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**U.S.-China Legal Cooperation –  
Part II: An Overview of  
American Governmental  
Legal Cooperation Initiatives**

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## List of Abbreviations

CCP	Chinese Communist Party
CECC	Congressional-Executive Commission on China
DoL	Department of Labour
DRL	Bureau of Democracy, Rights, and Labour
FY	Fiscal Year
HRDF	Human Rights and Democracy Fund
ILO	International Labor Organization
MFN	Most Favoured Nation
MoLSS	Ministry of Labour and Social Security <i>zhonghua renmin gongheguo laodong he shehuibaozhangbu</i>
NCUSCR	National Committee on United States-China Relations
NED	National Endowment for Democracy
NGO	Non-governmental organization
PNTR	Permanent Normal Trade Relations
PRC	People's Republic of China
WTO	World Trade Organization

## Introduction

As part of a comprehensive research endeavor,<sup>1</sup> this paper constitutes the second part of a three-part analysis of American-Chinese legal cooperation projects. Part I<sup>2</sup> 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.<sup>3</sup> 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.

Whereas Part I of the analysis concentrated on the theoretical questions, this paper sets out to substantiate the theoretical claims with empirical evidence from American-Chinese legal cooperation measures. Some reasons can be mentioned why the U.S. has been chosen as a case study. Firstly, the U.S. has a long tradition as a provider of legal advice to China; immediately after World War II Americans such as the renown legal scholar and Law School Dean Roscoe Pound worked as advisors to the Chinese nationalist (Guomindang) government and thus supported legal reform with an orientation to the American legal system at that time.<sup>4</sup> Other actors, for example the Ford Foundation and the Asia Foundation, look back at an engagement in the People’s Republik of China (PRC) in the area of legal reform for nearly 30 years, too.

Furthermore, a very multifaceted community of actors providing legal advice to the PRC can be found in the U.S. – amongst them business and partisan organizations, professional organizations, private foundations, academic institutes, and the American federal government itself. This means, since multiple different interests are associated with these different actors, the case study can be illustrative of the many facets of the dynamics underlying the process of legal transplantation.

This becomes even more true if one takes into account that the activities of different American donors in the area of legal cooperation with the PRC have to be analyzed against the background of the general U.S.-PRC bilateral relationship. As will be demonstrated, at times American legal cooperation with the PRC has been integrated into the U.S. foreign policy strategy vis-à-vis the PRC in order to achieve some broader goals, namely in the area of de-

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<sup>1</sup> This paper presents some first results of the research project “TransLECS” (Transnational Legal Development and Epistemic Communities). The project is headed 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).

<sup>2</sup> Schulte-Kulkmann/Heilmann 2005a

<sup>3</sup> 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).

<sup>4</sup> Bünger 1950: 175.

mocracy promotion and human rights. And even if the private and academic providers of legal advice in particular do not necessarily underwrite to the general foreign policy goals of the U.S. federal government, the way the “last superpower” is perceived by the Chinese government influences the way the advice given by American donors – be they private in nature or not – is measured by the Chinese side. In the same vein, the perception of the U.S.-China relationship in the U.S. – especially with regard to U.S. Congress – influences the scope of the legal cooperation work, for example with regard to the possibility to get funding for concrete projects.

Thus, this paper focuses on governmental American-Chinese legal cooperation initiatives, outlining the specific political background and providing detailed information about specific projects, their strategies and aims. Part III of the analysis<sup>5</sup> then will proceed with an account of private American-Chinese legal cooperation programs.

## 1 Political Background

Whereas there is a long tradition of *private* U.S. actors working with Chinese counterparts in the area of legal cooperation, official U.S.-PRC government-to-government legal cooperation only looks back at a rather short history. This history is closely connected with the U.S. government’s aspiration to improve the human rights situation in the PRC by the use of foreign policy and foreign economic policy means.

### *1.1 Assembling the Framework: The Bill Clinton-Jiang Zemin “Rule of Law Initiative”*

Since the Tiananmen crackdown in June 1989 it was a primary concern especially of U.S. Congress to take measures to improve the human rights situation in the PRC. One instrument to be applied was to exert economic pressure on the PRC. Therefore, the annual debate in Congress about granting Most Favored Nation trading status (MFN) to the PRC was tied closely to the human rights situation in the PRC with Congress threatening to deny MFN in case there was no improvement in the human rights record. Although the threat not to grant MFN was not credible due to the importance of healthy economic relations with the PRC for the U.S. economy, too, the annual battle over MFN severely flawed the overall U.S.-PRC bilateral relationship.<sup>6</sup>

Thus, in 1994 then-U.S. President Bill Clinton decided to decouple the PRC human rights situation and debate about MFN on the grounds that a constructive human rights strategy would prove more effective in order to improve the PRC human rights record. Part of this strategy was “support for efforts underway in China to promote the rule of law, in particular for efforts to achieve legal reforms aimed at specific human rights abuses”<sup>7</sup> – without taking a confrontational approach on human rights issues.<sup>8</sup> But, at that time, no concrete legal cooperation measures were initiated,<sup>9</sup> largely due to U.S. laws prohibiting cooperation of any form

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<sup>5</sup> Schulte-Kulkmann/Heilmann 2005b

<sup>6</sup> Stephenson 2000: 5.

<sup>7</sup> “U.S. Renews Most-Favored-Nation Trade Status for China” - President Clinton Opening statement at a news conference, Washington, DC, May 26, 1994; U.S. Department of State Dispatch Vol.5, No.22 (May 30, 1994). Available at: <http://dosfan.lib.uic.edu/ERC/briefing/dispatch/1994/html/Dispatchv5no22.html> (visited 01.06.2004).

<sup>8</sup> Cf. Carothers 1998: 106.

<sup>9</sup> Gewirtz 2003: 604.

with countries – such as the PRC – abusing human rights; thus, U.S. Congress blocked funding for any initiatives proposed by the administration.<sup>10</sup>

The situation changed with the upcoming U.S.-China Summit meeting of then-Presidents Bill Clinton and Jiang Zemin in Washington, D.C., October 1997. Shortly before the Summit, in late 1996, the post of “Special Coordinator for Global Rule of Law” was created within the U.S. Department of State, a position to be filled by Yale Law School professor Paul Gewirtz.<sup>11</sup> It was mainly due to Prof. Gewirtz’s strenuousness and strong believe in the importance of supporting legal reforms and rule of law in the PRC that the topic of U.S.-PRC legal cooperation figured more prominently on the agenda of the 1997 Summit.<sup>12</sup> Finally, the U.S. and the PRC in the Clinton-Jiang Summit Joint Statement 1997 agreed “that promoting cooperation in the field of law serves the interests and needs of both countries.”<sup>13</sup> As possible areas of cooperation the Statement proposed “exchanges of legal experts; training of judges and lawyers; strengthening legal information systems and the exchange of legal materials; sharing ideas about legal assistance; consulting on administrative procedures; and strengthening commercial law and arbitration.”<sup>14</sup>

It is important to notice that the legal cooperation thus agreed upon between the U.S. and the PRC in general terms was not officially captioned “*Rule of Law Initiative*” but “Cooperation in the Field of Law”. This noncommittal heading was chosen at the Chinese side’s urging in order to prevent the Statement from conveying any hints at “hidden agendas”. The term Rule of Law itself at that time was – and still is – quite controversial in the PRC,<sup>15</sup> connoting a variety of different meanings ranging from more technical aspects of procedural regularity to strong links to substantial human rights.<sup>16</sup> Thus, the PRC feared that agreeing to cooperate with the U.S. in the area of Rule of Law could have been interpreted by the U.S. as *carte blanche* to interpret Rule of Law according to the American version of the concept and urging the PRC to underwrite to this understanding, too. This means, the Chinese government was quite aware of the possibility that legal cooperation with the American side could be exploited by the U.S. government to pursue their foreign policy objective of improving the human rights situation and, ultimately, bringing about political change in the PRC, thereby jeopardizing the PRC national sovereignty. By agreeing to participate in “cooperation in the field of law”, the Chinese government assured that no concession to touch sensitive areas such as the rule of law was made *a priori*. Furthermore, it was easier for the PRC political leadership to rally internal support for a cooperation plan not explicitly emphasizing the controversial concept of Rule of Law but “cooperation in the field of law” which could be interpreted – and sold to more conservative members of the Chinese political leadership – as to be limited to technical, politically non-sensitive areas of the law, too.

Obviously, there existed different aims on the Chinese as well as on the American side with initiating legal cooperation. For one, legal reform supported by foreign knowledge is an important means for the Chinese government to reign in arbitrary bureaucracies and local governments as well as corruption, thereby improving the reliability of the legal system. This constitutes a vital precondition for economic development and further international (eco-

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<sup>10</sup> Stephenson 2000: 6.

<sup>11</sup> Stephenson 2000: 6.

<sup>12</sup> Cf. Gewirtz 2003: 608.

<sup>13</sup> „China-US Joint Statement“ – October 29, 1997; available at: <http://www.shaps.hawaii.edu/fp/us/us-china-jc4.html> (visited 01.06.2004)

<sup>14</sup> „China-US Joint Statement“ – October 29, 1997; available at: <http://www.shaps.hawaii.edu/fp/us/us-china-jc4.html> (visited 01.06.2004)

<sup>15</sup> On the different concepts of “Rule of Law” discussed in the PRC cf. Chen, Albert H.Y. 1999/2000.

<sup>16</sup> Gewirtz 2003: 609.

conomic) integration, especially after China's accession to the WTO. Furthermore, resort to the legal system provides an important channel for the populace to air their grievances as more and more Chinese are affected in their daily lives by extensive – and very often disadvantageous – social and economic changes. And, last but not least, law also serves more and more as a foundation for the legitimacy of the Chinese Communist Party's (CCP) regime, substituting the socialist ideology as it becomes less and less credible as a fundament for the CCP's rule in view of far-ranging social and economic changes.<sup>17</sup>

One of the most prominent Chinese intercessors of the initiative was then-Minister of Justice (now President of the Supreme People's Court) Xiao Yang. During his visit to Washington, D.C. in November 1997, together with Special Coordinator for Global Rule of Law Paul Gewirtz he worked out some of the first substantial activities to be carried out under the initiative.<sup>18</sup> These were announced on the occasion of the second Clinton-Jiang Summit Meeting in Beijing, June 1998.<sup>19</sup> These projects were to be carried out on the U.S. side by non-governmental actors. One reason for this arrangement was that organizations in the private field generally dispose of considerably more expertise in the area of law and legal cooperation than the State Department itself. But, what is more important, charging private actors with running concrete legal cooperation measures and thus keeping the State Department rather invisible (except for funding) was another precaution in order to assure the Chinese side that the U.S. government was not pursuing any hidden foreign policy agendas with the legal cooperation measures. There is always a certain suspicion on the Chinese side – as well as on the side of other governments in general, as well – that governmental U.S. rule of legal cooperation work could be exploited as a different means for furthering foreign policy interests.

