trier University

Address of the authors:
Department of Political Science
Trier University, 54286 Trier, Germany

E-mail: china_analysis@chinapolitik.de

Nicole Schulte-Kulkmann and Sebastian Heilmann

**U.S.-China Legal Cooperation – Part III:
An Overview of Private American-Chinese Legal Cooperation
Programs**

Table of Contents

List of Abbreviations.....	3
Introduction.....	5
1. Temple University Beasley School of Law.....	6
<i>1.1 Program Description</i>	6
1.1.2 Program Strategy and Potential Influence on the Migration of Legal Norms and Concepts.....	8
<i>1.2 Yale Law School China Law Centre</i>	11
1.2.1 Description of CLC Work.....	12
1.2.2 Program Strategy and Potential Influence on the Migration of Legal Norms and Concepts.....	12
2. Professional Organizations: The American Bar Association Asia Law Initiative.....	14
<i>2.1 Program Description</i>	15
2.1.1 China Trial Demonstration Program.....	16
2.1.2 Exchange between Chinese and American Legal Professionals.....	16
2.1.3 China Legal Aid Project.....	17
2.1.4 The China Environmental Governance Training Program.....	17
<i>2.2 Program Strategy and Potential Impact on the Migration of Legal Norms and Concepts</i>	19
3. Business Organizations: The United States-China Business Council.....	21
<i>3.1 Program Description</i>	22
<i>3.2 Strategy and Potential Impact on the Migration of Legal Norms and Concepts</i>	24
4. Private Non-Partisan Organizations.....	26
<i>4.1 Asia Foundation</i>	26
4.1.1 Program Description.....	26
4.1.2 Program Strategy and Potential Influence on the Migration of Legal Norms and Concepts.....	30
<i>4.2 Ford Foundation</i>	31
4.2.1 Project Description.....	33
4.2.2 Program Strategy and Potential Impact on the Migration of Legal Norms and Concepts.....	37
5. Private Partisan Organizations.....	42
<i>5.1 International Republican Institute</i>	42
<i>5.2 National Democratic Institute for International Affairs</i>	43

6. Main characteristics of U.S.-PRC Legal Cooperation Measures	44
6.1 <i>Legal Cooperation Initiatives are Mainly Civil Society Rooted</i>	44
6.2 <i>Diversified Funding of Legal Cooperation Initiatives</i>	45
6.3 <i>Support for Institutional Reform and Legal Aid as Main Focus of Legal Cooperation Initiatives</i>	46
6.4 <i>Prominence of Economic and Foreign Policy Interests</i>	49
6.5 <i>High Potential for the Development of Professional Networks</i>	51
6.6 <i>Potential Impact of American-Chinese legal Cooperation Measures on the Migration of Legal Norms and Concepts</i>	53
7. Conclusion.....	54
Appendices	56
Appendix I: Current Projects of the China Law Centre – Yale Law School	56
Appendix II: U.S.-China Legal Cooperation Fund Grants 1999 to 2004	58
Appendix III: Grants awarded by the Asia Foundation 2003 to 2004	60
Appendix IV: Selected Summary of Major Grants of the Ford Foundation Beijing Office for Development of the Chinese Legal System 1995 to 2005.....	63
Bibliography.....	71

List of Abbreviations

ABA	American Bar Association
ACLA	All-China Lawyers Association <i>zhongguo quanguo lüshi xiehui</i>
AF	Asia Foundation
ALRG	Administrative Law Research Group <i>quanguo renda changweihui fazhi gongzuo weiyuanhui xingzhenglifa yanjiuzu</i>
BCLC	Business and Comparative Law Center
CASS	Chinese Academy of Social Sciences <i>zhongguo shehui kexueyuan</i>
CCP	Chinese Communist Party
CEGP	China Environmental Governance Project
CLC	China Law Centre
CLEEC	U.S.-China Committee for Legal Education Exchange
CUPL	China University of Political Science and Law <i>zhongguo zhengfa daxue</i>
DRL	Bureau of Democracy, Rights, and Labor
FEC	(National People’s Congress) Financial and Economic Committee <i>quanguo renmin daibiao dahui caizheng he jingji weiyuanhui</i>
FF	Ford Foundation
IECG	International Experts Consulting Group
IPR	Intellectual Property Rights
IRI	International Republican Institute
LAC	(National People’s Congress Standing Committee) Legislative Affairs Commission <i>quanguo renda changweihui falugongzuoweiuyuanhui</i>
MOFCOM	Ministry of Commerce <i>zhonghua renmin gongheguo shangwubu</i>
NED	National Endowment for Democracy
NGO	Non-Governmental Organization
NJC	National Judges College <i>guojia faguan xueyuan</i>
NPC	National People’s Congress <i>quanguo renmin daibiao dahui</i>
NSA	National School of Administration <i>guojia xingzheng xueyuan</i>

OLA	(State Council) Office of Legislative Affairs <i>guowuyuan fazhiju</i>
PLRC	(CUPL) Procedural Law Research Center <i>zhongguo zhengfa daxue susongfa yanjiu zhongxin</i>
SC	State Council <i>guowuyuan</i>
SPC	Supreme People's Court <i>zui gao renmin fayuan</i>
USCBC	United States-China Business Council
USCLCF	U.S.-China Legal Cooperation Fund
WTO	World Trade Organization

Introduction

As part of a comprehensive research endeavor,¹ this paper constitutes the third part of a three-part analysis of American-Chinese legal cooperation projects. Part I² has outlined the theoretical foundations guiding the research, arguing that in order to fully understand the process of legal transplantation as one important aim of legal cooperation measures in general, one has to take into account the influence of certain collective actors – such as national governments, non-governmental organizations, international organizations and academic institutes – and individual actors – mainly Chinese and western legal experts, judges, lawyers, legislative staff, administrative personnel, scholars and students – and their respective interests on the migration of legal norms and concepts.³ It has been demonstrated that amongst these interests economic, foreign policy and prestige interests figure most prominently.

Moreover, Part I of the analysis pointed out that one also should pay attention to the transnational dimension of the process of legal transplantation. This refers to the special importance of ‘transnational professional networks’ which develop between Chinese legal experts and their western counterparts during their participation in legal cooperation projects. These networks have been introduced as important ‘channels’ which can significantly facilitate the migration of legal norms and concepts.

As the next step, Part II of the analysis⁴ set out to test the theoretical claims with empirical evidence from American-Chinese governmental legal cooperation measures. Firstly, the analysis provides insights into the political background of these activities by introducing the 1997/1998 Bill Clinton-Jiang Zemin ‘Rule of Law Initiative’ as well as U.S.-PRC Permanent Normal Trade Relations negotiations as important catalysts for subsequent U.S. governmental initiatives directed at supporting rule of law and human rights in the PRC. Amongst these, the grant-making activities of the State Department Bureau of Democracy, Rights, and Labor and the National Endowment for Democracy as well as the Department of Labor’s labor rule of law cooperation program are analyzed in detail. The main focus here lies on the programs’ strategies, their aims, and their potential impact on the migration of legal norms and concepts. The paper which is presented here, then, continues the analysis and focuses on private American-Chinese legal cooperation initiatives. The main actors which can be identified here are university law schools, professional and business organizations as well as private philanthropic and partisan foundations. Again, the different programs are examined with particular regard to their strategies, aims and the potential impact on the migration of legal norms and concepts. The paper concludes with outlining the basic characteristics of governmental and non-governmental American-Chinese legal cooperation, respectively. Furthermore, the evidence provided in Parts I and II of the analysis is used to substantiate the theoretical claims brought forth in Part I, in particular with regard to the development of transnational professional networks between American and Chinese legal experts and their importance as ‘channels’ for the migration of legal norms and concepts.

¹ This paper presents some first results of the research project ‘TransLECS’ (Transnational Legal Development and Epistemic Communities). The project is supervised by Sebastian Heilmann, Professor for Comparative Government/Political Economy of China, Universität Trier, Germany. Funding is provided by the Deutsche Forschungsgemeinschaft DFG (German Research Foundation). Further information available at: <http://www.translecs.com>

² Schulte-Kulkmann/Heilmann 2005a

³ The terms ‘export’, ‘migration’, and ‘transplantation’ of legal norms may be used – and, in this paper, are used – interchangeably. Their common meaning can be circumscribed as ‘the moving of a rule or a system of law from one country to another, from one people to another.’ (Watson 1974: 21).

⁴ Schulte-Kulkmann/Heilmann 2005b

Since there is a great diversity of American-Chinese legal cooperation programs implemented by private donors such as foundations, business organizations, professional organizations, and universities, it was not possible to gather substantive information on all of these different activities. Hence, the description and analysis provided below must be restricted to the initiatives by some selected private and academic institutions. But, since these institutions are amongst the most active in the area of legal cooperation with the PRC, the author is convinced that nevertheless meaningful conclusions may be derived from the analysis of their respective activities.

1. Temple University Beasley School of Law

1.1 Program Description

In 1995, Temple University Beasley School of Law was approached by the Chinese Ministry of Justice and the China University of Political Science and Law (*zhongguo zhengfa daxue* – CUPL) to start a Master of Laws (LL.M.) program in the PRC.⁵ The initiation of this program goes back to an explicit invitation by the Chinese government following the suggestion of Deng Xiaoping to establish exchange relationships between American and Chinese universities.⁶ Deng Xiaoping himself felt especially affiliated with Temple University since Temple had been the only American university to grant an honorary degree to him during his state visit to the U.S. in 1979. Besides these personal ties, the Chinese government had considered a similar legal education exchange program implemented by Temple University School of Law in Japan since 1994 and was convinced by the achievements of that program.⁷ Hence, in 1999, Temple University was awarded the possibility to offer the first foreign law degree-granting program in China in cooperation with CUPL.

The two-year LL.M. program provides legal training to students from the PRC in international legal practice and in technical legal language skills. The rationale underlying the programs is the conviction that it is not only important to introduce knowledge about legal thinking at the international level to students but also to enable them to interact with the international legal community long after their graduation. For this, sufficient language skills are a vital precondition. Hence, all courses are taught in English. Finally, successful students will receive a law degree from CUPL as well as from Temple University.⁸

As far as the subjects covered by the Temple-CUPL LL.M. program are considered, the program initially focused mainly upon the subjects of international business law and economic law, with special attention to World Trade Organization (WTO) related legal issues.⁹ Cooperation in these less sensitive areas of the law served as an important step to build up confi-

⁵ ‘Promoting Rule of Law in China’ – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002): Statement of Robert Reinstein, Dean, Temple University School of Law (*henceforth: Statement of Robert Reinstein, 24.05.2004*)

⁶ ‘Master of Laws Program’

(http://www.law.temple.edu/servlet/com.nci.products.DataModules.RetrieveAttachment/Beijing+LLM+Brochure/?server=templelawdb&dbname=templelaw&site=TempleLaw&action=International_attachments&article=1&filename=Beijing+LLM+Brochure.pdf [visited 12.07.2005])

⁷ ‘Promoting Rule of Law in China’ – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002): Testimony of Robert J. Reinstein, Dean, Temple University Beasley School of Law before the Senate Appropriations Committee, Subcommittee on Foreign Operations (March 7, 2002); *henceforth: Testimony of Robert Reinstein, 07.03.2002*

⁸ Testimony of Robert J. Reinstein, 07.03.2002; Conner 2003: 242.

⁹ Statement of Robert J. Reinstein, 24.05.2002

dence between the American and Chinese side.¹⁰ Thus, a trusting working relationship between the American and the Chinese side developed over time which allowed the program curriculum to be expanded. Since 2001, the program also covers the more sensitive and human rights and rule of law related issues of American constitutional law, labor and employment law, trial advocacy and criminal procedure, as well as professional responsibility.¹¹ It is also interesting to note that the Temple-CUPL LL.M. program is not a comparative law program but aims strictly at offering courses in American common law to Chinese students, taught by American and American-trained law teachers.¹²

Participants in the LL.M. program comprise legal practitioners such as judges and lawyers, legal academicians as well as Chinese government officials such the National People's Congress (NPC) Standing Committee Legislative Affairs Commission (*quanguo renda changweihui falugongzuoweiyuanhui* – LAC), China Securities Regulatory Commission (CSRC), NPC Committee on Internal and Judicial Affairs, and the Ministry of Commerce (MOFCOM).¹³ Furthermore, the program in particular aims at recruiting Chinese ethnic minority (i.e. non-Han) legal professionals with a potential for leadership.¹⁴ If non-Han legal professionals get the opportunity to enter central Chinese governmental institutions or influential governmental positions due to their solid legal education received by participating in the LL.M. program, then they possibly can plead more successfully for the problems and concerns of the ethnic minorities in the PRC, thus helping to bring about changes in the political and legal area favorable to these segments of the population. Each year, approximately 30 to 50 Chinese students participate in the LL.M. program; as a result, between 1999 and 2003 (end of the year), more than 104 Chinese jurists graduated from the program. During the year 2004, a further 47 students started their education with the Temple-CUPL LL.M. program.¹⁵ Currently, the Temple-CUPL LL.M. program is being transferred to Qinghua University.¹⁶

Besides the LL.M. programs implemented with CUPL and Qinghua University, Temple University School of Law also supports the Business and Comparative Law Center (BCLC). The BCLC comprises different projects run in cooperation with Chinese legal institutions and generally aims at strengthening the rule of law in the PRC.¹⁷ In the area of legal education, the Temple-CUPL and the Temple-Qinghua LL.M. programs are run under the umbrella of the BCLC. Moreover, the BCLC also offers short term language and judicial training programs for Supreme People's Court (SPC) judges and students of the SPC National Judges College (*guojia faguan xueyuan* – NJC). Furthermore, the BCLC is also engaged in legal advisory services to different Chinese legislative drafting institutions. For example, the SPC received advice on the drafting of a code of judicial ethics; the NPC asked for BCLC advice on laws governing real and personal property rights; the LAC Department of Economic Legislation received advice on the issue of WTO-related legislation.

¹⁰ Interview 03/2004

¹¹ Statement of Robert J. Reinstein, 24.05.2002; 'Master of Laws Program' (http://www.law.temple.edu/servlet/com.nci.products.DataModules.RetrieveAttachment/Beijing+LLM+Brochure/?server=templelawdb&dbname=templelaw&site=TempleLaw&action=International_attachments&article=1&filename=Beijing+LLM+Brochure.pdf [visited 12.07.2005])

¹² Conner 2003: 272, note 200.

¹³ Testimony of Robert J. Reinstein, 07.03.2002

¹⁴ 'China to Get Lessons in the Rule of Law'; in: Asia Times, 04.10.2001; 'Temple aims to westernize China's legal system'; in: Philadelphia Business Journal, 23.11.2001 (<http://www.bizjournals.com/philadelphia/stories/2001/11/26/focus3.html> [visited 12.07.2005])

¹⁵ Information provided by USAID; available at: http://www.usaid.gov/policy/budget/cbj2005/ane/pdf/china_cbj_fy05.pdf (visited: 29.11.2004)

¹⁶ Conner 2003: 272, note 200.

¹⁷ All information about the BCLC is taken from: Testimony of Robert J. Reinstein, 07.03.2002

Finally, another major goal of the BCLC is to establish working groups of American and Chinese scholars, lawyers, judges and members of the business community on a long-term basis. For one, these working groups are intended to serve as communication channels for the scholarly exchange on relevant legal issues between members of the American and Chinese legal community. But, furthermore, these groups are also designed as an expanding ‘pool of knowledge’ which will provide technical legal assistance to Chinese legislators, regulators, scholars and judges involved in the process of reforming the Chinese legal system.¹⁸ To date, some of these working groups have already been established. The joint Working/Study Group on property law of Temple, Qinghua and CUPL Universities and the China Society of Comparative Law (CSCL) is headed by Professor Jiang Ping, CUPL professor and CSCL Chair. Another Working Group on WTO issues, headed by Temple Professor Jeffrey Dunoff, and a Health Law Working Group embracing Temple and Qinghua Universities and the Union of Public Health/Chinese Academy of Preventive Medicine already have been established. Furthermore, it is planned to setup a Working Group on electronic commerce.

Funding for the Temple-CUPL and the Temple-Qinghua cooperation programs is provided for by the American government and the Chinese Ministry of Justice (MoJ). From 1999 to 2004, the State Department’s Bureau of Democracy, Rights and Labor (DRL)¹⁹ supported the programs with financial resources amounting to more than seven million US\$.²⁰ Donations by American business corporations also contribute to the work of the programs. For example, in 1999 the Starr Foundation, a charitable organization affiliated with the insurance company American International Group (AIG), supported the initiation of the Temple-CUPL program with two million US\$. In 2002, the Starr Foundation provided again 2.5 million US\$ for the program.²¹ Furthermore, other members of the American business community, such as General Motors, DuPont, Microsoft, CIGNA, and United Airlines²² as well as program *alumni* and influential U.S. law firms²³ also provide resources in support of the implementation of the programs.

1.1.2 Program Strategy and Potential Influence on the Migration of Legal Norms and Concepts

From the above description it becomes obvious that, for one, the Temple legal cooperation programs with Qinghua University and CUPL aim at initiating reforms of the Chinese legal system from within the PRC, with the help of Chinese legal professionals. By educating highly qualified Chinese legal professionals who have the potential to advance into influential governmental positions in the course of their careers, legal thinking inspired by American as

¹⁸ ‘China to Get Lessons in the Rule of Law’; in: *Asia Times*, 04.10.2001; ‘Temple aims to westernize China's legal system’; in: *Philadelphia Business Journal*, 23.11.2001 (<http://www.bizjournals.com/philadelphia/stories/2001/11/26/focus3.html> visited 12.07.2005)]

¹⁹ DRL is funding rule of law and human rights related legal cooperation projects in the PRC as well as in other parts of the world through the Human Rights and Democracy Fund (HRDF). See: Schulte-Kulmann/Heilmann 2005b.

²⁰ These funds have been provided via USAID (GAO 2004: 5).

²¹ ‘AIG Donates Additional \$2,5 Million to Temple in China’; in: *Temple Esquire*, Vol.2 (Fall 2002); available at:

http://www.law.temple.edu/servlet/com.nci.products.DataModules.RetrieveAttachment/esqfall2002/?server=temple-lawdb&dbname=templelaw&site=TempleLaw&sction=Publications_Attachments&article=1&filename=esqfall2002.pdf (visited 29.07.2005)

²² *ibid.*

²³ Cf. Interview 13/2002; ‘Temple aims to westernize China's legal system’; in: *Philadelphia Business Journal*, 23.11.2001 (<http://www.bizjournals.com/philadelphia/stories/2001/11/26/focus3.html> [visited 12.07.2005]); see also: ‘Teaching and Pro Bono Efforts’ (<http://www.coudert.com/practices/default.asp?action=practicedetails&id=14> [visited 20.07.2005])

well as by international legal norms and standards can be infused into the Chinese governmental apparatus. In the long term this can result in decisions of the Chinese government – especially in the economic area but not limited to that – geared more and more towards international standards, hence converting the PRC into a more reliable partner in international (economic) affairs. This is particularly true with regard to WTO-related legal issues which are one major working area of the program.

But change from within is in need, too, for example, with regard to the situation of ethnic minorities in China. These groups of the population are significantly underrepresented in the political, legal and economic decision making processes as well as deprived with regard to their access to participation in these areas in general. As has been described above, the Temple cooperation programs make efforts to offer non-Han legal professionals the possibility to participate in the LL.M. program. Therewith, members of minority populations get the chance to enter into influential governmental positions, too, where they can better represent these minorities' interests. Furthermore, if lawyers, judges, and government officials from ethnic minority regions receive qualified legal training, then it is possible to significantly improve the implementation and enforcement of the law in these regions as well as to facilitate access to law and to legal counsel for the broader population.

Furthermore, since Chinese students participating in the LL.M. programs are predominantly educated in American common law, this knowledge of American law and American legal approaches will likely influence the future legal practice of these legal professionals. This means, for one, by introducing American legal norms and approaches into the Chinese legal system via legal education, the practice of law in the PRC is likely to be influenced by the American example.

Moreover, with regard to the statutory framework of the Chinese legal system, there is also a possibly major impact of the Temple LL.M. cooperation programs. As has been mentioned above, several Chinese governmental institutions have already approached the BCLC, of which the LL.M. programs are one part, for support during the process of legislative drafting. Hence, American legal expertise and American legal norms as examples of best practice ingress into the Chinese legislative drafting process, since in the PRC, legal scholars to a relatively great extent have the possibility to influence the law making and, thereby, policy making process.²⁴ This means, the migration of legal norms originating in the American common law legal system into the Chinese legal system is facilitated to a high degree by the work of the program.

The process of the migration of legal norms and concepts is significantly intensified by the influence of networks between American and Chinese legal professionals. The Temple LL.M. cooperation programs are explicitly directed at the development of such networks. This becomes obvious with regard to the establishment of several American-Chinese working groups under the auspices of the BCLC as has been described above. These working groups bring together American scholars and influential Chinese legal academics and practitioners, many of whom are members of Chinese legislative drafting institutions. This means, by participating in the working groups, the Chinese jurists become affiliated with American legal norms and standards as well as with American legal thinking. This knowledge then is introduced into the legislative drafting process in which the Chinese legal experts participate. Hence, the networks established by the working groups and by the exchange between American and Chinese legal professionals in the course of the Temple LL.M. programs in general serve as im-

²⁴ Woodman 2004: 42.

portant channels for the migration of American legal norms and standards into the Chinese legal system.

One example for the influence of these networks on the migration of law is constituted by the person of Professor Jiang Ping. Professor Jiang is a pioneer in legal education exchange between the U.S. and the PRC,²⁵ as well as the head of the Temple-Qinghua-CUPL-China Society of Comparative Law joint Working/Study Group on civil and commercial law.²⁶ He is most influential in the area of private law and has been amongst the principal drafters of important pieces of legislation, such as the General Principles of Civil Law, Company Law, and Administrative Litigation Law.²⁷ Furthermore, Professor Jiang is also Head of the NPC Standing Committee LAC Administrative Law Research Group which is responsible for drafting major administrative legislation.²⁸ Currently, Professor Jiang is the chief drafter of the Chinese Civil Code.²⁹ This means, if influential Chinese legal professionals weaved into the Chinese legislative drafting process are integrated into professional networks between American and Chinese legal experts, then individuals such as Professor Jiang can serve as the channels through which there occurs a migration of legal norms and standards. Hence, in order to promote and export the own legal system, it is quite effective for a donor nation to support the establishment of such networks between legal professionals. University exchange and cooperation programs are particularly conducive to the development of these networks as well as to the development of progressive legal reform initiatives. For one, in the academic field there is quite a high degree of leeway for Chinese jurists to develop progressive concepts for legal reforms.³⁰ Hence, universities are amongst the primary ‘incubators’ for impulses for legal reforms since government and Chinese Communist Party (CCP) control over academic discussions has been significantly loosened.³¹ Furthermore, contacts between American and Chinese legal scholars are in general not burdened by overall diplomatic restraints as it is true for official U.S.-PRC relations. Thus, open discussions and exchange even on more sensitive, i.e. explicitly human rights and rule of law related areas of the law can be conducted more easily between Chinese and American academic colleagues.

Finally, it should be remarked that the value of academic contacts and the resulting development of professional networks for the transplantation of law have been acknowledged by private actors with an interest in the successful export of American legal norms and standards to the PRC, too. It has been pointed out in Part I of the analysis³² that business lawyers representing their clients in the PRC very often plead for a development of the PRC legal system along the lines of their own and their clients’ home jurisdiction in order to secure a business environment which is reliable as well as familiar to these clients.³³ In case of the Temple LL.M. programs, one major U.S. based international law firm, *Coudert Brothers*, established the Coudert Brothers Scholarship with the Temple-CUPL program in order to support legal

²⁵ Cf.: ‘Drafting a Uniform Chinese Contract Law’, available at: <http://www.columbia.edu/cu/chinalaw/calendar/4-10-96.html> (visited 20.07.2005)

²⁶ Testimony of Robert J. Reinstein, 07.03.2002

²⁷ ‘Drafting a Uniform Chinese Contract Law’; available at: <http://www.columbia.edu/cu/chinalaw/calendar/4-10-96.html> (visited 20.07.2004)

²⁸ The Administrative Law Research Group is described in detail below, cf. section 4.1.1.1

²⁹ Information available at: <http://www.1488.com/english/about/aboutus/default.asp> (visited 20.07.2005)

³⁰ Woodman 2004: 36.

³¹ Of course, there are exceptions to this statement. For example, some very critical discussions amongst Chinese legal academics evolved in Summer 2003 prior to the Chinese constitutional amendments. The Chinese government then stalled these discussion by distracting Chinese legal scholars from speaking out on issues related to the constitutional amendments and from participating in scholarly conferences (cf. Heilmann/Schulte-Kulkmann/Shi 2004).

³² Schulte-Kulkmann/Heilmann 2005a

³³ DeLisle 1999: 207; cf. Interview 11/2002

education in the PRC.³⁴ By sponsoring such scholarships, American law firms have the possibility to support American-style legal education in the PRC. In the long run, this may result in future generations of Chinese legal professionals becoming more and more affiliated with American-style legal practice and, thus, being more supportive to changes in the Chinese legal environment modeled on the American legal system. This, again, coincides with American law firms' and their clients' interest in the emergence of a legal environment in the PRC which is similar to their home jurisdiction.³⁵ Thus, this example is illustrative of the fact that academic programs and private (financial) support for legal cooperation projects more often than not work closely together in order to facilitate the export of American legal norms and concepts to the PRC.

In addition to the Temple LL.M. cooperation programs, another prominent American university, Yale University, is also engaged in implementing a large scale legal cooperation program with Chinese partners. This program is now to be described in more detail.

1.2 Yale Law School China Law Centre

The Yale Law School China Law Centre (CLC) can be regarded as a direct offspring of the Clinton-Jiang Summit in 1997.³⁶ In 1997/1998, Professor Paul Gewirtz of Yale Law School served as the Clinton Administration's 'Special Coordinator for Global Rule of Law' and was responsible for the elaboration of the 'Cooperation in the Field of Law' Initiative. Albeit Professor Gewirtz in his capacity as 'Special Coordinator for Global Rule of Law' was responsible for the Clinton Administration's support for rule of law *worldwide*, during his work he very soon 'caught the China bug big-time'³⁷ and involved himself more and more closely with legal reforms in the PRC. Thus, upon his leave from the State Department and return to Yale

³⁴ Information available at:

<http://www.coudert.com/practices/default.asp?action=practicedetails&lang=&id=14&x=14&y=10> (visited 20.07.2004).

