

Legal Cooperation Between China and the West

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Introduction

China's formal legal system and institutions, as well as the concept of legality itself, were destroyed under Mao Zedong. Following the proclamation of the People's Republic of China (PRC) on 1 October 1949, one of the new government's first actions was to abrogate all the previous government's legal codes. The PRC's first constitution (20 September 1954) called for a system of courts that emulated the Soviet Union's judicial system, but no major laws were enacted in China until the 1970s. Instead, the courts and judges were guided by a few basic statutes, government decree, and the Communist Party's program.

This process of legal disintegration accelerated under China's policy of autonomous economic development, which culminated in the highly experimental Great Leap Forward (1958-1962). China had hoped to modernize its industry and agriculture outside the influence of world capitalism by forming self-sufficient communes devoted to local agricultural production and industrialization. The results, however, were disastrous, and six to seven million people died of starvation in 1960-61 alone. The ensuing social and economic dislocation would also set the stage for the violence and chaos of the Cultural Revolution (1966-69) that would continue until Mao's death in 1976.

Following Mao's death, Deng Xiaoping (who had only recently been rehabilitated and returned to office) and the other Chinese leaders found themselves isolated from the rest of the world, in need of

¹ Carlos Wing-hung Lo, *China's Legal Awakening*, Hong Kong University Press, 1995, p.10.

Western capital and technology. In 1978, China made several major changes in direction. Following the establishment of full diplomatic relations with the U.S., it adopted policies (e.g., the Four Modernizations) that explicitly made economic development the country's highest priority. As part of the creation of the necessary environment for the attraction of foreign capital, China adopted a joint-venture law in the late 1970s. It subsequently enacted other laws for the same purpose and created special economic zones along its southern coast.

As Deng would explain later in a 1985 *New York Times* interview², "No country can now develop by closing its doors....Isolation landed China in poverty, backwardness and ignorance." Deng himself had been a victim of Mao's lawlessness and knew from personal experience what a country is like without law and order. While Mao considered law useless, two of Deng's famous slogans on the other hand were that "The rule of persons had to be replaced by the rule of law,"³ and "Law

² *New York Times*, January 2, 1985, p. A1.

³ Lo, p.34

was necessary to maintain social order for socialist modernization.⁴ At the same time, however, since opening itself to the international economy, China has followed a dualistic stance, in which it regards its internal affairs as matters of sacred sovereignty,⁴ which no other country has the right to interfere in.

⁴ Ibid, p.10

One of China's chief problems at this point is that, in its desire to bring about economic development while retaining political control, Party leaders are not sure how tolerant they can be, while the Chinese people, on the other hand, do not know what individual activities are accepted at a any given time. Since 1978 and throughout China's opening to the West, Chinese leaders have encouraged the people to achieve economic prosperity and have even promoted private ownership, whereas social activities have been suppressed. The latest confrontation in China occurred in late 1998, when President Jiang Zemin denounced attempts to found an opposition party and made clear that "Economic reforms were not a prelude to Western style multiparty democracy."⁵ Also the Tiananmen Square incident in 1989 destroyed much of the internal and international trust that had been created during the previous ten years. This kind of rough handling is contrary to the people's standpoint; many of them, especially those educated abroad, can compare both the political atmosphere and the Party's promises about "socialistic freedom" with their experiences in other countries.

The opening of the People's Republic of China to the West has presented huge opportunities and challenges to policymakers, the business community, and law experts in the Western world. The first experts to go to China to start cooperation in 1979 were legal advisers and businessmen, mostly from the United States. Americans could feel almost exceptional euphoria when these two nations established diplomatic relations in 1979 and the whole new market area was opened. At that time American

⁵ *The New York Times*, p.6, December 19, 1998

enterprises dealt directly with the Chinese trade administration, and together they formulated convenient laws and regulations that satisfied both parties.⁶

During the past twenty years the assistance between China and Western countries has expanded from business matters to all legal areas. Also the number of partners has increased, and it is now difficult to find Western industrialized countries that do not have cooperation with China in legal matters.

⁶ Professor Jerome Cohen, at Harvard University, October 23, 1998

Legal cooperation covers training judges, prosecutors and lawyers; criminal justice system reform; policing; fighting corruption; legal aid, human rights; legislative system research; women's rights and National People's Congress-related projects. It is also necessary to mention lawmaking programmes and programmes to renew governance and public administration.⁷ Now not only do foreign researchers travel to China, but Chinese scholars, academics, and official delegations spend long periods abroad studying foreign lawmaking and gathering information on how to develop the rule of law with Chinese characteristics.

Furthermore, since the mid-1980s the National People's Congress (NPC) has managed to utilize the power it was granted under the Constitution of 1982, and it has shown that the highest political leadership cannot always have the last word. The enlarged multi-candidate nomination process on the local level has also influenced the work of the NPC. Many China experts in the West no longer consider the NPC a rubber stamp for the leadership; a list of defeated bills, and government reports and nominations are concrete results of its increasingly independent work. Political discussion and differences in opinion are taking place in China.

However, after twenty years of cooperation, Western countries still cannot be sure whether China has permanently adopted changes in its legal system, nor which laws China is willing to put into effect. Many of these issues are politically sensitive in China, so open discussion with the West about them is

⁷ Ford Foundation, Beijing, May 22, 1998

still difficult. Furthermore, long as the coordination of legal cooperation is in the hands of the Communist Party, it alone decides when and in what form legal knowledge is distributed to the public.

This paper will concentrate on three major issues. *Chapter I* provides a summary of the development of Chinese jurisprudence since 1949 and examines how legal reform has been conducted over this short period of time.

Chapter II presents the relationship of four countries and the European Union to China. Finland, Germany, Great Britain and the United States, all have traditions of cooperation with China in the legal area, while EU is just beginning its own programme. Although their economic connections to China are close, they all have different approaches to cooperation with China. The previously mentioned European countries and the European Union finance long-term projects with public funding, while the American programmes are mostly based on private financing and are more short term.

Chapter III examines what benefits could be achieved if Western countries worked more closely together to avoid overlapping on expensive cooperation projects, and examines different views of how far and how seriously China has adopted legal restructuring. The paper ends with a short Conclusion.

CHAPTER I

The legal system in the People's Republic of China (PRC) has been undergoing major reforms since 1978. At the Third Plenum of the Chinese Communist Party's Eleventh Central Committee meeting in December of that year, Deng Xiaoping declared that the era of Maoist-style legal nihilism was over. According to the communique, "Law was essential for socialist modernization" and "There must be laws for people to follow, these laws must be observed, their enforcement must be strict and law breakers must be dealt with."⁸

To understand this, one of the most quoted chapters of the speech of Deng Xiaoping, we have to know some key points of the history of the People's Republic of China. Overall, the development of modern China's legal system can be divided into three main stages, though there are many exceptions. The first stage is from 1949 to 1954 when jurisprudence was based on a combination of Nationalist and Soviet models. The first Constitution was enacted 1954. The second stage is from 1954 to 1979, the

⁸ Carlos Wing-hung Lo, *Chinese Legal Awakening*, p.1 (Hong Kong University Press, 1995); and Shiping Zheng, *Party vs. State in Post-1949 China*, p.40 (Cambridge University Press, 1997).

most turbulent decades in Mao's era, extending three years after his death. The third stage began 1979 and is still continuing.

One of the things that Mao's theory of 'continuous revolution' meant was that from the Great Leap Forward of 1958 on, the Communist Party no longer respected laws and rules, even though they already existed and even though new ones were being enacted. 'Mass political campaigns and mob violence [were] the main forms of participation.'⁹ Between 1949 and 1954 especially, the Communist government used mass campaigns to consolidate its power and attack its enemies. During that time, campaigns became a permanent method in China for pushing forward political principles and ideas.¹⁰

Shiping Zheng writes in a very lively and detailed manner how, by late 1949, after the civil war, the Kuomintang's legal system on the mainland had been dismantled. The Communists thought that the Nationalists' legal system represented the previous ruling class, and they didn't want to save any part of it. In spite of the chaotic circumstances, the Communist Party was very eager to establish a legal system of its own, and between 1949 and 1954 the Party created the Supreme People's Court and the Supreme People's Procuratorate to work as the highest judicial and procuratorate organs. Under the organisation of the government, there were three Ministries that covered legal issues along with a wide variety of courts and judicial administrative agencies at the provincial and local levels.