Certainly, the U.S. initiative to cooperate with the PRC in the field of law indeed has to be regarded as a means to further foreign policy interests in general. These interests were broadly put as improving rule of law in the PRC but can be differentiated to encompass some more specific interests. One of these foreign policy interests was certainly economic. An important reason for the U.S. to promote rule of law in the PRC is to make “this country have a climate that is receptive to American business” with regard to the adherence to contractual obligations, compliance with licensing procedures and, in general, a high degree of reliance with

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<sup>17</sup> Gewirtz 2003: 604-605.

<sup>18</sup> Gewirtz 2003: 612.

<sup>19</sup> The following activities were announced:

*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 11.04.2005])

regard to commitments made.<sup>20</sup> Committing the PRC to adhering to the same international economic standards or “rules of the game” binding for the U.S. and other nations is particularly important for creating a level playing field for the competition between American and Chinese businesses and thus for removing some competitive disadvantages for U.S. goods and services.

Besides these economic interests the initiative to cooperate with the PRC in the field of law was meant as an “extension of efforts within the United States to improve human rights in China,” too.<sup>21</sup> Rule of law, human rights and democracy promotion have always been considered as part of the U.S. national interest and have therefore been an important part of America’s international tradition.<sup>22</sup> Rule of law, human rights and democracy promotion being considered as lying in the U.S. national interest can be explained basically by the adherence – with interruptions – of U.S. administrations since the Wilson presidency to the concept of the ‘democratic peace’.<sup>23</sup> The basic idea of this concept is that democracies do not fight each other in wars, thus spreading democracy – and, as a consistent part of it, the rule of law as well – is considered as a precondition for a peaceful and, therefore, economically prosperous international order.<sup>24</sup> This same theme has been guiding the initiation of the cooperation with the PRC in the field of law, too,<sup>25</sup> thus rendering the initiative an “extension of efforts within

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<sup>20</sup> “Remarks by Secretary of State Madeleine K. Albright to U.S. Business Representatives, Sheraton International Club, Beijing, China, April 30, 1998”; available at: <http://www.usconsulate.org.hk/uscn/state/1998/0430a.htm> (visited 02.06.2004); “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 (*hereinafter: Statement of William Sullivan, 24.05.2002*).

<sup>21</sup> Gewirtz 2003: 606. Cf. remarks of then-Secretary of State Madeleine Albright: “A half century ago, a generation of American leaders led by President Truman and Secretary of State Marshall offered a plan for re-building a Europe decimated by war. Their goals then were similar to our goals today. They understood that nations working together as trading partners and partners in peace would be less likely to fall into the abyss of war. They believed that gaining the commitment of nations to high standards of law and human rights would make the world less brutal and less unjust.” (“Secretary of State Madeleine K. Albright Luncheon Remarks – Wilmington, Delaware May 1997; available at: <http://www.usembassy-china.org.cn/press/release/1997/wwwhit24.html> [(visited 11.04.2005); *hereinafter: Secretary of State Madeleine K. Albright Remarks, May 1997* )

<sup>22</sup> Carothers 1999: 3-4. The link between the promotion of democracy, human rights and the rule of law and U.S. foreign policy interests is strongly pointed out by Kenneth Wollack: “The promotion of democracy is not some idealistic crusade, but a rather quintessential exercise in *realpolitik*. Nothing better serves the interests of the United States – economic, political, ideological – than the promotion of democratic practices and institutions. A more democratic world is not simply a more orderly and humane place. It is a more peaceful and more prosperous place. [...] [T]here must be a new urgency in the promotion of the rule of law, pluralism and respect for human rights. Democracy and human rights are not only ideals to be pursued by all nations – they are also pragmatic tools that are powerful weapons against extremism.” (Statement by Kenneth Wollack, President, National Democratic Institute for International Affairs, before the Committee on International Relations, U.S. House of Representatives, July 9, 2003; available at: [http://www.house.gov/international\\_relations/108/wol0709.htm](http://www.house.gov/international_relations/108/wol0709.htm) [visited 11.04.2005])

<sup>23</sup> Carothers 1999: 3.

<sup>24</sup> Cf. Carothers 1999: 45. The concept of the ‘democratic peace’ was developed by Immanuel Kant (Kant, Immanuel (1922). *Zum ewigen Frieden, Sämtliche Werke*. Bd. 6, Leipzig). For a recent analysis of the concept in international relations, cf. LIPSON, Charles (2003). *Reliable Partners. How Democracies Have Made a Separate Peace*. Princeton/Oxford: Princeton University Press.

<sup>25</sup> Cf.: “Remarks by Secretary of State Madeleine K. Albright to U.S. Business Representatives, Sheraton International Club, Beijing, China, April 30, 1998” (available at: <http://www.usconsulate.org.hk/uscn/state/1998/0430a.htm> [visited 02.06.2004]): “I think a China that is engaged constructively in the region and throughout the world is very important for peace, stability and prosperity, which is what the major goals of American foreign policy are.”

The George W. Bush administration, too, points out the importance of a democratic China guided by the rule of law for international peace and economic development: “Democratically governed nations are more likely to



the United States to improve human rights in China.”<sup>26</sup> Therefore, the initiative’s focus was not confined to commercial and economic law but covered cooperation in human rights related areas of the law as well (for example administrative law, legal aid etc.).<sup>27</sup>

Finally, the Clinton administration defined the improvement of the rule of law in the PRC as the most important aim of the legal cooperation initiative in order to secure as much support for the endeavor as possible. The concept of Rule of Law is associated with a variety of different meanings and can be linked to the realization of a variety of different interests, too. Rule of Law can be conceived of as being conducive to economic development, to reigning in corruption, to fighting human rights abuses, to improving law enforcement, to protecting the environment, and to increasing political participation of the citizens.<sup>28</sup> Thus, since Rule of Law appeals to such a diversity of interests, it is possible to gather support – and, of course, funding – in different political and societal camps for an initiative advancing the Rule of Law in the PRC.<sup>29</sup> But, in order not to alienate the Chinese government or domestic groups having specific interests connected to Rule of Law in mind, the Summit Statement did not make the goals of the U.S.-PRC legal cooperation initiative explicit; it was only agreed to cooperate – but not to which ends.<sup>30</sup> But, this equivocality is not to be considered as a principle flaw of the initiative; as has been pointed out above, it rather was a precondition to assure the participation of the PRC in legal cooperation with the U.S. in the first place as well as to “sell” it to more conservative members of the Chinese government.

But, despite this potential of the legal cooperation initiative to rally support from different camps, it was not very long-lived. U.S. Congress on the one hand refused to lift some of the legislative prohibitions embodied in the Foreign Relations Act in order to provide funding for the implementation of the initiative. These provisions prohibit the use of public money on cooperation measures with communist countries – including the PRC. On the other hand, Congress did not make available special funds earmarked for implementing the initiative, leaving the Clinton Administration with not enough resources to initiate follow-up activities.<sup>31</sup> Conservative forces in Congress thus did not recognize the potential inherent in legal coopera-

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secure peace, deter aggression, expand open markets, promote economic development, combat international terrorism and crime, rule responsibly, uphold human rights and fundamental freedoms, avoid man-made humanitarian crises, and improve human health.” (“A Comprehensive Human Rights Strategy for China” – Assistant Secretary of State Lorne W. Craner, Carnegie Endowment for International Peace, Washington, D.C., January 29, 2004; available at: [http://www.usembassy.it/file2004\\_02/alia/a4020307.htm](http://www.usembassy.it/file2004_02/alia/a4020307.htm) [visited 11.04.2005])

<sup>26</sup> Gewirtz 2003: 606. Cf. remarks of then-Secretary of State Madeleine Albright: “A half century ago, a generation of American leaders led by President Truman and Secretary of State Marshall offered a plan for re-building a Europe decimated by war. Their goals then were similar to our goals today. They understood that nations working together as trading partners and partners in peace would be less likely to fall into the abyss of war. They believed that gaining the commitment of nations to high standards of law and human rights would make the world less brutal and less unjust.” (Secretary of State Madeleine K. Albright Remarks, May 1997)

<sup>27</sup> Gewirtz 2003: 609/610.

<sup>28</sup> On the encompassing value of Rule of Law promotion see the remarks of then-Secretary of State Madeleine Albright: “If you are a business person, you will care whether China’s legal structure respects individual rights, and whether the political and security environment is stable. If you are a military planner, you will want to see China moving ahead with economic and political reform because you know that an open society contributes to peace. If you are a human rights activist, you will welcome the long-term liberalizing effects created by expanded commerce, creation of a strong private sector, and a broad dialogue between China and the world’s democracies. And if you are Secretary of State, you will be determined to move ahead on all fronts, encouraging the full integration of China into the international system.” (Secretary of State Madeleine K. Albright Remarks, May 1997; Stephenson 2000:10-11.

<sup>29</sup> Stephenson 2000: 10; “Promoting Rule of Law in China” – Roundtable before the Congressional-Executive Commission on China, One Hundred Seventh Congress, Second Session (May 24<sup>th</sup>, 2002): Statement of Robert Kapp, President, U.S.-China Business Council (*hereinafter: Statement of Robert Kapp, 24.05.2004*)

<sup>30</sup> Gewirtz 2003: 609.