³⁵ Cf. Alford 2000: 1713, Note 90.

³⁶ During the U.S.-China Summit Meeting in Washington, D.C., October 1997, then-Presidents Bill Clinton and Jiang Zemin agreed to cooperate more closely in the 'field of law' ('China-US Joint Statement' – October 29, 1997; available at: <http://www.shaps.hawaii.edu/fp/us/us-china-jc4.html> [visited 01.06.2005]). This agreement marked the initialization of the so-called 'Rule of Law Initiative'. In June, 1998, during the second Bill Clinton-Jiang Zemin Summit Meeting in Beijing, some first substantial activities to be carried out under the initiative were worked out:

In the area of judicial and lawyer training: a conference of U.S. and Chinese law deans (Beijing on June 17-19, 1998); expansion of judicial exchanges, including a visit to China by U.S. Supreme Court Justice Anthony Kennedy; initiation of judicial training seminars; support by the United States Information Service to the preparation and translation of legal teaching materials from English to Chinese; initiation of an American Bar Association program of legal cooperation with Chinese counterparts.

In the area of legal protection of human rights: a symposium (November 1998) on the legal protection of human rights, including international human rights covenants, criminal procedure rights, legal protection of religious freedom, and other issues.

In the area of administrative law: a broad-ranging symposium involving decision-makers and academic experts on comparative administrative law.

In the area of legal aid for the poor: a symposium in Beijing

In the area of commercial law and arbitration: exchanges on securities regulation, including a symposium of experts in 1999; seminars for American and Chinese officials and businesses on issues covering electronic commerce, corporate law and the judicial handling of commercial disputes; development of a program to cooperate in the training of arbitrators.

(Fact Sheet: Achievements of the U.S.-China Summit (Beijing Summit agreements build on October 1997 Summit, June 27, 1998; available at: <http://canberra.usembassy.gov/hyper/WF980629/epf104.htm> [visited 02.07.2005]). However, U.S. Congress refused to provide funding for the implementation of the initiative, leaving the Clinton administration with not enough resources to initiate the follow-up activities which had been agreed upon with Chinese President Jiang Zemin in 1998 (Gewirtz 2003: 614-615). Thus, the U.S.-PRC 'Cooperation in the Field of Law' never took off the ground (see Schulte-Kulmann/Heilmann 2005b).

³⁷ Gewirtz 2003: 616.

Law School, together with Professor Jonathan Hecht he established the CLC in 1999.³⁸ Since then, the CLC has served as a center of competence for assisting legal reform processes in the PRC as well as for increasing the understanding of the Chinese legal system outside the PRC.³⁹

1.2.1 Description of CLC Work

The CLC carries out collaborative projects with Chinese legal experts as well as with Chinese government institutions. Concrete projects focus for one on supporting the reform of Chinese legal institutions, i.e. the courts, administrative bureaucracies, and law schools. The other focus is directed at rendering assistance for the process of legislative drafting in collaboration with key Chinese governmental drafting bodies as well as with Chinese legal scholars. The three main areas of cooperation with the Chinese side include judicial reform, administrative law and regulatory reform, and legal education.

Appendix I gives an overview of the different cooperation projects the CLC is currently implementing with Chinese partners in different areas and with a focus on institutional strengthening and support for legislative drafting, respectively.

1.2.2 Program Strategy and Potential Influence on the Migration of Legal Norms and Concepts

The overview provided in Appendix I indicates, for one, that the CLC is able to conduct cooperation projects with Chinese partners in a number of quite sensitive areas of the law and legal reform, in particular criminal evidence law, administrative law, judicial independence, and the development of a constitutional review system. Cooperation in these areas requires mutual trust between the Chinese and American partners. In the case of the CLC, two aspects are crucial for the generation of such a working relationship based on mutual trust. For one, the CLC as an academic institution is not affiliated to or financed by the U.S. government. Hence, legal cooperation projects conducted by the CLC are not regarded with suspicion by the Chinese partners as being potential ‘carriers’ or ‘transmission belts’ for subjacent U.S. foreign policy interests.⁴⁰

Furthermore, the founders of the CLC, Professors Gewirtz and Hecht, are both well known and acknowledged personalities within the Chinese legal community and Chinese governmental circles alike. Professor Gewirtz has been ‘Special Coordinator for Global Rule of Law’ for the ‘Cooperation in the Field of Law’ agreed upon by Presidents Bill Clinton and Jiang Zemin in 1997.⁴¹ Professor Hecht, apart from being a renowned scholar of Chinese criminal procedure law and contemporary Chinese law in general, has worked for over a decade with, amongst others, the Ford Foundation, the United Nations, and the U.S. Department of State as a program officer and consultant on legal reform projects in the PRC.⁴² Both, Professors Gewirtz and Hecht, in their respective professional capacities have had the opportunity to build up and maintain contacts to members of the Chinese legal academe as well as to members of the highest Chinese governmental institutions involved in the legal and judicial reform process. These contacts subsist and render both Professors Gewirtz and Hecht as well as the CLC itself trusted partners for Chinese governmental officials who are charged with specific legal reform

³⁸ Gewirtz 2003: 161.

³⁹ ‘The China Law Centre – Yale Law School’, available at: <http://chinalaw.law.yale.edu/html/current.htm> (visited 20.07.2005). If not indicated otherwise, information about the CLC is derived from this source.

⁴⁰ Interview 02/2002

⁴¹ Stephenson 2000: 6; cf. Gewirtz 2003

⁴² For the CV of Professor Hecht, see: <http://chinalaw.law.yale.edu/html/personnel.htm> (visited 20.07.2005)

projects or for Chinese legal scholars in search of exchange and cooperation programs with foreign universities.

This point illustrates, again, the importance of developing professional networks between American and Chinese legal experts for the migration of legal norms and standards. For example, the director and vice-director of the State Council (SC) Office of Legislative Affairs (*guowuyuan fazhiju* – OLA) are both familiar with professors Gewirtz and Hecht through prior contacts. Hence, when then-Chinese Prime minister Zhu Rongji tasked the OLA with drafting the Administrative Licensing Law, the OLA approached the CLC in order to seek advice to be provided by American legal experts.⁴³ Thus, personal contacts allowed for American expertise to be infused into the drafting process of Chinese legislation and hence for American legal norms and standards to migrate into the Chinese legal system.

Another example for the migration of legal norms and standards through legal cooperation is the establishment of legal aid in the PRC in connection with the development of university based clinical legal education programs. Besides judicial reform and administrative law and regulatory reform, clinical legal education is the third focus of the CLC cooperation with Chinese partners. Here, the CLC is involved with helping Chinese law schools develop clinical legal education programs.⁴⁴ Clinical legal education aims at providing law students with the possibility to work with and prepare real-life law cases and to get in contact with citizens seeking legal advice. So, there is a close connection between clinical legal education schemes and legal aid since law students usually conduct their practical legal work in legal aid centers for the population.

Clinical legal education and legal aid is a peculiarity of the American system of legal education which has been successfully transplanted to the PRC. Since institutional exchanges to support the build up and improvement of the Chinese legal aid system established in 1996 occurred mainly with U.S. law schools and legal institutions, the legal aid and clinical legal education system now existent in the PRC is modeled closely on the U.S. system.⁴⁵ Yale University Law School plays an important role in this area, too. For example, one prominent university legal aid centre, Peking University Centre for Women's Law Studies and Legal Services, works closely together with Yale University Law School since its establishment in 1995.⁴⁶ Therefore, the work of the center is strongly influenced by the example of legal aid in the U.S.⁴⁷ Another important legal aid centre, Wuhan University Centre for the Protection of the Rights of Disadvantaged Citizens, was established in 1992 with financial support from the Ford Foundation.⁴⁸ Prof. Wan Exiang, the founder and director of the Wuhan Centre is a Yale Law School LL.M. graduate and now works closely together with the CLC and Yale law School in the area of reform of legal education and legal aid.⁴⁹ This means, his continuing

⁴³ 'The Law School Engages China', in: *Yale Law Report*, Winter 2003: 52-59; 58. Available at: http://chinalaw.law.yale.edu/china_Winter03.pdf (visited 20.07.2005)

⁴⁴ *ibid.*

⁴⁵ Choate 2000: 6.

⁴⁶ Cf. Liebman 1999: 235-236. Other cooperation partners of the Peking University Center are New York University Law School and Columbia University Law School. Some of the funding for the Center's work is provided for by the Ford Foundation (Liebman 1999: 235; Interview 05/2002). For example, the Ford Foundation pays the salaries for the professional tutors supervising the students working in the Center, supports the compilation of teaching materials and publications about clinical legal education methods and legal aid, and organizes exchange programs for Chinese and American law professors on the topic of legal aid in cooperation with different American universities (Interview 05/2002).

⁴⁷ Interview 05/2002

⁴⁸ Liebman 1999: 233-235.

⁴⁹ 'The U.S. China Rule of Law Initiative', in: *Yale Law Report*, Summer 1999: 47-52; 52. Available at: <http://chinalaw.law.yale.edu/YLRSummer99.pdf> (visited 26.07.2005)

contacts to the CLC serve as a channel for American legal education models to be infused into the PRC system of legal education. Moreover, since the Wuhan Centre is regarded as a model legal aid centre by the Chinese Ministry of Justice,⁵⁰ many other Chinese law schools have already modeled their respective legal aid and clinical legal education programs on the Wuhan model.⁵¹ Hence, not only the personal influence of individuals but also the influence of model institutions is an important channel for the export of certain American legal standards into the PRC.

Finally, the area of criminal as well as civil litigation is another case where the transplantation of American, or, in this case, more generally common law legal concepts into the PRC legal system has already been successful. Originally, in the mid-twentieth century, the Chinese legal system was strongly influenced by Soviet socialist law. As far as procedural law is regarded, this meant that the civil as well as the criminal trial mainly followed the inquisitorial system.⁵² But, mainly through the influence of large numbers of Chinese legal professionals receiving training in the U.S. through legal cooperation programs such as the university programs described above, the influence of the U.S. trial model recently has become dominant, resulting in the Chinese civil and criminal process now being orientated mainly towards the common law adversarial model.⁵³ This was evidenced chiefly in the amendment to the Criminal Procedure Law 1996, which now buttresses the role of the parties and their lawyers during the trial, especially with regard to the production of evidence.⁵⁴ As has been described above, one important cooperation measure of the Yale CLC is the advisory service to the NPC Standing Committee LAC drafting a criminal evidence law. Thereby, the advice provided by the CLC explicitly aims at ‘developing more ‘adversarial’ processes in criminal cases’⁵⁵, hence invigorating the transplantation of an American / common law legal concept into the PRC legal system.

Even if this paper can describe and analyze only two different American-Chinese university cooperation programs out of the multiplicity of such initiatives undertaken by law schools in the U.S. and the PRC, it should have become obvious that these projects are of great importance for the migration of legal norms and concepts due to their unique potential to create professional networks between American and Chinese jurists. But, academic exchanges are not the only institutionalized contacts between American and Chinese legal professionals. The American Bar Association as an important professional organization has to be mentioned, too. The American Bar Association runs a legal cooperation program with the PRC; this program’s distinctive conception and aims are to be described below.

2. Professional Organizations: The American Bar Association Asia Law Initiative

The American Bar Association (ABA) is a professional organization with more than 400,000 members. Since 1990, ABA has been running the Central and Eastern European Law Initiative (CEELI), supporting judicial and legal profession reform, legal education reform, crimi-

⁵⁰ Lee 2000: 384.

⁵¹ ‘The U.S. China Rule of Law Initiative’, in: *Yale Law Report*, Summer 1999: 47-52; 52. Available at: <http://chinalaw.law.yale.edu/YLRSummer99.pdf> (visited 26.07.2005)

⁵² For a short overview over the particularities of the inquisitorial and the adversarial system, cf. Chen, Albert H.Y. 2000: 67.

⁵³ Chen, Albert H.Y. 2000: 67.

⁵⁴ Chen, Albert H.Y. 2000: 68.

⁵⁵ ‘The China Law Center – Yale Law School’; available at: <http://chinalaw.law.yale.deu/html/current.htm> (visited 20.07.2005)

nal law/anti-corruption, citizen's rights advocacy, and gender issues.⁵⁶ Building on the experiences with CEELI, in the late 1990s, ABA initiated the Asia Law Initiative (ABA-Asia).

2.1 Program Description

ABA-Asia can be regarded as a direct offspring of the 'cooperation in the field of law' agreed upon by Presidents Bill Clinton and Jiang Zemin in 1997/1998.⁵⁷ Even if contacts between ABA and Chinese legal institutions existed prior to 1997, these relationships, for example with the All-China Lawyer's Association (*zhongguo quanguo lüshi xiehui* – ACLA) as well as with individual Chinese lawyers and legal professionals, were substantially renewed and intensified following the Bill Clinton-Jiang Zemin Summit Meeting 1997.⁵⁸ Later on, ABA-Asia became more institutionalized when in February, 2002, ABA was able to place an attorney liaison in Beijing in order to support the implementation of ABA-Asia legal cooperation measures and in particular the China Environmental Governance Project to be described below.⁵⁹ Funding for the liaison was provided by the State Department Bureau for East Asia and Pacific Affairs Grants.⁶⁰

ABA-Asia is implementing cooperation projects mainly in the areas of judicial and legal profession development, fighting corruption, and citizens' rights advocacy. In the area of judicial and legal profession education, ABA-Asia programs aim at introducing the functioning of judicial systems in democracies to legal professionals in the PRC. Special emphasis is laid here on the role of an independent judiciary and the importance of judicial ethics. Furthermore, training for legal professionals is provided in substantial areas of the law. Finally, ABA-Asia tries to support the reorganization of the Chinese bar organization ACLA in order to develop more democratic and transparent governance structures and to become an active advocate for legal reforms and rule of law in the PRC.⁶¹

In the area of fighting corruption, ABA-Asia to date is still elaborating concrete projects. These should aim mainly at supporting diverse law enforcement and counter-measures to corruption. Special emphasis will be laid on increasing public awareness of corruption and of public involvement in government processes as a safeguard against corruptive official behavior.⁶²

Finally, in the area of citizens' rights advocacy, ABA-Asia is following a 'bottom-up' approach to legal reforms in the PRC by supporting grassroots advocacy efforts. Advice is mainly provided through training, publications and policy dialogue on how to facilitate citizens' access to advocacy services.⁶³

In these different areas, assistance is provided mainly in form of technical assistance projects coordinated by the resident legal advisor; legal workshops and training programs in the PRC; training programs in the U.S.; assessment and advice on legislative drafting processes; provi-

⁵⁶ 'Clearing the Air: The Human Rights and Legal Dimensions of China's Environmental Dilemma' – Hearing before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (January 27, 2003): Statement of Brian Rohan, Associate Director American Bar Association/Asia Law Initiative (*henceforth: Statement of Brian Rohan, 27.01.2003*)

⁵⁷ Interview 05/2004

⁵⁸ *ibid.*

⁵⁹ Cf. section 2.1.4

⁶⁰ Statement of Brian Rohan, 27.01.2003

⁶¹ 'Judicial and Legal Professional Development' (<http://www.abanet.org/aba-asia/development.html>) [visited 20.07.2005])

⁶² 'Fighting Corruption' (<http://www.abanet.org/aba-asia/corruption.html>) [visited 20.07.2005])

⁶³ 'Citizens' Rights Advocacy' (<http://www.abanet.org/aba-asia/advocacy.html>) [visited 20.07.2005])

sion of legal background materials and analyses on specific legal topics; assessment of the PRC legal reform efforts, particularly with regard to PRC compliance with the UN Covenant on Civil and Political Rights and the UN Convention on the Elimination of all Forms of Discrimination Against Women.⁶⁴

This general overview of the work of ABA-Asia is now followed by the description of some concrete legal cooperation measures implemented by ABA-Asia.

2.1.1 China Trial Demonstration Program

After relationships to Chinese partners had been renewed in the aftermath of the Clinton-Jiang Zemin Summit Meeting in 1997, ABA-Asia in 1998 initiated the China Trial Demonstration Program.⁶⁵ In cooperation with the NJC of the Chinese SPC and the German Berlin Judges' Association, ABA-Asia started to organize live trial demonstrations. In the course of the first mock trial, a criminal law case and a commercial law case were performed – for comparative reasons – by ABA common law and German civil law experts, respectively. In the following years, the Trial Demonstration Program continued on a broader base with financial support provided by the Ford Foundation. Whereas the initial mock trial was heard only by participants from the NJC, in the following years, the program was opened to other Chinese legal professionals, for example to representatives from the Shaanxi Judges' Association, in order to spread information to a wider audience. Thus, whereas about 200 judges from the NJC attended the first mock trial, in 2001, about 400 legal professionals participated in the program. Furthermore, each mock trial session is videotaped and the material distributed to courts throughout the PRC in order to serve as examples for the adjudication of concrete cases. Funding for the continuing mock trial program, too, is provided by the Ford Foundation.⁶⁶

2.1.2 Exchange between Chinese and American Legal Professionals

In 1999, again in direct fulfillment of the recommendations made during the second Bill Clinton-Jiang Zemin Summit Meeting in 1998 to increase exchanges between Chinese and American legal professionals,⁶⁷ ABA signed an agreement with the ACLA to cooperate in the areas of lawyer training and internships, organization and management of the Chinese bar, legal education, exchange of legal information and law practice management. The concrete activities to be implemented under this cooperation scheme include six-month internships with U.S. law firms and basic legal training in the U.S. for up to ten Chinese lawyers each year.⁶⁸ Furthermore, in April 2002, ABA-Asia and the ACLA initiated a workshop series on legal ethics and criminal law defense issues which continued through 2003. These workshops received funding from the U.S. Embassy in Beijing and from the U.S.-China Business Council which is to be described below.⁶⁹

⁶⁴ 'How ABA-Asia Works' (<http://www.abanet.org/aba-asia/works.html> [visited 20.07.2005])

⁶⁵ Interview 05/2004

⁶⁶ 'China Environmental Governance Training Program' (<http://www.abanet.org/aba-asia/china.html> [visited 20.07.2005]); Testimony Before the 106th Congress: Written Statement of Timothy L. Dickinson, Immediate-Past Chair, Section of International Law and Practice on behalf of the American Bar Association before the Committee on Appropriations Subcommittee on Foreign Operations, Export Financing and Related Programs of the U.S. Senate on the subject of Foreign Assistance Programs (April 30, 1999), *henceforth: Written Statement of Timothy L. Dickinson, 30.04.1999*; Testimony Before the 106th Congress: Statement of Rona Mears, Chair American Bar Association Section of International Law and Practice on behalf of the American Bar Association before the Senate Appropriations Subcommittee on Foreign Operations, Export Financing and Related Programs of the U.S. Senate on the subject of Foreign Assistance (May 1, 2000), *henceforth: Statement of Rona Mears, 01.05.2000*

⁶⁷ Fact Sheet: Achievements of the U.S.-China Summit – Beijing Summit agreements build on October 1997 Summit, June 27, 1998

⁶⁸ Written Statement of Timothy L. Dickinson, 30.04.1999

⁶⁹ Cf. section 3.

2.1.3 China Legal Aid Project

Since 2000, ABA-Asia runs the China Legal Aid Project. This cooperation measure, too, was initiated following the Bill Clinton-Jiang Zemin Summit propositions to intensify the ‘Cooperation in the Field of Law.’⁷⁰ Following an inaugurating American-Chinese joint symposium in Beijing on legal aid systems in the U.S. and the PRC, the project, which also receives funding from the Ford Foundation, continued with a study tour on legal aid to the U.S. for Chinese legal aid practitioners (2002) and further training on legal aid in the PRC (2003). In the course of the study tour, ten directors of governmental and non-governmental legal aid centers from across the PRC met with representatives of American organizations involved in the provision of *pro bono* legal services, such as non-governmental organizations (NGOs), private law firms, public defender programs, and university legal aid clinics as well as with judges, prosecutors and attorneys. By now, the range of legal aid activities in the PRC is very diverse, with individuals and organizations affiliated with universities, major law firms or even individual lawyers working independently in different areas such as client-oriented litigation, pursuit of cases with broader societal implications, client counseling and mediation etc.⁷¹ Thus, besides introducing the American legal aid system to the Chinese participants, the study tour also aimed at bringing together the diverse members of the Chinese legal aid community and hence encouraging the development of an informal network between them. Furthermore, ABA also tries to integrate public interest law firms, NGOs, and activists from outside the PRC into this network as partners of appropriate Chinese counterparts.⁷² Hereby, ABA intends to shed some light on the different forms of legal aid existent in the PRC and on which of these forms might be most effective in the PRC political and legal environment. This provides participants in the ABA China Legal Aid Project with the opportunity to begin a dialogue on how to establish a consistent legal aid system in the PRC.⁷³ Funding for the China Legal Aid Project is provided by the Ford Foundation, the Asia Foundation, the U.S.-China Business Council and the U.S. Department of State.⁷⁴

Furthermore, ABA-Asia also cooperates with the Business and Comparative Law Center (BCLC) of Temple, CUPL, and Qinghua universities described above.⁷⁵ Hence, the work of ABA-Asia is another example for networks not only between individuals but also between institutions developing in the area of U.S.-China legal cooperation.

Finally, the most extensive project currently implemented by ABA-Asia in the PRC is the China Environmental Governance Project. Therefore, this project will now be described in more detail.

2.1.4 The China Environmental Governance Training Program

In February 2002, ABA-Asia started preparations for the implementation of the China Environmental Governance Project (CEGP) through the ABA attorney liaison in Beijing.⁷⁶ From the very beginning, ABA-Asia focused on the inauguration of a legal cooperation project

⁷⁰ Statement of Rona Mears, 01.05.2000

⁷¹ Statement of Brian Rohan, 27.01.2003; for a general overview of legal aid in the PRC see Liebman 1999; Choate 2000; see also Lee 2000: 382-399.

⁷² Statement of Brian Rohan, 27.01.2003

⁷³ ‘Chinese Legal Aid Directors Learn from U.S. Study Tour’; in: *Asia Reporter* (Fall 2002): 2-5. Available at: <http://w3abanet.org/aba-asia/9046aabaafall2002.pdf> (visited 20.07.2005)

⁷⁴ ‘China Environmental Governance Training Program’ (<http://www.abanet.org/aba-asia/china.html> [visited 20.07.2005])

⁷⁵ Written Statement of Timothy L. Dickinson, 30.04.1999; cf. section 1.1.1

⁷⁶ If not indicated otherwise, all information about the CEGP is derived from Statement of Brian Rohan, 27.01.2003

which was not limited to the resolution of some very specific problems in a relatively short period of time, but wanted instead to create a permanent program which also involved local Chinese experts as well as diverse groups of stakeholders. Thus, in its initial phase, the project established cooperative contacts with Chinese governmental as well as non-governmental actors, such as the ACLA, China Law Society, SC Environmental Protection and Resources Conservation Committee (EPRCC), China State Environmental Protection Agency (SEPA), SEPA Center for Environmental Education and Communication (CEEC), Chinese environmental NGOs, Chinese private consultants, and members of the U.S. State Department.⁷⁷ Then, the project decided to focus training and advice activities on three Chinese cities – Shenyang, Wuhan, and Chifeng – with different serious environmental problems. In the first project phase, introductory training sessions were provided in each of these cities, covering the areas of Chinese environmental law, relationships between stakeholders in environmental impact assessment, public participation in environmental decision-making as well as the role of advocacy in the defense of citizens' rights.⁷⁸

During the second project phase, different follow-on activities were implemented. For one, the project supported the Shenyang municipal government in drafting the first municipal public participation legislation. In Wuhan, CEGP provided advice on the feasibility of regional Internet databases on environmental information, and, finally, in Chifeng emphasis was laid on the role that the regional government might play in devising sustainable land use practices that help to reign in the problem of desertification.⁷⁹

One concrete cooperation measure already mentioned above is support for the Shenyang municipal government to draft legislation ('measures' – *banfa*⁸⁰) on public participation in environmental decision-making. The draft Measure had been prepared by the Shenyang Environmental Protection Bureau (Shenyang EPB) and included provisions for citizen access to information, requirements for public participation as well as mandatory transparency among facilities releasing pollutants into the environment.⁸¹ In Summer/Fall 2002, CEGP organized a workshop in Shenyang for assessors and stakeholders. Furthermore, CEGP coordinated an assessment by Chinese, American and international experts of a draft version of the Measure.⁸² As a direct consequence of the informational input provided during the workshop, the draft Measure underwent further re-drafting. Simultaneously, in June and October, 2002, the different draft versions had been published in the local newspaper in order to invite public comments. Based on the advice provided by CEGP and public input, in 2003 the Measure was promulgated by the Shenyang Municipal Government in 2003 as 'Measure of the Shenyang Municipality on Public Participation in Environmental Protection.'⁸³ It is expected that the

⁷⁷ Woodrow Wilson International Center for Scholars: Environmental Governance in China – Event Summary (Dec. 17, 2002); available at: http://wwics.si.edu/index.cfm?fuseaction=events.event_summary&event_id=26128 (visited 20.07.2005)

⁷⁸ 'ABA-Asia Helps Chinese Agencies Open Their Doors'; in: *Asia Reporter* (Fall 2002): 3-4. Available at: <http://w3abanet.org/aba-asia/9046aabaafall2002.pdf> (visited 20.07.2005)

⁷⁹ *ibid.*; Statement of Brian Rohan, 27.01.2003

⁸⁰ 'Measures' (*banfa*) constitute administrative rules which are generally drawn up by the relevant departments under the SC (at the national level) or by the relevant departments under local governments. *Banfa* may be compulsory or recommended and contain rather detailed and concrete instructions for the administration of the areas covered by the *banfa*.

⁸¹ Statement of Brian Rohan, 27.01.2003

⁸² 'ABA-Asia Helps Chinese Agencies Open Their Doors'; in: *Asia Reporter* (Fall 2002): 3-4. Available at: <http://w3abanet.org/aba-asia/9046aabaafall2002.pdf> (visited 20.07.2004)

⁸³ Statement of Brian Rohan, 27.01.2003, Appendix C; draft also available at: <http://www.temple.edu/iilpp/EnvironmentalRoundtableResearchDocs/PPRegEnglish.doc> (visited 04.08.2005)

legislation will soon be promulgated as a local law (*difangxing fagui*) by the Shenyang People's Congress.⁸⁴

2.2 Program Strategy and Potential Impact on the Migration of Legal Norms and Concepts

ABA-Asia legal cooperation programs with the PRC follow a rather comprehensive approach and cover different areas of legal cooperation.