However, as was mentioned earlier, this was just a formality; in fact the whole system was nominal, because state power was controlled by the Party leaders and Chairman Mao Zedong. He was chairman

⁹ Minxin Pei, 'Is China Democratizing?', *Foreign Affairs*, p.69 (January/February 1998)

¹⁰ Pitman B. Potter, 'Riding the Tiger', *China Quarterly* 1994, p. 329 and Zheng, p. 270

of all the main organs, so in practise the new regime relied on his directives and the orders of military commissions. Instead of the old term *Emperor* the new term *Chairman* was synonymous with the highest political power.

There can be no doubt that the Revolutionaries wanted to establish a new legal order, but it is always easier to destroy an old system than it is to create a new one. In this respect, the main obstacles and problems in the early years of the People's Republic seems to be similar to that which China is facing now: the most obvious difficulty was and still is the lack of qualified judges and other legal staff. During those times, legal personnel consisted of two groups: people recruited from the army, and the *retained personnel* from the Kuomintang regime. The first group had to be convinced that laws worked better than guns, while the second group had to learn how to work under the Communists.¹¹

The problems faced by the PRC nowadays are quite similar, though a little further developed. The largest part of the legal staff have grown up under the Communist regime and have great experience of Mao's nihilism: now they have to rethink and understand how to obey and apply the Western-style laws that have been promulgated since 1978. The other, but much smaller, group of judiciary are educated abroad, mostly in Western countries, and they still have to understand the practise of Communist style. However the major and most destructive crimes are mostly the same now as they were fifty years ago- corruption and actions against the State and the Party.

Between 1949 and 1954 the purge of Nationalists from the Party was so great that the Party's goal of promoting legal justice was impossible. Very soon the judicial organs *i.e.*, the Political and Legal

¹¹ Zheng, pp. 53-56

Affairs Committee, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Justice, and the Legislation Commission were simply merged into one entity, so that it could handle all the cases, which were easily found in political witch-hunts. The People's Republic of China created a very aggressive way of distributing justice—the so-called People's Tribunals started to handle masses of people, who were titled "counter revolutionaries."¹²

The People's Tribunals didn't have all the nominal legal power, however. In cases of, for example, arrest, and particularly capital crimes, the sentence had to be approved by the Party organs. So the still-continuing practise and the legacy of interference by the Party is based on practices and nihilism under Mao's regime.

¹² Ibid, p. 57

Beside witch-hunts and the legacy of Party interference in the judiciary, Mao's regime produced another lasting legacy. The first Constitution was enacted in 1954, and this established the National People's Congress (NPC). These constitutional and legal-system models were found across the border in the Soviet Union, and copying, cutting and translating these texts was already seen at that time as a useful way to fabricate rapid solutions.¹³

Although the NPC had on paper almost unlimited power, for twenty-five years it had little political import. Furthermore, the NPC was unable to work because among other things, it had no organizational structure. For instance, the leadership of the Plenary Session of the NPC was temporary, and the length and number of its meetings were not standardized. In fact, during both the Great Leap Forward of 1958-62 and the Cultural Revolution of 1966-76, neither the Plenary Session nor the Standing Committee (a smaller, permanent body of the NPC delegates) met at all.¹⁴

¹³ Ibid, pp. 57-58

¹⁴ Michael W. Dowdle, The Constitutional Development of the National People's Congress, *Columbia Journal of Asian Law*, vol 11, Spring 1997, No 1, pp-3-4

After creating the Constitution in 1954, the PRC tried for the second time to establish a complete judicial system. The structure of courts and procuratores seemed to be quite impressive and, from the outside, even looked reliable. Certain People's Tribunals still existed, but they no longer had the separate and special judicial powers they'd had in former times.¹⁵

This positive development continued for less than two years, until 1956, when new ideas began crossing the border from the Soviet Union. There, Secretary General Nikita Khrushchev criticised the era of Stalin and the errors of the past. Furthermore, the political tension in many Eastern European countries caused anxiety in Mao's mind.¹⁶ Mao had to react in some way, so he decided to create his own version of a more liberal attitude toward the people. In April 1956 he launched the "Let a hundred flowers bloom" campaign. This campaign allowed intellectuals and non-Communists to speak freely, give criticism, and estimate the results of the revolution. The very basic questions were: Why had the economic situation not become better, as promised; and, Why was such a small group, only two percent of the total population, allowed to treat the rest of the population as if it were its private property?¹⁷

¹⁵ Zheng, p.60

¹⁶ Paavo-Olavi Huotari and Pertti Seppala, *Kiinan kulttuuri*, p. 81(Otava, 1989)

¹⁷ Zheng, p. 62

The ensuing critiques were so devastating that they were impossible for the leadership to accept. Mao soon discovered that his real enemies and troublemakers were inside the Party, and this time they were called **ARightists@**.

According to official figures published more than twenty years later, 553,000 people were designated as **Rightists** in 1957-58. Many of them were forced out of their homes, cities and jobs into labour camps. By the end of 1982 as many as three million people had been **Arehabilitated@** and half a million were reinstated as Party members.¹⁸

The anti-rightist campaign destroyed all the laudable goals that were written into the 1954 Constitution. The Communist Party had regained total power, which included very direct power over the control of the entire judicial administration. Even the Ministry of Justice was abolished in 1959, and it would not be reinstated for twenty years.¹⁹ Equality of citizens before the law was so blatantly untrue, that it is understandable why even now Chinese intellectuals can't believe in it. It is easy for them to see and find similarities between the past and present time and the rule of law.

The next four years, 1958-62, were spent in the turmoil of the Great Leap Forward, which demanded all the energy and time of the citizenry. Mao had again found the example for this program in the Soviet Union. During his second and last visit to Moscow in November 1957, Mao became convinced that the People's Republic of China could achieve the same economic goals that Secretary General Nikita Khrushchev had declared for the USSR. However, Mao's unplanned decision to rapidly

¹⁸ Ibid, p. 68

¹⁹ Ibid, p.75

industrialize China was totally unrealistic, and as a result, millions of people starved to death, and the principles of a rule of law were left in abeyance.²⁰

To understand the present process and difficulties of creating a genuine legal system in China, it is also necessary to look at the last decade of Chairman Mao and the period called the Cultural Revolution.

²⁰ Ibid p.93

This violent period lasted from 1966 until 1969, but with its aftershocks, it actually lasted until 1976. The reason for this last upheaval can be found from the consequences of former campaigns, widespread malnutrition among China's citizens, and from a dispute within the Party in the beginning of the 1960s. Many prominent members in the Party leadership had criticised the poor results of the Great Leap, among whom were Party-Secretary Deng Xiaoping. As always, Chairman Mao saw the criticism as a threat against himself and his rule. As a result, he launched a new Party line of the class struggle and Actions against the dangers of capitalism.²¹ Mao agitated young, urban people against cultural authorities and government and Party officials. Millions of young subsequently Chinese joined the Red Guards, and with the help of the army they travelled to Beijing and then to the countryside to destroy Party offices, universities, and homes, and even to torture their families both physically and mentally.

Almost all the Party leaders were attacked in one way or another. On both the national and local levels, they were accused of being traitors and enemies. The Standing Committee of the National People's Congress was proven to be so rotten that it had to indefinitely postpone its working period that was drawn out for eight years, from 1966 until 1975.

²¹ Ibid. p. 134

As a result of these actions the public security, the procuratorate and the courts were destroyed again. The entire rank of the Ministry of Public Security was arrested. Nationwide, over 34,000 policemen, procurators, judges and other judicial workers were persecuted, and over one thousand died. This resulted in the destruction of an entire class of professional people, who were eliminated.²² Because of the antijudiciary campaigns, China had only 1,000 lawyers at the beginning of the 1980s.²³

Mao's goal was not to systematically kill the people, as Josef Stalin did in the Soviet Union. Mao's method was to launch grand ideological education campaigns; but the results were just the same: millions of innocent people suffered and died. Mao's death in September 1976 left the country in chaos. After more than fifty different campaigns, the Chinese were exhausted by revolutionary ideas, and when Deng Xiaoping rose to power in 1978, they were ready to concentrate on measures such as modernization of their society.