<sup>31</sup> Gewirtz 2003: 614-615.

tion to improve the rule of law and human rights situation in the PRC; they instead refused to cooperate in any area with the “butchers of Beijing”.<sup>32</sup>

But, the fact that the legal cooperation initiative itself failed to mature into a full-fledged U.S.-China governmental cooperation program due to the described lack of funds does not mean that the initiative was completely without effect. Quite to the contrary, the U.S.-China agreement to cooperate in the area of law was of great importance. With the Clinton-Jiang Summit Joint Statement 1997, Chinese President Jiang Zemin committed himself to the position that legal cooperation with the U.S. “serves the needs and interests” of the PRC. On the one hand, this commitment served as an important protective cover for legal reformers in the PRC already working with U.S. legal experts in the area of legal reform.<sup>33</sup> On the other hand, this statement provided the foundation and the ignition for the initiation of a diversity of legal cooperation programs by American non-governmental donors. This means, the U.S.-China agreement on legal cooperation can be conceived of as a *political* foundation and prerequisite upon which it was possible to build a large array of private American-Chinese legal cooperation measures and programs in the first place. Thus, even without developing a life of its own due to a lack of funding, the initiative opened the door for spreading U.S.-China legal cooperation programs.

### *1.2 Permanent Normal Trade Relations Negotiations as a Catalyst for U.S.-PRC Legal Cooperation*

A second aspect conducive to the promotion of U.S.-China legal cooperation has to be pointed out. It has been mentioned that the refusal of U.S. Congress to provide funds constituted an immense obstacle to U.S.-China legal cooperation and especially to the Bill Clinton-Jiang Zemin legal cooperation initiative. In 2000, granting Permanent Normal Trade Relations (PNTR) status to the PRC changed the accidentals considerably. PNTR was negotiated between the U.S. and the PRC as a precondition for China’s entry into the World Trade Organization (WTO). Prior to PNTR, the annual vote in Congress about MFN status for the PRC had been an opportunity to point out human rights problems in China and to call for these shortcomings to be corrected. Otherwise, Congress threatened not to renew MFN in the following years. Thus, PNTR meant that U.S. Congress lost a powerful weapon for monitoring the rule of law and human rights situation in the PRC as well as for exerting pressure on the Executive to stand up for better human rights protection in China. Congress was neither willing to give up its influence on the administration’s China policy, nor the possibility to exert pressure on the PRC to improve the human rights situation. As a consequence, Congress called for the relevant U.S. Departments to plan and implement appropriate legal cooperation measures with the PRC to ensure that the Administration lives up to its commitment to further the rule of law and human rights in the PRC. Furthermore, Congress also demanded a better coordination of U.S.-China cooperation activities in order to compensate for the loss of pressure on the PRC to improve the human rights record resulting from PNTR.

Thus, H.R. 4444 on Permanent Normal Trade Relations with the People’s Republic of China, requires “the Departments of Commerce, State, and Labor to provide training and technical assistance in China for purposes of developing the rule of law with respect to commercial and labor market standards and with respect to democracy-building. The Departments will establish programs to assist China in bringing its laws into compliance with international requirements, including WTO rules and ILO (International Labor Organization) conventions, and in

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<sup>32</sup> Interview 04/2004

<sup>33</sup> Gewirtz 2003: 610.

developing processes to enforce the rule of law.”<sup>34</sup> The U.S.-China Trade Relations Act (2000),<sup>35</sup> granting PNTR status to the PRC, requires the implementation of legal cooperation programs with the PRC.<sup>36</sup> As a consequence, in fiscal year (FY) 1999/2000 U.S. Congress for the first time allowed U.S. foreign assistance funds (i.e. Economic Support Fund money) to be used for financing rule of law and democracy related programs implemented by American Organizations in the PRC;<sup>37</sup> in FY 2002/2003 specific amounts of money other than Economic Support Fund resources were specifically earmarked for these programs.<sup>38</sup> This means, since FY 1999/2000 there exist some U.S. government funded initiatives to improve the rule of law situation in the PRC by legal cooperation measures.

Furthermore, H.R. 4444 also required the “establishment of a Congressional-Executive Commission on China”.<sup>39</sup> Thus, in October 2000, the Congressional-Executive Commission on China (CECC) was established by China Relations Act (2000).<sup>40</sup>

### *1.3 Institutionalized Monitoring of the Human Rights and Rule of Law Situation in the PRC:*

#### *The Congressional-Executive Commission on China*

The Congressional-Executive Commission on China (CECC) consists of nine Senators, nine members of the House of Representatives, and five senior Administration officials appointed directly by the president.<sup>41</sup> The functions of the CECC comprise monitoring PRC compliance with human rights as well as supervising the development of rule of law in the PRC. Furthermore, the CECC compiles and maintains a registry of prisoners of conscience and of persons who are in one way or the other persecuted by the PRC government due to their pursuit of basic human rights such as free expression, free assembly, religious freedom etc. Finally, the CECC monitors all legal cooperation activities conducted by the U.S. government or by private American donors, thereby helping to coordinate these activities.<sup>42</sup> But, it is important to point out that the CECC does not initiate or conduct legal cooperation programs with Chinese partners itself; instead, the CECC collects information about rule of law and human rights developments in the PRC and shares this information with the U.S. government as well as with the general American public.<sup>43</sup>

The CECC conceives of human rights and the rule of law as two closely connected principles; therefore, monitoring legal reform developments in the PRC is an important focus of the

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<sup>34</sup> H.R. 4444, Subtitle B, Section 511-514;

available at: <http://rpc.senate.gov/~rpc/releases/1999/L71tr083100.htm> (visited 08.09.2004)

<sup>35</sup> Publ. L. No. 106-286, §511, 114 Stat. 880, 905-06 (2000)

<sup>36</sup> Orts 2001: 73.

<sup>37</sup> Pub. L. No. 105-277, §527

<sup>38</sup> Pub. L. No. 107-115, §526; United States General Accounting Office (2004). *Foreign Assistance: U.S. Funding for Democracy Related Programs (China)*. Washington, D.C.: GAO; 1-2 (*henceforth: GAO 2004*).

<sup>39</sup> H.R.4444, Title III, Section 301; available at: <http://rpc.senate.gov/~rpc/releases/1999/L71tr083100.htm> (visited 08.09.2004)

<sup>40</sup> “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): Opening statement of Hon. Max Baucus, a U.S. Senator from Montana, Chairman, Congressional-Executive Commission on China (*henceforth: Statement of Max Baucus, 07.02.2002*)

<sup>41</sup> H.R.4444, Title III, Sec. 303; available at: [http://www.cecc.gov/pages/general/HR4444\\_Title3.pdf](http://www.cecc.gov/pages/general/HR4444_Title3.pdf) (visited 16.06.2004)

<sup>42</sup> The functions of the CECC are described in H.R.4444, Title III, Sec. 302; available at: [http://www.cecc.gov/pages/general/HR4444\\_Title3.pdf](http://www.cecc.gov/pages/general/HR4444_Title3.pdf) (visited 16.06.2004)

<sup>43</sup> “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): Opening statement of Hon. Doug Bereuter, a U.S. Representative from Nebraska, Co-Chairman, Congressional-Executive Commission on China (*hereinafter: Statement of Doug Bereuter, 07.02.2002*)

CECC work. In the area of human rights and rule of law, it is not the aim of the CECC to pursue advocacy work on individual cases of human rights violations but to support overall systemic changes in the PRC. In this regard, the CECC is to be conceived of as an “instrument of the U.S. government” for implementing the overall foreign policy goal of improving the human rights and rule of law situation in the PRC.<sup>44</sup> Hence, the CECC will work out “how the United States can pursue policies and programs that will increase the respect for law in China [...]”<sup>45</sup> One important method to achieve this encompassing aim is to build up legal institutions in the PRC, i.e. improving the education of lawyers and judges, increasing transparency in the legislative and regulatory process and extending legal services to all parts of the Chinese population. The contribution of the CECC in fulfilling this task is to “act as a catalyst for encouraging and supporting United States and multilateral efforts” in this area.<sup>46</sup> Since there does not exist a comprehensive U.S. governmental program to support and fund legal cooperation projects in the PRC, the CECC aims at finally working out such a program in order to complement the efforts of the many private American donors in this field. In this regard, the work of the CECC particularly aims at providing the U.S. government with information about the areas in which a U.S. public engagement would be most promising. In order to gather additional information and to avoid duplication, the CECC also analyzes the legal cooperation programs conducted by foreign private and public donors in the PRC.<sup>47</sup>

It is important to mention that the CECC was unilaterally established by the U.S. in conjunction with PNTR; this means the CECC is not based on an agreement or Memorandum of Understanding between the U.S. and PRC governments. Consequently, the PRC government interpreted the inauguration of the CECC as an intrusion into Chinese internal affairs and thus refuses to cooperate with the CECC. Therefore, the CECC tries to identify reform-minded individuals in the Chinese government, CCP, and economy and to develop strategies to assist those in the PRC who seek reform,<sup>48</sup> thereby supporting reforms from below and from within the PRC. This proceeding clearly resembles a “Trojan Horse” strategy:<sup>49</sup> such a strategy conceives of legal cooperation as an instrument for covertly introducing human rights and rule of law related ideas into the PRC, aiming at inducing political reforms and, finally, democratization. In order to stall reform processes, the Chinese government, too, sometimes resorts to the argument that foreign donors might follow a “Trojan Horse” strategy. For example, during the vibrant discussion about amendments to the Chinese constitution in summer 2003, many critical and constructive suggestions were raised by Chinese legal academics.<sup>50</sup> This prompted the Chinese government to bear down this discussion.<sup>51</sup> In this context, the Central Office of the CCP Central Committee issued a document, accusing foreign legal cooperation programs of importing subversive ideas heating up the constitutional debate into the PRC. It was argued that by following a “Trojan Horse” strategy, these programs tried to destabilize and weaken the PRC.<sup>52</sup> By accusing foreign donors of pursuing such a strategy, some parts of the Chinese

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<sup>44</sup> Statement Max Baucus, 07.02.2004

<sup>45</sup> Statement Max Baucus, 07.02.2004

<sup>46</sup> Statement of Doug Bereuter, 07.02.2002

<sup>47</sup> Statement of Doug Bereuter, 07.02.2002

<sup>48</sup> Statement of Max Baucus, 07.02.2002

<sup>49</sup> Cf. Stephenson 2000: 14-16.