The China Trial Demonstration Program mainly focuses on the education of Chinese legal professionals as well as on establishing exchanges and, thereby, professional networks between Chinese and American jurists. The China Legal Aid Project, then, aims at facilitating access to the law and legal advice for Chinese citizens. Finally, CEGP provides support for legislative drafting but is also concerned with helping citizens to assert their interests in environmental issues with the help of the law.

However, even if CEGP ostensibly focuses on the substantive area of environmental law, the program nevertheless follows a much broader agenda. Indeed, CEGP aims at 'increasing the capacity in rule of law and developing replicable models in good governance, particularly in such areas as access to information, governmental transparency, citizen participation in decision-making, and defense of citizens' rights through legal advocacy.'⁸⁵ However, from the very beginning, ABA-Asia was well aware that currently there is not much 'political space' in the PRC for conducting legal cooperation measures directly addressing sensitive areas such as government transparency and accountability, citizen participation and protection of citizens' rights as well as human rights.⁸⁶ Thus, ABA-Asia looked for a 'wedge issue', an area of the law which the Chinese government itself regarded as in need of reforms and where the Chinese government would hence be more receptive for legal cooperation proposals. Since environmental problems and their resulting negative impacts on, amongst others, health, agriculture, water supply and distribution, and, thus, on the economic system as a whole are currently being assessed as more and more serious by the Chinese government, the area of environmental law offers enough 'political space' to engage the Chinese side in legal cooperation measures.⁸⁷

Moreover, in the same vein as different other American legal cooperation initiatives already described above, ABA-Asia CEPG, too, tries to identify reform-minded government officials and private individuals as partners for the cooperation measures. In addition, CEPG explicitly addresses lower administrative levels and is not centered at Beijing. These two aspects bear several advantages. For one, members of the reform-minded community in the PRC are able to identify the issues – such as environmental law in this case – for which there is enough tolerance for American-Chinese legal cooperation measures and hence the possibility to achieve substantial results. Furthermore, lower administrative levels, such as Shenyang municipality, are very often more reform-minded and open-minded than central-level entities. On the one hand, this attitude results from the fact that almost all foreign cooperation proposals are offered to partners at the central level, in Beijing, leaving the lower levels with extremely little foreign advisory input.⁸⁸ On the other hand, these lower levels are tasked with the practical implementation of various reform measures drawn up at the highest political level in Beijing, more often than not confronting the local officials in charge with severe problems. Hence, officials at lower levels are very eager to engage in cooperation measures with foreign partners in order to achieve practical advice. Furthermore, afar from Beijing,

⁸⁴ Statement of Brian Rohan, 27.01.2003

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ *ibid.*

⁸⁸ Woodman 2004: 41.

partners in order to achieve practical advice. Furthermore, afar from Beijing, officials at lower levels often have more leeway to be more experimental. This ‘space’ is used to develop and implement – with the help of foreign advice as in the case of the cooperation between Shenyang municipality and CEPG – new approaches to certain problems. If these approaches prove to be successful at the local level, the new measures might gain national consideration in the long run, too, significantly increasing the status of the respective regional officials; hence, the desire to gain prestige is an important reason especially for local officials, too, to exhibit open-mindedness and thus to engage in progressive cooperation measures with foreign partners. If the foreign partner enjoys high esteem with the Chinese side, as is the case with the ABA, then the possible prestige to be gained by the Chinese partners and, hence, the intention to cooperate is further augmented.⁸⁹

Apart from identifying members of the Chinese reform community and from focusing efforts at lower administrative levels, CEPG explicitly follows a ‘Trojan Horse’ strategy.⁹⁰ Pursuant to the rationale of the ‘Trojan Horse’ strategy, CEPG aims at much broader objectives than only the improvement of the Chinese environmental law system. As has already been mentioned, the project tries to further rule of law in China as well as governmental transparency, increase citizen participation in decision-making, and enhance respect for and implementation of law. Since so far there is not enough political space, i.e. the willingness of the Chinese government to cooperate with foreigners in these sensitive areas of the law which are tangent to the government’s own claim to power and the subordination of the government under the law, it was important for CEPG to identify an entry point such as environmental law.⁹¹ According to the ‘Trojan Horse’ strategy, the Chinese government initially agrees to cooperate in more technical areas of the law in order to solve different concrete problems with the help of foreign advice.⁹² This seems to be the case with CEPG and environmental law. At first, Chinese authorities were quite skeptical about the project but, since environmental problems are considered as quite serious by the Chinese central government by now, this mistrust could be transcended and central Chinese institutions (SC EPRCC, SEPA, CEEC) were won over as CEPG partners. Thus, by drafting the Shenyang municipality Measures on Public Participation in Environmental Protection, it was possible to introduce some important elements of Good Governance and rule of law, such as effective procedural interactions between citizens and the government, transparency of information, and citizens’ ability to legally challenge acts of the government into the area of *environmental* law.⁹³ Then, according to the ‘Trojan Horse’ strategy, it is intended that these elements of rule of law, once they have gained hold in one specific area of the law, later matriculate to other areas of the law.⁹⁴

Thus, as has been stated in Part II of the analysis,⁹⁵ it becomes obvious that extra-legal interests, mainly directed at initiating political reforms in the PRC, are by no means exclusive to governmental or government financed American legal cooperation measures with the PRC. Private actors, such as the ABA, also subscribe to these foreign policy interests in legal coop-

⁸⁹ Statement of Brian Rohan, 27.01.2003

⁹⁰ Interview 05/2004; Statement of Brian Rohan, 27.01.2003, explicitly refers to „the environment [being] the wedge issue, the *Trojan Horse*, by which the ABA is working with the legal reform community in China to advance cutting edge concepts of rule of law, governance, and transparency.’ (Author’s emphasis)

⁹¹ Interview 05/2004

⁹² Cf. Stephenson 2000: 14.

⁹³ Statement of Brian Rohan, 27.01.2003

⁹⁴ *ibid.*; Woodrow Wilson International Center for Scholars: Environmental Governance in China – Event Summary (Dec. 17, 2002); available at: http://wwics.si.edu/index.cfm?fuseaction=events.event_summary&event_id=26128 (visited 20.07.2005); Interview 05/2004; cf. Stephenson 2000: 14.

⁹⁵ Schulte-Kulmann/Heilmann 2005b

eration with the PRC and try to further these interests by implementing their legal cooperation programs.

But, not only academic and professional legal organizations are engaged in legal cooperation with the PRC. The American business community, too, is supportive to these activities. But, besides providing support for single legal cooperation projects, such as the Temple-CUPL LL.M. program described above, the U.S.-China Business Council as an important American business organization has also set up a scheme for continuously providing financial support for American-Chinese legal cooperation measures. This grant-making program is to be described now.

3. Business Organizations: The United States-China Business Council

The United States-China Business Council (USCBC), founded in 1973 as ‘National Council for US-China Trade’, is the principal organization of American corporations engaged in the PRC. To date, about 215 corporations are members of the USCBC. The USCBC is a private, non-profit, non-partisan, member-supported organization and serves for one as an advisory body to member-corporations already engaged in the PRC or entering the Chinese market for the first time. Moreover, the USCBC is also engaged in supporting the U.S. government’s China policies not only in the area of U.S.-China business relations but in a more comprehensive way. This includes meetings with Members of Congress and Congressional staff as well as frequent testimony on behalf of the American business community in Congressional or other venues. Thus, the USCBC tries to play an influential role in analyzing and advocating key policy issues of U.S.-China business and foreign policy relations.⁹⁶

One important area where the influence of the USCBC on U.S.-PRC relations comes to bear is legal reform in China. This engagement of the USCBC for legal reforms in the PRC goes back to the Bill Clinton-Jiang Zemin ‘Cooperation in the Field of Law’ Initiative 1997/1998, too. In 1998, one year after the agreement between Presidents Bill Clinton and Jiang Zemin was reached to enter into this cooperation, it became obvious that Members of Congress were reluctant to appropriate funds to the Initiative. Against the background of the abatement of the urban protest movement in Beijing, 1989, a majority of Members of Congress was not convinced that legal cooperation could serve as a suitable measure to improve the human rights and rule of law situation in the PRC. Instead, cooperation with the PRC in any area whatsoever was regarded as a possible concession and remuneration to the Chinese *regime* and should therefore be avoided. Since Congress was not willing to provide sufficient resources for the implementation of the Bill Clinton-Jiang Zemin Initiative, U.S. corporations organized in the USCBC decided to engage themselves in the area of legal cooperation with the PRC.

American corporations engaged in the PRC are directly and indirectly affected by the human rights and rule of law situation in China. For one, insufficient rule of law standards in the PRC are obstacles to efficient business operations and significantly rise transaction costs for the corporations involved. Thus, American corporations – as well as foreign businesses in general – have a self-interest in establishing a sound and reliable business environment in the PRC. But, moreover, American corporations in particular face another obstacle to their engagement in the PRC.

As a matter of fact, the collective memory of the American public is still deeply shaken by the Tiananmen crackdown in 1989 as well as by ongoing press coverage of persistent human

⁹⁶ Information about the USCBC presented here is taken from: ‘An Introduction to the US-China Business Council’; available at: <http://www.uschina.org/more.html> (visited 16.08.2005)

rights violations in the areas of labor rights, ethnic minority rights, environmental degradation, housing and forced resettlement etc. Therefore, American corporations engaged in the PRC are very often confronted with harsh criticism since the American public not only equals economic cooperation with the PRC with support for the Chinese government but also positively accuses U.S. corporations of complicity.⁹⁷ This is particularly with regard to labor rule of law since American businesses engaged in the PRC more often than not cash in on low safety and health protection standards for employees and low levels of wages in their plants in China.⁹⁸ All this adds up to a rather negative reputation of American businesses engaged in the PRC and, hence, to strong public pressure on these corporations to show ‘corporate responsiveness’ with regard to their China activities. Albeit it constitutes no difficulty for American corporations to accept the concept of ‘corporate responsiveness’ in principle, it proves much more difficult to live up to these words with regard to problems as diverse as human rights protection, labor rights, environmental degradation, gender issues, protection of business interests etc. Again, the concept of Rule of Law served as an enclosing and broadly acceptable heading covering all these aspects. Therefore, the member corporations of the USCBC decided to engage in activities to improve the rule of law in the PRC. Thus, in 1998 the USCBC founded the U.S.-China Legal Cooperation Fund (USCLCF).⁹⁹

This means, the initiation of the USCLCF can be regarded as an effort by American businesses to ‘do something that is good and smart’:¹⁰⁰ On the one hand, the initiative is dedicated to doing something ‘that is good’ insofar as the USCLCF aims at improving the rule of law situation, and – related to that – the human rights situation in the PRC as well. On the other hand, the initiative is ‘smart’ insofar as by getting involved in the improvement of human rights and rule of law in China, American corporations are able to live up to their commitment to ‘corporate responsiveness’ and thereby to improve their public reputation as well as the business environment in the PRC conducive to these corporations’ activities in China.¹⁰¹ Apart from these more self-interested considerations it was also the aim of the USCBC to demonstrate that in the eyes of the American business community it was not reasonable that U.S. Congress inhibited funds for the Bill Clinton-Jiang Zemin Initiative. Instead, the USCBC intended to reveal an alternative to the confrontational approach to U.S.-China human rights and rule of law policies favored by Congress at that time.¹⁰²

3.1 Program Description

The USCLCF is made up by donations from USCBC member corporations. A group of trustees, elected from amidst the members, is responsible for the administration of these financial resources. Twice a year, the group of trustees announces a grant program for China rule of law projects and invites applications for single grants. Eligible for application are legal cooperation projects planned or implemented *cooperatively* by a Chinese and an American partner; furthermore, both applicants should be NGOs. Following a scheme similar to that exercised by DRL,¹⁰³ USCLCF funds are only provided to the American partner NGO of an American-

⁹⁷ Interview 04/2004; cf. Kapp 2003: 86

⁹⁸ Cf. Remarks of Congressional-Executive Commission on China Legislative Branch Commissioner Representative Marcy Kaptur (‘Human Rights in China in the Context of the Rule of Law’ – Hearing before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session, February 7, 2002); available at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:78790.pdf (visited 04.08.2005)

⁹⁹ Interview 04/2004

¹⁰⁰ *ibid.*; cf. Kapp 2003: 86

¹⁰¹ Interview 04/2004

¹⁰² *ibid.*

¹⁰³ Cf. Schulte-Kulmann/Heilmann 2005b

Chinese legal cooperation project. This approach is justified by the fact that Chinese NGOs very often are not able to fulfill the demanding requirements with regard to organizational structure and audit the USCLCF entails on applicants; in general, only experienced American NGOs are in a position to fulfill these demands. Furthermore, since the USCBC has no personal or financial resources to monitor the correct usage of the funds, this responsibility is assigned to the American NGOs involved in the legal cooperation measure, too.¹⁰⁴

USCLCF grants mainly support projects in the areas of training of judges and lawyers, legal protection of human rights, administrative law, commercial law and arbitration, as well as legal aid for the poor. Furthermore, special emphasis is laid on projects that respond to problems arising from the WTO membership of the PRC.¹⁰⁵

Again, in the same vein as projects funded by DRL, the USCBC is not involved with the selection of possible legal cooperation projects. This responsibility lies with the Chinese partner NGOs.¹⁰⁶ As has already been mentioned in Part II of the analysis with regard to the work of DRL,¹⁰⁷ due to the special ‘patron-warden’ relationship between Chinese NGOs and governmental agencies (or individual members thereof), the Chinese partners are in a better position to decide if there is enough political space to carry out specific legal cooperation measures.¹⁰⁸ Again, this approach results in the American side remaining mainly invisible in the background. This is important for the success of the cooperation measures for reasons similar to those presented in the context of the description of DRL activities in Part II of the analysis.¹⁰⁹ In the same vein as legal cooperation programs funded by the U.S. Department of State may be exposed to suspicions that these programs serve as vehicles for the implementation of U.S. foreign policy interests, the fact that large American corporations sponsor legal cooperation measures could stir suspicion on the Chinese side that the U.S. tries to further economic interests in the course of the cooperation. This is not conducive to the transplantation of legal norms and concepts and should therefore be avoided since American corporations indeed are interested in a successful migration of legal norms and concepts as will be explained below.

In general, only small grants of about 2,000 to 25,000 US\$ are donated by the USCLCF to American-Chinese legal cooperation projects.¹¹⁰ It is not the aim of the USCLCF to be the only grantor to legal cooperation projects; rather, the USCLCF preferably grants resources to legal cooperation projects which already receive financial support from other sources but are in need of additional funding in order to succeed.¹¹¹ Furthermore, since grants are very small,

¹⁰⁴ Interview 04/2004

¹⁰⁵ ‘U.S.-China Legal Cooperation Fund – Scope of Grant Program’; available at: <http://www.uschinalegalcoop.org/scope.html> (visited 16.08.2005)

¹⁰⁶ Interview 04/2004

¹⁰⁷ Cf. Schulte-Kulkmann/Heilmann 2005b

¹⁰⁸ As a general rule, in the PRC, so-called ‘non-governmental organizations’ (*feizhengfu zuzhi*) are always associated with a state actor – regardless whether an administrative agency or an influential government official constitutes this ‘patron’ (Lee 2000: 423). But, on the other hand, despite being formally tied to a government actor, many Chinese NGOs do not necessarily receive government funding and are able to work quite independently (Liebman 1999: 270/271). Moreover, very often working under the auspices of a government ‘patron’ is a precondition for NGOs in the PRC to engage in more progressive projects since close relations to the government confers a high degree of legitimacy upon the activities of an NGO (Lee 2000: 378) – particularly if the ‘patron’ himself is reform-minded. And, finally, a powerful ‘patron’ may be of help if it comes to the implementation of certain policies advocated by an NGO (Lee 2000: 378).

¹⁰⁹ Schulte-Kulkmann/Heilmann 2005b

¹¹⁰ ‘Promoting Rule of Law in China’ – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002): Statement of Robert Kapp, President, U.S.-China Business Council (*henceforth: Statement of Robert Kapp, 24.05.2004*); Interview 04/2004

¹¹¹ Interview 04/2004

the Chinese government's attention is drawn neither to the USCLCF funding activities nor to the concrete legal cooperation measures benefiting from the USCLCF; as a result, the projects 'remain under the radar' which allows the implementing Chinese NGOs more security and more space for their activities.¹¹²

Appendix II provides an overview of grants awarded by the USCLCF from 1999 to 2005.

3.2 Strategy and Potential Impact on the Migration of Legal Norms and Concepts

The overview presented in Appendix II illustrates that the USCLCF supports a great diversity of American-Chinese legal cooperation projects whereas the main focus is laid on projects from the following areas: legal aid/access to justice; WTO related legal issues (including legislative reform, implementation of relevant legal rules, protection of Intellectual Property Rights (IPR), and dispute resolution); labor law; comprehensive rule of law (including constitutionalism, judicial ethics, and judicial independence); substantive legal education for Chinese legal professionals (judges, lawyers) and Chinese law students; standardization of the Chinese legal infrastructure (i.e. legal citation systems, Chinese-American translation of legal terms; development of a codification system for Chinese laws) along U.S. standards.

From this tabulation it becomes obvious that the USCBC tries to meld business and morals by supporting specific legal cooperation projects. For one, support to projects in the areas of substantive (business) law, rule of law, legal education of judges, administrators and regulators, dispute resolution mechanisms, and WTO related legal issues all serves to ameliorate the legal environment for American corporations engaged in the PRC by improving the legal framework as well as the implementation of legal rules. Furthermore, efforts to standardize the Chinese legal infrastructure alongside U.S. examples are also conducive to the work of American corporations and their legal counsel in the PRC. This means, the donations of USCBC members to the USCLCF are partly used to further the interests of American businesses in reliable legal institutions in the PRC.

But, on the other hand, the USCLCF also supports legal cooperation projects potentially contrary to the interests of American corporations engaged in the PRC. This is true especially with respect to legal aid in the area of labor law. As has been seen, the USCLCF supports a number of projects focusing on legal aid in general, on legal aid for women and on legal aid for (women) workers, too. This means, especially by improving access to justice for poor workers, the USCLCF enables these workers to enforce their legal rights against their employers – which more often than not are American corporations, too. Of course, support for such legal cooperation projects which are potentially adversarial to their own interests – and profits – renders American corporations' endeavor to live up to their commitment to 'corporate responsiveness' exceedingly credible in the eyes of the American public. Thus, support of this kind is essential to fulfill the aim of improving the corporations' public reputation which had been one incentive for the inauguration of the USCLCF in the first place.¹¹³

But, it has to be emphasized that the dedication to legal cooperation projects potentially harmful to corporations' self-interest is not unlimited. As has been mentioned, the USCBC group of trustees decides which grant proposals receive support from the USCLCF. This means, in case that the trustees are convinced that certain legal cooperation projects are harmful to their own corporations' interests they have the possibility to veto the awarding of grants to the projects in question. Hence, even if the USCLCF does not shy away from fostering legal cooperation projects supportive to non-business groups in order to live up to the commitment to

¹¹² *ibid.*

¹¹³ *ibid.*

‘corporate responsiveness’, it is obvious that donor corporations do not intend to infringe too much on their own interests by supporting certain legal cooperation projects. Nevertheless, the work of the USCLCF is an example of how business and morals can be successfully fused.

As far as the potential impact of the work of the USCLCF on the migration of legal norms and concepts is regarded, one has to pay attention to the area of substantive legal norms as well as to the area of legal practice. For one, training for Chinese legal professionals is provided in substantive areas of the law, such as labor law, IPR law, corporate and securities law, WTO law and dispute resolution, and administrative law. Since instructors are mainly specialists from the U.S. legal system, a certain ‘bias’ of the advice towards the American legal system and legal practices is not to be avoided.¹¹⁴ This finally results in the development of a certain ‘mental infrastructure’ on the side of the Chinese participants,¹¹⁵ leaving them more receptive to legal norms and concepts originating in the American legal system.

Furthermore, the groundwork for the development of the said ‘mental infrastructure’ is laid by USCLCF grant-making to activities in the area of legal education. As is the case with different other American organizations engaged in legal cooperation with the PRC, educating Chinese legal professionals (judges, administrative personnel and lawyers) and law students (mainly through clinical legal education programs) is one important focus of the work funded by USCLCF, too. Thereby, students and professionals are familiarized with the substance and practice of the American law. Furthermore, this effect is to be amplified by USCLCF efforts to support the standardization of the Chinese legal infrastructure alongside U.S. standards. Familiarity with this legal infrastructure is an important element of the legal practice. This means, if Chinese jurists are familiar with the American standards of citation and codification, then in their daily work they will likely refer to American legal texts, as well. Thus, spreading a legal infrastructure based on American standards is to be regarded as another channel for the migration of American legal norms and concepts into the Chinese legal system.

Finally, one has to bear in mind that the impact of the USCLCF activities on the migration of legal norms and concepts is considerably aggravated by the fact that large American corporations are the donors. Even if the USCBC formally remains in the background by leaving the tasks of project organization and implementation with the respective American and Chinese partner NGOs, it remains obvious where resources stem from. This may result in a certain suspicion on the Chinese side that the American side is trying to further own (economic) interests with legal cooperation measures. But, on the other hand, since the U.S. is the most important economic partner of the PRC, especially in WTO related areas it is important for the Chinese side to adapt to American specifications as they are submitted by American business-financed legal cooperation measures. This means, the market power of American corporations is supportive of the migration of American legal norms and concepts through legal cooperation measures financed by American donors, too.

Whereas the private university-based and business-supported legal cooperation programs described above all constitute relatively recent projects, mainly initiated in connection with the Bill Clinton-Jiang Zemin ‘Cooperation in the Field of Law’ initiative, the law and legal reform related work of American private foundations looks back at a much longer tradition of cooperative ties with the PRC. Moreover, these private foundations dispose of considerable financial resources to be invested in broadly based legal cooperation projects. Therefore, the private foundations, i.e. the Asia Foundation and the Ford Foundation as the most important

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

ones, are in a position to considerably influence the Chinese legal reform process. Hence, these legal cooperation programs deserve closer attention.

4. Private Non-Partisan Organizations

4.1 *Asia Foundation*

The Asia Foundation (AF) as a private, nonprofit and nongovernmental organization is involved in legal development as a major area of the China program since 1979; therefore, the AF can look back at a long tradition of working on legal reforms in the PRC.¹¹⁶ AF activities are funded by contributions from corporations, other foundations, and individuals in the U.S. and the Asia Pacific region. Furthermore, the AF receives financial allowances from U.S. governmental organizations such as DRL as well as an annual appropriation from U.S. Congress.¹¹⁷ AF resources are then mainly awarded as grants to other organizations. Thus, the AF supports a vast array of different legal cooperation measures in the areas of legal reform, civil society and women's rights, allocating about one million US\$ annually.¹¹⁸ Since it is not possible to describe the entirety of these projects in detail, special emphasis is laid on one AF legal cooperation program which is embedded in an encompassing overall program that focuses on governance, law and economic reform.¹¹⁹ This program is directly organized and implemented by the AF bureau in Beijing and covers two main areas: administrative law reform (in particular administrative procedure law and WTO compliance), as well as legal aid and public legal education.¹²⁰ Three exemplary activities are to be presented in more detail below.

4.1.1 Program Description

4.1.1.1 *Administrative Law Reform*

Administrative law reform is of special importance to the development of rule of law as well as to human rights protection in the PRC. Administrative law rules define citizens' rights, regularize the functions of government agencies at different administrative levels and provide mechanisms for the punishment of offending officials. Thereby, administrative law is an important instrument for restraining the arbitrary exercise of state power as well as for the provision of redress for citizens who have been wronged by actions of government agencies. Furthermore, administrative law reform is a vital precondition for ensuring PRC compliance with WTO requirements in the area of trade and commerce administration at the national and sub-national level. Therefore, administrative law reform is a major focus of AF legal cooperation projects in the PRC. These projects can be divided into two related sub-areas: assistance to research and drafting of an Administrative Procedure Law and training measures for local government staff in order to ensure the uniform application of WTO rules.

a) *Administrative Procedure Act*

Since 1998, the AF is supporting the drafting process of the Administrative Procedure Act (APA). The APA will mandate transparency, prior notice and comment, public hearings, con-

¹¹⁶ 'Legal Reform in China'; available at: <http://www.asiafound.org/pdf/ChinaLegalReform.pdf> (visited 06.01.2005)

¹¹⁷ Cf. 'About the Asia Foundation' (<http://www.asiafoundation.org/About/overview.html>) [visited 18.08.2005]

¹¹⁸ Wang/Evasdottir 2003: 28

¹¹⁹ 'Promoting Rule of Law in China' – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002): Statement of Nancy Yuan, Director, Asia Foundation (*henceforth: Statement of Nancy Yuan, 24.05.2002*)

¹²⁰ *ibid.*

sultations and require consistency in rule making across different legislative agencies at different levels of government in the PRC and is therefore of great importance for the development of rule of law as well as for WTO compliance. Chinese partners to this project are the China Administrative Law Research Group (*quanguo renda changweihui fazhi gongzuoweiyuanhui xingzhenglifa yanjiuzu* [ALRG]); the Center for Administrative Law Studies, National School of Administration (*guojia xingzheng xueyuan* – NSA); and the Center for Chinese Public Law Studies, Peking University.¹²¹

The ALRG was created in 1986 by the NPC Standing Committee LAC as a network of high-ranking Chinese legal scholars, jurists and government officials.¹²² The ALRG supports LAC in the process of researching and drafting new administrative legislation; for example, the Administrative Litigation Law (1989), the State Compensation Law (1994), and the Administrative Penalties Law (1996) all have been drafted with ALRG support.¹²³ In the case of the APA, the ALRG forms the core drafting team together with the vice chairman of the Chinese People's Political Consultative Conference, the deputy director of LAC and senior members of the NPC Legal and Judicial Affairs Committee (*renda falu weiyuanhui*). The ALRG team is joined by an eight member International Experts Consulting Group (IECG) which is selected with the help and financial support from the AF.¹²⁴ Led by Professor Stanley Lubman, a renown scholar of Chinese law,¹²⁵ the IECG supports the ALRG in the process of conducting research on administrative legislation and provides advice during the drafting phase.¹²⁶ During this process, Chinese and foreign members of the ALRG and the IECG are in constant personal contact, sharing research results and preliminary drafts in order to solicit the opinion of their fellow experts.