Since that time, Chinese legal culture has had very clear goals. government uses laws and regulations as tools to control society, enforce ideology and achieve economic prosperity. This is called **A instrumentalism@C laws are instruments of policy enforcement. ALaws are not a limit on state power; rather, they are mechanism by which state power is exercised.@**²⁴

²² Ibid. pp. 137-138

²³ Ibid. p. 184, quoted Xinhua News Agency, July 18, 1995

²⁴ Pitman B. Potter, *at Leiden University Law Faculty* October 26-28, 1998; and James V. Feinerman, "Economic and Legal Reform in China, 1978-91" p.63, in *Problems of Communism* (1991)

Under the leadership of Deng Xiaoping, the Communist Party (CPC) in 1978 made a strong commitment to create a legal order. In Mao's era, the Party enjoyed absolute leadership over the judiciary; Party policy was described as the soul of the people's democratic legal system and thus enjoyed a higher status than law.²⁵ According to Deng Law should be the highest authority, but it is not always clear what that implies. The biggest problem was and still is that the Party leaders and local cadres are ordered to act as examples for the people, but again the reality proves how difficult it is for the leaders to change their old ways. President Jiang Zemin has repeatedly said that Corruption is a matter of life and death for the Party and the state.²⁶ China's leaders denounce corruption, but in the minds of the people, the Party's actions against the cancer are far from what is needed, and it is the Party itself that is the problem.

The Role of the National People's Congress

President Jiang Zemin praised the achievements of the NPC to President Bill Clinton, in Beijing at a summit in June 1998: In the two decades since the reform and opening-up program was started, the

²⁵ Lo, p.252

²⁶ *Far Eastern Economic Review*, p.10, August 20, 1998

NPC has adopted more than 320 laws and acts, thus constantly strengthening the legal protection of democracy, fundamental freedom and various rights enjoyed by the Chinese people.²⁷

He didn't mention how enormous had been the flood of proposed bills, nor the number of administrative regulations and laws and regulations in Provincial and Local People's Congresses.²⁸

President Jiang gave his American counterpart to understand that China's renewed socialistic system was as capable of enacting laws and rules as the Western countries.

²⁷ President Jiang Zemin, Beijing, June 27, 1998

²⁸ Zheng, pp.168-169 and Lo, pp. 135-136

The structural reforms that have taken place in China are per se overall clear and effective. The Ministry of Justice, which had been abolished during the Anti-Rightist Campaign twenty years earlier, was re-established in September 1979. Bureaus of justice in provincial governments were also restored, as were the judicial administrative agencies at all levels.²⁹

The NPC's delegate body was almost tripled in a short period of time. In the early 1960s there were only 1,220 delegates, but between 1978-82 the number grew to 3,500, while it is now about 3,000. The number of supporting staff also grew from 54 in 1979 to over 2,000 by the end of the 1980s.³⁰ While the number of people doesn't necessarily mean effectiveness, in the case of China it can be said that the NPC now has been given the tools to cope with its job.

According to many Sinologists, the NPC is no longer a rubber stamp for the government.

C The NPC has emerged as an independent and influential force in China's political arena.³¹

²⁹ Zheng, p. 167

³⁰ Dowdle, p.4-5

³¹ Ibid. p.1

- C It is China's Capitol Hill, which has asserted its prerogatives as China's supreme lawmaking body. It is a potential challenger to the CPC's monopoly of power.³²
- C In a sense, the use of the NPC as a tool of political struggle and the increase in meaningful debate within its legislative chambers signifies the increased importance of the NPC as a source of political authority.³³

³² Minxin Pei, p. 74

³³ Pitman B. Potter, at Leiden University

C The NPC became in the mid-1980s a forum for voicing dissent on important issues.³⁴

The most important explanation of how this has come about is that in accordance with the 1982 Constitution, the Communist Party changed the way candidates are nominated to the Provincial People's Congresses. On the local level, the number of nominees generally exceeds the delegate slots by between 20% and 50%.³⁵ A growing number of Chinese have an unprecedented chance of electing deputies by direct elections to People's Congresses at the local level. This also influences national politics, because delegates to the Plenary Session of the NPC are selected every five years from the Provincial Party lists and from Provincial People's Congresses. Although the nomination process is strictly in the hands of the CPC and although some of the delegates are still nominated directly by the Party, this means that members of the NPC are selected by more "democratic" means than before. Some sort of competition in the nomination process can easily be seen in the work and results of the National People's Congress in Beijing.

³⁴ Merle Goldman, "Is Democracy Possible?", *Current History* p. 259 September 1995

³⁵ Dowdle, p.38

Even a partial list of the government's defeated bills, reports and nominations during the 1990s is remarkable, even though this type of information doesn't necessarily appear in Western newspapers. A number are really worth mentioning. For instance in 1992 one-third of the legislators voted against or abstained from voting on building the Three Gorges dam; in 1995, one-third opposed or abstained from voting on one of the President Jiang Zemin's candidates for vice prime minister.³⁶ In the same year, one-third of the deputies voted against the annual report of the Supreme Court, while in March 1997, 40 % rejected the annual report of the Supreme Procurator.³⁷

Constitutional specialist Michael W. Dowdle of Columbia University believes that the visibility of the NPC within the Chinese political environment has made it more effective. Also, study tours around the world have increased the status of the delegates and made it easier for them to put forward their own point of views. Dowdle also points out that Anetworking@ is one of the motors behind the NPC

³⁶ Goldman, p.259

³⁷ Minxin Pei, p. 75

development, as this allows delegates to create contacts between each other on the regional and international level, without the interference of Beijing.³⁸

³⁸ Interview, Michael W. Dowdle, New York, November 12, 1998

CHAPTER II

The reasons for the current legal reforms in China can easily be calculated, though many researchers mainly stress the economic reasons. In this they are certainly right, because Deng Xiaoping did not hide the goal of achieving prosperity for the nation. The opening to the West and trade between other countries required legislation and rules, and this has given a great impetus to the process. The other reasons are, according to Shiping Zheng: 1) revulsion against the Cultural Revolution; 2) the need for new sources of legitimacy; and 3) concern about social order and stability.³⁹ Building socialism with a Chinese characteristics and Building socialist jurisprudence with Chinese characteristics were the slogans that Deng promulgated in 1982. One of his desires was to free Chinese jurisprudence from its Soviet connection.⁴⁰ Deng and his comrades had painful memories of the political and economic pressure and methods that Chairman Mao had tried to apply, which were based on Soviet models, and Deng did not want to take any more examples from the neighbouring country. He was also afraid of violence and chaos, which were present almost all the time during Mao's era.

³⁹ Zheng, p. 162

⁴⁰ Lo, pp. 29 and 55

When Deng opened discussion about renewing legal system, the entire subject was a tabula rasa for a handful of local scholars. In this, we have to remember that after the Cultural Revolution, the lack of qualified legal experts was a real problem, just as it is now. According to Carlos Wing-hung Lo, ADeng never had a coherent theory of law; he merely had some random and preliminary ideas of the orientation of law.⁴¹

A socialistic system with Chinese characteristics means that the Party still has an absolute hold on power. For instance, although the election system and nomination of candidates have been tentatively changed on the local level, the special quotas of the Party and Army members secure the status quo. Nothing unprecedented or radical can happen without acceptance by the Party organs.

According to Shiping Zheng, it is the Party's Political and Legal Affairs Committee, (PLAC), that controls the judicial apparatus in the legal process:

From the [national] center to the provincial and local levels, the Party's PLAC directly controls the legal apparatus, public security forces, procuratores and courts. Every Party committee has a secretary specifically assigned to be in charge of political and legal affairs. This person makes sure that the Party's policies and intentions are observed in all legal activities. This almighty committee was established in January 1980. Its responsibilities include reviewing and handling major issues in political and legal work and making recommendations to the Party Central Committee. In this it helps to handle reports sent from the lower levels, overseeing the implementation of the party's principles and policies, state laws and regulations, and overseeing the organizational and ideological condition of the legal apparatus.⁴²

⁴¹ Ibid., p. 257 .