<sup>50</sup> For an in-depth analysis of the discussion about the Chinese constitutional amendments in 2003/2004 see: Heilmann/Schulte-Kulkmann/Shih 2004

<sup>51</sup> Substantive parts of the discussion about constitutional amendments were carried out via the Internet and during academic conferences. When the Chinese government tried to stall the discussion, the relevant Internet pages were closed down, and legal academics were asked not to participate in the discussion any longer. Some of the most outspoken academics were kept under police surveillance for some time (see: Heilmann/Schulte-Kulkmann/Shih 2004).

<sup>52</sup> Cf. „China Cracks Down on Ongoing Debate over Political Reform”; *The Wall Street Journal*, 24.09.2003. Indeed, some American organizations are cooperating with Chinese partners just in the area of constitutional

government and CCP are hence trying to discredit foreign legal cooperation programs as well as reform minded Chinese officials advocating these programs in order to stall legal reform processes. In the same vein, Chinese non-governmental organizations (NGOs) working with foreign partners in the area of legal reform are at times accused of collaborating with foreigners following a “Trojan Horse” strategy, leaving these NGOs very vulnerable to governmental interference with their work.

However, members and staff of the CECC emphasize that it is not the aim of the CECC to impose American human rights and rule of law standards on the PRC<sup>53</sup> or to follow a subversive and non-transparent “Trojan Horse” strategy.<sup>54</sup> In any case, whether American legal cooperation indeed constitutes a Trojan Horse or not, the Chinese government is making use of this argument at discretion in order to restrict the work of legal cooperation activities if regarded as necessary. As a result, many private American organizations active in the area of legal cooperation renounce public funding as a matter of principle. Public funding would allow these organizations to be tied to the U.S. government and hence to be regarded as transmission belts for U.S. governmental interests in the PRC.<sup>55</sup> This could result in less freedom for the work of these organizations and more vulnerability of the organizations as well as of their Chinese counterparts.<sup>56</sup>

This presentation reinforces the theoretical argument brought forward in Part I of the analysis<sup>57</sup> that legal cooperation measures are strongly perceived as relatively powerful instruments for advancing one nation’s foreign policy interests *vis-à-vis* other nations. In practice, this results in a certain aversion of nations to engage in legal cooperation with other nations perceived as more powerful since this could leave the weaker partner vulnerable to the execution of the more powerful partner’s foreign policy objectives. Here lies one reason why so far the PRC and the U.S. have not agreed upon a comprehensive official U.S.-China government-to-government legal cooperation program.

However, in the area of labor law, official U.S.-PRC legal cooperation begins to take shape. This program is to be described in more detail below.

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reform, thus being an implicitly target of the CCP Central Committee’s statement, too. For example, the Yale University China Law Center (to be described in Schulte-Kulkmann 2005b) is working with Chinese legal scholars to explore mechanisms for developing a system of constitutional review in the PRC (cf. “The China Law Center – The Law School Engages China”, *Yale Law Review*, Winter 2003. Available at: [http://chinalaw.law.yale.edu/china\\_Winter03.pdf](http://chinalaw.law.yale.edu/china_Winter03.pdf) [visited 19.06.2004]).

<sup>53</sup> Statement of Max Baucus, 07.02.2002

<sup>54</sup> Interview 03/2004

<sup>55</sup> However, there are quite a few American private organizations receiving public money for financing some parts of their work, but this does not result in these organizations being less independent in their work. The main consequence of receiving public money is that the standards of evaluation for the publicly financed programs are more strict.

<sup>56</sup> This argument was put forward by William Sullivan, Director, Executive Education Programs, Maxwell School of Public Affairs, Syracuse University (“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 [*hereinafter: Statement of William Sullivan, 24.05.2002*])

<sup>57</sup> Schulte-Kulkmann/Heilmann 2005a

## 2 U.S. Governmental Legal Cooperation Initiatives

### *2.1 Direct Government-to-Government Cooperation Programs: U.S. Department of Labor and PRC Ministry of Labor and Social Security*

#### *2.1.1 Program Description*

Cooperation between the U.S. Department of Labor (DoL) and the Chinese Ministry of Labor and Social Security (MoLSS) directly results from PNTR legislation, too. As has been mentioned above, PNTR legislation requires the DoL to provide training and technical assistance in China.<sup>58</sup> Therefore, in 2002, Secretary of Labor Elaine Chao released two grants totaling 6.4 million US\$ for legal cooperation projects in the area of labor law. Of these resources, 2.3 million US\$ were earmarked for projects improving the safety and health conditions in Chinese coal mines whereas 4.1 million US\$ were spent on projects to support labor rule of law in the PRC.<sup>59</sup>

This last-mentioned grant was awarded to a consortium of three private organizations – the Worldwide Strategies, Inc.,<sup>60</sup> the Asia Foundation, and the National Committee on United States-China Relations (NCUSCR)<sup>61</sup> – which is responsible for the implementation of technical assistance measures as required by PNTR legislation. The consortium cooperates with the Chinese MoLSS, Chinese governmental institutions at the provincial and municipal level as well as with non-governmental and educational organizations and employer and worker groups. The technical cooperation focuses on education and training activities to strengthen the Chinese government’s capacity to draft laws and regulations to implement international standards of workers’ rights, promote greater awareness of labor law among Chinese workers, and, finally, to improve legal aid services to women and migrant workers.<sup>62</sup> The NCUSCR in particular is responsible for the implementation of cooperation measures in the area of legislative drafting, employment laws, curriculum development and training for labor inspectors, and labor law enforcement.<sup>63</sup> The Asia Foundation focuses on the area of legal aid and uses DoL funds for the development and support of legal aid services to migrant women workers.<sup>64</sup>

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<sup>58</sup> H.R. 4444, Subtitle B, Section 511-514

<sup>59</sup> “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 08.09.2004)

<sup>60</sup> Worldwide Strategies, Inc. is a private organization working on economic and social development issues.

<sup>61</sup> The NCUSCR, established in 1966, is a private, non-partisan, non-profit educational organization that “promotes understanding and cooperation between the United States and Greater China in the belief that sound and productive Sino-American relations serve vital American and world interests.” NCUSCR work is financed by grants from other private foundations, the U.S. Department of State, Department of Education, and Department of Labor as well as by corporate and individual donations. (“Our Mission”; available at: [http://www.ncuscr.org/About\\_Us/AboutUs.htm](http://www.ncuscr.org/About_Us/AboutUs.htm) [visited 08.09.2004])

<sup>62</sup> “Labor Programs at the National Committee”; available at: <http://www.ncuscr.org/labor.htm> (visited 08.09.2004)

<sup>63</sup> “Labor Programs at the National Committee”; available at: <http://www.ncuscr.org/labor.htm> (visited 08.09.2004)

<sup>64</sup> The Asia Foundation’s support for migrant woman workers is described in Schulte-Kulkmann/Heilmann 2005b

### *2.1.2 Program Strategy and Potential Impact on the Migration of Legal Norms and Concepts*

In 2003, DoL and MoLSS signed a Memorandum of Understanding (MoU) regarding U.S.-China Labor Law Cooperation. Furthermore, in 2004, four Joint Letters of Understanding were signed between DoL and Chinese governmental institutions.<sup>65</sup> Thus, U.S.-China cooperation in the area of labor rule of law successively became more and more formalized. This makes it more difficult for the Chinese government to stall the process of labor law consultation and cooperation with the U.S. government because even if a MoU does not impose legally binding obligations on the parties, the nullification of a MoU is nevertheless connected with severe political costs. The U.S. is particularly interested in continuing and deepening labor rule of law cooperation with the PRC since in this area “interest and morals” converge. For one, the American public and members of Congress strenuously call upon the U.S. government as well as upon American businesses engaged in the PRC to support the improvement of labor conditions in China, in particular with regard to work safety, the abolition of child labor, workers’ rights, and the abolition of forced prison labor. By initiating cooperation in the area of labor rule of law, the U.S. government is able to live up to these demands. Furthermore, American corporations also participate in supporting labor law improvements in the PRC, for example by financing cooperation projects through the U.S. China Business Council Legal Cooperation Fund.<sup>66</sup> Since American corporations are often accused of cashing in on low health and safety protection standards for workers and low levels of wages in their plants in China,<sup>67</sup> it is in their interest, too, to support labor law improvements in the PRC and thereby to improve their public reputation.

However, on the other hand, support for labor rule of law is highly conducive to economic interests of the U.S. as well as of American businesses. Labor rule of law cooperation measures also aim at ensuring that the PRC lives up to WTO obligations and implements international labor law standards. But, improvements in work health and safety, support for workers’ rights, prescription of minimum wages etc. are not only advantageous for Chinese workers and employees; first of all, these improvements also result in raising labor and production costs since higher wages have to be paid and more investments have to be made in work health and safety precautions. This means, since low production costs because of cheap labor is one of the main competitive advantages of Chinese products over American products, U.S. support for the implementation of certain international standards of labor rule of law which simultaneously result in higher labor and production costs raises the competitiveness of American products over goods manufactured in the PRC. Thus, support for labor rule of law can be regarded as a measure which to a certain degree also protects businesses and jobs in the U.S. Hence, two main U.S. interests connected with legal cooperation in the PRC – eco-

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<sup>65</sup> The first Joint Letter of Understanding (JLoU) was signed between DoL and MoLSS, covering issues of wage and hour regulations and enforcement; the second JLoU, signed between DoL and the Chinese State Administration of Work Safety, aims at deepening cooperation in the area of occupational safety and health; the third JLoU, signed between DoL and the Chinese State Administration of Work Safety, covers the area of mine safety and health and the role of private insurance in the promotion thereof; finally, the subject of the fourth JLoU, signed between DoL and MoLSS, is the improvement of American-Chinese cooperation in the area of regulation, administration and oversight of pension programs (“The U.S. Department of Labor and the People’s Republic Sign Four Joint Letters of Understanding”; available at: <http://www.dol.gov/opa/media/press/opa/OPA20041117.htm> [visited 08.09.2004])

<sup>66</sup> The activities of the U.S. China Legal Cooperation Fund are described in Schulte-Kulkmann/Heilmann 2005b

<sup>67</sup> 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](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:78790.pdf) [visited 04.08.2004])

conomic interests as well as foreign policy interests directed at improving rule of law and human rights in China – are simultaneously improved by the DoL labor rule law cooperation program.