Besides assistance to legislative *drafting* in the area of administrative law, the AF also offers training measures to Chinese local government staff in order to improve the *implementation* of administrative and other legal rules with special relevance to WTO commitments.

b) Training for Local Government Staff

In 1998, the SC OLA approached the AF requesting support for an education and training program especially designed for local legal affairs officials.¹²⁷ Together with the SC OLA and Offices of Legal Affairs at the provincial and municipal level, the AF implemented a training program on the uniform and transparent implementation and impartial review of rules and regulations. Again, Professor Stanley Lubman was mandated by the AF to design and implement the program. On the Chinese side, about 40 key legal affairs officials charged with drafting and directing WTO compliance measures from all Chinese provinces – including the Tibet Autonomous Region, the four provincial-level cities (Beijing, Tianjin, Shanghai,

¹²¹ 'Legal Reform in China'; available at: <http://www.asiafound.org/pdf/ChinaLegalReform.pdf> (visited 06.01.2005)

¹²² Potter 1994: 274; cf. 'Focus on People in the Law. Luo Haocai – A Justice and Scholar', *Beijing Review* (April 1998)

¹²³ McCutcheon 2000a: 171

¹²⁴ 'Legal Reform in China'; available at: <http://www.asiafound.org/pdf/ChinaLegalReform.pdf> (visited 06.01.2005)

¹²⁵ Statement of Nancy Yuan, 24.05.2002. Prof. Lubman has taught Chinese law at the universities of Stanford, Berkeley, Columbia, Harvard, University of Heidelberg (Germany) and at the School of Oriental and African Studies of the University of London

(cf. <http://www.law.berkeley.edu/faculty/profiles/facultyProfile.php?facID=1103> [visited 17.08.2005])

¹²⁶ 'Legal Reform in China'; available at: <http://www.asiafound.org/pdf/ChinaLegalReform.pdf> (visited 06.01.2005)

¹²⁷ 'Uniform Application of WTO Rules: Training for Local Government Staff'; available at: <http://www.asiafoundation.org/pdf/china.wto.uniform.pdf> (visited 06.01.2005)

Chongqing) and from the commercially important municipalities of Shenzhen, Guangzhou, Dalian, and Qingdao participated in the program.¹²⁸

The program divides into three phases. During the first phase, the Chinese participants are provided with basic information about the principles of administrative law through a series of lectures by renown international experts on administrative law. Then, during a second phase, the Chinese officials obtain the possibility to participate in a study tour to the U.S. During this study tour the participants are exposed to practical administrative rule making and implementation in the context of the American legal system. Finally, upon the return of the participants to their posts in the PRC, a third project phase invites them to come together again in order to discuss their experiences and possible ways to solve practical problems on the ground.¹²⁹

It is a specialty of this program that it explicitly invites Chinese legal affairs staff from local government levels to participate in the training. This is of great importance since awareness of relevant WTO provisions is basically absent at the sub-national levels of the Chinese government and local officials only dispose of a very limited understanding of WTO compliance requirements. Furthermore, local governments in the PRC very often tend to favor local businesses against other, especially foreign, parties if conflicts arise and since judges are paid by local governments, impartial judgments in these cases are very rare. This means, PRC compliance with WTO requirements as stipulated by Art.2 of the Protocol of Accession of China to the WTO (i.e. impartial application and administration of laws and regulations, and impartial and independent judicial review of all administrative actions) is in danger to be vitiated by local governments' deviance.¹³⁰ Therefore, it is very important to train local officials in order to ensure that they are sufficiently skilled to fulfill China's WTO commitments in their respective areas of responsibility.

For these reasons, the Chinese central government itself attributes high priority to legislative drafting and training in the area of administrative law. Therefore, Chinese legislative institutions are cooperating with a variety of western partners in order to improve the administrative legal framework as well as the implementation of administrative rules. As has been described above, the Yale Law School China Law Center provides advice on the drafting of the Administrative Licensing Law and the Administrative Litigation Law.¹³¹ Moreover, since August 2000, the Deutsche Gesellschaft für Technische Zusammenarbeit GTZ (*German Corporation for Technical Cooperation*) cooperates with the NPC Standing Committee LAC, too.¹³² In the course of the 'Sino-German Cooperation on Administrative Law' the GTZ supports the drafting of the Administrative Procedure Law, the Administrative Licensing Law¹³³, the Administrative Enforcement Law, and the Administrative Litigation Law.¹³⁴

Furthermore, the European Union (EU), too, in cooperation with the MOFCOM conducted a high-profile legal cooperation program to support China's accession to the WTO from November 2000 to December 2003.¹³⁵ In the same vein as the AF program, this project aimed at strengthening administrative structures and capacities in the PRC. Areas of special concern to

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ *ibid.*

¹³¹ Cf. below, Appendix I

¹³² Information available at: http://www.gtz-legal-reform.org.cn/english/projects/lac/lac_project.htm (visited 18.08.2005)

¹³³ The Administrative Licensing Law came into effect on July 1, 2004.

¹³⁴ Information available at: http://www.gtz-legal-reform.org.cn/english/projects/lac/lac_pr.htm (visited 18.08.2005); on German-Chinese legal cooperation see Schulte-Kulmann 2005a, 2005b

¹³⁵ Cf. <http://www.delchn.cec.eu.int/en/Co-operation/WTO.doc> (visited 18.08.2005)

this project were the training of personnel in charge of the preparation and administration of regulations relevant to WTO obligations; support for the development of procedures for complying with notification requirements; operation of the WTO dispute resolution system and procedures for implementation of WTO decisions; and, finally, assistance with the establishment of enquiry points for the provision of information to WTO members.¹³⁶

Thus, it becomes obvious that due to the importance of compliance with WTO requirements to a smooth integration into the international trade regime and hence to the overall development of the Chinese economy, the PRC government to a very high degree is anxious to cooperate with Germany, the U.S. and the EU as China's most important trading partners in the area of improving the Chinese legal framework with regard to WTO requirements. On the other hand, this attitude of the Chinese government conforms to the interests of the western partners in legal cooperation, too. It is important for fellow WTO members that the PRC quickly adjusts its legal and judicial system to WTO requirements in order to avoid costly disputes about rule violations and to secure a level playing field for American and European businesses entering the Chinese market.

Whereas AF support for legislative drafting and legal training in the area of administrative law is thus closely connected to broader American economic interests, the AF also supports legal cooperation projects tied more closely to the promotion of human rights in the PRC. The main focus in this area is laid on legal aid and popular legal education.

4.1.1.2 Support for Legal Aid and Popular Legal Education

The PRC legal aid system was formally established with the passage of the Lawyers' Law in 1996 (effective as of January 1, 1997). This law establishes a right for citizens who can not afford a lawyer to obtain legal aid (Art.41) and simultaneously obliges lawyers to undertake the duty of providing *pro bono* legal services to citizens eligible for legal aid (Art.42). The AF is supporting both private and public legal aid programs and works together with the Ministry of Justice National Legal Aid Center¹³⁷ as well as with Chinese universities, the ACLA, the All-China Women's Federation, and provincial and county government legal aid programs. Since the central Chinese government does not provide funds for the operation of local level legal aid centers, the AF awards the majority of grants in this area to provincial and sub-provincial legal aid projects. For example, support has been provided to legal aid centers in some of the poorest provinces of the PRC, such as Guizhou, Yunnan, Xinjiang Uighur Autonomous Region, and Ningxia Hui Autonomous Region.¹³⁸ Furthermore, a study tour to the U.S. on legal aid had been organized in May 2001 for a delegation of the National Legal Aid Center. It was the purpose of this study tour to familiarize the Chinese participants with legal aid measures for poor and disadvantaged citizens in urban and rural areas of the U.S. Topics of special concern in this context were the question of funding of legal aid services, methods of service delivery, training of public interest lawyers and clinical legal education in the U.S.¹³⁹

¹³⁶ *ibid.*

¹³⁷ The National Legal Aid Center has been established in 1996 and is headed by a Vice Minister of Justice. On the one hand it is the task of the Center to set the national policy on legal aid, to direct the training of legal aid providers, to coordinate national legal aid work and to increase public outreach. On the other hand, the Center itself handles legal aid cases, especially those which are of national significance ('Legal Aid in China'; available at: <http://www.ahrchk.net/hrsolid/mainfile.php/2000vol10no11/753/> [visited 10.08.2005])

¹³⁸ *ibid.*; 'Legal Reform in China'; available at: <http://www.asiafoundation.org/pdf/ChinaLegalReform.pdf> (visited 06.01.2005)

¹³⁹ 'Supporting Legal Aid in China'; available at: <http://www.asiafound.org/pdf/china.legal.aid.pdf> (visited 06.01.2004)

In addition, since 2000 the AF supports a special project for migrant women workers in Guangdong which combines legal aid and legal education. This project is partly financed by a U.S. Department of Labor grant.¹⁴⁰ In cooperation with the Guangdong Women's Federation, the project provides legal aid services for migrant women workers, mainly in the areas of labor law, property disputes, marriage and child custody disputes as well as physical abuse. Moreover, the Women's Federation offers general information to migrant women workers about their legal rights and how to protect them. For example, with support from the AF, in 2001 the Women's Federation published a handbook – 'How to protect yourself' – on women's basic legal rights, and throughout the year 2000 a special news column reporting on Federation activities and concrete cases appeared in local newspapers.¹⁴¹

Appendix III provides an overview over grants awarded by the Asia Foundation in 2003 and 2004.

4.1.2 Program Strategy and Potential Influence on the Migration of Legal Norms and Concepts

The potential influence of the AF Administrative Law and WTO Compliance Program derives for one from the institutional link-up to the ALRG as well as from the development of networks between individuals.

For one, the ALRG network comprises high-ranking Chinese legal scholars as well as government officials. Moreover, the ALRG is explicitly charged with researching and drafting administrative legislation by the NPC Standing Committee LAC. This special institutional design allows ALRG scholars direct and regular access to key policy makers.¹⁴² This means, the advice of American legal scholars cooperating with ALRG is also directly channeled into the administrative law legislative process.

The likely influence of American experts' advice on Chinese administrative law is further intensified by personal ties of individual ALRG members to the American legal system itself. For one, many Chinese scholars now working with the ALRG have received graduate legal education in the U.S., mainly through the U.S.-China Committee for Legal Education Exchange (CLEEC) program funded by the Ford Foundation from 1983 to 1995.¹⁴³ Therefore, these scholars now contribute their knowledge of the American legal system and American substantive law to their work as drafters of Chinese legislation. Moreover, personal ties between American legal institutions and Chinese legal experts involved in legislative processes persist. For example, Professor Jiang Ping, ARLG Head and also Head of the China Society of Comparative Law and President of CUPL, cooperates closely with American legal scholars at the Business and Comparative Law Center supported by Temple University¹⁴⁴ as well as with American legal experts advising the ALRG. Furthermore, ALRG member Professor Wang Xixin, Associate Professor of Law and Associate Dean for External Affairs at Peking University Law School, since 2003 works as a Fellow at the Yale Law School CLC.¹⁴⁵ Since the Yale CLC is involved in advising on Chinese administrative legislation, too,¹⁴⁶ it is very

¹⁴⁰ 'U.S. Labor Department to Provide Technical Assistance to China on Labor Law, Worker Rights, and Mine Safety'; available at: <http://www.dol.gov/opa/media/press/ilab/ILAB2002584.htm> (visited 08.09.2005)

¹⁴¹ 'Solving Legal Issues for Guangdong's Women Laborers'; available at: <http://www.asiafoundation.org/pdf/china.guangdong.women.pdf> (visited 06.01.2005)

¹⁴² McCutcheon 2000a: 172

¹⁴³ McCutcheon 2000a: 171; the Ford Foundation CLEEC program is described below in section 4.2.1.1

¹⁴⁴ Cf. above, section 1.1.1

¹⁴⁵ Information available at: <http://chinalaw.law.yale.edu/html/personnel.htm> (visited 20.08.2005)

¹⁴⁶ Cf. above, section 1.2.1

likely that American administrative law and legal concepts brokered by individuals such as Professor Wang Xixin gain considerable influence on Chinese administrative law legislation. This positive effect of personal and institutional ties on the migration of legal norms and concepts is further augmented by the fact that in case of the AF program as well as in most cases of American-Chinese legal cooperation, intimate adepts of China and Chinese law such as Professor Lubman are in lead of the advisory teams. These scholars enjoy extremely high credit with their Chinese counterparts due to their legal expertise and their standing as ‘old friends of China’. Therefore, advice provided by these individuals is much more likely to be considered than counsel offered by other foreign experts who dispose of no special knowledge of Chinese law and maintain no personal ties to China and the Chinese.¹⁴⁷

Thus, despite the rootage of Chinese administrative law in the civil law tradition,¹⁴⁸ it remains to be seen whether Chinese administrative law will develop further along the traditional civil law line or if American influence can be brought to bear, especially on imminent revisions to some central pieces of Chinese administrative law legislation. For example, current discussions about amending the 1994 State Compensation Law focus on raising the amount of compensation as well as on changing the aim of compensation from consoling the injured to punishing the perpetrators.¹⁴⁹ This mirrors the American concept of ‘punitive damages’ and hints thus at an influence of U.S. legal thinking in the area of compensation law.

The potential influence of personal and institutional networks between American and Chinese legal scholars and legal institutions on the migration of legal norms and concepts is highlighted again by the work of the Ford Foundation which is to be described in the following section.

4.2 Ford Foundation

The Ford Foundation (FF) was founded in 1936 as a local philanthropy in the state of Michigan. Since then, the FF has been an independent, nonprofit, nongovernmental organization. Initially, the FF started its grant-making activities with resources derived from gifts and bequests of Ford Motor Company stock by Henry and Edsel Ford. However, today the FF no longer owns Ford Motor Company stock, and is therefore completely independent of Ford Motor Company.¹⁵⁰ Furthermore, the FF also does not receive financial resources through U.S. government appropriation and is therefore independent of U.S. government interests, too.¹⁵¹

The FF is by far the most important American private philanthropic foundation engaged in legal cooperation work with the PRC, spending about five million US\$ annually on its human

¹⁴⁷ Cf. Woodman 2004: 39.

¹⁴⁸ Concepts such as administrative act (*‘Verwaltungsakt’*), administrative punishment, administrative procedure (*‘Verwaltungsverfahrenrecht’*), administrative enforcement, and state compensation law (*‘Staatshaftungsrecht’*) are alien to the common law legal tradition and have instead been borrowed from western European civil law systems (Chen, Albert H.Y. 2000: 64; for a general overview of Chinese Administrative Law cf. Chen, Jianfu 1999:127-166).

¹⁴⁹ The Standing Committee of the X. NPC added the revision of the State Compensation Law to the Legislative Plan (*‘Abänderung des Staatsentschädigungsgesetzes’* (Revision of the State Compensation Law); *Beijing Rundschau*, 33/2004; available at: <http://www.bjrundschau.com/2004-33/2004.33-fm-1.htm> [visited 20.08.2005]; cf. ‘Lawyers Call for Amendment of Compensation Law’; *China Daily*, 23.06.2003 (http://www.chinadaily.com.cn/en/doc/2003-06/23/content_240240.htm [visited 20.07.2005])

¹⁵⁰ Ford Foundation: ‘Our Mission’; available at: <http://www.fordfound.org/about/mission2.cfm> (visited 20.08.2005)

¹⁵¹ Interview 11/2002

rights and rule of law related programs.¹⁵² Just as the Asia Foundation, the FF, too, looks back at a more than twenty year history of involvement in legal reform in the PRC.

When the Chinese political leadership decided to follow the path of Opening and Reform in December 1978, it soon became evident that foreign help would be needed in order to reconstruct the Chinese legal system. Furthermore, some members of the Chinese government realized at that time that there was a special need for legal training and education in the new era and were hence willing to consider the possible benefits of legal cooperation projects with foreign donors. In this context, Professor Jerome Cohen, an eminent expert of China and Chinese law, succeeded in privately introducing the FF to then-Chinese Vice Minister of Foreign Economic Relations Wang Daohan in April 1979.¹⁵³ This resulted in the FF receiving the Chinese government's allowance to take up work in the PRC. In the initial phase, from 1979 to 1981, the FF started with cautiously building up confidence and mutual understanding between the PRC and the American side. On this basis, the work was expanded by and by and in 1988, the FF was the first private foreign foundation to open an office in Beijing. Amongst the first grantees of the FF was the Chinese Academy of Social Sciences (CASS), a research institute directly subordinated to the SC and at the same time the official sponsor of the FF, allowing it to maintain offices in the PRC.¹⁵⁴

From 1979 to the present, the work of the FF has laid emphasis on different areas of legal reform in the PRC. The first main focus of the FF was support for rebuilding a legal infrastructure through the education of law teachers. This resulted in the implementation of the U.S.-China Committee for Legal Education Exchange (CLEEC) project from 1983 to 1995.¹⁵⁵ The CLEEC program so far has been the earliest and largest single U.S.-China legal cooperation project and is therefore to be described in more detail below.

With the opening of the Beijing Office in 1988, the focus of FF work broadened and the areas of legislative research and drafting, as well as training of judges and procurators were included into the project portfolio. Initially, support for legislative drafting covered the areas of administrative law and criminal procedure law, but soon, beginning in 1992, human rights and constitutional law was included as well.¹⁵⁶ However, it soon became evident that one of the main obstacles to the development of rule of law in the PRC is not a lack of adequate legislation but insufficient implementation of existing laws and regulations. Thus, the FF decided to lay more emphasis on comprehensive judicial reform which includes for one the education of law implementing personnel such as lawyers, judges, prosecutors, and police. But, moreover, strengthening of citizens' awareness of the law as a means to justice as well as access to the law for ordinary citizens is of equal importance to the development of rule of law in the PRC. Hence, since 1995, the FF law programs in the PRC focus on two main areas: judicial reform and 'law-in-action'.¹⁵⁷ These activities are to be described in more detail below.

But now the analysis should start with the above mentioned U.S.-China Committee for Legal Education Exchange project.

¹⁵² Wang/Evasdottir 2003: 28.

¹⁵³ 'A Legal Laoganbu Looks Back' – Interview with Jerome Cohen: 15; in: *China Rights Forum*, Vol.11, No.2 (2003); 11-21. Available at: <http://www.hrichina.org/fs/view/downloadables/pdf/downloadable-resources/jcohen.pdf> [visited 16.08.2005]

¹⁵⁴ McCutcheon 2000a: 165-166.

¹⁵⁵ *ibid.*: 166-167.

¹⁵⁶ *ibid.*: 169-171.

¹⁵⁷ *ibid.*: 173.

4.2.1 Project Description

4.2.1.1 U.S.-China Committee for Legal Education Exchange

From 1983 to 1995, the FF funded the U.S.-China Committee for Legal Education Exchange project (CLEEC). This program answered to a policy decision of the PRC government to focus on the build-up of some elite legal academic institutions in order to accelerate the re-development of the Chinese legal profession.¹⁵⁸ Under a Memorandum of Understanding signed with the Chinese Ministry of Education, the FF was invited to support the training of the faculty of eight major government-designated universities and institutes of political science and law,¹⁵⁹ Fudan University, Jilin University, Wuhan University, Peking University, CUPL, East China Institute of Political Science and Law, Southwest China Institute of Political Science and Law, and Qinghua University.

The FF, too, was convinced that a stock of competent Chinese jurists was at least equally important to the success of the Chinese legal reform process than the existence of sound pieces of legislation. Therefore, CLEEC invited Chinese legal educators to participate in training measures and degree programs at American Law Schools. During the training measures, the Chinese participants were intensively supervised and instructed by American legal scholars in order to enable these Chinese jurists to pursue foreign legal education and research of high quality. More than 40 U.S. law schools participated in the CLEEC program and in the end, more than 250 Chinese legal academics had received training through CLEEC.¹⁶⁰

In the words of former FF program officer Mark Sidel, it was the central aim of this component of CLEEC ‘to have a major multiplier effect.’¹⁶¹ As a consequence, the CLEEC program aimed not only at educating young Chinese jurists in substantive American law but also at introducing American legal teaching methodology to CLEEC participants. Thus, by ‘training the trainers’, the CLEEC program on the one hand intended to instill substantial legal knowledge in the Chinese legal reform process. On the other hand, the Chinese CLEEC participants were expected to support the comprehensive reform of the Chinese legal education system by applying the new American-learned teaching methods upon their return to the PRC.

As a second program component, CLEEC also brought American legal scholars to the PRC. These scholars offered in-country short courses in American law to Chinese law faculty, students, lawyers, and government officials. Additional funding for this part of the CLEEC program was provided by the United States Information Agency (USIA), now integrated into the U.S. Department of State.¹⁶²

Besides educating Chinese jurists in the U.S. or in the PRC, one of the most important aims of these first two complementary CLEEC components was to build up networks, on the one hand between American and Chinese members of the legal profession and, on the other hand, between the Chinese jurists themselves. For one, this networking was thought to be a vital

¹⁵⁸ Wang/Evasdottir 2003: 28.

¹⁵⁹ *ibid.*: 28; ‘A Legal Laoganbu Looks Back’ – Interview with Jerome Cohen: 15; Lubman 2003: 24.

¹⁶⁰ »Human Rights in China in the Context of the Rule of Law« – Hearing before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (February 7, 2002): »The Accession to the World Trade Organization of the People’s Republic of China (PRC) and Related Rule-of Law Issues«. Prepared Statement of James V. Feinerman before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (Feb. 7, 2002); *henceforth: Prepared Statement of James V. Feinerman, 07.02.2002*

¹⁶¹ McCutcheon 2000a: 166.

¹⁶² Prepared Statement of James V. Feinerman, 07.02.2002

precondition in order to prevent the Chinese CLEEC participants from isolation upon their return and hence to ‘foster a mutually supportive intellectual environment, especially for new ideas, within those faculties.’¹⁶³ Moreover, the development of professional networks between American legal scholars and their Chinese counterparts served as an important venue for the promotion of many other forms of American-Chinese scholarly exchange, even beyond the duration of CLEEC.¹⁶⁴

Finally, the CLEEC program also supported the build-up of law libraries in the PRC. With additional financial support from the Henry Luce Foundation, CLEEC provided leading Chinese law faculties as well as the CASS Law Institute with U.S. legal materials in print and electronic form, including access to on-line legal databases and the World Wide Web.¹⁶⁵ On the whole, from 1983 to 1995, the FF supported the CLEEC program with grants totaling more than four million US\$.¹⁶⁶

4.2.1.2 Support for Legislative Drafting

Beginning in 1992, the FF also provided support for legislative drafting to selected Chinese law making bodies. Thereby, the FF did not concentrate on the area of economic law as many other donors, but explicitly tried to further administrative law and criminal procedure law reforms which the FF regarded as vital for the development of comprehensive rule of law in the PRC.¹⁶⁷

Amongst the FF grantees in this area were the NPC Administrative Law Research Group (ALRG) described in detail above¹⁶⁸ as well as the CASS. At that time, the ALRG was responsible for drafting central pieces of administrative legislation, such as Administrative Litigation Law, State Compensation Law, Administrative Penalty Law, and Administrative Procedure Law. The CASS conducted research on the possible effects of China’s accession to international covenants on civil and political rights, and on economic, social, and cultural rights.¹⁶⁹

Later, the FF also supported research toward the revision of the Chinese Criminal Procedure Law as well. A group of reform-minded law professors, led by Professor Chen Guangzhong, former President of CUPL, had been tasked by the NPC LAC with developing a first draft. This group received financial support from the FF for its work, too.¹⁷⁰

In 1995, the FF streamlined its grant-making activities to concentrate resources on two main areas: Judicial Reform and Law-in-action.¹⁷¹ At the core of this reorganization lies the conviction that one of the main problems currently facing the Chinese legal reform process lies in the insufficient implementation of legal rules. Therefore, on the one hand, the FF tries to improve implementation by supporting the education of judges and other legal professionals as well as research on judicial reforms in general. On the other hand, the FF tries to improve citizens’ access to the law through its grant-making activities. If more people know about

¹⁶³ McCutcheon 2000a: 167.

¹⁶⁴ Prepared Statement of James V. Feinerman, 07.02.2002; Wang/Evasdottir 2003: 28.

¹⁶⁵ Prepared Statement of James V. Feinerman, 07.02.2002

¹⁶⁶ *ibid.*

¹⁶⁷ McCutcheon 2000a: 170.

¹⁶⁸ See above section 4.1.1.1

¹⁶⁹ McCutcheon 2000a: 171.

¹⁷⁰ *ibid.*: 172.

¹⁷¹ *ibid.*: 173.

their rights then it is more difficult to infringe on those rights in the judicial process; hence, pressure is put on the judicial system to improve implementation.

4.2.1.3 Judicial Reform

FF support for judicial reform currently concentrates on four main aspects. Firstly, grants are awarded to courts and legal research institutions engaged in *trial procedure reforms*. This work is complemented by, secondly, support for *applied research* in the same area. These research projects for one aim at providing critical information to legal professionals such as judges and prosecutors on how trial procedure reforms might possibly be designed and implemented. But, on the other hand, these projects also try to gather information about citizens' attitudes towards the judicial system, about citizens' problems in accessing the courts and about deficiencies concerning the enforcement of judgments. This information is then infused in the discussion in order to ensure that trial procedure reforms account for practical problems faced by citizens on the ground.¹⁷²

The third area of concern to the FF is support for *judicial education*. Amongst the main FF grantees in this area are – on the academic research side – the Center for Judicial Studies at Peking University and the National Judges College. The Center, for example, has been conducting research on problems such as lacking popular confidence in the judicial system as well as in the courts in particular and on the lack of justices' judicial skills as a hindrance to the implementation of justice. The NJC, on the other hand, works not only to improve the skills of judges in substantial areas of the law. Furthermore, special emphasis is laid on the improvement of judicial ethics and independence. Both areas are reciprocally reinforcing. Solid knowledge of substantial legal issues enables judges to self-consciously render judgments without seeking the guidance of higher ranking colleagues; this, in turn, increases judges' independence.¹⁷³

Finally, the FF also supports the development of judges' associations and organizations in order to further the *build-up of an institutional infrastructure* more independent from state organs.¹⁷⁴

4.2.1.4 Law-in-action

The second area of FF grant-making activities also important to the improvement of legal implementation is the area of law-in-action. This phrase covers efforts 'to strengthen citizen's awareness of law as a means to justice, demonstrate how the legal system can be used to protect rights, give practical experience to lawyers and students, and strengthen the ability of the legal system to deliver justice.'¹⁷⁵ Thus, whereas judicial reform follows a 'top-down' approach by improving the quality of procedures and personnel of the judicial system itself, law-in-action is characterized by empowering citizens to use the law for their own interests, thereby generating a constituency which pushes for legal and judicial reforms from the 'bottom-up'.