⁴² Zheng, p. 172

The membership of the central PLAC usually includes the ministers of Justice, Public Security and State Security, the president of the Supreme People's Court, and the chief procurator of the Supreme People's Procuracy. The same pattern generally holds true at the various local levels.⁴³

⁴³ Zheng, p. 172 and Feinerman, p. 70

Knowing this, one can infer what kind of independence of legal system in the People's Republic of China has. According to democratic principles and Western values it does not exist. The close relationship between the Party and the legal order means that in any area, reform cannot proceed faster than the Communist Party allows, writes James V. Feinerman.⁴⁴ Carlos Wing-hu Lo formulates: "Scholars propose, but the Party disposes." Chinese thinking about law has remained primarily instrumentalist; in other words law is a tool for achieving economic goals and securing political stability.⁴⁵

The legal cooperation between Western countries and the People's Republic of China is based on two reasons. First, China offers huge potential markets to all kinds of trade. As a developing and still quite closed country, it does not have an efficient financial system, or laws. In that sense it is a pure business area, which is dependent on foreign experts and advise. Second, Western democracies realize that the only way to influence in China is to create dialogue and constructive relations rather than use sanctions. During the 1980s business laws were on the focus, but in the 1990s human rights issues have also been taken with the programs.

The examples studied in this paper, Finland, the Federal Republic of Germany, Great Britain, the United States and the European Union all have different kinds of connections to China. Although trade is the most common mutual factor, their individual political relations are based on different historical

⁴⁴ Feinerman, p.70

⁴⁵ Feinerman, p.63 and Pitman B. Potter, at Leiden University, in October 1998

experiences. And these factors have a very clear influence on the way each of them exercises their programs of legal cooperation and assistance with China.

FINLAND - CHINA RELATIONS

To some degree, Finland is becoming more economically dependant on China, as year by year China is becoming a more significant export country for Finland. The Finnish high tech industry produces some of the items China needs most, and Finland has chosen to cooperate with it, to keep and enlarge its markets.

Among our five examples, Finland is the only one that exports more to China than it imports. The value of exports in 1998 was US \$ 800 million while the value of its import was only US \$ 300 million. During the 1990s Finnish imports to China have quadrupled. The most important export items are Nokia mobile phones and telecommunications technology (42%) and engineering industry items (34%), which mostly means paper machines.⁴⁶

Because the economic relationship is so close and positive to Finland, so the political relations are very important, because in China the biggest deals are always made through good political relations and trust. One very concrete example of the connection between business and good political relations occurred in November 1989, when the Finnish Minister of Foreign Trade, Pertti Salolainen, was the first Western minister to visit China after the Tiananmen incident. It was an action for which Finland has

⁴⁶ TT (Finnish Industry Organisation)

been criticized by human rights organizations and political circles at home and abroad, and Finnish government officials admitted frankly that commercial interests were the only purpose of the visit.

Minister Salolainen went there to open the China Forest and Paper Exhibition, as had been planned a year before.

Going back to the 1950s, it is useful to know that Finland was one of the first countries to recognize the People's Republic of China, the first Western country to create bilateral trade relations with China, and Finland has never had diplomatic relations with Taiwan. This history of successful relations without political disagreement has been useful to both countries.

COOPERATION IN THE LEGAL AREA

Legal cooperation between Finland and the PRC began in 1993, when Minister of Justice Xiao Yang was invited to Finland. A year later, in January 1995, the Ministers of Justice signed in Beijing an agreement of cooperation between the two countries in the legal area. At that time the agreement was one of the first ever made between the PRC and another Western country (says Ministry of Justice)

Later, in March 1996, the countries signed an agreement and carried out an execution plan. It concentrates on four areas: 1) discussions and research of the basis of constitutionally governed state; 2) criminal law; 3) crime prevention; and 4) the work of judiciary. Cooperation between the Finnish Heads of the Supreme Courts, the highest Procuratore and their Chinese counterparts is also part of the cooperation.

Most of the work is based on visits and seminars. During several meetings between Head of States, Ministers, the highest procurators, bar associations and other authorities since 1994, the topics have covered wide areas, including the principles of Chinese criminal policy, the work of procurators, the new criminal law, economic criminality, the death penalty, and civil rights. According to Finnish experts, discussions have been very open: the Chinese have underscored their socialistic character and their belief in strict penalties as examples to others. They have also argued for the use of the death penalty, which they view as a necessary tool to combat criminality.⁴⁷ The Finnish side on its behalf has underlined all the principles that are fundamental to the rule of law, for example the openness of trials and the basic principle of explaining the decisions and sentences to defendants.

During 1996, the Chinese described their new criminal law code to the Finnish Chancellor of Justice. The Chinese were sure that the position of defendants would be improved, but at the same time they admitted that the lack of educated jurists was a real problem. The Chinese also seemed to be

⁴⁷ This basic Chinese principle became clear to me in October 1993, when China's minister of justice, Xiao Yang (now president of the Supreme People's Court), and his delegation were invited to Finland to begin the cooperation process. As a journalist, I had the opportunity of interviewing him about the goals that had been set between the two governments. What I most clearly remember from the interview was that, without a batting an eye, he said: "The People's Republic of China needs to keep death penalty in force to guarantee social order in the state." I have been interested in the PRC's legal system since that moment.

increasingly interested in ways of preventing economic criminality and asked about Finnish experiences in coping with it.

In the same year, the Chinese Deputy Ministry of Justice, along with a delegation of prison administrators visited Finland and some of its local prisons, and learned of the administrative principles of this special sector. In Beijing the Finnish justice authorities were presented with the Chinese way of arbitrating differences (instead of using litigation) and the difficulties in finding defence lawyers. According to the Finnish Bar Association, each year 100,000 Chinese apply for the very popular examination to act as advocate, but only 10,000 pass the first test. I was unable to get any information on how many of those accepted pass the final examination. The Chinese speciality is that these >advocates= do not need to have an education of jurist, also other diplomas are accepted. However, they must have experience in working on legal matters.⁴⁸

Among many visits, one the most interesting occurred in May 1997, when the chief director of the Finnish Prison Administration visited Tibet. This was the first official Western delegation to ever visit a prison in Tibet. In the capital, Lhasa, the director and his delegation had an opportunity to hold discussions with judges and local administrators. It became clear that the hold of the Communist Party in Tibet is as strong as everywhere else in the Chinese judiciary. Comparing the prisons they saw in Beijing and in Lhasa, the Finnish delegation estimated that discipline was stricter in Beijing than in Lhasa, but that the sentences in Tibet were just as severe. The delegation also noticed that many prisoners were

⁴⁸ Finnish Bar Association, Helsinki

sentenced because of their Acounter revolutionary@ actions. They were allowed to talk with one of them.

During 1997, the Chinese Bar Association made a trip to Finland, where a week long seminar concerning criminal procedure (i.e., pre-trial investigation, consideration of indictment, trial and appeal from decision) was organised. Their Finnish counterparts concluded afterwards that in spite of Western influence, Chinese criminal law and procedure are in practise quite different; for example, detention times are long and the rights of the defendant are less than those under Western standards. Finally, in December 1998, a new execution plan was signed and it was extended until 2000. Details will be decided in spring 1999.⁴⁹

Finnish authorities openly stress that, in dealing with China, they place more trust in practical dialogue than condemnation or pressure. Because the agreements are made between ministries, it is easier to make decisions on subjects and discuss things directly with Chinese decision makers. This principle was repeated recently in October 1998, when President Martti Ahtisaari handled the issue in the annual meeting of the Finnish Association of Lawyers. The president said that Finland can't pressure the People's Republic of China to change its human rights policy. He mentioned that China has already shown great interest in developing its legal system and that experiences of cooperation had been useful.

⁴⁹ Ministry of Justice, Finland

It is understandable that as a small country, Finland does not have the number of experts or resources to pay for large scale, private training projects in China. The weak point of Authority-based-cooperation however is that it is convenient for Finnish and other politicians. It certainly gives an impression that Finnish decision makers are concerned about legal development and human rights in China, but, it is also quite difficult to know, on what basis the subject matters are selected and how the issues are dealt with. The expression that is so often used in these matters, 'By mutual decision', is so vague that one never quite knows who has decided what.