As far as the program’s potential impact on the migration of legal norms and concepts is concerned, a positive influence of the U.S.-PRC cooperation in the area of labor rule of law on the Chinese labor law regime is likely simply because the PRC is obliged by WTO membership to harmonize the labor law system with international labor law standards. These standards, in turn, to a considerable degree mirror labor law regulations valid in the U.S. Thus, the area of labor law is an example for an indirect export of American legal norms and concepts: The U.S. has been successful in pushing U.S.-style or U.S.-acceptable legal models in international organizations such as WTO and ILO; in turn, these organizations shape international model standards. Therefore, if nation states wish to accede to such organizations, they are obliged to live up to the required legal standards. This means, adjusting to “international” standards set by international organizations very often equals conforming with legal regimes originating in the U.S.<sup>68</sup> Thus, insofar as international standards for example in the area of labor law are concerned, a migration of legal norms occurs due to the “extraterritorial reach” of American legal norms and concepts.<sup>69</sup>

Besides the direct governmental U.S.-China legal cooperation in the area of labor law, there exists to a much greater extent some indirect U.S. governmental involvement in American – albeit private – legal cooperation initiatives since some funding for these projects stems from governmental sources. Mainly responsible for spending public money on private American-Chinese legal cooperation initiatives is the State Department’s Bureau of Democracy, Human Rights, and Labor, to be described below.

## *2.2 Indirect Governmental Measures of Legal Cooperation: U.S. Government Funded Projects*

### *2.2.1 Bureau of Democracy, Rights, and Labor*

The Bureau of Democracy, Human Rights, and Labor (DRL) was created by U.S. Congress in 1977 and is a part of the U.S. Department of State; currently, DRL is headed by Acting Assistant Secretary of State Michael G. Kozak. In the beginning, DRL served as an institution for promoting as well as monitoring and reporting on the human rights and political freedom situation in 195 countries. As has been mentioned above, in FY 1999/2000, U.S. Congress authorized the use of Economic Support Funds to make grants to human rights and democracy related cooperation projects in the PRC – but only under the precondition that these funds went to non-Chinese NGOs outside the PRC.<sup>70</sup> Then, in conjunction with PNTR legislation, in 2000, U.S. Congress lifted the restriction that Economic Support Funds could only be provided to organizations outside the PRC and, moreover, made available funds amounting to 10 million US\$ for the support of human rights, rule of law and democracy related programs in the PRC through the Human Rights and Democracy Fund (HRDF) administered by DRL.<sup>71</sup> This means, absent the opportunity to discuss the human rights and rule of law situation in China in conjunction with the annual debate about MFN renewal, Congress now wanted to

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<sup>68</sup> DeLisle 1999: 202.

<sup>69</sup> DeLisle 1999:208.

<sup>70</sup> GAO 2004: 2.

<sup>71</sup> GAO 2004: 3. The relevant legislation is Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, Pub. L. No. 107-115, § 526(a), 115 Stat. 2118, 2147 (cf. Gewirtz 2003: 615, note 23).



use the DRL – as well as the CECC – as a forum for debating the human rights and rule of law situation in the PRC and as an instrument for putting pressure on the PRC in this regard.

Nevertheless, the decision to equip DRL with resources to support concrete human rights and rule of law related cooperation projects in the PRC again was quite disputed amongst members of Congress. Some refused to cooperate on a working level with the Chinese *regime* and instead favored diplomatic channels such as the UN Human Rights Commission to exert pressure on the PRC regarding the human rights and rule of law situation. The conviction that it is advisable to use different channels at a time in order to promote human rights and rule of law only slowly evolved amongst members of Congress,<sup>72</sup> thus, only in 2003 DRL resources were supplemented considerably.<sup>73</sup>

A detailed overview of U.S. governmental funding to human rights and rule of law projects in the PRC will be provided below in section 2.2.1.

### *2.2.1.1 Description of DRL Initiatives*

The financial resources provided by DRL/HRDF are used to “support democratic institutions, promote human rights, and build civil society in countries and regions of the world that are geo-strategically critical to the U.S.”<sup>74</sup> – amongst which the PRC takes a prominent place. The focus of DRL/HRDF funded projects is thus strictly human rights and rule of law oriented.<sup>75</sup> This means that the work of DRL does not aim directly at furthering U.S. economic interests by supporting commercial rule of law in the PRC. Even if American businesses would like to see DRL spending public money on measures directly improving the economic rule of law environment in the PRC, there is an understanding amongst members of the American business community that human rights related rule of law projects can produce a spill-over effect conducive to economic activities, too. In particular, certain aspects of the concept of Good Governance such as reliable governmental institutions, transparency and legal certainty are vital preconditions for the protection of human rights as well as for the safety of economic transactions.<sup>76</sup>

HRDF resources are not used to finance cooperation projects directly run by DRL or the Department of State. Instead, DRL calls upon international (not necessarily American) and Chinese non-governmental organizations to submit proposals for bilateral cooperation projects, mainly in the area of promotion of judicial independence, promotion of rights awareness, conduction of direct elections at the village level, support for judicial, administrative and regulatory reform, and promotion of citizen participation in local government and civil society.<sup>77</sup> Once a year, DRL decides which of the proposed projects receive HRDF funding. Appendix I provides an overview of HRDF funded projects in the PRC from FY 1999/2000 to 2004/2005. In the majority of cases, funding is provided to western (in fact mainly American) NGOs. This means, DRL resources are not directly provided to the Chinese organizations but indirectly via the private American partner organizations. Furthermore, there is no direct contact between DRL and the Chinese partner organizations of a funded project; the American organizations themselves are responsible for finding eligible Chinese partner organizations –

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<sup>72</sup> Interview 06/2004

<sup>73</sup> In FY 2003, U.S. Congress appropriated an additional US\$ 15 million for this sort of projects (GAO 2004: 3).

<sup>74</sup> Cf. “Human Rights and Democracy Fund /HRDF”; available at: <http://www.state.gov/g/drl/c7607.htm> (visited 15.07.2004)

<sup>75</sup> Interview 06/2004

<sup>76</sup> Interview 06/2004

<sup>77</sup> “HRDF Project Highlights”; available at: <http://www.state.gov/g/drl/c7970.htm> (visited 15.07.2004)

in most cases NGOs – for the projects in question.<sup>78</sup> However, in many cases DRL officials are familiar with the respective Chinese partner organizations to a cooperation project, their activities and reputation and more often than not know the organizations’ representatives personally. But these contacts generally remain at an unofficial level; thus, in particular for the Chinese government, DRL officially remains in the background.

This is true for the design and implementation of specific cooperation projects, too. DRL in general is not involved in this process. Instead, it is left mainly to the Chinese partner organizations to figure out which sorts of projects are most appropriate and, what is more, which projects can be implemented within the boundaries set by the Chinese government with regard to the articulation of human rights and rule of law topics. Hence, there is a very close cooperation between Chinese NGOs and the respective local branches of the working levels of the Chinese government. This close relationship results from the special structure of Chinese NGOs which will be briefly explained below.

Indeed, a Chinese organization dubbed *non-governmental organization* (*feizhengfu zuzhi*) is not to be equated with a western NGO in a simplistic way. The western, liberal-democratic, reading of the term usually describes NGOs as “non-profit organizations as privately constituted, privately funded, independently operated organizations established by individual citizens who are united by a common vision of the collective good.”<sup>79</sup> As such, NGOs are regarded as essential to civil society since this type of organization is considered as an “antagonist” to state and government institutions, hence reigning in the danger of excessive state authority.<sup>80</sup>

Chinese NGOs are different from that. Non-governmental organizations in the PRC usually do not possess formal legal status as independent entities but operate as more or less autonomous sub-divisions of governmental institutions. Thus, in principle, these NGOs are not to be regarded devoid of governmental influence and control. From a western point of view, this significantly diminishes the capability of Chinese NGOs to act as a counterbalance to governmental authority. In other words, Chinese NGOs are regarded as mere “transmission belts”, conveying government policies down to the local community.<sup>81</sup>

But, this is only one side of the medal. Chinese NGOs have to be treated in a more differentiated fashion. On the one hand, since each Chinese NGO has to be associated with a state actor, this affiliation leaves the ‘patron’ with considerable influence on the work and activities of the NGO – regardless whether an administrative agency or an influential government official constitutes this ‘patron’.<sup>82</sup> 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.<sup>83</sup> 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<sup>84</sup> – particularly if the ‘patron’ himself is reform-minded. And, finally, a

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<sup>78</sup> Interview 06/2004

<sup>79</sup> Lee 2000: 375, referring to: BUCHOLTZ, Barbara K. (1998). Reflections on the Role of Non-profit Associations in a Representative Democracy. In: *Cornell Journal of Law and Public Policy*, Vol.7; 555, 571-76.

<sup>80</sup> Lee 2000: 376.

<sup>81</sup> Lee 2000: 376-378.

<sup>82</sup> Lee 2000: 423.

<sup>83</sup> Liebman 1999: 270/271.

<sup>84</sup> Lee 2000: 378.

powerful ‘patron’ may be of help if it comes to the implementation of certain policies advocated by an NGO.<sup>85</sup>

This ‘patron-ward’ relationship between Chinese NGOs and governmental actors helps to explain why American NGOs such as those funded by DRL are able to cooperate successfully with Chinese counterparts even without direct involvement of and approval by the Chinese central government. It has been mentioned that in the course of the cooperation it is left to the Chinese counterpart NGOs to figure out if there is enough “political space” to implement certain human rights and rule of law related cooperation measures. Since Chinese NGOs are tied to governmental ‘patrons’, it is, for one, facile for these organizations to decide in reconciliation with the ‘patron’ whether a certain project still lies within the boundaries defined by the Chinese government. Furthermore, once the ‘patron’ has approved the implementation of the project, this equals central government approval and lends legitimacy to the endeavor. Thus, depending on the degree of reform-mindedness of the ‘patron’, even progressive human rights and rule of law related cooperation projects can be successfully implemented.