These bottom-up induced reforms are typically furthered by public legal aid and clinical legal education centers which are therefore the main FF grantees in this area. As has been mentioned above, the PRC started developing a legal aid system with the enactment of the Law-

¹⁷² Cf. *ibid.*: 174-176.

¹⁷³ *ibid.*: 176-179.

¹⁷⁴ *ibid.*: 174.

¹⁷⁵ *ibid.*: 179.

yers Law in 1996. Furthermore, the enactment of the Criminal Procedure Law 1996 and the subsequent transition to an adversarial trial system which assigned the burden of proof and evidence collection to the defendant, required provisions on how to secure adequate legal representation for people who can not afford a lawyer. Even if lawyers in the PRC are obliged to take legal aid cases on a *pro bono* basis by the Lawyers' Law, most legal aid cases in the PRC today are handled by university or community based legal aid centers. According to statistics from the Chinese Ministry of Justice Legal Aid Center, from 1997 to 2003, legal aid centers in the PRC provided consulting services to over 6.4 million people and offered assistance in 800,000 cases.¹⁷⁶

Legal aid centers fulfill different important functions in the Chinese legal reform process. For large segments of the Chinese society, legal aid centers offering complimentary advice or even representation are the only possibility to gain access to the law. For one, many Chinese citizens can not afford lawyers' fees; furthermore, particularly in underdeveloped western, ethnic minority, and rural regions of the PRC there are not enough lawyers available for the population. For these citizens, legal aid provided by university law schools, local women's federations etc. is the only way to access the law. Moreover, in most cases such legal aid centers not only offer legal advice and representation in concrete legal questions but also arrange popular legal education measures. Thereby, legal aid centers fulfill the important task of spreading legal literacy amongst marginalized segments of the Chinese population, such as ethnic minorities, peasants, women, (migrant) workers etc.¹⁷⁷

Finally, by enabling citizens to exercise their legal rights, legal aid centers also support the implementation of law and legal reforms.¹⁷⁸ This is especially true in sensitive areas such as administrative law suits or criminal proceedings. In most cases, citizens on their own shy away from suing the government under administrative law provisions, but with the help of legal aid centers, these citizens often succeed.¹⁷⁹ Furthermore, for defendants in criminal proceedings, legal aid is often vital in order to guarantee a trial as fair as possible.¹⁸⁰

Legal aid also provides law students with an important opportunity to gain practical experience during their legal education. Therefore, legal aid centers are often based at universities and integrated into the law schools' legal education curriculum. Legal education in the PRC to date is very theoretical and students lack the practical 'lawyering' skills they will need in their professional careers.¹⁸¹ Therefore, the opportunity to volunteer in law school legal aid clinics is very much appreciated by Chinese law students.¹⁸²

Finally, the work of legal aid centers often generates broader social impact and promotes legal reform as well. Some legal aid centers explicitly offer their services to marginalized or disad-

¹⁷⁶ 'Legal Assistance: Government Duty'; *Beijing Review* 06/2004; available at: [http://www.bjreview.com.cn/200406/Nation-200406\(B\).htm](http://www.bjreview.com.cn/200406/Nation-200406(B).htm) (visited 20.08.2005)

¹⁷⁷ For example, the Asia Foundation supports legal aid centers in some of the poorest provinces of the PRC, such as Guizhou, Yunnan, Xinjiang Uighur Autonomous Region, and Ningxia Hui Autonomous Region ('Legal Reform in China'; available at: <http://www.asiafound.org/pdf/ChinaLegalReform.pdf> [visited 06.01.2005])

¹⁷⁸ McCutcheon 2000b: 269.

¹⁷⁹ For example, the Wuhan University Center for the Protection of the Rights of Disadvantaged Citizens specializes in administrative cases (Liebman 1999: 234).

¹⁸⁰ Whereas many university legal aid clinics, such as the legal aid centers of Wuhan University and Peking University do not handle criminal legal aid cases, the legal aid center of CUPL Center for Criminal Law and Justice is the first criminal legal aid clinic in the PRC.

¹⁸¹ McCutcheon 2000b: 271-272.

¹⁸² For example, the Wuhan University Center for the Protection of the Rights of Disadvantaged Citizens receives more students requests than it can offer places to students (Liebman 1999: 234).

vantaged groups of the population such as women, children, ethnic minorities, migrants, and the disabled. Thereby, these centers wish to highlight these groups' special challenges and needs in order to spur legal reforms in favor of these clients.¹⁸³ Other legal aid centers specialize on the representation of cases which are of particularly high societal impact or on cases in areas where legal provisions are inadequate. Thereby, these centers intend to highlight problems in the legal system and to incite legal improvements, too.¹⁸⁴

As becomes obvious from the overview of major legal reform projects supported by the FF Beijing Office from 1995 to 2005 provided in Appendix III, most FF grants in this period of time have been awarded to legal aid projects. The main FF grantees in this area are Qianxi Women's Federation rural legal services center for women, Wuhan University Center for the Protection of the Rights of Disadvantaged Citizens, CUPL Center for Criminal Law and Justice criminal defense legal aid clinic, and Peking University School of Law Center for Women's Law and Legal Services.

Furthermore, the FF supported the build-up of legal aid clinics and clinical legal education schemes at several universities throughout the PRC, such as East China University of Political Science and Law, Fudan University, Northwest University of Political Science and Law, People's University of China, Sichuan University, South Central University of Economics and Law, Qinghua University, Yunnan University, and Zhongshan University (Guangzhou). Thereby, from 1995 to 2005 (February), more than seven million US\$ have been spent by the FF on the development of legal aid and clinical legal education throughout the PRC.

But, FF support is not limited to the development of singular legal aid centers and clinical legal education curriculums; moreover, the FF also assists the build-up of a network between legal aid centers as well as between legal professionals engaged in legal aid. Therefore, the FF for one assists the 'Mini-Initiative on Clinical Legal Education and Legal Aid in China' which seeks to promote clinical legal education programs in Chinese universities and to expose greater numbers of Chinese law students to legal aid during their legal education. Furthermore, the FF also has assisted Chinese law professors in forming the Chinese Clinical Legal Education Network (CCLLEN) which meets regularly, convenes conferences, and maintains a website in order to promote clinical legal education in the PRC. Furthermore, the FF organizes exchanges between CCLLEN and foreign legal aid experts.¹⁸⁵

4.2.2 Program Strategy and Potential Impact on the Migration of Legal Norms and Concepts
The different FF initiatives supporting legal reforms in the PRC each followed a distinctive strategy and have been instrumental as channels for the migration of legal norms and concepts from the American legal system to that of the PRC. The possible impact of the initiatives is to be analyzed below.

For one, CLEEC so far has been the most important and comprehensive U.S.-China legal cooperation project implemented by a private American foundation; indeed, 'CLEEC has been formative and instructive for Ford's entire China law program' in the following years.¹⁸⁶ As such, CLEEC did influence the migration of legal norms and concepts in different respects.

¹⁸³ One example, again, is the Wuhan University Center for the Protection of the Rights of Disadvantaged Citizens

¹⁸⁴ Peking University Center for Women's Law Studies and Legal Services specializes in high-impact litigation, i.e. the Center concentrates its efforts on cases of large social impact in order to highlight problems in the legal system and to advocate legislative changes – even if victory in these cases very often is unlikely (Liebman 1999: 235-236)

¹⁸⁵ Information provided by the FF Beijing office, on file with the author

¹⁸⁶ McCutcheon 2000a: 167.

For one, by educating Chinese law faculty staff as well as by providing U.S. legal materials for Chinese law school libraries, CLEEC significantly molded the developing Chinese system of legal education alongside the example of the American legal system from the very beginning. The participating Chinese universities were amongst the most famous and important law schools in the PRC at that time and today. This means, these institutions, equipped with American legal materials and staffed with U.S.-trained legal scholars led the way and served as examples for the reform efforts of law schools all over the PRC.¹⁸⁷ Moreover, from a very early beginning, Chinese law students at these universities were being educated by CLEEC trained law faculty staff and used American legal material for their studies and research. Hence, a new generation of young Chinese professionals grew up and became familiarized with American-learned teaching methods as well as with American legal materials. If one agrees with the notion that a ‘lawyer [...] always maintains the imprinting received during his first year of legal study’ and that, *vice versa*, ‘a law teacher shares the minds of thousands of future lawyers, [so that] the very fact that they are exposed to his teaching influence the legal system to which they belong’,¹⁸⁸ then it becomes obvious that the CLEEC program indeed did have a considerable influence especially on the migration of American-style legal teaching methods¹⁸⁹ and legal reasoning as well as on the migration of legal norms and concepts through the provision of U.S. legal material.

This holds true even if one has to admit that not all Chinese CLEEC participants immediately returned to the PRC for teaching after their graduation from U.S. law schools; some 69% of participants went back to the PRC, and about 49% of all participants have resumed teaching positions at Chinese law schools.¹⁹⁰ However, those CLEEC alumni who did return to the PRC in many cases occupy influential positions in the Chinese legal and political system, for example as law school professors and deans, university presidents, drafters of legislation, members of the China International Economic & Trade Arbitration Commission (CIETAC), and members of the WTO Dispute Settlement Body (DSB). This means, since these CLEEC alumni hold positions with influential decision making bodies as well as judicial and academic institutions, they can serve as important channels for the import of American legal norms and concepts into the Chinese legal system. Table I provides an overview of important career positions of some former CLEEC participants, illustrating their potential influence on the Chinese legal reform process.¹⁹¹

Table I: Influential career positions of some former Chinese CLEEC participants

CLEEC Alumnus	Important career positions (<i>inter alia</i>)
Prof. Wang Liming	Associate Law Dean at People’s University of China (Renmin Daxue)
Prof. He Jiahong	Law Professor, Renmin Daxue; Associate Law Dean at Renmin Daxue
Prof. Wan Exiang	Founder of the Wuhan South Central University of Political Science and Law Center for the Protection of the Rights of Disadvantaged Citizens; Vice-President of the Supreme People’s Court
Prof. Zhu Lanyue	Professor and Vice-Dean of the International Law Department at East China University of Political Science and Law (Shanghai);

¹⁸⁷ Interview 02/2004

¹⁸⁸ Mattei 1994: 204.

¹⁸⁹ Cf. Lubman 2003: 24, indicating that many of the more-than 100 CLEEC alumni who returned to Chinese law faculties in fact used their American-learned teaching methods to reform the very rigid and formalistic approach to law teaching common to Chinese law schools.

¹⁹⁰ McCutcheon 2000a: 168.

¹⁹¹ On the basis of information provided in McCutcheon 2000a, Lubman 2003, and on the Internet, it was possible to research the *curricula vitae* and important career positions of some CLEEC alumni.

	Arbitrator at the China International Economic & Trade Arbitration Commission (CIETAC); Arbitrator at the Shanghai Arbitration Commission and at the Shenzhen Arbitration Commission; Member of the Shanghai Trademark Evaluation Board; Member of the WTO Dispute Settlement Body (DSB)
Prof. Zhang Wenxian	Former Law Dean at Jilin University; Vice-President of Jilin University
Prof. Wang Chenguang	Former Vice-Dean Peking University School of Law; Dean and Professor of Law, Qinghua University School of Law; Arbitrator at the CIETAC; Vice-President of the China Law Society Comparative Law Council
Prof. Li Jiaojie	Professor of International Law, Qinghua University
Prof. Luo Haocai	Former Vice-President of Peking University; Former Vice-President of the Supreme People's Court; Former leader of the China Administrative Law Research Group; Vice-Chairman of the 9 th Chinese People's Political Consultative Conference National Committee
Prof. Xin Chunying	Former director of the CASS Institute of Law; Member of the NPC Standing Committee (since 2003)
Prof. Wang Xixin	Law Professor Peking University; Member of the ALRG

Other foreign donors such as, for example, Germany admit that the availability of American legal materials has considerably facilitated the migration of legal norms and concepts and hence significantly influenced the development of the Chinese legal system. Thus, in order to secure a certain influence for the continental European civil law system and in particular, the German legal system anyhow, in 1998 the German government started financing a program for the translation of some of the most important pieces of German legal literature. In the course of this project, until 2005, about 30 scholarly works are to be translated into Chinese.¹⁹² CLEEC alone, by comparison, from the early 1980s on provided eight major Chinese university law libraries with comprehensive American legal material in print as well as in electronic form. Thus, it becomes obvious that the German initiative to influence the Chinese legal system through scholarly works for one is belated. Furthermore, the German effort to translate only 20 volumes of legal literature is by far dwarfed by the amount of American legal material provided to Chinese universities through CLEEC as well as through other programs continuing until today. Thus, a major effect on the Chinese legal system is not to be expected.

Furthermore, as has been mentioned above, CLEEC brought together American and Chinese law scholars and very often, these contacts developed a life of their own. Sometimes, Chinese CLEEC alumni and their host law schools in the U.S. implemented cooperation programs themselves or at least maintain regular working contacts even after the termination of CLEEC. For example, Professor Wan Exiang, founder of the Wuhan University of Political Science and Law Center for the Protection of the Rights of Disadvantaged Citizens, graduated from Yale University in 1987 as a CLEEC participant. Today, he closely cooperates with the

¹⁹² Hornberger/Sund 2001: 11. Amongst these scholarly works to be translated are the following titles: Käsler, Dirk. *Max Weber: Eine Einführung in Leben, Werk und Wirkung* (Max Weber: An Introduction to his Life, Oeuvre, and Impact); Kaufmann, Arthur. *Rechtsphilosophie in der Nach-Neuzeit* (Post-Modern Legal Philosophy); Kötz, Hein. *Europäisches Vertragsrecht I* (European Contract Law I); Maurer, Hartmut. *Allgemeines Verwaltungsrecht* (General Principles of Administrative Law); Medicus, Dieter. *Allgemeiner Teil des BGB* (General Principles of the BGB) (Hornberger/Sund 2001: 12). For a detailed overview, see Schulte-Kulmann 2005b

Yale Law School CLC in the area of reform of legal education and legal aid.¹⁹³ Thus, these persisting contacts between CLEEC alumni and their American host institutions also serve as channels for continued exchange and hence for the migration of legal norms and concepts.

Apart from this influence on the migration of legal norms and concepts, the CLEEC program received extraordinarily high esteem with the Chinese participants as well as with the Chinese government. Hence, in the eyes of CLEEC alumni the confidence and trust created by CLEEC facilitates the work of the FF until today.¹⁹⁴

The perceived great success of CLEEC is also one reason why American law schools lay considerable emphasis on engaging in possible cooperation with Chinese counterpart institutions, such as for, example, the Temple-CUPL and Temple-Qinghua LL.M. programs described above.¹⁹⁵ Honoring the achievements of the CLEEC program as well as of one of its founding members, Professor R. Randle Edwards, in educating Chinese legal scholars, Columbia University Law School established the Edwards Fellowship in 2002. The Fellowship has been established with support from the FF and is endowed with resources amounting to one million US\$.¹⁹⁶

As far as FF support for legislative drafting is concerned, these initiatives, too, exerted a certain impact on the migration of legal norms and concepts, both through individual Chinese legal scholars as well as through institutional networks.

For one, many of the Chinese scholars working with the ALRG and CASS have been participants in the CLEEC program¹⁹⁷ and could hence contribute their legal knowledge gained during their studies or research in the U.S. to their work. Thus, it is possible to reason that these Chinese legal scholars and the familiarity with western and international human rights ideas they developed during their studies in the U.S. influenced CASS's research and therefore, in the end, the decision of the PRC to sign the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights.¹⁹⁸ Furthermore, the improvements in the area of Administrative Law which, for example, enable citizens to sue the government and to claim compensation for improper government action¹⁹⁹ also mirror western conceptions of the subordination of the government under the law as prescribed by the rule of law so that it can again be reasoned that these conceptions have been introduced into the Chinese legislative process due to the influence of Chinese scholars educated in the U.S.

Scholarly influence of this kind can also be observed with respect to the Chinese Criminal Law and Criminal Procedure Law revised in 1996. It has already been mentioned that the FF

¹⁹³ 'The U.S. China Rule of Law Initiative', in: *Yale Law Report*, Summer 1999: 47-52; 52; available at: <http://chinalaw.law.yale.edu/YLRSummer99.pdf> (visited 26.07.2005)

¹⁹⁴ McCutcheon 2000a: 170, citing CLEEC *alumnus* Professor Wang Liming; Interview 11/2002

¹⁹⁵ Lubman 2003: 24; cf. above section 1.1.1

¹⁹⁶ Columbia Law School as well as former students of Professor Edwards raised 500,000 US\$ which was matched by the FF (Lubman 2003: 25, note 113); 'Columbia University Center for Chinese Legal Studies R. Randle Edwards Fellowship for Visiting Chinese Law Scholars 2004-05' (available at: http://www.law.columbia.edu/center_program/chinese/Edwards, [visited 20.08.2005])

¹⁹⁷ For example, CLEEC *alumnus* Professor Luo Haocai (Peking University), together with Professor Jiang Ping and Professor Ying Songnian (both CUPL), was the first director of the ALRG upon its inauguration in 1986; ALRG member Professor Zhang Chunsheng and the former director of the CASS Institute of Law, Professor Xin Chunying, as well as about 30 other legal scholars working with the CASS in the 1990s have been participating in CLEEC, too (McCutcheon 2000a: 171).

¹⁹⁸ Cf. McCutcheon 2000a: 171.

¹⁹⁹ On the advantages and limitations of the Administrative Litigation Law (adopted in 1989) cf. Potter 1994.

supported a group of ‘reform-minded’ law professors, headed by former CUPL President Chen Guangzhong, who had been mandated by the NPC LAC with drafting the new Criminal Procedure Law (enacted in 1996).²⁰⁰ For one, the new Criminal Procedure Law now includes provisions which strengthen the rights of the defendant, for example the right to seek counsel or the right to be provided with an assigned counsel in case of need.²⁰¹ This, again, mirrors a certain influence of western conceptions of fair trial on the Criminal Procedure Law as enshrined in the concept of the rule of law.²⁰² Furthermore, the Criminal Procedure Law now contains several provisions which make the trial more adversarial in nature²⁰³ which constitutes a ‘clear sign of common law influence.’²⁰⁴

Moreover, the FF encouraged the group tasked with drafting the Criminal Procedure Law to establish an organization and hence to institutionalize and continue its work on criminal procedure and criminal justice reform. Thus, in 1996, with financial support from the FF, the group founded the ‘Center for Criminal Law and Justice’ based at CUPL.²⁰⁵ The Center posed as the foundation upon which in 1999 the ‘Procedural Law Research Center’ at CUPL (*zhongguo zhengfa daxue susongfa yanjiu zhongxin* – PLRC) was established in October 1999.²⁰⁶ Professor Chen Guangzhong, former Head of the Criminal Procedure Law drafting group, is Honorary Director of the PLRC.²⁰⁷ The PLRC is now divided into four sub-sections, the Criminal Procedural Law Section, the Civil Procedural Law Section, the Administrative Procedural Law Section, and the Evidence Law Section. The main tasks of the PLRC for one lay in the area of education. The PLRC offers LL.M. and LL.D. courses to Chinese law students but also provides short-term training courses on new developments in the area of procedural law for Chinese legal professionals as well as for government officials. Furthermore, the PLRC in its capacity as a think-tank takes part in legislative drafting and provides procedural law research and consultation to Chinese governmental legislative bodies. As such, PLRC staff took part in drafting and modifying several procedural laws of the PRC.²⁰⁸ Finally, the PLRC conducts advanced research in the area of procedural law in cooperation with academic counterparts in the PRC as well as abroad, organizes conferences on specific procedural law topics and invites foreign legal experts as lecturers or conference participants.

²⁰⁰ McCutcheon 2000a: 172.

²⁰¹ Cf. Art.33 and Art.34 Criminal Procedure Law (English text of the Criminal Procedure Law available at: <http://www.cecc.gov/pages/newLaws/criminalProcedureENG.php> [visited 20.08.2005])

²⁰² Of course, one has to bear in mind that many provisions of the Law improving the rights of the defendant as well as of his counsel are only insufficiently implemented due to entrenched police and prosecutorial practices. Cf., for example: CECC (May 2003). *Defense Lawyers Turned Defendants: Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China* (available at: <http://www.cecc.gov/pages/news/ZhangCriminalDef.pdf> [visited 20.08.2005]); CECC (February 2003). *The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg: The Law, the Courts, and the Debate on Legality*. (available at: <http://www.cecc.gov/pages/news/lobsang.pdf> [visited 20.08.2005])

²⁰³ For example, according to the 1996 Criminal Procedure Law, the pre-trial review of cases by the court no longer covers a review of the substance of the cases but only a review of whether the relevant formal criteria have been fulfilled (Art.150). Furthermore, the primary duty to produce evidence is shifted from the court to the parties and their lawyers (Art.157) (Chen, Albert H.Y. 2000: 68).

²⁰⁴ Chen, Albert H.Y. (2000): 66.

²⁰⁵ McCutcheon 2000a: 173.

²⁰⁶ ‘Brief Introduction to the Center’ (<http://www.procedurallaw.com.cn/col78/index.html?id=78%20> [visited 20.08.2005])

²⁰⁷ *ibid.*

²⁰⁸ For example, Criminal Procedure Law, Civil Procedure Law, Administrative Procedure Law, Law on Legislation, Law on Administrative Punishments, Law on Administrative Judicial Review, State Compensation Law, Bankruptcy Law, Arbitration Law, Notary Public Law, etc. (Information available at: <http://www.procedurallaw.com.cn/col78/index.html?id=78%20> [visited 20.08.2005])

In the same vein as the ALRG, the PLRC, too, has established cooperative ties with Chinese State legislative drafting organs, such as the NPC LAC and the SC OLA. Therefore, the PLRC is able to effectively infuse academic knowledge into the legislative process. Furthermore, since several members of the PLRC have received judicial training in the U.S. and since American and other foreign legal experts are invited as lecturers or as conference participants on a regular basis, the PLRC serves as an important channel for the migration of foreign legal concepts and norms into the Chinese legal system, too. This means, by providing funding for the inauguration of the Center in the first place, the FF also supported the build-up of an institutionalized professional network of Chinese and foreign legal experts which secures constant input of legal knowledge from different sources into the Chinese legislative drafting process as well as into the Chinese legal academic education and research process, thereby facilitating the migration of legal norms and concepts.

Last, but not least, the work of the two private partisan foundations – the International Republican Institute and the National Democratic Institute for International Affairs – in the area of legal reform in the PRC is to be described. However, since the author only disposes of limited information about these foundations' rule of law related work in the PRC, the subject will be treated only sketchily.

5. Private Partisan Organizations

5.1 International Republican Institute

The International Republican Institute (IRI), founded in 1983, is a non-profit organization funded mainly through the National Endowment for Democracy (NED) and the U.S. Agency for International Development (USAID). Furthermore, IRI receives grants and donations from individuals, corporations as well as from other foundations.²⁰⁹ Support for legal reforms in the PRC corresponds to IRI's overall goal to advance democracy, freedom, self-government and the rule of law worldwide.²¹⁰

Since 1994, the main focus of IRI activities in the PRC lies on supporting electoral reform at the grassroots (village) level. In the course of this program, IRI sponsors workshops and training seminars for grassroots election officials, conducts local governance training seminars and promotes women's political participation, particularly in rural areas.²¹¹

Whereas this program fits in the broader context of Good Governance, in the past IRI also supported some more specific rule of law and legal reform oriented programs in the PRC. For one, since 1993, IRI provided legislative drafting support to the NPC Financial and Economic Committee (*quanguo renmin daibiao dahui caizheng he jingji weiyuanhui* – FEC) on several economic laws.²¹² Furthermore, IRI also supported legal reform efforts in the PRC by inaugurating a judicial training program in cooperation with the SPC and the NPC. This program aimed at improving the implementation and enforcement of new commercial laws by bringing together Chinese judges, members of the NPC drafting commissions and international com-

²⁰⁹ Information available at: <http://www.iri.org/faq.asp> (visited 20.08.2005)

²¹⁰ Information available at: <http://www.iri.org/history.asp> (visited 20.08.2005)

²¹¹ Information available at: <http://www.iri.org/countries.asp?id=1039578672> (visited 20.08.2005)

²¹² For example, anti-monopoly law, banking law, bankruptcy law, contract law, enterprise income tax law, foreign currency management law, futures law, government procurement law, guaranty law, inheritance law, legislation law, partnership law, personal income tax law, real estate law, securities law, sole proprietorship law, law on government transfer payments, and trust law.

mercial law experts and practitioners in order to discuss the meaning and adjudication of commercial legislation.

Finally, IRI also supported the development of the Chinese legal aid system. In the course of this program, Chinese legal aid experts were invited on study tours to get insights into foreign countries' legal aid systems. Furthermore, starting in 2002, IRI also provided direct support to legal aid centers in Anhui Province.²¹³

Interestingly, IRI ceased these projects so that today the emphasis is concentrated on electoral reform in the PRC. For one, IRI justifies the decision to abandon support for the NPC FEC and for legislative drafting by pointing out that the cooperation did not result in a development of the NPC towards a more professional and independent legislature as aspired. Contrariwise, as far as IRI's appraisal is concerned, the NPC still has to be regarded as a 'rubber-stamp' so that cooperation was no longer regarded as fruitful.²¹⁴ Furthermore, IRI in general refuses to work too closely with Chinese governmental organizations or institutions such as the NPC. This results from the widespread corruption amongst Chinese government officials which very often is a great obstacle to constructive cooperation. Therefore, IRI also phased out support for legal aid since cooperation in this area also requires close contacts with the Chinese Ministry of Justice.²¹⁵

Due to these developments, IRI programs today are concentrating on electoral reforms. Therefore, these programs fit more accurately in the broader category of the promotion of Good Governance and are of less significance for this analysis dealing with programs supporting legal and judicial reforms and rule of law in the PRC in a narrower sense.