GERMANY - CHINA RELATIONS

Germany created strong economic relations with China during the sixteen years of Chancellor Helmut Kohl's administration, from 1982 to 1998. Business has grown quite a bit, but it represents a negative trade balance for Germany. Its exports to China in 1996 were over US \$7.2 billion, but its imports were worth \$12 billion. Trade is increasing steadily on both sides year after year.⁵⁰ During Kohl's time, trade and human rights were not openly connected to each other. However, in June 1996 the German Parliament (the Bundestag) accepted a resolution condemning China's actions against Tibet. This political expression was too much for Chinese, and Foreign Minister Klaus Kinkel had to cancel his upcoming trip to China.

Very soon after this incident, however, in September 1996 during the UN session, the foreign ministers settled the matter. Germany agreed to continue human rights discussions without confrontation and by mutual understanding. No resolution has been heard since then from the German government's side.⁵¹ These discussions mostly occur among the EU-Human Rights Commission.

⁵⁰ Table 120, *Handbook of International Economic Statistics 1997*, CIA

⁵¹ Amnesty International Report, January 28, 1999

COOPERATION IN THE LEGAL AREA

Since 1980 the Federal Republic of Germany has been offering China assistance in support of economic reform. As part of this assistance, there are many legal exchange projects between ministries, universities, German foundations, the Ford Foundation, NGOs and the European Union.

Comparing Germany's activities with other countries shows some clear differences: Germany seems to be committed to long term, (even over twenty years) explicit agreements, and it operates on a very large scale. This means that Germany is engaged in both purely legislative programs and many other processes, which include lawmaking and legal advice. The scale covers policy development, labour safety, social security system, economic development and environmental advising. The amount of money involved is impossible to calculate, but a general view is that millions of D-marks are annually budgeted to each program. An interesting point in this regard is that almost every programme includes a study trip to Germany.

An examination of several legislative programs show that:

- © The German government since 1993 has advised its Chinese counterparts in labour and social lawmaking. Germany has reserved 8 million D-marks (more than US \$5 million) for this project through 1999.
- © The same amount of money is being used between 1997-99 as advisory services to the Finance and Economic Committee of the NPC.

- C During 1998-2002, the National Environmental Protection Administration will receive 3 million D-marks (about US \$2 million). It is not unusual that the most longstanding programmes (from five to ten years), have been budgeted for even more.
- C German foundations have even signed twenty-five-year-long assistance agreements with the Chinese. For example, the Konrad Adenauer Foundation has been working between 1979-2005, with the Chinese Academy of Social Sciences, among others, to support law development and social security. Almost as long term a relationship exists between the Friedrich Ebert Foundation (1984-2005) and different Chinese authorities and institutions. According to my research, no other country has the same kind of continuity of cooperation with China.

Germany is also very strongly present with the programmes of the Ford Foundation, in which it often operates with Americans.⁵²

It has been said that Germany is an economic giant, but a political dwarf, and in some sense both statements have some truth. Germany is not a member of the UN Security Council and for historic reasons its politicians are not openly eager to advise others on how to deal with human rights. For the generations born just after the war, economic goals have been the most natural and important things in

⁵² Foreign Ministry of Germany and Embassy of the FRG in Beijing

life, and this has met with response by some others; in this case, the Chinese, but for the new generations, born in the 1960s and later, reality appears in a different way. They have seen that prosperity and economic freedom cannot give all the valuable things, not in Germany nor in China. Unemployed people in both countries, and especially in the eastern part of Germany, have already given fresh impetus to political life. The Chinese are trying to form new political parties, and in Germany, the Socialdemocrats with the Greens are now in power.

The parliament elected in 1998 and the new Social Democratic-Green government coalition has already stated that human right issues will have a higher status and the focus will be on their China policy. The new government has promised to do some organizational enforcement to improve and strengthen the policy.⁵³ These promises will be tested during the coming spring, when Chancellor Gerhard Schroder pays his first visit to China.

⁵³ *Frankfurter Allgemeine Zeitung*, February 5, 1999

GREAT BRITAIN - CHINA RELATIONS

In the case of Great Britain, historical and political relations are far more important than trade figures. The focus has been of course on Hong Kong, which, as a result of the Opium Wars in the 1840s, was annexed to Britain as a Colony. This period ended in June 1997, in a peaceful handover to China.

The last British governor of Hong Kong, Christopher Patten (1992-97), writes that Britain has not in recent history had any significant bilateral relationship containing an element as substantial as Hong Kong.⁵⁴ This statement implies a great deal. The last active phase of the handover process took almost twenty years. Negotiations lasted for two years (1982-84) and the result was a Joint Declaration, a detailed treaty. Putting the Declaration into force was politically difficult for both countries. The main obstacles were judicial arrangements and democratic elections.⁵⁵ All these questions shook both the Chinese and British sense of justice. Sino-British ties have strengthened significantly since Hong Kong's smooth return. China was prepared for riots, but no any political crises have occurred.

The economic relations are not at all as strong as in the cases of the two previous examples. British exports to China have slightly decreased in the mid-90s; they were a little over 1 billion US\$ in 1996.

⁵⁴ Christopher Patten, *East and West*, p. 102, Macmillan Publishers Ltd, 1998

⁵⁵ *Ibid.*, pp. 29, 41, 42

China makes good profits by exporting to the Great Britain, the value of this business was US \$3.4 billion.⁵⁶

COOPERATION IN LEGAL MATTERS

In October 1998 Prime Minister Tony Blair had the rare opportunity of summarizing all the achievements that Great Britain and the People's Republic of China had reached during the past decade in the area of legal exchange. He was the first British prime minister to visit the PRC in seven years and one of the high points was to open British Law Week in Beijing. It was one of the largest delegations of overseas legal experts ever to visit China. The British group of forty-eight lawyers was led by a Lord Justice from the Court of Appeals; with him were senior barristers, solicitors, academics, human rights experts, representatives of British NGOs and other practitioners working with the law. Many of them had already established contacts with Chinese, but many were visiting the country for the first time. Their Chinese counterparts were a combination of 350 lawyers, judges, officials and academics. They were specialists in all topics of law, from human rights to commercial law. For five days the discussions focussed on criminal procedure, law and policing, and prosecution methods.

The British speciality was presented on the first day C it was a mock trial of a robbery case. The trial took place in a Peking hotel, presided over by the Court of Appeal Lord Justice and with a jury

⁵⁶ CIA statistics 1997, table 120

made up of seven Chinese legal figures. The goal of the mock trial was to show how a case is presented, argued and decided in the British courts, using English laws as an example. The purpose was also to show the responsibilities of the different participants: the prosecution, the defence, the jury, the judge and the court officials. To the Chinese, the absolutely new thing was the jury, which does not exist in their system.

The British and Chinese governments have a number of very detailed arrangements in the legal area, many of which have been ongoing for ten years. The work is shared between different ministries, the Law Society, the Great Britain-China Centre and the British Council (BC). The BC's Programme falls into three major categories:

- C Assistance with China's legislative reform and effective implementation;
- C Assistance with professional training and development;
- C Assistance to widen knowledge of the law and legal remedies, in particular for women.

Special emphasis is placed on Criminal Procedure Law and Criminal Codes. The BC has been working with the Legislative Affairs Commission of the National People's Congress in a revision of the Criminal Procedure Law and Criminal Codes. The new law and codes came into effect in 1997; the major change was to improve the position of the defendant. A defendant now has the right of access to a defence lawyer (if he/she is able to find one) as soon as charges are laid, and the role of judges has been changed to a more independent direction. The BC says that British laws have been considerably used as examples.

The BC works together with a number of Chinese organisations, courts, Supreme Courts, universities and with the National Legal Aid Centre. Cooperation with the Aid Centre is very practical, because Chinese law firms are obligated to spend part of their time on legal aid cases.