One example for such a conducive ‘patron-ward’ relationship between Chinese NGOs and governmental actors is the work of some legal aid centers. Two of these are Peking University Center for Women’s Law Studies and Legal Services and Wuhan University Center for the Protection of the Rights of Disadvantaged Citizens.<sup>86</sup> Both centers are formally affiliated with a government entity – the law departments of Peking University and Wuhan University, respectively – but the centers receive government funding only to a very limited degree and operate autonomously to the greatest possible extent.<sup>87</sup> Furthermore, both centers are connected to individual and institutional governmental ‘patrons’ through close personal ties: The founder of the Wuhan University Center, Prof. Wan Exiang, is Vice-President of the Supreme People’s Court; moreover, the Center receives appreciation by the Wuhan municipal government as well as by the Ministry of Justice in Beijing. A number of advisors to the Peking University Center also hold prominent government posts. Thus, under the “umbrella” of these governmental ‘patrons’, both centers are able to file high-impact litigation in the areas of family law, labor disputes and personal injury claims. Thereby, the centers advocate legislative changes (Peking University Centre) and represent clients suing government departments or entities (Wuhan University Centre).<sup>88</sup> These two examples should illustrate that the ‘patron-warden’ relationship between NGOs and (individual members of) governmental institutions not only infringes on the independence of NGOs but can also provide NGOs with a protective “umbrella” as well as with legitimacy which leaves the NGOs with considerable space to carry out progressive activities.

As has been mentioned above, since some government officials at the working level are relatively open-minded and reform-oriented, more often than not it is possible to gain their approval – sometimes after long informal negotiation processes – for cooperation projects which would not have been approved by the Chinese central governmental authorities due to these projects’ close connection to explicit human rights and rule of law topics.<sup>89</sup> This implies that the Chinese central government for one is not directly involved in selecting and approving the different cooperation programs between Chinese NGOs – and their ‘patrons’ – and American private organizations. Moreover, because approval for projects in most cases is granted by

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<sup>85</sup> Lee 2000: 378.

<sup>86</sup> Liebman 1999: 233 et seqq.

<sup>87</sup> Liebman 1999: 271.

<sup>88</sup> Liebman 1999: 234-236.

<sup>89</sup> Interview 06/2004. Chinese institutions, such as university law schools, for example, planning to implement legal cooperation measures with foreign partners are obliged to report to the Chinese Ministry of Foreign Affairs on this cooperation (Woodman 2004: 41).

local ‘patrons’, the Chinese central government is not directly aware which programs exactly are carried out between Chinese and American partners. Of course, the Chinese Central government is informed in broad terms that funding for certain rule of law and human rights cooperation projects is provided for by the U.S. government, but lacks information as to which organizations and individuals are concretely involved in the cooperation projects.<sup>90</sup>

There seems to exist a sort of quiet agreement: As long as certain human rights and rule of law cooperation projects do not cross the “red line” of what is in form and content acceptable to the official Chinese governmental view concerning human rights and rule of law questions, there is considerable leeway for concrete cooperation projects at the working level. It is the task especially of the Chinese NGOs to make sure that certain projects – at least nominally – stay well within these boundaries and to bargain approval with the respective ‘patron’ government officials or institutions at the working level.

Furthermore, it is easier for the Chinese central government to turn a blind eye on the Chinese-American human rights and rule of law cooperation activities since the U.S. government does not get directly involved in these activities. Quiet allowance of these private activities as one form of cooperation in the area of human rights and rule of law has certain advantages for the Chinese government. By allowing American organizations to work in this area, the Chinese government can show a certain degree of good will to cooperate in order to improve the human rights and rule of law situation and thus mitigate some of the pressure exerted by the U.S. government. On the other hand, by allowing only private activities the Chinese government does not enter any formal and binding agreements with the U.S. government as would have been brought about by the initiation of an official government-to-government rule of law and human rights cooperation scheme. Thus, the Chinese government retains control over the cooperation activities and is able to stall these activities in case of need.

#### *2.2.1.2 Program Strategy and Potential Influence on the Migration of Legal Norms and Concepts*

As far as the U.S. strategy underlying the work of DRL is concerned, one can conclude that the fact that DRL is trying, wherever possible, to work with reform-minded Chinese counterparts in order to initiate “change from within”<sup>91</sup> is a strong indicator that rule of law and human rights cooperation as conceived by DRL – at least implicitly – follows a “Trojan Horse” rationale: DRL/HRDF support is directed at projects which constantly try to push the “red line” of which human rights and rule of law related topics are eligible for cooperation measures. This means that DRL aims at supporting human rights and rule of law reform projects with a focus on and potential for reform which is well ahead of what the Chinese central government is willing to concede at the moment. Thus, DRL supports reformist tendencies in the PRC with the hope that these tendencies might gain momentum and a life of their own which then no longer could be controlled or stalled by the PRC central government.

Thus, the strategy of DRL to bring about improvements of the rule of law and human rights situation in the PRC is to be regarded as a complement to the official U.S. foreign policy line *vis-à-vis* the PRC in the area of human rights and rule of law. Whereas official U.S. diplomacy tries to exert pressure on the PRC to improve the human rights and rule of law situation by providing inducements and threatening disadvantages mainly of the economic kind, DRL is conducting a low profile approach by supporting private American-Chinese initiatives in

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<sup>90</sup> Interview 06/2004

<sup>91</sup> Interview 06/2004

order to bring about changes from within the PRC with the help of Chinese reformist forces themselves.

The strategy of DRL to rely on American and Chinese NGOs as partners for the implementation of rule of law and human rights cooperation programs results in the development of networks between American and Chinese individuals. This network not only consists of American and Chinese NGO members but also comprises Chinese legal scholars and progressive members of Chinese governmental institutions. The network is constantly expanding since individuals and organizations engaged in human rights and rule of law cooperation projects to date are continuously working to recruit new individual and institutional partners for potential future cooperation measures.<sup>92</sup> Since interpersonal contacts are particularly crucial for the migration of legal norms and standards, the development of networks between American and Chinese individuals working in the area of human rights and rule of law reform is of great importance for the export of American human rights and rule of law standards into the PRC. For one, personal contacts between American and Chinese legal professionals, academics and students very often result in a growing affective identification with the American legal system and legal values on the side of the Chinese legal professionals.<sup>93</sup> This, in turn, results in a strong preference for American legal norms as examples if these individuals are asked to advise on Chinese legal reform projects. In the PRC, legal scholars to a relatively great extent have the possibility to influence the law-making and, thereby, the policy-making process as advisors to government bodies.<sup>94</sup> Thus, cooperation with Chinese legal experts constitutes an important mechanism to introduce American legal norms and concepts into the Chinese legal reform process. Further on, individual alumni of American-Chinese cooperation measures (mainly educational programs) very often feel strongly devoted to the programs they participated in. This sometimes results in these individuals donating large amounts of money to the implementing institutions in order to express their solidarity, thereby supporting the continuance of the legal cooperation work.<sup>95</sup>

Moreover, institutional contacts are of importance for the export of legal norms and concepts, too. Both individual and institutional contacts grow hand in hand. For one, institutional contacts are the basis for individual contacts, but, on the other hand, initial individual contacts often result in the establishment of new institutional contacts. Institutional contacts, such as cooperation schemes between American and Chinese universities, shape the Chinese legal education landscape by introducing American legal teaching methods into the PRC. For example, Qinghua University (Beijing) started a law school based on American legal teaching techniques in cooperation with Columbia University (New York); furthermore, a joint Master of Laws degree program is currently implemented by Qinghua University, Chinese University of Political Science and Law and Temple University.<sup>96</sup> Since Qinghua University is one of the most influential universities in the PRC, it is likely that the cooperation scheme with Columbia and Temple law schools induces other Chinese universities to seek cooperation with American law schools, too.

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<sup>92</sup> Interview 06/2004

<sup>93</sup> Cf. Mattei 1994: 204.

<sup>94</sup> Woodman 2004: 42.

<sup>95</sup> The described example occurred in the case of some participants of the Committee on Legal Education Exchange with China (CLEEC) programs. From 1983 to 1997, this program offered LL.M. programs at U.S. law schools to Chinese legal professionals and government officials (Gray 1995: 7). Some of the program alumni donated large amounts of money after their return to the PRC to express their gratitude for having had the opportunity to participate in the program which very often opened up career opportunities to them (Interview 02/2004). The CLEEC program is described in Schulte-Kulmann/Heilmann 2005b.

<sup>96</sup> Weinstein 1998: 224. The Temple University-China University of Political Science and Law LL.M. program as well as the Temple University-Qinghua University LL.M. program are described in Schulte-Kulmann/Heilmann 2005b

Another prominent example in this case is the establishment of legal aid in the PRC. For 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 system now existent in the PRC is modeled closely to the U.S. system.<sup>97</sup>

Thus, a legal cooperation strategy based on the development of professional networks between individuals and institutions as it is funded by DRL/HRDF and implemented by American private organizations seems to be a highly effective strategy to export American law and legal concepts.<sup>98</sup> This effectiveness is augmented by the fact that on the American side only *private* organizations become visible during the course of the cooperation projects. The U.S. as a state actor is only indirectly involved via HRDF funding. Thus, cooperation measures and hence exported legal norms and concepts are regarded with much more favor because the absence of direct U.S. governmental influence dampens suspicions of the PRC as the importing nation that assistance measures only serve as vehicles for U.S. foreign policy interests.<sup>99</sup>

### 2.2.2 National Endowment for Democracy

A different channel for the implementation of U.S. government funded human rights and rule of law related cooperation programs is the National Endowment for Democracy (NED). NED was inaugurated by the Reagan administration in 1983. Its initial task was to promote democracy as an ideology and to fight back Marxism-Leninism in the administration's "war of ideas" against the former Soviet Union. Formally, NED is organized as a private organization but since the majority of funds for NED is annually appropriated by U.S. Congress, it should better be described as a quasi-governmental organization. But, NED also raises funds from non-governmental sources. NED makes grants to grantees which in turn use these resources to run their own projects. The main grantees are the Center for International Private Enterprise, the American Centre for International Labor Solidarity, the International Republican Institute, and the National Democratic Institute for International Affairs,<sup>100</sup> but grants are also given directly to Chinese grantees.<sup>101</sup>

Unlike the case of DRL, appropriations to NED did not prohibit grant making to Chinese organizations; hence NED was able to support rule of law and human rights related cooperation measures even prior to FY 1999/2000.<sup>102</sup> Currently, NED grants for China focus less on supporting rule of law in the narrower, "thin" sense but on the promotion of human rights in general. Furthermore, support for free flow of information, in particular for independent media, labor rights, electoral and legal reform, policy analysis, and promotion of free markets are also important areas of NED grant making activities.<sup>103</sup> Appendix II gives an overview of NED China grants from 2000 to 2003.