5.2 National Democratic Institute for International Affairs

The National Democratic Institute for International Affairs (NDI) is another main grantee of the NED and works 'to strengthen and expand democracy worldwide.'²¹⁶ In the PRC, NDI mainly focuses on improving the legislative process, especially by strengthening mechanisms of citizen participation. NDI's principal partner is the Peking University Law School Center for the Study of Comparative Legislatures. The Center, which also receives grants from the FF, conducts research on legislative processes and citizen participation in government.²¹⁷

Since 1999, NDI has continuously provided the Center with materials on democratic legislative practices. These documents are compiled at the library of Peking University Law School and have been successively translated into Chinese in order to make them more broadly available.²¹⁸

Furthermore, starting in 2000, NDI so far also has conducted three seminars on comparative legislative processes and strengthening citizen participation in the legislative process in cooperation with the Center. The main focus of these seminars has been laid on the promotion of public legislative hearings.²¹⁹ Seminar participants included members of local People's Congresses, NPC LAC and SC OLA staff as well as current and former legislators from the U.S.

²¹³ Information available at: <http://www.iri.org/countries.asp?id=1039578672> (visited 20.08.2005)

²¹⁴ Interview 01/2004

²¹⁵ *ibid.*

²¹⁶ 'The Work of the National Democratic Institute' (<http://www.ndi.org/about/about.asp> [visited 20.08.2005])

²¹⁷ 'NDI Worldwide – Asia' (<http://www.ndi.org/worldwide/asia/asia.asp> [visited 20.08.2005])

²¹⁸ 'NDI Worldwide – Asia: China' (<http://www.ndi.org/ndi/worldwide/asia/china/china.asp> [visited 15.07.2005])

²¹⁹ *ibid.*

and the UK.²²⁰ In 2000 and 2001, NDI was awarded 209,666 US\$ and 209,778 US\$, respectively, from NED in support of this project.

Moreover, NDI also cooperates with the Administrative Law Institute of the Shanghai Municipal Office of Legal Affairs in this area. Together with the Institute, NDI so far has organized two seminars on the development of public legislative and administrative hearings.²²¹ In 2000, these activities, too, have been supported by the FF with 100,000 US\$.

By working on the improvement of the legislative process and the expansion of citizen participation, NDI covers an important niche in the overall Chinese legal reform process. These efforts are matched by the ABA China Environmental Governance Training Program described above which supported the promulgation of the Shenyang Municipality ‘Measures on Public Participation in Environmental Protection’. Thus, these programs mirror the conviction of American donors that it is not only important for the success of the Chinese legal reform process that there are sound legal rules which are implemented reliably. What is more, implementation can only be improved in the long run if those who are subordinate to the laws are involved in the creation of rules, too. Therefore, support for the legislative process and for the enhancement of citizen participation should gain stronger emphasis in Chinese-American as well as in western-Chinese legal cooperation programs more generally in the future.

6. Main characteristics of U.S.-PRC Legal Cooperation Measures

Based on the empirical evidence presented above as well as in Part II of the analysis,²²² this paper will now proceed by elaborating the main characteristics of American-Chinese legal cooperation initiatives.

6.1 Legal Cooperation Initiatives are Mainly Civil Society Rooted

American civil society supported organizations such as the large philanthropic Foundations (Asia Foundation, Ford Foundation), academic institutions and professional organizations look back at a long tradition of supporting legal reforms, rule of law and human rights in the PRC; in some cases, programs started coevally with the initiation of the Reform and Opening Policy in the PRC in 1978. These programs mainly relied on private financial resources, receiving no or only very limited governmental support for their work. Thus, the American government itself for a long period of time has not been involved financially or politically in American-Chinese legal cooperation. This means, moreover, that American private actors have been able to negotiate and implement legal cooperation programs with their Chinese partners without any significant political influence from the Government. Governmental institutions also interfered not with the choice of the Chinese partner institutions, meaning that American-Chinese legal cooperation in most cases constitutes a cooperation grown from the ‘bottom-up’. Thereby, many bilateral cooperation projects go back to prior contacts of former Chinese students or visiting scholars to the U.S. who, after their return to the PRC, used these contacts to initiate legal cooperation measures with their Chinese home institutions and the American institutions they once visited.

The American government only tried in 1997 to formalize and to centralize American-Chinese legal cooperation initiatives at the highest political level by agreeing on the ‘Cooperation in the Field of Law’ with the Chinese government.²²³ However, since U.S. Congress denied the appropriation of special funds for the cooperation initiative, no concrete measures

²²⁰ *ibid.*

²²¹ *ibid.*

²²² Schulte-Kulkmann/Heilmann 2005b

²²³ On the Bill Clinton-Jiang Zemin ‘Rule of Law Initiative’ see: Schulte-Kulkmann/Heilmann 2005b

could be implemented under this framework. However, this did not necessarily mean a failure of the initiative, since the agreement on the ‘Cooperation in the Field of Law’ provided for additional ‘political space’ in the PRC for American-Chinese legal cooperation measures. As a consequence, many private actors benefited from the conducive climate and initiated new legal cooperation programs with Chinese partners.

In 1999/2000, PNTR legislation for the first time allowed the direct use of American governmental funds for the support of legal cooperation measures in the PRC.²²⁴ However, the American government stuck to the scheme of supporting the implementation of legal cooperation measures mainly through private American actors. This means, the American government increased the amount of public financial resources appropriated to private legal cooperation initiatives but did not involve itself significantly with the organization and implementation of legal cooperation measures or the identification of Chinese partner organizations. This was left to the American private actors since these, for one, dispose of considerably more expertise than governmental institutions in identifying the special needs to be addressed by the cooperation programs as well as suitable Chinese partners. Moreover, abstinence of American governmental institutions, except for funding, from legal cooperation measures helps to decrease distrust on the side of the Chinese partners as well as on the Chinese government that the programs might serve as mere ‘transmission belts’ for American foreign policy interests. Particularly with regard to cooperation in sensitive and human rights related areas of the law such distrust can be reduced significantly by limiting the involvement of American governmental institutions to financing the respective projects,²²⁵ moreover, since U.S. governmental funds are seldom donated directly to projects but are instead distributed as grants via intermediate institutions such as, for example, the National Endowment for Democracy,²²⁶ the connection of financial support to the American government is further blurred and, hence, distrust can also be reduced.

Thus, given the tradition of civil society support for American-Chinese legal cooperation and the corresponding reluctance of the American government to directly implement legal cooperation measures, it becomes plausible that in the U.S. there does not exist any comprehensive governmental legal cooperation scheme with the PRC which could be compared, for example, with the ‘German-Chinese Rule of Law Dialogue’.²²⁷

6.2 Diversified Funding of Legal Cooperation Initiatives

As has been denoted in the foregoing paragraph, governmental funds are only of ancillary importance to the overall financing of American-Chinese legal cooperation. Only in 1999/2000 PNTR legislation made arrangements for the direct use of U.S. governmental funds in American-Chinese legal cooperation. Since then, public resources earmarked for supporting these activities increased rapidly, amounting to 39.756 million US\$ (approx. 29.934 million Euro).²²⁸

Moreover, large amounts of resources are spend by private American actors on legal cooperation programs with their Chinese partners. Since in the U.S. there does not exist any central institution responsible for distributing financial resources to legal cooperation programs, each actor, private or governmental, independently decides which projects are to be supported by any amount of funds. In most cases, private as well as governmental institutions request pro-

²²⁴ Cf. Schulte-Kulkmann/Heilmann 2005b

²²⁵ Woodman 2004: 36.

²²⁶ Cf. Schulte-Kulkmann/Heilmann 2005b

²²⁷ On the ‘German-Chinese Rule of Law Dialogue’ see: Schulte-Kulkmann 2005a; Schulte-Kulkmann 2005b

²²⁸ GAO 2004: 4.

ject proposals from American and/or Chinese organizations intending to implement legal cooperation projects. This, for one, results in a certain pressure of competition amongst grant applicants. Thus, actors intending to implement legal cooperation projects are forced to continually revise and improve their project schemes in order to present sound cooperation proposals which are closely tailored to the specific needs in the PRC legal reform process since only programs qualified in such a way get a chance to receive funding. As a consequence, program schemes in general prove highly innovative and the risk that projects, after a while, only offer easily implemented ‘standard’ measures which less and less fit the Chinese partners’ specific demands for advice can be limited.

Furthermore, American private and governmental grant making institutions do not concentrate their funds on a small number of grantees; instead, funds are passed to a great number of diverse grantees. This strategy answers to the fact that in the PRC innovative, high quality legal reform projects run mainly by Chinese NGOs and academic institutions are currently proliferating. For these projects to succeed, already relatively small amounts of resources suffice. Furthermore, by granting only limited sums at a time to Chinese projects, American organizations avoid that Chinese institutions only interested in generating funds apply for grants. Particularly large Chinese governmental institutions, such as Ministries which are ‘flooded’ by legal cooperation programs beyond their working capacity by foreign donors, after a while tend to regard these cooperation proposals only as ‘cash cows’ and lose interest in substantial legal cooperation.

Finally, small grants warrant that the Chinese government’s attention is drawn neither to the American private organizations’ or the American government’s funding activities nor to the concrete legal cooperation measures benefiting from the respective grants; as a result, the projects ‘remain under the radar’ which allows the implementing Chinese organizations more security and more space for their activities, particularly with regard to sensitive and human rights related areas of the law.²²⁹

6.3 Support for Institutional Reform and Legal Aid as Main Focus of Legal Cooperation Initiatives

According to the diversity of – mostly private – actors involved in American-Chinese legal cooperation, programs offered by these actors also feature a great variety of topics and measures.

Amongst these, legal cooperation in the area of commercial rule of law is important. The USCBC in particular supports projects concerned with the education of Chinese jurists and support for legislative drafting in the area of commercial law.

Furthermore, legal cooperation programs focus on administrative law, particularly on areas of the law relevant for the fulfillment of the WTO commitments of the PRC. Support is offered by the AF WTO legal Compliance Program and by the Yale CLC; USCBC grants are provided to these and other projects in this field.

However, legal cooperation in this area is not limited to improving only those aspects of Administrative law relevant for economic activities and the implementation of WTO commitments. Rather, programs also aim at strengthening administrative law rules as instruments for the protection of the legal rights and interests of the population. Therefore, improvement of Administrative Procedure Law and Administrative Litigation Law as well as public participa-

²²⁹ Interview 04/2004

tion processes are important areas of legal cooperation, too. Thus, projects aim at comprehensively supporting rule of law and human rights through administrative laws and regulations.

Labor law constitutes a third prominent focus of American-Chinese legal cooperation measures. In this area, projects provide support for drafting labor law rules and regulations conforming international labor law standards and offer training measures for Chinese government officials in order to improve the application and implementation of existent labor laws and regulations. Finally, support for legal aid organizations specializing in labor law and offering advice to (migrant and women) workers is a focal point, in particular of the programs offered or financed by the Department of Labor,²³⁰ NED,²³¹ USCBC, AF, and FF.

Moreover, support for reforms in the area of criminal and criminal procedure law is a major concern of nearly all American supported programs under analysis here. In this area, American governmental and private donors cooperate with central Chinese legislative institutions such as the NPC LAC as well as with influential think tanks, such as the CASS Institute of Law and academic research centers such as the PLCR at CUPL.²³² Moreover, individual Chinese legal scholars also participate in the cooperation measures; these experts, in turn, are themselves able to exert considerable influence on the legislative drafting process since their advice is frequently sought by central Chinese legislative drafting institutions.²³³ The advice offered by American supported programs in this area mainly aims at introducing more adversarial elements characteristic of trials in the American legal system into the Chinese criminal procedure law. Moreover, the expansion and effectuation of the rights of the defendant in the course of the trial and thus the support for basic human rights in this area is a major concern of the legal cooperation programs.

Besides support for legislative drafting, training measures for criminal defense lawyers, judges, prosecutors as well as for legal aid centers specializing in criminal legal aid also constitute important elements of American-Chinese legal cooperation programs in this area of the law. Training of judicial personnel involved with criminal proceedings aims at improving the observation of the legal rights of the accused and the defendant, too, and thus to ensure a trial as fair as possible under the given circumstances.

Besides the importance assigned by American-Chinese legal cooperation on certain areas of the law – such as Commercial Law, Administrative Law, Labor Law, and Criminal Law – American donors also support comprehensive legal reform efforts not limited to special areas of the law. Here, programs supporting judicial reform, judicial education, and legal aid figure most prominently.

Programs in the area of judicial reform are concerned mainly with increasing the independence of the Chinese judiciary and with improving the protection of the legal rights of citizens during judicial proceedings. In order to achieve this end, American supported or implemented programs try to familiarize Chinese jurists with the concepts of judicial independence, fairness of the trial, and the importance of the citizens' rights by staging moot courts. However, these moot courts not only aim at producing substantially and procedurally sound judicial decisions; what is more, participating Chinese jurists have to realize the importance of the role of the individual judge, prosecutor, and lawyer, respectively, in securing a fair trial and should thus start to adjust their understanding of the respective role models.

²³⁰ Cf. Schulte-Kulmann/Heilmann 2005b

²³¹ Cf. *ibid.*

²³² The activities of the PLRC at CUPL are described above, section 4.2.2

²³³ Cf. Potter 2001: 157, FN 7; Woodman 2004: 42.

Furthermore, support for the education of younger Chinese jurists is important to many American-Chinese legal cooperation programs. One of the most prominent programs has been the FF CLEEC program; in fact, this program can be regarded as a precursor to the many different legal education programs implemented cooperatively by American and Chinese universities until today, such as for example the Temple-Qinghua-CUPL LL.M. legal cooperation program described above.

Moreover, support for legal aid also constitutes an important element of American-Chinese legal cooperation. Many American donors cooperate with university based as well as with local governmental or NGO supported Chinese legal aid centers. Since legal aid is a relatively new phenomenon in the Chinese legal system, Chinese legal aid centers benefit considerably from American advice which can offer insights from a long tradition of legal aid in the American legal system. Furthermore, the financial support offered by American donors is also of great importance, since in most cases Chinese legal aid centers do not receive substantial governmental funds or private donations for their work.²³⁴ However, in large parts of the PRC, mainly in remote rural and ethnic minority regions, no other opportunities to receive judicial advice or representation are available to citizens;²³⁵ therefore, support for legal aid and for the proliferation of legal aid centers constitutes a substantial contribution to the improvement of the administration of justice in the PRC.

Finally, overall support for the improvement of the human rights situation in the PRC is to be regarded as a prominent aim of all American-Chinese legal cooperation programs under consideration. The different types of legal cooperation measures – support for legislative drafting and judicial reform, training of government officials and judicial personnel, judicial education as well as legal aid – are directed at not only immediately improving the conformity of Chinese legal rules and regulations with international standards, the implementation of such rules and regulations, the judicial system, or the access of the average citizen to legal counsel. This means, programs not only stress the ‘technical’ aspects of the law, but emphasize instead a more comprehensive approach, which is concerned with the direct impact of the measures in question on the human rights situation in general.

Explicitly relating the legal cooperation programs to the improvement of human rights in the PRC is indicative of a ‘thick’ theory of rule of law²³⁶ as a guideline for the American-Chinese legal cooperation programs. However, drawing a linkage between the improvement of the rule of law, on the one hand, and the improvement of human rights and, finally the establishment of a democratic political order, on the other hand, more often than not induces American-Chinese legal cooperation programs to following a ‘Trojan Horse’ strategy.

The American legal cooperation considers support for rule of law and human rights as two sides of the same medal. This view is rooted in a normative understanding of the concept of rule of law as it is characteristic for western liberal-democratic political systems. Therefore, in order to promote such an understanding, American supported or implemented legal cooperation measures more often than not have to adopt a ‘Trojan Horse’ strategy concentrating on a more ‘thin’ version of the concept of the rule of law in order to secure a viable basis for cooperation in the first place.²³⁷ In the course of the cooperation, emphasis then is more and more shifted to normative or ‘thick’ conceptions of rule of law.

²³⁴ Peerenboom 2002: 363.

²³⁵ *ibid.*: 362.

²³⁶ Peerenboom 2004: 2.

²³⁷ Peerenboom 2004: 8.

However, this strategy is likely to provoke mixed feelings on the Chinese side. On the one hand, Chinese legal experts mainly from the academic field are often quite open-minded about considering ‘thick’ conceptions of rule of law and human rights related questions during cooperation measures with their American counterparts.²³⁸ Since it is still not without problems and risk to discuss these problems more explicitly in the PRC, discussions about ‘rule of law’ are valued as a ‘cipher’ for exploring these politically more sensitive topics.

On the other hand, emphasizing ‘thick’ conceptions of rule of law leads to considerable mistrust towards American legal cooperation programs particularly on the side of the Chinese government and governmental institutions since these programs are perceived as ‘transmission belts’ for furthering American foreign policy interests.²³⁹ For this reason, it is often recommended to strictly separate substantial and normative aspects of legal cooperation in order to rebut the allegation of abusing a ‘thick’ concept of rule of law for furthering more comprehensive political reforms in the PRC.²⁴⁰ However, one has to remember that American supported and implemented legal cooperation programs have been able to deal with more sensitive areas of the law such as criminal law successfully for a long time. Such a continuity would not have been possible if there existed a profound mistrust of these American legal cooperation programs on the side of the Chinese governmental or private partners or if both sides were not consonant with the appropriateness of ‘thick’ rule of law conceptions to the Chinese legal reform process at least to a certain degree.

6.4 Prominence of Economic and Foreign Policy Interests

As far as the interests dominating American legal cooperation initiatives are concerned, economic as well as foreign policy interests figure most prominently.

With regard to economic interests, the U.S. values legal cooperation as an important instrument for the promotion of international legal standards, especially in the areas of WTO regulations, labor law and the protection of IPR. In these areas, legal cooperation aims at introducing such standards into the Chinese legal system and at improving their implementation. Since violation of international labor law standards, IPR and WTO regulations by the PRC or by Chinese corporations leads to unwarranted advantages in competition for these market actors, the U.S. government in support of national American businesses and their interests strives to prevent such violations by exerting influence on domestic Chinese legal rules and regulations as well as on their implementation. In the medium to long run, particularly the education of Chinese jurists in American (economic) law increases the influence of American law on the Chinese legal system and thereby facilitates the harmonization of Chinese laws and regulations with international legal standards (which in most cases mirror American legal examples²⁴¹). Likewise, American corporations entering the Chinese market benefit from a more reliable legal environment similar to their home jurisdiction.

The American business community indeed is well aware of these advantages of legal cooperation with the PRC. Therefore, American corporations are willing to donate large amounts of financial resources supporting grant schemes such as the USCLCF of the USCBC. Likewise, the Temple-Qinghua LL.M. legal cooperation program also benefits from massive financial support by American corporations.

²³⁸ *ibid.*: 9-10.

²³⁹ Woodman 2004: 36; Interview 11/2002

²⁴⁰ Peerenboom 2000.

²⁴¹ Cf. DeLisle 1999: 202

However, the involvement of the American business community with legal cooperation is not only motivated by economic interests. As has been mentioned above, American-Chinese legal cooperation to a large extent is supported by civil society based actors. Thus, relations between the U.S. and the PRC are not only measured in economic terms; instead, human rights and rule of law related questions which are of high importance to civil society actors are equally influential.²⁴² For this reason, American business corporations are getting under pressure not only to exploit their engagement in the PRC to maximize their profits; instead, the American public expects corporations to live up to their ‘corporate responsiveness’, i.e. to promote social and political progress in the PRC as well.²⁴³

American foreign policy, too, has to answer to popular demands concerning the improvement of the political and human rights situation in the PRC. Therefore, support for advancements in these areas through legal cooperation measures also corresponds to U.S. foreign policy interests.²⁴⁴ This is clearly illustrated, for example, by the high amounts of financial resources – amounting to more than 39 million US\$ by the end of 2004 – disbursed by the American government on legal cooperation programs with the PRC.²⁴⁵

However, American private as well as governmental actors are well aware that legal cooperation measures aiming – at least partially – at exporting the American model of rule of law and, finally, even democracy to the PRC²⁴⁶ are not in the interests of the Chinese government. Therefore, legal cooperation measures often follow a ‘Trojan Horse’ strategy. This means, legal cooperation projects commonly concentrate on more technical questions of the law and avoid any direct references to ‘rule of law’ and ‘human rights’ in official project presentations.²⁴⁷ However, this strategy effectively cloaks that questions of substantial rule of law and human rights nevertheless are of central importance to the daily work ‘on the ground’ of many legal cooperation measures. Moreover, American donors such as the FF, USCBC and NED generally prefer supporting a great diversity of Chinese grantees instead of concentrating resources on a few partners in the PRC. By dispersing their assistance widely, these donors thus avoid the suspicion of the central Chinese government.

In the same direction goes the strategy of the American government not to directly get involved with the organization and implementation of legal cooperation programs but instead to assign resources to private organizations such as NED which then realize the respective legal cooperation measures.

However, the above mentioned further foreign policy interests pursued with many American legal cooperation projects are not always effectively concealed. Therefore, the Chinese government as well as members of the Chinese legal community more often than not distrust American supported legal cooperation projects²⁴⁸ so that the pursuit of underlying foreign policy purposes may have a negative impact on the overall success of the legal cooperation measures.

²⁴² Cf. Thurston 2003.

²⁴³ Kapp 2003: 86.

²⁴⁴ DeLisle 1999: 184.

²⁴⁵ GAO 2004: 4.

²⁴⁶ Cf. Lubman 1999: 5; Woodman 2004: 42.

²⁴⁷ Woodman 2004: 35.

²⁴⁸ Interview 12/2002; cf. Woodman 2004: 36.

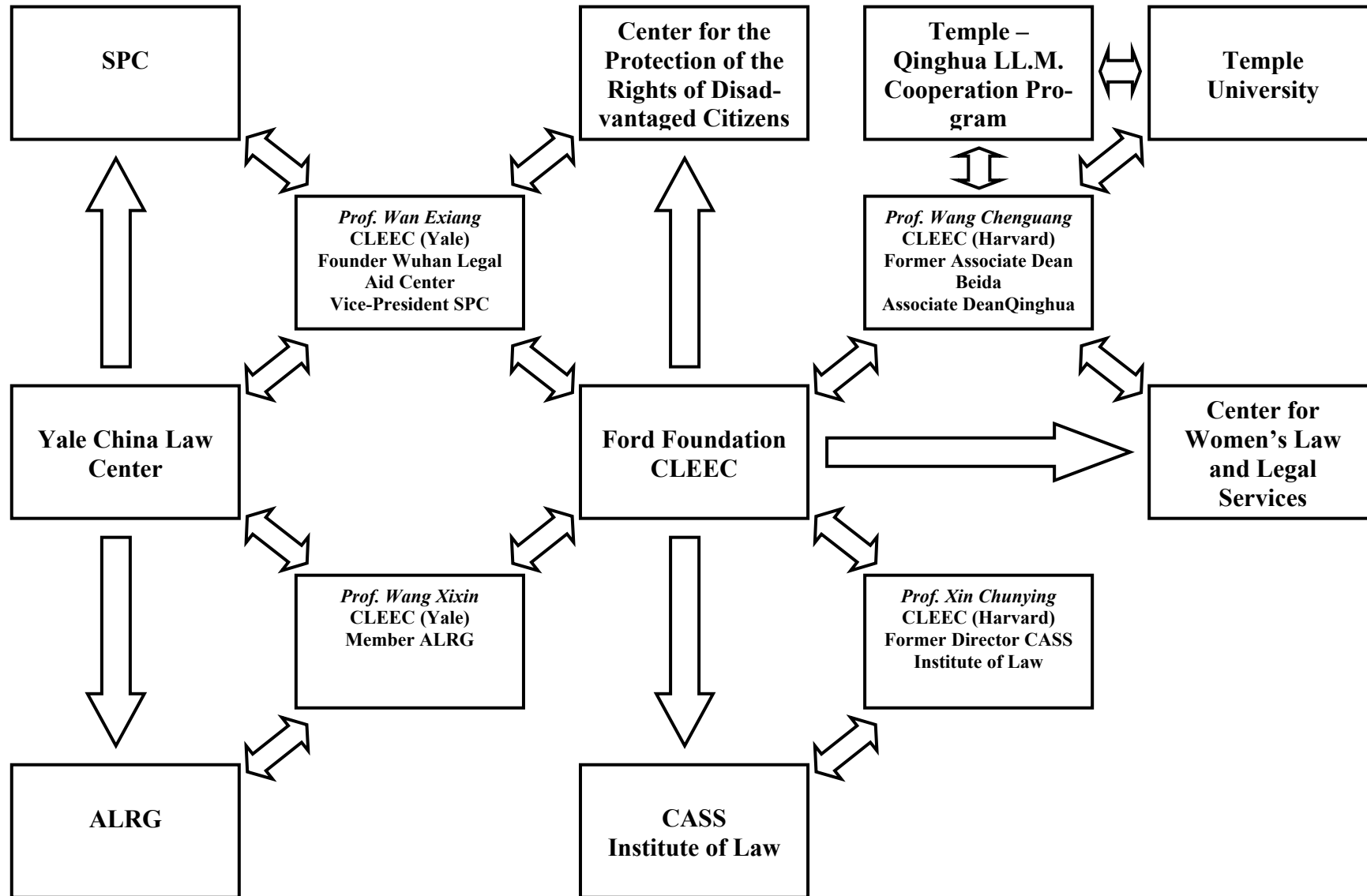
6.5 High Potential for the Development of Professional Networks

As far as the development of professional networks amongst American and Chinese legal experts is considered, some indications for the existence of such networks can be mentioned. Most importantly, more and more Chinese jurists share an educational background with their American counterparts. As has been described above, in the early 1980s the CLEEC program of the FF provided a considerable number of Chinese jurists with the opportunity to conduct graduate studies of American law in the U.S. Until today, the education of Chinese jurists and students in American law and the U.S. legal system constitutes an important component of many of the legal cooperation programs described above. In many cases, the personal and institutional relationships established by these Chinese jurists during their residence in the U.S. persist even after their return to the PRC and provide a foundation upon which further contacts between Chinese and American jurists as well as between American and Chinese institutions of legal education are built. These contacts are very helpful with the establishment of new American-Chinese academic legal cooperation measures which provide future generations of Chinese jurists and students with the opportunity to study law at U.S. law schools. Due to the high amounts of financial resources which are provided for programs such as the Temple University's LL.M. cooperation program, it is therefore very likely that the number of Chinese jurists who receive an undergraduate or graduate education in American law will proliferate considerably in the years to come. This means, too, that the community of American and Chinese legal experts who share the same legal background and who are thus to be considered as part of a professional network will also grow.