Professional Training - The British Council and the Great Britain-China Centre, in cooperation with the Lawyers' Department of the Ministry of Justice and the All China Lawyers' Association, have implemented a training program for young Chinese lawyers, which is funded by (the British) Department for International Development (DfID). The program has been in operation for almost ten years. So far, 143 young Chinese lawyers have received training in the UK and Hong Kong. It has been so successful that a similar scheme for young judges has been designed and agreed upon by DfID and the Supreme People's Court. The Great Britain - China Centre has also been appointed the project manager for a five-year training programme, which brings six judges a year to Britain for 10 months of English language training, academic training, and placement in law firms. Financing comes from the British government.

Widening Knowledge - As a final point it has to be mentioned that the BC has been working with the *Legal Daily* to assist it in spreading knowledge of the law among the Chinese public. Delegations from the newspaper have visited the UK to examine how complicated topics there are presented to a non-professional readership. With a readership of over 700,000, the *Legal Daily* is China's second largest daily newspaper.

The BC has also found that television is a good tool for spreading information, and it works with a number of Chinese media organisations. A five-year plan to write a English-Chinese dictionary of legal

terms is also in preparation. The BC also provides assistance to Chinese women's organisations to support their work and protect women's rights.

Like the BC, the Great Britain-China Centre also emphasizes that their approach is based on a dialogue; the more each side can see how the other side operates, the better are the results.⁵⁷

British law specialists seem to have managed to widen the scale of legal assistance to larger levels of Chinese society. Because trade is not the only influential aspect, the British have developed cooperation programmes, which also work on the grass-roots level. This reflects the British ideas of civil society: goals are placed together, but activities are shared from the government level to organisations and even to private enterprises like media companies. Even when most of financing is based on taxpayers' money, the results are different than when the work is carried out only by ministries, as is the case in Finland for instance. After studying the materials it is obvious that the large-scale British activities provide good and practical examples to the Chinese on how to widen legal reforms from economic matters to all levels of life.

USA -CHINA RELATIONS

⁵⁷ The British Council and the Great Britain-China Center materials

The United States and the People's Republic of China can be in some cases be seen as equally matched countries. The U.S. is politically strong, its democratic ideals are high and it can sway foreign public opinion in favour of its own goals. But at the same time the U.S. is politically weak, because it acts inconsistently and has relatively short- term goals. The political values of the president and political reality of the Congress are often difficult to fit together.

China is economically dependent on the United States. The U.S. is the biggest client and its Most Favored Nation (MFN) trade status is significant for China's economy. This relation makes China also very powerful. The U.S. trade deficit with China has been negative since 1985 and in 1997 it reached huge US\$ 49.7 billion.⁵⁸ China can utilise economic contracts as a weapon against the U.S. and open its markets only little by little, keeping American businessmen and politicians in difficulties.

⁵⁸ Robert S. Ross *The 1998 Sino-American Summit* , p.8 Asia Society, 1998

In spite of these difficulties, American China-policy specialists and Sinologists have for years seen much progress in China. Some of them praise enthusiastically, others are more some cautious about the economic opening, the reforms of electoral systems on local level, and the almost total renewing of the legal system, which in many cases fulfills, but mostly in theory, the international standards. They all seem to share three common views, which are connected to each other: human rights issues as a whole and the Tiananmen incident in 1989 as something apart. The third thing is American public opinion, which doesn't see China's Communist leadership as a reliable partner in the international arena. This suspicion has been supported recently at turn of the year 1998-99, when the Party leader and President Jiang Zemin made clear that economic reforms were not prelude to Western style multiparty democracy. He also used very conservative expressions, such as how China should not rely too heavily on foreign countries to boost its economic development.⁵⁹

⁵⁹ *The New York Times*, p. A6, December 19, 1998

The same American experts analyse the complexity of US-China relations depending on their own interest groups. Director Allen C. Choate of the Asia Foundation, which is a private, nongovernmental organization, says that the US-China relationship lacks traction and continuity, and that it is very events-sensitive. The U.S. and China do not have common interests and long-term goals. Both nations consider themselves exceptional, and they do not know exactly what the real motives of their counterpart are. They don't trust each other. According to Choate, the relationship has never been normal nor in equilibrium. He also reminds us that domestic factors always have been very important in shaping U.S. foreign policy positions, but in the case of China they are even more powerful. He writes that in many cases American public opinion is based only on images, and that the people don't know or don't want to know the positive things that have happened in China since 1978. At the same time, growing Chinese nationalism can be seen as a new public opinion, and young Chinese are increasingly aware about the position of their nation and its importance in the world politics.⁶⁰

From 1949 to 1971, until Secretary of State Henry Kissinger visited China for the first time, these two countries were enemies. Following eight years of negotiations, they established diplomatic relations in 1979, but Washington maintained unofficial links with Taiwan. The years between 1979-89 Director Choate calls "China-mania": everything seemed to be possible and the number of contacts at all levels

⁶⁰ Allen C. Choate, *Building Trust in the US-China Relationship*, the Asia Foundation, Working Paper 4, October 1997

exploded. The events of 1989 put an end to that phase. Relations during the next six years were even aggressive, until President Bill Clinton began a policy of *Engagement*, which, according to the Americans, means that both countries should cooperate and find trust.⁶¹

⁶¹ Ibid. and News-Agency Reuters , June 16, 1998

Professor Robert S. Ross writes that American success in human rights is difficult to measure. Although the U.S. has managed to press China to release dissidents, Americans do not accept that these people are treated like bargaining chips. Prof. Ross foresaw in June 1998 that China would formally sign the International Covenant on Civil and Political Rights, because Chinese leaders understand how important human rights are in the U.S. debate over China policy (this actually took place in October 1998, but the treaty is not yet been ratified by the National People's Congress). By promising to sign the Covenant, China defused U.S. efforts in 1998 to pass a resolution condemning Chinese human rights policy at the annual meeting of the UN Human Rights Commission in Geneva.⁶²

LEGAL COOPERATION

Legal exchanges and programme cooperation between China and the U.S. have their roots in the late 1970s. The U.S. and China established diplomatic relations in January 1979 and the American business community immediately set its sights on this new market. When Deng Xiaoping proclaimed the beginning of economic reforms in 1978, he also opened the business legislation sector to foreign influence. The very first laws were based on economic needs. In the 1980s American enterprises did not even need to think about the function of the Chinese judiciary: companies dealt directly with the Chinese Trade Administration and business went well.⁶³

⁶² Ross, p. 17

⁶³ Professor Jerome Cohen, at Harvard University, October 23, 1998

The central legal activity in the U.S. during the past fifteen years (1983-98) has been the exchange and training of Chinese legal scholars, judges and officials through the Committee on Legal Education Exchange with China (CLEEC), an American consortium supported mostly by the Ford Foundation. While the Ford Foundation ended its funding in 1996, the work continues on a new scale, which is still under planning: the first fifteen-year period was used mostly on training Chinese scholars in the U.S. and now it is time to develop a follow-up programme for those young Chinese legal academics who have returned.

CLEEC sees itself as the most prominent American organization that has had the greatest impact on the Chinese legal system. This is a fair estimate, as the leading American professors of Chinese law have been and still are the backbone of its activities. Because the organization is led by academics, it has more extensive and longer-term goals than the private business sector, which has tended to finance legal exchanges for their own short-term economic reasons and purposes.

Between 1983 and 1998 CLEEC placed sixty-nine Chinese degree-seeking participants and 150 visiting scholars. Since the mid-1980s, it has offered ten four-week in-country courses in American law for candidates, who are selected to study in American law schools. Over time, many Chinese jurists and government officials, who had no intention of visiting the U.S., have also been trained at the Center. CLEEC estimates that this program has been very successful, because the alumni of the courses have advanced to important positions in China. The United States Information Agency (USIA) has funded these courses.

Some of the results of the CLEEC supported education are obvious, but the long term results are difficult to measure. Last fall (1998) when a ten man delegation from leading Chinese law schools visited

leading American universities for the first time, about half of them had an earlier experience of study in U.S. Many other U.S.- educated Chinese are nowadays permanent researchers in the Institute of Law in the Chinese Academy of Social Sciences, which is a think-tank for the Communist Party. These men have influence now, which can be expected to continue into the future.