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<sup>97</sup> Choate 2000: 6.

<sup>98</sup> However, it has to be mentioned, some projects supported by DRL grants do not rely exclusively on the promotion of the American legal system but follow a more comparative legal approach by inviting legal scholars from other Asian or European nations as expert speakers as well. But, whether a comparative approach is followed is not to be decided by DRL but depends on the implementing organizations' decisions.

<sup>99</sup> DeLisle 1999: 284; Interview 01/2004; Interview 03/2004

<sup>100</sup> Carothers 1999: 7; 30-32.

<sup>101</sup> An overview of NED grantees in the PRC, amongst others, is available at: <http://www.ned.org/grants/web-asia.html> (visited 04.03.2005).

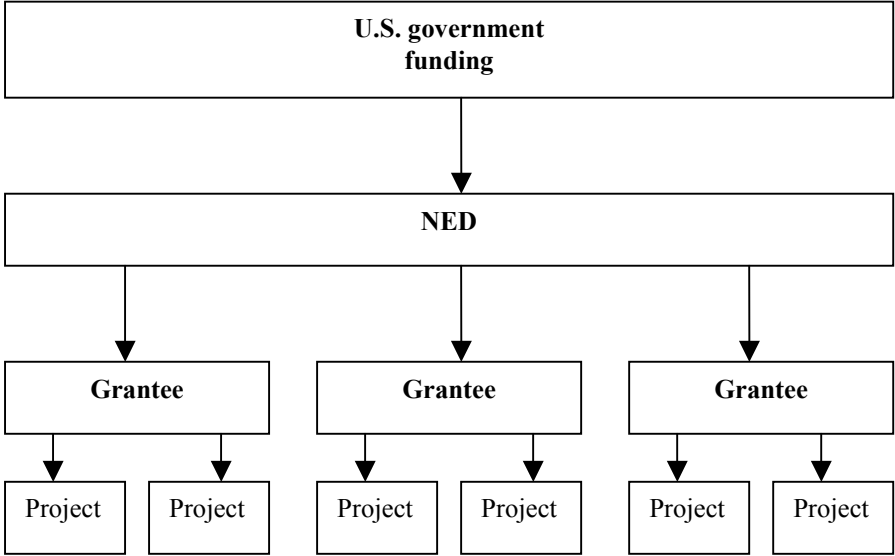
<sup>102</sup> GAO 2004: 5.

<sup>103</sup> GAO 2004: 6.

From this overview it becomes obvious that these grants mainly fund highly sensitive projects such as dissemination of information about human rights, support for reforming the “re-education through labor” (*laogai*) system, press freedom, and improvement of the human rights situation in Tibet. If one considers that NED spent more than 11 million US\$ between 2000 and 2003 on these projects, it becomes obvious that the U.S. government is massively engaged in the promotion of human rights in the PRC. But, since the areas covered by NED support are quite sensitive, a direct cooperation between American organizations and – least of all – the U.S. government and the Chinese side would not have been possible. Therefore, the U.S. government is covertly supporting human rights promotion in the PRC. For one, as has been mentioned above, NED technically is a private organization. This means, funds awarded by NED are not perceived as *governmental* funds in the first place. Furthermore, NED itself is not engaged in implementing concrete projects. Instead, resources are given to grantees which in turn use these funds to run their own projects. Hence, the origin of the funds is further blurred. And, finally, individual grants awarded by NED to grantees are rather small so that these funds “remain under the radar” and do not provoke the attention of the Chinese government as would have been the case with large amounts of money invested in certain projects.

Obviously, the U.S. government follows a masked strategy to further human rights in the PRC and is willing to spend large amounts of money on these activities. Given that with the adoption of PNTR legislation there exists no longer the possibility to exert open pressure on the PRC to improve the human rights situation by applying economic incentives and threats, the U.S. government now tries to further the foreign policy goal of supporting human rights and democratization in the PRC by covertly supporting private activities directed at these very ends. Since the origin of funds is blurred by making use of different layers of funding as illustrated in Figure 1, the U.S. government is not easily brought into direct connection with these activities. For one, this is important for the work of the grantees running projects in the PRC. If these projects would be associated with U.S. government funding, then the Chinese government would have a reason to ban this work. Furthermore, the massive financial support of the U.S. government for projects directed at democratization and human rights promotion in the PRC could be regarded as subversive by the PRC government as well as an interference in internal affairs, eventually resulting in severe diplomatic irritations.

**Figure 1: Diffusion of U.S. government spending on human rights and rule of law related projects in the PRC**



As has been illustrated above, U.S. government funded cooperation projects focusing more directly on supporting legal reform and rule of law in the PRC are not implemented as covertly as projects in the area of human rights, even if funds for these projects are often diverted and split into small portions, too. But, in general, since the Chinese government has recognized the need for legal reforms and rule of law (at least in a minimal, procedural sense), there is much more “political space” to carry out cooperation projects in this area than in the area of human rights. This space can be used by American organizations to cooperate with Chinese counterparts in concrete legal cooperation projects, even if these projects eventually touch the area of human rights as well.

*2.2.3 Other U.S. Government Funded Initiatives*

There are some other U.S. government funded initiatives to further rule of law and human rights in the PRC by cooperation measures which have to be described shortly.

*State Department Bureau for East Asia and Pacific Affairs Grants*

For one, the State Department Bureau for East Asia and Pacific Affairs Grants – in the same way as DRL – also provides grants to support cooperation measures in the area of human rights and rule of law. For example, from FY 1999/2000 to 2003/2004 a total of 7 Million US\$ were granted to the Temple University Law School legal education program with Qinghua University and China University of Political Science and Law.<sup>104</sup> Furthermore, in 2001, the Bureau supported the American Bar Association’s “China Environmental Governance Training Program”<sup>105</sup> with resources amounting to 385,000 US\$.<sup>106</sup>

<sup>104</sup> The Temple-Qinghua-Chinese University of Political Science and Law LL.M. program is described in Schulte-Kulkmann/Heilmann 2005b

<sup>105</sup> This program is described in Schulte-Kulkmann/Heilmann 2005b.

<sup>106</sup> GAO 2004: 4.



### *U.S. Embassy in Beijing*

Furthermore, the U.S. embassy in Beijing is also integrated in U.S. government initiatives to further rule of law and human rights in the PRC. The George W. Bush Administration chose a lawyer with expertise on China as an Ambassador to Beijing<sup>107</sup> and a Resident Legal Advisor is deployed at the U.S. embassy in Beijing. It is the task of this advisor “to engage with Chinese counterparts to stimulate justice sector reforms through (for example) bilateral discussions and programs focusing on substantive and procedural criminal and civil law topics.”<sup>108</sup> Since 2000, this mandate is concretized in the “Rule of Law Small Grants Program” run by the U.S. embassy in Beijing and financed by the State Department.<sup>109</sup> The Program awards small grants – ranging from approximately 4,000 to 25,000 US\$ – to selected Chinese and American NGOs to finance their respective rule of law and human rights related cooperation programs.<sup>110</sup> For examples, grants have been provided to People’s University (*Renmin Daxue*), Beijing, for the preparation of distant learning material on the subject of WTO related legal issues<sup>111</sup> and to the American Bar Association China Law Initiative.<sup>112</sup>

The strategy of the program resembles that followed by DRL. In the case of the Rule of Law Small Grants Program, the U.S. government remains in the background, too. The Ambassador and the Resident Legal Advisor identify Chinese and American NGOs potentially eligible for the Program<sup>113</sup> but they work “privately” with Chinese NGOs as well as with Chinese officials in order to figure out possible areas and concrete projects for cooperation in the context of human rights and rule of law.<sup>114</sup> This means, the U.S. State Department is not directly involved in these discussions. For one, this strategy has the advantage, as has been described above with regard to the strategy followed by DRL, that cooperation measures are regarded with considerably less suspicion since the U.S. government does not seem to be formally involved in the activities, thereby facilitating the export of legal norms and concepts. Furthermore, if the U.S. government is not directly involved, this results in some more leeway for the project work and the involved Chinese NGOs and individuals since a direct cooperation with the U.S. government would be scarcely tolerable for the Chinese government, possibly resulting in restrictions on the work of the NGOs and even harassments for the individuals involved.

As far as the aims of the Program are considered, it tries to “encourage systemic reforms” and to provide “support of democratic values” through the cooperation measures.<sup>115</sup> Given the decision of the U.S. government to remain in the background by only quietly funding the Program, hereby avoiding to arouse the attention of the Chinese government, one can conclude that the “systemic changes” sought by the Program might not be consented by the Chinese *regime*. Against this background, the explicit decoupling of U.S. government involvement and the implementation of the Rule of Law Small Grants Program thus hints at a “Trojan Horse” Strategy being followed by this sort of cooperation, too.

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<sup>107</sup> “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): Prepared Statement of William P. Alford

<sup>108</sup> GAO 2004: 5.

<sup>109</sup> The State Department Bureau of East Asia and Pacific Affairs to date has awarded a total of 175,000 US\$ for the implementation of the “Rule of Law Small Grants Program” (GAO 2004: 5).

<sup>110</sup> Interview 13/2002; United States Department of State. “Supporting Human Rights and Democracy. The U.S. Record 2002-2003” (released 24.06.2004): 76; *henceforth: State Department 2004*. Available at: <http://www.state.gov/g/drl/rls/shrd/2002/> (visited 19.07.2004)

<sup>111</sup> Interview 13/2002

<sup>112</sup> The American Bar Association’s legal cooperation programs in the PRC are described in Schulte-Kulkmann/Heilmann 2005b.

<sup>113</sup> Interview 13/2002

<sup>114</sup> State Department 2004: 76.

<sup>115</sup> State Department 2004: 76.

### 2.3 Overview of U.S. Government Financial Support for Human Rights and Rule of Law Related Cooperation Projects in the PRC

U.S. government funding for human rights and rule of law related cooperation projects since FY 1999/2000 totaled more than 39 million US\$.<sup>116</sup> Below, Appendices I and II give overviews of rule and law and human rights related projects funded by DRL and NED, respectively. Table 1 provides information about the total amount of funds provided for such projects through the State Department (i.e. DRL, Bureau for East Asia and Pacific Affairs Grants, Bureau for International Narcotics and Law Enforcement Affairs), NED, and the Department of Labor.