Figure 1 provides an overview Chinese jurists trained in the U.S. with support of the CLEEC program²⁴⁹ who now occupy or have occupied important positions in the Chinese legal system.

²⁴⁹ An overview of prominent CLEEC alumni is provided above, section 4.2.2

Figure 1: Networks between Chinese and American Legal Professionals as well as between Chinese and American Legal Institutions



6.6 Potential Impact of American-Chinese legal Cooperation Measures on the Migration of Legal Norms and Concepts

The expansion of the community of Chinese jurists trained in American law is also important for the migration of American legal norms of concepts into the Chinese legal system.

Due to their education in the U.S., many Chinese jurists entered into high and influential positions with Chinese legislative and governmental institutions or such as the ALRG, NPC LAC or with national ‘think tanks’ such as CASS. Therefore, these Chinese can be considered important channels which facilitate the migration of American legal norms and concepts into the Chinese legal system.

Some indications can be mentioned in order to illustrate the potential impact of American-Chinese legal cooperation and American trained Chinese jurists in particular on the migration of American legal norms and concepts into the Chinese legal system.

The development of the Chinese legal aid system constitutes the first example. Legal aid and practical legal education is one particularity of the American legal system and also constitutes an important element of many American-Chinese legal cooperation programs, for example the programs of the FF and the AF. Since American donors have supported Chinese universities with the establishment of clinical legal education programs and legal aid clinics, very often with the help of American trained Chinese jurists such as Prof. Wan Exiang, it seems to be reasonable to suggest that the legal aid system which exists in the PRC today is clearly modelled after the American exemplar and can therefore be considered as an event of the migration of a legal institution from the American into the Chinese legal system.

Cooperation in the area of criminal law also constitutes a focal point of many American-Chinese legal cooperation programs. In the course of such programs, Chinese legal experts working in this field have received training and support by American donors. For example, scholarly influence of this kind can now be observed with respect to the Chinese Criminal Law and Criminal Procedure Law revised in 1996. In this case, the FF supported a group of ‘reform-minded’ law professors, headed by former CUPL President Chen Guangzhong, who had been mandated by the NPC LAC with drafting the new Criminal Procedure Law (enacted in 1996).²⁵⁰ For one, the new Criminal Procedure Law now includes provisions which strengthen the rights of the defendant, for example the right to seek counsel or the right to be provided with an assigned counsel in case of need.²⁵¹ This mirrors a certain influence of western conceptions of fair trial on the Criminal Procedure Law as enshrined in the concept of the rule of law. Furthermore, the Criminal Procedure Law now contains several provisions which make the trial more adversarial in nature²⁵² which constitutes a ‘clear sign of common law influence.’²⁵³

The two examples mentioned above at least hint at the possibility that the migration of American legal norms and concepts into the Chinese legal system is advanced by American-Chinese legal cooperation measures and the development of professional networks between American and Chinese jurists in the course of these cooperation measures.

²⁵⁰ McCutcheon 2000a: 172.

²⁵¹ Cf. Art.33 and Art.34 Criminal Procedure Law (English text of the Criminal Procedure Law available at: <http://www.cecc.gov/pages/newLaws/criminalProcedureENG.php> [visited 20.08.2005])

²⁵² For example, according to the 1996 Criminal Procedure Law, the pre-trial review of cases by the court no longer covers a review of the substance of the cases but only a review of whether the relevant formal criteria have been fulfilled (Art.150). Furthermore, the primary duty to produce evidence is shifted from the court to the parties and their lawyers (Art.157) (Chen, Albert H.Y. 2000: 68).

²⁵³ Chen, Albert H.Y. (2000): 66.

7. Conclusion

In order to reach a final conclusion, it seems necessary to emphasize the following points. For one, it has been stated in Part I of the analysis²⁵⁴ that general foreign policy interests are mirrored by and have influence on legal cooperation measures. As far as U.S. foreign policy *vis-à-vis* the PRC is considered, in the economic realm concerns regarding the promotion, implementation and protection of international trade regime rules as well as American national economic interests rank prominently. Accordingly, legal cooperation measures with the PRC focus on the fields of WTO-related administrative law, economic law, IPR protection and labor law.

However, secondly, American legal cooperation with the PRC is not to be considered as one-sidedly driven by economic considerations.²⁵⁵ Support for the protection of human rights as well as for further political reforms also constitutes an important focus of all legal cooperation programs under consideration. This bias, on the one hand, answers to the desire of the growing community of reform-minded Chinese legal scholars who are to a high degree interested in exchanging views on legal questions with political connotations with their American counterparts. However, on the other hand, focusing on sensitive human rights and political reform related questions also renders American implemented or financially supported legal cooperation programs vulnerable to the Chinese central government's control. Therefore, in order to diffuse suspicion and possibly restrictions to the work of the programs, many American legal cooperation programs follow a 'Trojan Horse' strategy. Whereas this strategy is meant by American organizations to secure 'political space' for cooperation measures by evidently concentrating on non-political, non-sensitive technical legal questions, commentators from the outside, not least other western providers of legal cooperation programs tend to interpret the 'Trojan Horse' strategy as a means to impose American norms and values compulsorily on the Chinese legal system. Therefore, American legal cooperation measures are also vulnerable to criticisms originating in the western donor community.

Nevertheless, American legal cooperation with the PRC seems to be highly successful in at least three regards. Firstly, American implementing and grant making institutions succeed in realizing their project plans even if these focus on sensitive political and human rights related topics. This indicates that today there indeed exists 'political space' in the PRC as well as a community of Chinese legal scholars interested in working on these questions. Since in many cases American donors are the only ones making use of this 'space', however, this results, secondly, in some areas of Chinese law dominated almost exclusively by the influence of American legal models. This holds true, for example, in the areas of legal aid as well as of criminal law. Since American legal cooperation focuses strongly on the education of younger generations of Chinese jurists, American legal cooperation measures also are, thirdly, successfully supporting the development of professional networks between these Chinese legal experts and their American counterparts. These professional networks, in turn, are supportive of the migration of legal norms and concepts originating in the U.S. legal system into Chinese law.

Other foreign donors, for example German governmental and private legal organizations, are only beginning to realize the possibility to cooperate with Chinese partners on non-technical legal questions beyond economic areas of the law, on the one hand, and the importance of the education of younger Chinese jurists in German law and therefore the influence to be gained from German-Chinese professional networks on the export of legal norms and concepts, on the other hand. Given the high amount of funds which are used by American governmental

²⁵⁴ Schulte-Kulmann/Heilmann 2005a

²⁵⁵ In this aspect there is a significant difference between American and German legal cooperation with the PRC since German-Chinese legal cooperation programs, particularly governmental programs, focus almost exclusively on economic aspects of legal cooperation (cf. Schulte-Kulmann 2005a).

and private donors to support legal cooperation with the PRC, it is therefore to be expected that the influence of the American legal system as a 'leading' one will also be brought to bear upon the Chinese legal system. Given the already mentioned concern of American legal cooperation measures with political and human rights related aspects of the law, this will be, in the author's view, not be to the PRC legal system's disadvantage.

Appendices

Appendix I: Current Projects of the China Law Centre – Yale Law School²⁵⁶

Area	Focus	Chinese Partner	Project Description
Judicial Reform	<i>Institutional Strengthening</i>	Supreme People's Court, National Judges College	Cooperation with the SPC and the NJC on reforming the structure of the Chinese judiciary in order to further more judicial professionalism and independence as well as to reign in local protectionism and external interference with the work of the judiciary.
		Shanghai courts	Cooperation in the area of civil litigation reform, especially with regard to expansion of pretrial process, use of alternative dispute resolution mechanisms under the supervision of the court, establishment of simplified processes, improvement of appellate review
		Chinese legal academics and legal experts	Development of proposals for the abolition or thorough reform of the 'reeducation through labor' system
		Institute of Law of the Chinese Academy of Social Sciences	Development of policy recommendations on judicial structure, judicial independence, judicial review, the relationship between the media and the courts to be submitted to leading government officials
		Chinese legal scholars	Exploration of possible short-term and long-term mechanisms for the development of a constitutional review system
	<i>Support for Legislative Drafting</i>	Legislative Affairs Commission of the NPC Standing Committee (LAC)	Support for drafting a criminal evidence law, addressing problems such as the collection and use of evidence in criminal cases; the suspect's 'right to silence' during interrogation through police forces; ways for courts to handle illegally-seized evidence; expanding the use of witnesses during trials; introducing a more adversarial style into the Chinese criminal trials, with greater roles for defense counsel and new role for judges
		China University of Politics and Law (Zhengda)	Project paralleling the cooperation with LAC to support the drafting of a criminal evidence law; development of a 'scholars' draft' of the criminal evidence law as well as an academic publication on criminal evidence law
		NPC LAC	Support for the process of drafting a tort law
	Administrative Law and Regulatory Reform	<i>Institutional Strengthening</i>	State Council, non-governmental actors
Shanghai Municipal Government, Shanghai People's Congress, Chinese legal experts			Support for the development of a new approach to professional and business associations with the aim to establish organizations which act more as independent, self-funded, and self-regulated interest groups than extensions of the government bureaucracy

²⁵⁶ This overview is based on information available at 'The China Law Centre – Yale Law School'; available at: <http://chinalaw.law.yale.edu/html/current.htm> (visited 20.07.2005)

	<i>Support for Legislative Drafting</i>	State Council Office of Legislative Affairs (OLA), NPC LAC	Support for the drafting of an Administrative Licensing Law
		National School of Administration, Zhengda, Chinese academics and government officials	Exploration of possibilities to strengthen the Chinese Administrative Litigation Law
		OLA	Support for the development of procedural rules for public hearings and other forms of public participation in administrative rulemaking
		Chinese government officials and legal experts (ALRG)	Support for the drafting of an Administrative Procedure Law
		NPC LAC, Chinese legal experts	Support for the revision of the Company Law
Legal Education	<i>Institutional Strengthening</i>	Diverse Chinese law schools	Support for the development of clinical legal education programs

Appendix II: U.S.-China Legal Cooperation Fund Grants 1999 to 2004²⁵⁷

Year	Project Description
1999 (funds total: US\$ 131,400)	Support for a comparative study analyzing human rights protection and the administration of justice in the PRC, Taiwan and Hong Kong
	Support for improving administrative procedures and practices in the PRC
	Support for the preparation of an English-Chinese Dictionary of Anglo-American legal concepts and terms
	Support for the production of Internet-based seminars about the U.S. legal system for Chinese judges, lawyers and law students
	Support for legal aid
	Support for the improvement of the teaching of business law and securities law
2000 (funds total: US\$ 151,550)	Support for the compilation of a handbook for village elections
	Support for the training of Chinese administrators, regulators and lawyers in the application of WTO related legal rules
	Support for the development of an improved code of legal ethics for Chinese lawyers
	Support for a study of the rule of law, constitutionalism, and judicial independence
	Support for a study of the legal impact of China's accession to the WTO on the PRC and on the U.S.
	Support for the drafting of a codification system for Chinese Laws to be used by lawyers as well as non-legal professionals
	Assistance to the conduction of a study of U.S. securities law by Chinese securities regulators and Chinese law students
2001 (funds total: 127,000)	Support for administrative law reforms essential for China's compliance with WTO requirements
	Support for a workshop and research on freedom of information and open government
	Support for field research in two locales to identify impediments to full implementation of PRC labor laws
	Support for the assessment of legal aid needs in one Chinese province and for the composition of a criminal investigation and defense manual for Chinese legal aid attorneys
	Support for a series of interdisciplinary seminars on WTO standards, structure and procedures, with special emphasis on rule of law and conflict resolution in the WTO context
	Support for the training of legal aid providers for women, especially in the area of domestic violence
	Support for the development of an Internet-based course on WTO related issues for Chinese provincial and local officials and enterprise managers
	Support for an international symposium for Chinese policy makers and legislators on rural land reforms in the PRC
	Support for the development of a cooperative teaching program on alternate labor dispute resolution mechanisms
2002 (funds total: US\$ 142,500)	Analysis of the PRC Government Procurement Law in relation to other Chinese laws regulating government behavior to help prevent abuses by government purchasing agents
	Support for a legal training seminar for Chinese judges on intellectual property rights protection
	Support for a series of short-term intensive courses on U.S. corporate and securities laws at a Chinese law school

²⁵⁷ Information available at: <http://www.uschinalegalcoop.org/prior.html> (visited 04.04.2005)

	Support for a training seminar on the implementation of the PRC Rural Land Contracting Law
	Support for a series of seminars on labor law designed to bring U.S. and Chinese labor law experts into direct contact
	Support for a program teaching the basic WTO law and dispute resolution processes to 25 Chinese judges
	Support for legal aid workshops for women in four regions of china, focusing on labor rights of women
	Support for the creation of a non-profit China information technology web site
2003 (funds total: US\$ 120,000)	Inauguration of a journal of American law for Chinese readers
	Support for enhanced accessibility of legal services to the ethnic minority population of Xinjiang province
	Production of a manual to be used with an English-Chinese translation software program for international trade law legal terms
	Support for summer internships at U.S. legal aid clinics for Chinese trainees; special emphasis is laid on the representation of disadvantaged persons
	Support for one conference in a series focusing on East Asian nations' experience in conducting judicial reform and strengthening judicial independence
	Support for an American instructor in the area of legal aid and clinical legal education
	Support for a workshop and for the production of resource materials in the area of enforcing redevelopment-related property rights
	Support for the establishment of a commercial dispute resolution facility
	Support for the organization of a conference on constitutional reform
	Support for the Chinese National Rounds of the 2004 Jessup International Law Moot Court Competition
	Support for comparative studies of the American and the Chinese legal citation systems in order to develop a uniform standard for the PRC in the long run
	Support for a patent law training workshop at a Chinese university
2004 (funds total: 137,000)	Support for the revision of the PRC Code of Civil Procedure
	Support for the establishment of an American-Chinese labor law exchange network
	Support for a center for public participation processes
	Support for the conduction of a survey-based assessment of the performance of Chinese courts in commercial litigation
	Support for the conduction of a four-region comparison of labor regulations and standards
	Support for intensive training to two Shanghai judges on international commercial law and judicial administration in a US law school environment
	Continuing support for a training program for Chinese professionals in alternative labor dispute resolution
	Support for the Chinese National Rounds of the 2005 Jessup International Law Moot Court Competition
	Support for conducting a study to develop the most effective strategies to address the improvement of victim rights in China
	Support for conducting three conferences (Kunming, Shanghai, and Beijing) concerned with the development of health law as an academic discipline/professional specialty in China
	Support for conducting a Beijing conference to discuss and adopt a uniform legal citation system for China
	Support for conducting a study of the current state of consumer protection in China, to include a comparison of consumer protections in the US and China
	Support for the development of a model program to promote civil rights law and practice in China
	Support for conducting a three-day conference in China on the Amendment of the State Compensation Law

Appendix III: Grants awarded by the Asia Foundation 2003 to 2004^{258*}

Year	Area	Chinese Partner	Project Description
2003	Administrative Law and WTO Compliance	State Council Legislative Affairs Office	Partial support for a two-week traveling program on WTO legal compliance and administrative law in selected U.S. cities for two groups of provincial and central government legislative affairs officials; partial support for the participation of 40 provincial and central level legislative affairs officials and American local trade and legal experts in a workshop in Hong Kong on WTO compliance issues
		National School of Administration	Support for a three-day conference in Beijing to review and discuss the PRC draft Administrative Procedure Act with 30 Chinese participants
		Peking University School of Law	Support for the translation of the draft of the PRC Administrative Procedure Act and the comments on that law provided by Chinese administrative law experts
		Central and provincial Offices of Legal Affairs	<i>WTO Phase II Legal Compliance Program</i> Support for a 15-day study tour of observation and consultation on WTO legal compliance and administrative law to the U.S., led by Professor Stanley Lubman, for two groups of provincial and central level legal affairs officials
		State Council Office of Legislative Affairs	<i>WTO Phase II Legal Compliance Program – Hong Kong</i> Support for two Legislative Affairs Office to make presentations and consult with members of the Hong Kong business community on WTO legal compliance issues
		National Judges College, Beijing	Support for a United States Circuit Judge to attend meetings and make presentations on administrative law, court administration, and judicial training topics
		Local Offices of Legal Affairs	<i>WTO Phase III Legal Compliance Program</i> Support for a workshop in Hong Kong, assisted by Professor Stanley Lubman, to enable local legislative affairs officials to meet WTO obligations within their jurisdictions after the completion of Phase I and II programs
		State Council Office of Legislative Affairs	Support for the SC OLA Vice Minister to join the opening plenary session and attend part of the workshop on China's Legal System and Mechanisms to ensure WTO compliance
	Legal Aid	Inner Mongolia Autonomous Region Legal Aid Center	Support for expanded legal aid development and operations in the region
		China University of Political Science and Law	Support for criminal law legal aid and legal education activities
		Nanjing University School of Law Legal Aid Center	Support for improving the quality of legal aid services provided by the Center in Anhui and Jiangsu provinces
		Shanxi Provincial Legal Aid Center	Support for the development of legal aid and for the provision of legal aid services in prefectures, counties, and districts in Shanxi Province

²⁵⁸ Information available at: http://www.asiafoundation.org/Locations/china_projects.html (visited 07.07.2005)

* Information on grants awarded by the AF in previous years is not available to the author

		Sichuan University School of Law Legal Aid Center	Support for the improvement of legal aid services provided by the center in the areas of constitutional law and labor law
		Xinjiang Uighur Autonomous Region Legal Aid Center	Support for a legal aid staff development project in Xinjiang, including: translation into Uighur, publication, and distribution of a legal aid handbook; study tours of legal aid centers in other Chinese provinces; two five-day training courses for about 100 prefecture, county, and city legal aid center directors in Xinjiang
		Yunnan Provincial Legal Aid Center	Support for legal aid development and operations in Yunnan Province
		Zhengzhou University School of Law (Henan Province)	Support for the Law School legal aid program entitled 'Citizens Suing the Government' which helps citizens to protect their legal rights and interests and also facilitates the legal education of the participating law students who intend to specialize in constitutional and administrative law
		Guangdong Women's Federation, Women's Rights Department	Support for the fourth phase of a legal aid and education project to help migrant women workers and women workers with economic problems
2004	Administrative Law and WTO Compliance	East China University of Science and Technology Shanghai	Support for a two-day Patent Law Training Workshop at the East China University of Science and Technology in Shanghai, which aims at enhancing the awareness of patent rights for inventions and at facilitating the discussion of ways to respect intellectual property rights
		National School of Administration	Support for a three-day conference in San Francisco enabling 12 Chinese legal scholars and officials to consider China's draft Administrative Procedures Law with six American administrative law specialists
		State Council Office of Legal Affairs, Local Offices of Legal Affairs	Continued support for China law program consultancy and advisory services in cooperation with Prof. Stanley Lubman; support for consultation and a trip to Beijing during which key law development issues and areas of program opportunity related to promoting access to justice and China's rule of law are to be identified
	Legal Aid	China Society Press	Support for the publication of the third six-volume series of legal knowledge handbooks and manuals for village committee leaders and farmers
		CASS	Support for a two-part set of pilot projects that provide practical policy suggestions to the central government, and legal rights' protection knowledge to farmers
		Inner Mongolia Autonomous Region Legal Aid Center	Continued support for sustainable legal aid development and expanded operations in Inner Mongolia
		Yunnan Provincial Legal Aid Center	Continued support for expanded legal aid development and operations in Yunnan province; Preparation and planning of a training program for legal aid staff
		Zhengzhou University School of Law (Henan Province)	Continuation and expansion of the administration legal aid service and public education program entitled 'Citizens Suing the Government'

		U.S.-China Labor Law Co-operation Project	Support for a series of pilot projects which in cooperation with the Anhui Labor and Social Security Bureau aim at increasing migrant workers' legal awareness of labor law; Support for the project coordinator to implement and manage all project activities; Baseline survey and needs assessment of labor law awareness and education in Anhui and Yunnan; Baseline survey and needs assessment of labor law awareness and education in Tianjin
		Yunnan Labor and Social Security Legal Counseling and Service Center, Yunnan Labor and Social Security Bureau	Support for a series of pilot activities to increase migrant workers' legal awareness of labor law and improve and expand labor legal services
		Guangdong Women's Federation, Women's Rights Department	Continued support for the fifth phase of a legal aid and education project to benefit migrant women workers in Guangdong
		Sun Yat-sen University, Research Institute for Guangdong Development	Support for the improvement of the quality and expansion of legal aid services to migrant women factory workers

**Appendix IV: Selected Summary of Major Grants of the Ford Foundation Beijing Office for Development of the Chinese Legal System
1995 to 2005²⁵⁹**

Year	Focus*	Grantee	Grant Amount	Project Description
1995 (funds total: US\$ 159,500)	<i>Law-in-action</i>	Qianxi Women's Federation	US\$ 35,000	Support for China's first rural legal services center for women, including a project to encourage local women to run for office in village elections and to bring attention to gender aspects of the village self-governance system
		Wuhan University	US\$ 37,000	Support for the legal aid and clinical legal education program of the Center for the Protection of the Rights of Disadvantaged Citizens
	<i>Judicial Reform</i>	South Central University of Political Science and Law	US\$ 87,500	Support for the establishment of an experimental training program for basic and intermediate-level judges in Hubei Province; including training on selected areas of substantive law, on the American system of judicial review of administrative decisions, on the concept of professionalism in the judiciary, on developing skills such as legal interpretation, reasoning and opinion writing
1996 (funds total: US\$ 251,000)	<i>Law-in-action</i>	Qianxi Women's Federation	US\$ 75,000	Continued support for China's first rural legal services center for women
	<i>Judicial Reform</i>	South Central University of Political Science and Law	US\$ 111,000	Continued support for the establishment of an experimental training program for basic and intermediate-level judges in Hubei Province
		China University of Political Science and Law	US\$ 65,000	Support for fieldwork and research on trial procedure reforms, especially civil procedure reforms
1997 (funds total: US\$ 374,000)	<i>Law-in-action</i>	China University of Political Science and Law	US\$ 100,000	Support for the work of the Center for Criminal Law and Justice (CCLJ). Support covers the continuation of the CCLJ's criminal justice program (including a study of the implementation of revisions to the Criminal Procedure Law, and studies on ratification and implementation of the International Covenant on Civil and Political Rights), the CCLJ's criminal defense legal aid clinic, and a project on criminal evidence law reform
		Peking University School of Law	US\$ 72,000	Support for the Center for Women's Law and Legal Services; support covers resources for recruiting and developing a high-caliber staff, and for increasing the public interest aspect of the Center's work by focusing on cases of major legal and social significance
		Qianxi Women's Federation	US\$ 83,000	Continued support for China's first rural legal services center for women
		Wuhan University	US\$ 47,000	Continued support for the legal aid and clinical legal education program of the Center for the Protection of the Rights of Disadvantaged Citizens

²⁵⁹ Information on grants awarded from 1995 to 2001 was provided directly by the FF Beijing Office; information on file with the author

* Author's classification

	<i>Judicial Reform</i>	Peking University School of Law	US\$ 45,000	Support for the Center of Judicial Studies to conduct a comprehensive analysis on judicial reform and to conduct applied research on the historical evolution of the Hankou District Court and the Qingdao Intermediate Court
1998 (funds total US\$ 282,000)	<i>Law-in-action</i>	China University of Political Science and Law	US\$ 70,000	Continued support for the work of the Center for Criminal Law and Justice (CCLJ)
		Peking University School of Law	US\$ 97,000	Continued support for the Center for Women's Law and Legal Services
		Qianxi Women's Federation	US\$ 75,000	Continued support for China's first rural legal services center for women
		Wuhan University	US\$ 40,000	Continued support for the Center for the Protection of the Rights of Disadvantaged Citizens
1999 (funds total US\$ 891,700)	<i>Law-in-action</i>	American Bar Association	US\$ 45,000	Support for a US-China conference on legal aid (<i>ABA China Legal Aid Project</i>)
		China University of Political Science and Law	US\$ 190,000	Continued support for the work of the Center for Criminal Law and Justice (CCLJ)
		China University of Political Science and Law	US\$ 80,000	Support for the start-up of China's first public interest environmental law center – the Center for Environmental Law Research and Legal Services. The work of the Center aims at improving the protection of the environment by using the law to impede and punish environmental abuses. Amongst the Center's activities are the provision of free legal counseling, litigation of selected, environmental law related cases, and applied research and development of policy suggestions
		Qianxi Women's Federation	US\$ 305,000	Continued support for China's first rural legal services center for women
		Wuhan University	US\$ 100,000	Continued support for the Center for the Protection of the Rights of Disadvantaged Citizens
	<i>Judicial Reform</i>	American Bar Association (US)	---	Support for the <i>ABA China Trial Demonstration Program</i>
		Federal Judicial Center (US)	US\$ 21,000	Support for the participation of two Chinese judges at the Visiting Foreign Judicial Fellows Program sponsored by the Federal Judicial Center. This program offers the participating Chinese judges the opportunity to conduct research at the Center for one to six month and to come into contact with American legal scholars and institutions
		Peking University School of Law	US\$ 60,000	Support for a research center on the Chinese NPC – the Peking University Center for the Study of Comparative Legislatures. The Center will conduct research on the NPC as well as on other foreign legislatures, train NPC staff and representatives, and publish research reports and translation series
		South Central University of Political Science and Law	US\$ 35,700	Continued support for the establishment of an experimental training program for basic and intermediate-level judges in Hubei Province