But what happens to the rest, to the largest part of young Chinese academics? Until 1989, about half of the CLEEC scholars sent to the U.S. never returned to China. Since 1990, the Chinese are mainly sent as visiting scholars and now only 10-15 % stay in the West. For returning academics the future in China can be disappointing: they soon lose contact with their U.S. universities, and they can't update their skills. Political pressure and threats are not uncommon. CLEEC is now planning support programmes in China to assist returning academics, but financing has not yet been secured.⁶⁴

In the mid-90s the main supporters in the U.S. of legal cooperation, especially the Ford Foundation, came to the conclusion that more specific cooperation programmes are needed in China. Nowadays it and other foundations finance a large variety of American non-profit organisations, one of which is the American Bar Association (ABA).

The ABA is a nongovernmental organization and the world's largest voluntary professional organization, with 400,000 members. It has had contacts with the PRC for twenty years. Since the 1980s the focus has been on commercial-law programs. In May 1998 the ABA signed cooperation agreement with the All-China Lawyers Association (ACLA), a result of the state visits of Presidents Jiang Zemin and Bill Clinton in 1997 and 1998. In the joint communique, the presidents agreed to

⁶⁴ *The Draft report from the CLEEC to the Ford Foundation*, Washington

pursue cooperation in six legal areas, including exchange of experts, training judges and lawyers, and increasing all legal information and exchanges of material.

The agreement between the ABA and Chinese ACLA provides a great deal of practical help: seminars and training and internships for Chinese lawyers in U.S. law firms, assistance in bar organization and management techniques, and exchanges of legal materials. Just before the British Law Week in Beijing in November 1998, the American Bar Association held a week-long trial demonstration. Together with German judges, the ABA demonstrated four trials, the focus of which was to compare the differences between common and civil law. The trials were videotaped and the tapes will be available throughout China for educational purposes.⁶⁵

As can be seen, legal cooperation between the U.S. and China from the beginning has been almost exclusively private. Because of difficult political relations and mistrust between the nations, the U.S. government's role and financing has been very limited. China almost nonexistent, if it is compared with the budgets of similar European programmes. In this is no surprise why the Communist Party loves work with American companies. China both think only of money and value stability in society. Long-term education, research and human right issues are left to resource-poor universities and to top politicians.

EU - CHINA RELATIONS

⁶⁵ The American Bar Association material and online www.abanet.org

The European Union decision-making body, the Commission, launched a new China policy in March 1998, entitled **A**Building a Comprehensive Partnership with China.@ The key idea is to engage China in the global economy through social reforms and open the society, which could be built on the rule of law.

The given reasons are mostly economic. The EU is currently China's fourth largest trade partner and business is increasing rapidly. During January-September 1998, the trade deficit for the EU with China was US \$ 4.2 billion (5.9 billion ECU). The EU wants China to join the World Trade Organisation and open its markets, and by this way to modernize also the legislation. Persuading China to accept the WTO demands is difficult **C** China calculates very carefully, what it can benefit by joining. Opening markets to foreign competition is not so easy for the communist leadership. In the meantime, the EU has promised to keep its markets open, despite a mounting trade deficit.

Part of the new China policy is the annual EU Summits with China, the first of which was held in 1998 in Great Britain. The purpose is to intensify political relations in the same way as occurs between the European Union and the U.S., Japan and Russia.

COOPERATION IN THE LEGAL AREA

The European Union is currently being involved in legal cooperation with China. In Brussels this new phenomenon is described with the words **A**huge European interest,@ which suggests that European countries have among all the other China enthusiasm found legal cooperation useful to promote relationships and probably also the trade. This became clear during the first visit of Mr. Jacques Santer,

President of the European Commission, to China in October-November 1998. In Beijing, the vice-president of the Commission, Sir Leon Brittan, signed a four-year long legal cooperation programme, which is worth of 13.2 million ECU (US \$16 million), which will begin in the summer of 1999.

According to EU sources, this legal cooperation program seeks:

- C To promote rule of law by making the Chinese aware of their rights and advising them to see that the rule of law is a key element in supporting the reform process and;
- C To strengthen civil society by promoting grass-roots democracy, consumers= rights and the rights of ethnic minorities and women.

The four-year programme can be divided into four parts:

- C Exchanges for lawyers - Fifteen Chinese lawyers per year will spend nine months in Europe, both studying law and interning in a law firm. In the final two years, five European lawyers per year will go to China for studies.
- C Training for judges and prosecutors - Ten senior judges and prosecutors per year will spend three months in Europe to pursue individually- tailored programmes.
- C Visitors programme - A four- week study tour each year for twenty key administrators, legislators, and opinion-forming academics from China.
- C Directors Facility - a small project fund to support high-impact cooperation projects. This has not yet been fully explained in the plan.

The Programme Management Office and its European director will be located in Beijing, and a liaison office will be established in the EU. As implementation advances, the Office will be strengthened

with a Chinese co-director. A ten-member steering committee will regularly advise the work of the Management Office. Discussions on human rights are separated from this process; they are ongoing through a special commission.⁶⁶

The EU explains their huge interest in China by the very same reasons as all the other cooperators around the world: difficulties in business relations are obvious. Based on its own experience the EU says that as a Community of Law it has developed legal provisions in many fields, which are quite similar as nowadays in China. However, this is only partly true, because in the EU lawmaking happens in interaction between political parties and different organisations and the member states have accepted democratic values.

⁶⁶ The European Commission, Brussels

CHAPTER III

From these five examples it is obvious that the People's Republic of China is willing to cooperate in the legal area, while the Western world is even more eager to finance a wide scale of projects. Another obvious result is that China operates with each state separately and every single state emphasizes its readiness to negotiate with China about its desires without knowing what the neighbouring country is offering and doing perhaps with the same subject. The coordination is in the hands of Chinese leadership; in other words, in the hands of the Communist Party. How much, in which form and when the huge amount of foreign information is filtered to public use is only known by the Party. The follow-up of the results can be seen only by the researchers who has time, knowledge and international contacts to study Chinese legislation and meet local academics, who have been studying abroad.

One of the leading American Chinese law experts, the former chair of the CLEEC (1983-91), Professor Randle Edwards from Columbia University, takes Chinese company law as an example of how China has managed to enact so many laws in quite a short period of time. Professor Edwards explains that the company law has very heavy German accent, because the law is actually German company law filtered through Taiwan. He reminds us that the Chinese always examine legislation passed in Taiwan, because the Taiwanese have greater experience with European law and have already written

and translated the content in Chinese. This Taiwanese influence on Chinese legislation is very little known among Europeans and Americans.⁶⁷

According to Professor Edwards, there is a dualism at work in Chinese laws, according to their purpose and for whom the laws are enacted, depending on the subject matter of the legislation. If the law is enacted for international purposes, a term like *partly cosmetic* could be a useful label; for instance, the joint-venture law in 1979 was very broad and written because some kind of legislation was needed for international trade. Later, in 1983 it was detailed and now it is a real law and is meant to be obeyed, says Professor Edwards. But if the law is for domestic use, he says that the Chinese look at foreign experience and quite often just make copies, cutting and pasting it. The ambitious content can be a simple result of the lack of knowledge. It is not unusual that lawmakers do not understand the purpose of the text and the meaning of *rule of law*.

Professors James Feinerman of Georgetown University, (USA) and Pitman B. Potter from University of British Columbia (Canada) emphasize that Chinese thinking about law has remained instrumentalist:

- Ⓒ Law is a tool of policy enforcement.
- Ⓒ Law is not a limit on state power; rather, it is a mechanism by which state power is exercised.

⁶⁷ Interview with Prof. Randle Edwards in New York, November 12, 1998

C Law is useful and necessary only when it promotes goals decided by the Party.

Professor Potter writes that one consequence of Chinese instrumentalism is that laws and regulations are intentionally ambiguous. In practice this means that its very general form allows policymakers and implementing officials to interpret the laws in flexible ways. This "Open form" gives free hands to leaders to modify the policy foundations and permits broad discretion so that the goals are achieved.⁶⁸

The problem of weak interpretation and lack of predictability even give way to crimes against which the laws are enacted. For example, the fight against the very widespread corruption is difficult when the same persons and authorities who are blamed for corruption can "legally" manipulate the judiciary.

China's government has not hidden its plans to change the legal system and culture from the people. For example, since the beginning of the 1980s, numerous newspapers that concentrate on legal matters have been established, and, as mentioned earlier, the *Legal Daily* has one of the largest circulation in China.

The commitment to the process can also be seen in a 1985 decision of the NPC, in which it launched a five-year campaign to widen the nation's legal consciousness, by requiring that all educational institutions and political and social organization and mass media promote legal education. Despite the fact that the people, in general, know very little about the law, and that while 200 million are illiterate,

⁶⁸ Pitman B. Potter at Leiden University, October 26-28, 1998 and James V. Feinerman, Economic and Legal Reform in China 1978-91, in *Problems of Communism*, p.63 1991.

the benefits to these campaigns varies widely. Nonetheless, it would be unfair to say that China is just making cosmetic changes to its legal system. Only fifteen years ago, China systematically rejected all discussions of human rights and corruption; it viewed these as totally internal matters. Nowadays China is more open to see the differences between its policy and other countries, even it still does not accept any remarks from other countries.

The Tiananmen incident in May-June 1989 is the most far-reaching crises, and keeps foreign countries and experts constantly analysing the purpose and achievements of legal cooperation. Pitman B. Potter sees, that, Opponents of martial law revealed their assumptions that the PRC courts lacked the power and the will to challenge the political order.⁶⁹ Carlos Wing-hung Lo formulates that, At present, there are no legal norms explicitly defining people's democratic power, popular supervision, political rights and various kind of freedom. The Party still enjoys a monopoly in interpreting the constitutional nature of political acts. Lo writes further that we could blame both sides for their stubbornness, but the events of 1989 damaged the party's long-term political effort to achieve a collective leadership, which was aimed at preventing any personal dictatorship like that of Mao.

After a decade of legal reform, law and politics have still not been separated. In this respect no advance has been made since the trials of (dissident) Wei Jingsheng and the Gang of Four.⁷⁰ Deng Xiaoping wanted to get rid of the chaos and nihilism of Mao, but he fell into the same violence as his predecessor. That year permanently changed the opening process of China. In many people's minds

⁶⁹ Pitman B. Potter, *Riding the Tiger*, *The China Quarterly*, p.355, 1994

⁷⁰ Lo, *China's Legal Awakening*, pp. 279,280,317

and in many countries attitudes all the reforms since 1989 are cosmetic and their Chinese counterparts are unreliable.

Like many other big powers China repeatedly surprises the world by formally accepting international agreements, but not ratifying them. In October 1998 China signed the International Covenant of Civil and Political Rights, but before it comes in force, the National People's Congress has to ratify it. A year before China signed an UN agreement of social and cultural rights, but it is not in force either.⁷¹

Human right groups prefer that China could discuss human and political rights inside the country with its own citizens and not invite only foreign politicians and experts to have sophisticated discussions in closed seminars.

Amnesty International sent an open letter to EU governments in February 1999, just before the next round of the EU-China human rights dialogue. In it, the Amnesty warned that there is a risk that the EU governments were becoming hostage to a dialogue process that is not producing results. The results can only be measured in terms of concrete improvements for victims. According to Amnesty, since October 1998 more than seventy dissenters have been detained and at least fifteen high-profile dissidents have been given heavy prison sentences. Amnesty emphasized that it has never opposed dialogue with China,

⁷¹ *New York Times*, October 27, 1998 and Reuters, September 15, 1998

but it urged governments to question China's sincerity in signing key human rights conventions in 1997 and 1998.⁷²

The experiences of the CLEEC ([U.S.] Committee on Legal Education Exchange with China) proposes that even Western states should cooperate with each other in attempts to increase knowledge of rule of law in China. Now it exists a real risk and even evidence that part of the very expensive Western legal exchanges are overlapping. Because the projects are difficult to organize it should be useful to negotiate beforehand with other countries about their plans and experiences. It is also evident that China is ready to negotiate of joint cooperation between states. A good example is the emerging legal exchange with the European Union and also the successful work of the Ford Foundation to coordinate Western interests.

⁷² Amnesty International, EU Association Office, Brussels, February 5, 1999

The CLEEC has noticed that part of the Chinese academics easily lose their contacts (in this case) to American Universities and have real difficulties to update already learned skills. Current Chair of the CLEEC, professor James V. Feinerman proposes that it could be useful if European countries could continue to educate partly the same academics, who have already received education in the U.S. Professor Feinerman's desire prove the uncertainty of American China policy. Long-term education and quality programmes take time, money and long-range political decisions. The U.S. Congress is reluctant to finance any such programmes with China, while American companies invest only in short-term education programs where they have special economic interests. The CLEEC's leadership reminds us that the real results occurs when well- educated experts rise to the government level. There are now about ten persons in entire government of China who have foreign law degrees.⁷³

The current Chinese leadership emphasizes some of the achievements of legal reform even as final results. As an example of that could be quoted President Jiang Zemin, when he said to President Bill Clinton in Washington (June 27,1998), "The Chinese can fully express their views and exercise their political rights." During the research process I found two descriptions which characterize the rule of law and reform process in China. I think the quotation of President Jiang and the next opinions will show how distant the systems still are from each other. A member of an American NGO said that "There is

⁷³ The former Chair of the CLEEC, Prof. Randle Edwards. New York, Nov. 12, 1998

collection of legal institutions, not a legal system, and, ASome sort of legal culture has begun to take root in China among Party leaders, cadres, judicial personnel, intellectuals and the general public.@

CONCLUSIONS

After the era of Mao, China was forced to create a legal system. Deng Xiaoping realised that no country would help China out of its economic chaos if there weren't laws and regulations to secure foreign investments. The primary goals of lawmaking were to launch economic reform and guarantee social stability.

Since 1978 and its opening to the international economy, China has made a clear distinction between international and domestic issues. Its principle has been to cooperate and develop legislation and judiciary on a bilateral basis with numerous countries and organizations, such as the U.S., Germany, Great Britain, Finland and, recently, with the European Union. In so doing, China has managed to coordinate and control the reform process. This has also meant that it can show interest in very wide scale of legislative reforms and professional education, and that it has been to find states to finance these programs. Each of these countries is a close business partner of China's, and they are eager to pay for legal reform programs, even if they do not know whether the cooperation will ever lead to any concrete results.

China's strategy is clever; it can show exceptional curiosity even towards issues such as human rights and give the impression that it is seriously talking about them. But as Amnesty International warns,

A[There] exists a danger that Western governments are becoming hostages in a process which does not lead to any results. International trade and China's internal political game are mixed in very unusual ways, and because many of China's business partners are also satisfied with the bilateral programs, these countries can Aprove to critics at home that they are working on a confidential basis with China.

China almost achieved its most desired economic goal in late April 1999 in Washington during the visit of Premier Zhu Rongji to the United States. It nearly reached an agreement with the U.S. on joining to the World Trade Organization, but the agreement fell through at the last moment. China and the U.S. are now again working hard to come to an agreement on this matter. China sees that by being a part of this organisation that it will be better able to influence decisions concerning itself. As one of the Chinese negotiators said during the visit: "China has reached the level where it is ready to compete with foreign investors. We want to join to the WTO because of China, not because of the Americans."⁷⁴

According to some Western analysts, even China's stagnated political situation could get a boost from the energy it would receive from joining the WTO, as it would have to play by the same rules as others do, which could even help to smooth out changes and bring reforms to its political system. What is not clearly underlined in the West, however, is that never in history has such a large economic and socialist power joined the WTO. On many previous occasions China has presented its capability to

⁷⁴ Liu Xiaoming, Deputy Chief of Mission, Embassy of the PRC in Washington, at Fletcher School of Law and Diplomacy, April 15, 1999

interpret international agreements in ways that benefit itself, while managing to keep other states out of its internal matters.

In short, the West really does not know in which ways the rule of law will be developed in China, and whether this will have any affect on matters such as human and individual rights. Keeping in mind the previous statement by a Chinese negotiator, China's accession to the WTO does not offer anything concrete to those in China or the West who are hoping for changes in China's attitude and handling of its internal matters.

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