* Grant already included in Support for a US-China Conference on Legal Aid

		Supreme People's Court	US\$ 55,000	Support for the SPC Judicial Reform Working Group. The Group prepares a draft of a five-year proposal for reform of the judicial system to be submitted to the KPC leadership.
2000 (funds total US\$ 672,300)	<i>Law-in-action</i>	Ford Foundation	US\$ 313,600	Support for the 'Mini-Initiative on Clinical Legal Education and Legal Aid in China' which seeks to promote clinical legal education programs in Chinese universities and to expose greater numbers of Chinese law students to legal aid during their legal education; assistance to Chinese law professors in forming the Chinese Clinical Legal Education Network (CCLN) which meets regularly, convenes conferences, and maintains a website in order to promote clinical legal education in the PRC; support for the organization of exchanges between CCLN and foreign legal aid experts
		Shanghai Institute of Administrative Law	US\$ 100,000	Support for the Shanghai Legal Affairs Office's efforts to introduce administrative hearings in the PRC. The project aims especially at improving the implementation of hearings in the context of administrative agency sanctions and at expanding the use of hearings to other types of government action, for example drafting of legislation
	<i>Judicial Reform</i>	Chinese Academy of Social Sciences, Law Institute	US\$ 20,000	Support for a study examining basic issues of judicial independence
		Chinese Academy of Social Sciences, Law Institute	US\$ 81,000	Support for the newly established Center of Public Law which studies judicial reform within the context of international human rights norms
		Shanghai Judges' Association	US\$ 112,700	Support for a project examining advanced trial procedure issues, such as the use of panels of judges and laypersons to try cases; pre-trial procedures; detailed court rules of trial procedure; rules of evidence for criminal and civil trials. Support for studying German and American court systems and trial practices
		South Central University of Political Science and Law	US\$ 45,000	Continued support for the establishment of an experimental training program for basic and intermediate-level judges in Hubei Province
	2001 (funds total US\$ 1,245,480)	<i>Law-in-action</i>	China University of Political Science and Law	US\$ 170,000
Ford Foundation			US\$ 750,000	Continued support for the 'Mini-Initiative on Clinical Legal Education and Legal Aid in China' and for the Chinese Clinical Legal Education Network
Peking University School of Law			US\$ 80,000	Support for the establishment of a center for labor law research and legal aid to workers.
Research Center on Juvenile Legal Aid			US\$ 76,400	Support for establishing a resource center with legal materials on children's rights; for providing legal services to children; for establishing a network of private lawyers who will provide <i>pro bono</i> legal assistance to children; for developing materials that educate children and the public about the legal rights of children
<i>Judicial Reform</i>		China University of Political Science and Law	US\$ 79,400	Support for the development of an expert's draft of a national enforcement of judgments law by a group of civil procedure scholars at the Procedural Law Research Center

		South Central University of Political Science and Law	US\$ 89,680	Continued support for the establishment of an experimental training program for basic and intermediate-level judges in Hubei Province
2002²⁶⁰ (funds total: US\$ 1,297,790)	<i>Law-in-action</i>	All-China Women's Federation	US\$ 39,000	Support for a training program for lawyers litigating women's rights cases
		Northwestern Polytechnical University	US\$ 63,200	Support for legal research and other activities to strengthen the status and rights of women in the workplace
		Research Center on Juvenile Legal Aid	US\$ 85,000	Continued support for research, public interest litigation and other activities to advance and protect children's rights and interests
		The Maple Women's Psychological Counseling Center	US\$ 47,400	Support for the provision of legal and psychological services for women
		The Spangenberg Group (U.S.)	US\$ 52,500	Support for the provision of technical assistance to the All-China Women's Federation on training lawyers working on women's rights litigation
		Yunnan Xishuangbanna Prefecture Women and Children Psychological and Legal Consultation Service Center	US\$ 35,000	Support for the provision of legal and psychological counseling for women and children in a rural, minorities area of Yunnan Province; Support for the publication of the 'Xishuanbanna Social Work News' newsletter
		National Committee on United States-China Relations, Inc. (U.S.)	US\$ 99,300	Support for a study visit by Chinese justice officials to the U.S. to explore the role of clinical legal education in American legal education and in the provision of legal aid to the poor
		Wuhan University	US\$ 60,000	Continued support for the legal aid and clinical legal education program of the Center for the Protection of the Rights of Disadvantaged Citizens and for a 10th anniversary conference
	<i>Judicial Reform</i>	Beijing Bar Association	US\$ 80,000	Support for the implementation of programs which aim at strengthening the voice of China's criminal defense attorneys in the criminal procedure reform process
		Foundation for Criminal Justice (U.S.)	US\$ 12,800	Support for the development of networks and interaction between Chinese and American criminal defense attorneys
		Vera Institute of Justice, Inc. (U.S.)	US\$ 80,000	Support for a study tour by Chinese law professors to investigate the handling of minor crimes in the United States
		China University of Political Science and Law	US\$ 117,000	Support for administrative litigation research, legal representation and consultation
		Chinese Academy of Social Sciences	US\$ 70,400	Support for research on the implementation of administrative reconsideration legislation in China
National Democratic Institute for International Affairs (U.S.)		US\$ 11,400	Support for the Research Center for Contemporary China to design and conduct a mock legislative hearing to review potential legislation on HIV prevention and care	

²⁶⁰ Information available at:

http://www.fordfound.org/global/office/grants.cfm?link_category=&expand1=Peace+and+Social+Justice&expand2=Human+Rights&office=Beijing&grant_year=2002 (visited 20.08.2005)

		Peking University School of Law	US\$ 54,000	Support for the Center for Research on People's Congresses & Foreign Legislatures to study and develop legislative and electoral systems and to strengthen public participation in the law-making process
		American Bar Association Fund for Justice and Education (U.S.)	US\$ 42,790	Support for the ABA <i>Trial Demonstration Program</i> (demonstration trials held in Beijing to show how U.S. & German courts try a domestic violence case)
		South Central University of Economics and Law	US\$ 113,400	Support for a pilot program providing criminal procedure training for local police chiefs in Hubei province
		People's University of China	US\$ 54,000	Support for the implementation of a pilot sociology of law program
		Sichuan University	US\$ 39,500	Support for theoretical and applied research on the role of the Supreme People's Court
		Supreme People's Court	US\$ 96,000	Support for research on judicial personnel management issues, including the use of judges' assistants
		The University of Hong Kong	US\$ 21,000	Support for activities to assist Chinese legal theorists in developing more nuanced and culturally appropriate conceptions of rule of law
2003²⁶¹ (funds total: US\$ 2,027,070)	<i>Law-in-action</i>	All China Women's Federation	US\$ 121,000	Support for advocacy and training measures on using the newly enacted Rural Land Contract Law to protect the land tenure rights of Chinese women
		CASS	US\$ 220,300	Start-up support for a public law litigation center at the CASS Law Institute
		Beijing Child Legal Aid and Research Center	US\$ 170,000	Support for research and public interest litigation to strengthen the legal rights of children
		Northwestern Polytechnical University	US\$ 36,100	Support for legal research and other activities to strengthen the status and rights of women in the workplace
		Peking University School of Law	US\$ 200,000	Continued support for the Center for Women's Law Studies and Legal Services
		Qianxi Women's Federation, Hebei Province	US\$ 56,000	Continued support for legal services for rural women
		Research Center on Juvenile Legal Aid	US\$ 170,000	Continued support for research and public interest litigation to strengthen the legal rights of children
		The Maple Women's Psychological Counseling Center	US\$ 66,700	Support for legal services to women and for the legal component of the Center's pilot program of comprehensive intervention at the community level for family problems
		The Spangenberg Group (U.S.)	US\$ 60,700	Support for the development of a training course on international feminist legal theory at the CASS's new Center for Research in Gender and Law
		Wuhan Women's Federation	US\$ 30,000	Support for the continued development of the clinical legal education curriculum at the university's law school

²⁶¹ Information available at:

http://www.fordfound.org/global/office/grants.cfm?link_category=&expand1=Peace+and+Social+Justice&expand2=Human+Rights&office=Beijing&grant_year=2003 (visited 20.08.2005)

		China Law Society	US\$ 114,870	Support for the China Clinical Legal Educators' Committee to develop a clinical legal education program in the PRC
		East China University of Political Science and Law	US\$ 20,500	Support for the development of the clinical legal education curriculum
		Fudan University	US\$ 21,400	Support for the development of the clinical legal education curriculum
		Northwest University of Political Science and Law	US\$ 20,400	Support for the development of the clinical legal education curriculum
		People's University of China	US\$ 42,400	Start-up support for a center for labor law research and legal aid to workers
		Sichuan University	US\$ 21,100	Support for the development of the clinical legal education curriculum
		South Central University of Economics and Law	US\$ 30,400	Support for the development of the clinical legal education curriculum
		Qinghua University	US\$ 23,400	Support for the development of the clinical legal education curriculum
		Wuhan University	US\$ 22,300	Support for the development of the clinical legal education curriculum
		Yale China Association (U.S.)	US\$ 30,000	Support for clinical teaching fellowship for a young American lawyer at China's Northwest University of Politics and Law
		Yunnan University	US\$ 17,820	Support for the development of a pilot clinical legal education program
		Zhongshan University	US\$ 15,780	Support for the development of the clinical legal education curriculum
	<i>Judicial Reform</i>	CUPL	US\$ 80,000	Support for research on key issues of prosecutorial reform in China, including pre-trial discovery and prosecutorial supervision of the criminal investigatory process
		NPC Research Office of the General Office of the Standing Committee	US\$ 65,100	Support for comparative research on legislative systems and for studying Chinese and foreign best practices for increasing public participation in the lawmaking process
		National Prosecutor's College	US\$ 100,000	Support for the development of a standard training curriculum for senior Chinese prosecutors and for research on implementation of the unified legal professionals' entrance examination
		Ministry of Justice Institute of Crime Prevention	US\$ 25,000	Support for comparative research on prison management
		National Judges College	US\$ 32,600	Support for the research and publications of the Judicial Research Center
		CASS	US\$ 143,400	Support for research on legal reform and the construction of constitutional government in the PRC
		Shanghai Institute of Law and Economics	US\$ 39,600	Support for a conference on the relationship between economic development and legal reform in the PRC
2004²⁶² (funds total:	<i>Law-in-action</i>	China Legal Aid Foundation	US\$ 278,200	To establish a public interest law fellowship for recent law school graduates in China

²⁶² Information available at: http://www.fordfound.org/grants_db/view_grant_by_keyword.cfm?keyword=china (visited 02.07.2005)

US\$ 2,689,420)		NCUSCR (U.S.)	US\$ 65,050	To strengthen the capacity of Chinese legal aid centers through networking and overseas internship placement opportunities for China's leading legal aid lawyers
		Yunnan Xishuangbanna Prefecture Women and Children Psychological and Legal Consultation Service Center	US\$ 121,850	For legal and psychological counseling for women and children in arural, minorities area of Yunnan Province in southwest China and to publish the "Xishuangbanna Social Work News" newsletter
		Women's Studies Institute of China	US\$ 99,300	To strengthen gender-based analysis of legislation and the legislative process
		Northwest University of Politics and Law	US\$ 60,000	For interactive, skills-based, peer-led training of criminal defense lawyers from the five North-western provinces of China
		East China University of Politics and Law	US\$ 10,000	To develop a labor law clinic as part of its clinical legal education program
		CUPL	US\$ 190,000	Core support for the Center for Legal Assistance to Pollution Victims, a key Chinese environmental law litigation and research center
		China Law Society	US\$ 880,000	For the development of clinical legal education in key Chinese law schools and for networking, training and curriculum development to strengthen the clinical legal education movement
		The Trustees of Columbia University New York (U.S.)	US\$ 73,800	For the Public Interest Law Initiative to appoint a Public Interest Law Fellow from China and sponsor an internship program for leading Chinese public interest lawyers at U.S. legal aid centers
		Qinghua University	US\$ 63,500	For the Constitutional Law and Civil Rights Center, an innovative collaboration between the university's law school and the Beijing Bar Association, to strengthen protections for citizens' rights
		People's Procuratorate of Haidian District (Beijing)	US\$ 50,000	For research, training and interventions to develop the defense of battered women's syndrome in the Chinese criminal justice system
		Wuhan University Center for Protection for the Rights of Disadvantaged Citizens	US\$ 33,600	General support for legal services to protect the rights of women, the elderly, laborers and other vulnerable groups
		Beijing Dadao Administrative Law Legal Aid Center	US\$ 117,000	For administrative litigation research, legal representation and consultation
		The Spangenberg Group (U.S.)	US\$ 85,800	To help Chinese researchers, activists and lawyers develop tools for gender-based analysis and advocacy strategies for women
		The Trustees of Columbia University of New York (U.S.)	US\$ 70,900	To enable two Chinese public interest lawyers to serve as fellows of the university's Budapest Public Law Center and network with public interest lawyers from Eastern Europe and the United States
	<i>Judicial Reform</i>	Renmin University	US\$ 35,000	For the Institute of Labor Relations to conduct research and prepare a publication on labor relations, labor rights and policy in China

		South Central University of Economics and Law	US\$ 60,000	To develop and publish a set of textbooks for the training of provincial level judges throughout China
		CUPL	US\$ 33,400	Core support for the Center for Legal Assistance to Pollution Victims, a key Chinese environmental law litigation and research center
		Peking University School of Law	US\$ 40,610	For research on reforming re-education through labor and other forms of punishments for minor crimes
		Peking University School of Law	US\$ 29,700	Core support for the Center for Research on People's Congresses & Foreign Legislatures to study & develop legislative & electoral systems & strengthen public participation in the law-making process
		Fudan University	US\$ 39,000	For the School of Law to conduct research and pilot projects on the reform of the criminal investigation system
		Vera Institute of Justice, Inc. (U.S.)	US\$ 152,710	To host a study visit by Beijing defense lawyers, police, and other criminal justice experts to examine detained suspects' access to legal defense in the United States
		Vera Institute of Justice, Inc. (U.S.)	US\$ 100,000	To train and mentor Chinese criminal justice researchers in the methodology of designing and implementing criminal justice sector reform pilot projects
2005²⁶³ (funds total: US\$ 1,084,215)	<i>Law-in-action</i>	Beijing Child Legal Aid and Research Center	US\$ 170,000	General support for research and public interest litigation to strengthen the legal rights of children
		Sichuan University	US\$ 80,000	For the School of Law to strengthen judicial constitutional supervision mechanisms through litigation of individual test cases and convene symposia on the problems of constitutional litigation
		The Spangenberg Group (U.S.)	US\$ 40,250	For research and technical assistance to help Chinese lawyers & specialists develop tools & strategies for using the law to address gender inequality & for a regional conference on gender & the law
	<i>Judicial Reform</i>	CUPL	US\$ 232,655	Core support for the Center for Criminal Law and Justice to conduct empirical and policy-based research on criminal justice reform issues
		Peking University School of Law	US\$ 119,860	For the Center for Research on People's Congresses and Foreign Legislatures to study and develop legislative and electoral systems and strengthen public participation in the law-making process
		CUPL	US\$ 198,500	For the Procedural Law Research Center to conduct a pilot project on strengthening protections for defendants' rights during initial interrogations
		New York University (U.S.)	US\$ 146,150	For the School of Law to provide technical assistance to a research project on plea bargaining reform in China and convene a conference on comparative criminal justice reform in Russia and East Asia
		Peking University School of Law	US\$ 96,800	For field research, workshops and an international symposium on the prevention of torture and the reform of the Chinese judicial system

²⁶³ Information available at: http://www.fordfound.org/grants_db/view_grant_by_keyword.cfm?keyword=china (visited 02.07.2005)

Bibliography

A. Documents and Sources

‘A Legal Laoganbu Looks Back’ – Interview with Jerome Cohen.

In: *China Rights Forum*, Vol.11, No.2 (2003); 11-21.

Available at: <http://www.hrichina.org/fs/view/downloadables/pdf/downloadable-resources/jcohen.pdf> (visited 16.08.2005)

‘Clearing the Air: The Human Rights and Legal Dimensions of China’s Environmental Dilemma’ – Hearing before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (January 27, 2003): Statement of Brian Rohan, Associate Director American Bar Association/Asia Law Initiative

Washington, D.C.: U.S. Government Printing Office, 2003

Also available at:

<http://www.cecc.gov/pages/roundtables/012703/rohanStmt.php> (visited 20.07.2004)

Fact Sheet: Achievements of the U.S.-China Summit (Beijing Summit agreements build on October 1997 Summit), June 27, 1998

<http://canberra.usembassy.gov/hyper/WF980629/epf104.htm> (visited 02.06.2005)

‘Human Rights in China in the Context of the Rule of Law’ – Hearing before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (February 7, 2002): ‘The Accession to the World Trade Organization of the People’s Republic of China (PRC) and Related Rule-of Law Issues’. Prepared Statement of James V. Feinerman before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (Feb. 7, 2002). Washington, D.C.: U.S. Government Printing Office, 2002.

Also available at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:78790.pdf (visited 04.07.2005)

‘Promoting Rule of Law in China’ – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002): Statement of Robert Kapp, President, U.S.-China Business Council

Washington, D.C.: U.S. Government Printing Office, 2002

Also available at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:80531.pdf (visited: 04.03.2005)

‘Promoting Rule of Law in China’ – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002): Statement of William Sullivan, Director of Executive Education Programs, Maxwell School of Public Affairs, Syracuse University

Washington, D.C.: U.S. Government Printing Office, 2002

Also available at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:80531.pdf (visited: 04.03.2005)

‘Promoting Rule of Law in China’ – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002): Statement of Nancy Yuan, Director, Asia Foundation

Washington, D.C.: U.S. Government Printing Office, 2002

Also available at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:80531.pdf (visited: 04.03.2005)

'Promoting Rule of Law in China' – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002): Statement of Robert Reinstein, Dean, Temple University School of Law
Washington, D.C.: U.S. Government Printing Office, 2002
Also available at:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:80531.pdf
(visited: 04.03.2005)

'Promoting Rule of Law in China' – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002): Testimony of Robert J. Reinstein, Dean, Temple University Beasley School of Law before the Senate Appropriations Committee, Subcommittee on Foreign Operations (March 7, 2002). Washington, D.C.: U.S. Government Printing Office, 2002.
Also available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:80531.wais (visited 20.07.2005)

Testimony Before the 106th Congress: Statement of Rona Mears, Chair American Bar Association Section of International Law and Practice on behalf of the American Bar Association before the Senate Appropriations Subcommittee on Foreign Operations, Export Financing and Related Programs of the U.S. Senate on the subject of Foreign Assistance (May 1, 2000)
Available at: <http://www.abanet.org/poladv/testimony/forassistsen050100.html> (visited 20.07.2005)

Testimony Before the 106th Congress: Written Statement of Timothy L. Dickinson, Immediate-Past Chair, Section of International Law and Practice on behalf of the American Bar Association before the Committee on Appropriations Subcommittee on Foreign Operations, Export Financing and Related Programs of the U.S. Senate on the subject of Foreign Assistance Programs (April 30, 1999)
Available at: <http://www.abanet.org/poladv/testimony/fops4309.html> (visited 20.07.2005)

Testimony of Robert J. Reinstein, Dean, Temple University Beasley School of Law before the Senate Appropriations Committee, Subcommittee on Foreign Operations (March 7, 2002); imprinted at: 'Promoting Rule of Law in China' – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24, 2002)
Washington, D.C.: U.S. Government Printing Office, 2002
Also available at:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:80531.pdf
(visited: 04.03.2005)

United States General Accounting Office GAO (2004). *Foreign Assistance: U.S. Funding for Democracy Related Programs (China)*.
27.02.2004
GAO-04-445R
Washington, D.C.: GAO
Available at: <http://www.gao.gov/new.items/d04445r.pdf> (visited 12.07.2005)

B. Secondary Literature

ALFORD, William P. (2000). Exporting 'The Pursuit of Happiness.'
In: *Harvard Law Review*, Vol.113; 1677-1715.

CHEN, Albert H.Y. (2000). Socialist Law, Civil Law, Common Law, and the Classification of Contemporary Chinese Law.
In: OTTO, Jan Michiel/POLAK, Maurice V./CHEN, Jianfu/LI, Yuwen (eds.)(2000). *Law Making in the People's Republic of China*.
The Hague et al.: Kluwer Law International; 55-74.

CHEN, Jianfu (1999). *Chinese Law. Towards an Understanding of Chinese Law, Its Nature and Development*.
The Hague et al.: Kluwer Law International.

CHOATE, Allen C. (2000) . *Legal Aid in China*.
The Asia Foundation Working Paper No.12 (April 2000).

- CONNER, Alison W. (2003). The Comparative Law School of China.
In: HSU, C. Stephen (ed.)(2003). *Understanding China's Legal System. Essays in Honor of Jerome A. Cohen*.
New York: New York University Press; 210-273.
- DeLISLE, Jacques (1999). Lex Americana? United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond.
In: *University of Pennsylvania Journal of International Economic Law*, Vol.20, No.2; 179-308.
- GEWIRTZ, Paul (2003). The U.S.-China Rule of Law Initiative.
In: *William and Mary Bill of Rights Journal*, Vol.11; 603-621
Available at:
<http://chinalaw.law.yale.edu/The%20U.S.-China%20Rule%20of%20Law%20Initiative.pdf> (visited 01.06.2005)
- HEILMANN, Sebastian/SCHULTE-KULKMANN, Nicole/SHIH, Lea (2004). Die Farbe der Macht hat sich geändert. Kontroversen um die Verfassungsreform in der VR China.
China Analysis No.31 (February 2004)
http://www.chinapolitik.de/studien/china_analysis/no_31.pdf (visited 27.06.2005)
- HORNBERGER, Udo/SUND, Horst (2001). Repräsentative Deutsche Rechtsliteratur der Gegenwart.
In: *China-Report*, Nr. 35 (15. Juli 2001); 11-12.
- KAPP, Robert A. (2003). The Matter of Business.
In: McGIFFERT, Carola (ed.)(2003). *China in the American Political Imagination*.
Washington, D.C.: CSIS; 82-92.
- LEE, David C. (2000). Legal Reform in China. A Role for Nongovernmental Organizations.
In: *Yale Journal of International Law*, Vol.25, No.2; 363-434.
- LIEBMAN, Benjamin L. (1999). Legal Aid and Public Interest Law in China.
In: *Texas International Law Journal*, Vol. 34; 212-286.
- LUBMAN, Stanley (2003). The Study of Chinese Law in the United States. Reflections on the Past and Concerns about the Future.
In: *Washington University Global Studies Law Review*, Vol.2, No.1; 1-35.
Available at:
http://law.wustl.edu/Publications/WUGSLR/Issue%20Archive/Volume_2_1/Lubman_book_pages.pdf
(visited 20.08.2005)
- MATTEI, Ugo (1994). Why the Wind Changed. Intellectual Leadership in Western Law.
In: *The American Journal of Comparative Law*, Vol.42; 195-218.
- McCUTCHEON, Aubrey (2000a). Contributing to Legal Reform in China.
In: McClymont, Mary/Golub, Stephen (eds.)(2000). *Many Roads to Justice. The Law-related Work of Ford Foundation Grantees Around the World*.
New York: The Ford Foundation; 159-196.
- Idem. (2000b). University Legal Aid Clinics. A Growing International Presence with Manifold Benefits.
In: McClymont, Mary/Golub, Stephen (eds.)(2000). *Many Roads to Justice. The Law-related Work of Ford Foundation Grantees Around the World*.
New York: The Ford Foundation; 267-282.
- PEERENBOOM, Randall (2000). China and the Rule of Law. Part I.
In: *Perspectives*, Vol.1, No.5
Available at: http://www.oycf.org/Perspectives/5_043000/china_and_the_rule_of_law.htm
(visited: 07.09.2005)
- Idem. (2002). *China's Long March Toward Rule of Law*.
Cambridge: Cambridge University Press.

- Idem. (2004). Varieties of Rule of Law. An Introduction and Provisional Conclusion.
In: Idem. (ed.)(2004). *Asian Discourses of Rule of Law. Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.*
London, New York: Routledge; 1-55.
- POTTER, Pitman B. (1994). The Administrative Litigation Law of the PRC. Judicial Review and Bureaucratic Reform.
In: idem (ed.)(1994). *Domestic Law Reforms in Post-Mao China.*
London, New York: M.E. Sharpe; 270-304.
- Idem. (2001). *The Chinese Legal System. Globalization and Local Legal Culture.*
London u.a.: Routledge.
- SCHULTE-KULKMANN, Nicole (2005a). The 'German-Chinese Rule of Law Dialogue' – Substantial Interaction or Political Delusion?
China Analysis No.46 (May)
Available at: http://www.chinapolitik.de/studien/china_analysis/no_46.pdf (visited 15.05.2005)
- SCHULTE-KULKMANN, Nicole (2005b). *Rechtsszusammenarbeit mit der Volksrepublik China. Deutsche und amerikanische Initiativen im Vergleich.*
Göttingen: V&R Unipress
- SCHULTE-KULKMANN, Nicole/HEILMANN, Sebastian (2005a). U.S.-China Legal Cooperation – Part I. The Role of Actors and Actors' Interests.
China Analysis No.42 (April)
Available at: http://www.chinapolitik.de/studien/china_analysis/no_42.pdf (visited: 20.04.2005)
- Idem. (2005b). U.S.-China Legal Cooperation – Part II. An Overview of American Governmental Legal Cooperation Initiatives.
China Analysis No.43 (April)
Available at: http://www.chinapolitik.de/studien/china_analysis/no_43.pdf (visited 20.05.2005)
- STEPHENSON, Matthew C. (2000). A Trojan Horse behind Chinese Walls? Problems and Prospects of US Sponsored „Rule of Law' Reform Projects in the People's Republic of China.
CID Working Paper No. 47 (May 2000)
Available at: <http://www2.cid.harvard.edu/cidwp/047.pdf> (visited 20.05.2005)
- WANG, Stephanie/EVASDOTTIR, Erika (2003). Funding the Rule of Law and Civil Society.
In: *China Rights Forum*, Vol.23, No.2 (2003); 22-35.
Available at: http://www.hrichina.org/fs/downloadables/pdf/downloadable-resources/HRIC_issues_paper3.2003.pdf?revision_id=8756 (visited 16.08.2005)
- WATSON, Alan (1974). *Legal Transplants.*
Charlottesville: University Press of Virginia.
- WOODMAN, Sophia (2004). Bilateral Aid to Improve Human Rights.
In: *China Perspectives*, Vol.51; 28-49.

C. Interviews

- Interview 02/2002: Former Program Coordinator China Law Programs (American university China Law Program); telephone interview 21.02.2002
- Interview 05/2002: Chinese Law Professor; Beijing, PRC, 28.08.2002
- Interview 11/2002: Former program coordinator (American private foundation); Beijing, PRC, 24.09.2002
- Interview 12/2002: Chinese member of a central Chinese legislative institution; Beijing, PRC, 30.09.2002
- Interview 01/2004: Program Officer China, American NGO; Washington, D.C., 17.02.2004
- Interview 02/2004: American Law Professor; Washington, D.C., 17.02.2004
- Interview 03/2004: U.S. government official; Washington, D.C., 18.02.2004
- Interview 04/2004: American business person; Washington, D.C., 19.02.2004
- Interview 05/2004: American Bar Association Representative responsible for the Asia Law Initiative;

Washington, D.C., 19.02.2004