**Table 1: U.S. Funding for Human Rights and Rule of Law Related Cooperation Projects in the PRC FY 1999/2000 to 2003/2004 (in US\$)**<sup>117</sup>

Fiscal Year Agency/Bureau	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004	Total
<b>Department of State:</b>						
<i>DRL*</i>	296,000			3,827,000*	5,661,000	<b>9,709,000</b>
<i>Bureau for East Asia and Pacific Affairs Grants</i>			2,135,000	2,300,000	3,155,000	<b>7,590,000</b>
<i>Bureau for International Narcotics and Law Enforcement Affairs</i>			489,000	476,000		<b>965,000</b>
<b>State Total</b>	296,000		2,624,000	6,603,000	8,816,000	<b>18,339,000</b>
<b>NED</b>	1,887,000	2,662,000	3,096,000	3,144,000	4,228,000	<b>15,017,000</b>
<b>DoL</b>				6,400,000		<b>6,400,000</b>
<b>Total</b>	<b>2,183,000</b>	<b>2,662,000</b>	<b>5,720,000</b>	<b>16,147,000</b>	<b>13,044,000</b>	<b>39,756,000</b>

### 3 Summary

Compared to private American legal cooperation initiatives to be described in Part III of the analysis,<sup>118</sup> governmental and government-supported U.S.-PRC legal cooperation projects

<sup>116</sup> GAO 2004: 2.

<sup>117</sup> Table taken from GAO 2004: 4, slightly modified

\* Funds spent by DRL were calculated on the basis of the information provided by DRL; available at: <http://www.state.gov/g/drl/rls/32893.htm>; <http://www.state.gov/g/drl/rls/32957.htm>; <http://www.state.gov/g/drl/rls/32961.htm>; <http://www.state.gov/g/drl/rls/32966.htm> (all web pages visited 12.07.2004)

♦ Includes US\$ 75,000 provided by the State Department's Bureau of Oceans and International and Scientific Affairs (cf. GAO 2004: 4, Table 1)

constitute a quite new phenomenon. Perhaps as a result of the traditional engagement of civil society actors such as large philanthropic foundations, mainly the Asia Foundation and Ford Foundation, or of academic institutions such as university law schools, American governments felt no need to add a specific governmental program to these initiatives or even to try to centralize the diversity of private endeavors by orchestrating them in a governmental legal cooperation scheme. Moreover, reservations against cooperating with ideologically inimical nations as incorporated in legislation prohibited direct bi-lateral governmental legal cooperation with the PRC. In 1997/1998, President Clinton, thus, did not succeed in “selling” his “Rule of Law Initiative” agreed upon with Chinese President Jiang Zemin to the legislature which blocked funding and hence stalled the initiative. Ironically, this did not result in preventing legal cooperation with the “butchers of Beijing” as intended by members of Congress. Quite to the contrary, the agreement between the two Presidents to increase “Cooperation in the Field of Law” served as an incubator to many private American-Chinese legal cooperation projects, since the commitment of Jiang Zemin to legal cooperation with the U.S. opened considerable political space for these projects.

However, when the U.S. congress had to grant PNTR status to the PRC in connection with China’s accession to the WTO, the American legislature lost an important venue for exerting pressure on the PRC to improve the human rights and rule of law situation. As a result, lawmakers became much more receptive to exploring different instruments for supporting human rights and the rule of law in China and finally adopted the Clinton administration’s idea of initiating “cooperation in the field of law” with the PRC by mandating appropriate measures by law and by allocating the necessary funds. Since government has thus been legitimized, large amounts of money have been spent on direct government-to-government cooperation projects such as the DoL’s program or on grant-making schemes such as the DRL HRDF.

However, these resources would not have been spent if it had not been for the improvement of specific American interests. From the above analysis of the different programs it becomes obvious that amongst these, economic interests such as supporting the development of a commercial rule of law environment conducive to the activities of American businesses in the PRC and facilitating China’s compliance with WTO obligations are prominent. But, moreover, foreign policy interests directed at bringing about, as a first step, improvements to the human rights situation, and then, eventually, also supporting indigenous tendencies for political liberalization and democratization in the PRC are of equal importance to the American government. Therefore, significant amounts of financial resources are spent through grant making schemes such as the DRL HRDF or through NED and the U.S. embassy in Beijing on legal cooperation programs in the areas of international human rights law, criminal law, judicial reform (i.e. court organization, procedural law reforms, judicial independence), judicial training, government transparency and accountability, support for legal aid centers as well as for grass roots NGOs and human rights advocacy organizations. Thereby, legal cooperation in particular aims at helping to build up professional networks between the participating American and Chinese jurists. With regard to the questions raised in Part I of the Analysis,<sup>119</sup> this strategy seems indeed conducive to the transplantation of American legal norms and concepts into the Chinese legal system.

The final part of the Analysis will then explore, for one, whether the interests followed by the American government by supporting and implementing legal cooperation programs with the PRC are also mirrored by private American legal cooperation initiatives. Furthermore, it remains to be seen whether the strategies followed by these private initiatives also provide addi-

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<sup>118</sup> Schulte-Kulkmann 2005b

<sup>119</sup> Schulte-Kulkmann/Heilmann 2005a

tional evidence substantiating the importance of professional networks for the transplantation of legal norms.

## Appendices

### Appendix I: Rule of Law and Human Rights related Projects in the PRC funded by DRL / HRDF FY 1999/2000 to FY 2004/2005

Fiscal Year Funds total	Projects and funding	Grant Amount*	Project aims and activities
1999/2000 <sup>120</sup> US\$ 296,000	<i>China Human Rights and Legal Reform</i>	US\$ 296,000	Conference on international human rights law; promotion of rule of law and respect for human rights
2002/2003 <sup>121</sup> US\$ 3,752,000	<i>Advancing the Rule of Law via Court to Court Exchange</i>	US\$ 116,000	Visit of a delegation of seven senior level U.S. District and Appellate Court Judges to meet with Chinese judges and to discuss legal reform questions. This visit is meant to provide American legal expertise on some important Chinese legal reform questions
	<i>Improving Local Elections, Governance and Rule of Law</i>	US\$ 850,000	Support for training of election officials and potential candidates in order to improve local elections, governance and rule of law
	<i>Promoting Judicial, Administrative Law and Regulatory Reform</i>	US\$ 580,000	Project responding to debates about judicial independence and the relationship between the courts and the executive branch of the government; in the course of some conferences discussions about draft laws that address the role of the government in economic and social activities and draft laws in the areas of legislative and administrative hearing processes
	<i>Strengthening Direct Elections for Chinese Township and County Level People's Congress Deputies</i>	US\$ 350,000	Support for the implementation of new procedures that increase transparency and fairness in township and county level People's Congress elections
	<i>Promotion Citizen Participation in Government and Encouraging Government Accountability</i>	US\$ 758,000	This project aims at strengthening public legislative hearings and the emergence of NGOs to monitor government activities. In the course of the project training on how to hold a public hearing and on the role of NGOs in the legislative process is conducted, a website on democratic parliamentary procedure is established
	<i>Promoting Criminal Defense</i>	US\$ 101,000	Support for Chinese criminal defense attorneys to effectively represent their clients as well as to protect themselves within the Chinese legal system
	<i>Support for Chinese Initiatives in Judicial Reform and Citizen's Rights</i>	US\$ 600,000	Support for Chinese initiatives directed at improving legal services in rural areas, strengthening the legal system's ability to address election violations, promoting criminal defense reform and improving the efficiency and fairness of judicial decisions

\* In order to avoid double counting, DRL funds given to the NED are not included in this overview. Since in FY 2000/2001 HRDF funds have been donated exclusively to NED, FY 2000/2001 is not accounted for here.

<sup>120</sup> Information available at: <http://www.state.gov/g/drl/rls/32893.htm> (visited 12.07.2004)

<sup>121</sup> Information available at: <http://www.state.gov/g/drl/rls/32961.htm> (visited 12.07.2004)

	<i>Strengthening Legal Services</i>	US\$ 297,000	Training activities to enable lawyers and legal service workers to better represent their clients, especially in the areas of family and gender law
	<i>Promoting Civil Society and Public Advocacy</i>	US\$ 100,000	Assistance for citizen advocacy projects that are doing environmental awareness work in the public sphere. Projects provide support for impact litigation, advocacy campaigns, and outreach activities on public environmental matters
<b>2003/2004</b> <sup>122</sup> US\$ 5,661,000	<i>China Model Advocacy Court-house</i>	US\$ 330,000	Support for the implementation of training measures to defense attorneys, prosecutors and judges in order to enable them to offer their clients a meaningful defense in criminal proceedings; support for measures aiming at changing court procedures in order to provide for due process in criminal cases
	<i>Promoting Rule of Law</i>	US\$ 607,000	Support for the creation of a rural legal aid corps, for the conduction of constitutional litigation, for the development of a unified legal system
	<i>Women's Rights Task Force</i>	US\$ 299,000	Support for women's rights proponents in the areas of domestic violence, women's labor rights, women's property rights; support for the establishment of a network of women's rights groups
	<i>China Criminal Justice Reform</i>	US\$ 350,000	Support for criminal legal aid measures and education of defendants and legal professionals about the rights of criminal defendants
	<i>Rule of Law and Governance</i>	US\$ 550,000	Promotion of citizen participation, transparency, and legal advocacy
	<i>Electoral and Political Reform</i>	US\$ 800,000	Support for measures aiming at improving and expanding local elections, promotion of political participation, encouragement of governmental transparency and accountability, support for debate on political reform
	<i>Judicial, Administrative and Regulatory Reform in China</i>	US\$ 600,000	Support for judicial, administrative and regulatory reform in order to strengthen the rule of law
	<i>Promoting Standardized Elections</i>	US\$ 350,000	Support for measures aiming at standardizing and strengthening elections and democratic processes in order to build understanding and respect for democracy and increase public participation
	<i>Grassroots NGO Development</i>	US\$ 500,000	Support for grassroots NGOs by creation and development of municipal and sub-provincial networks of local grassroots NGOs which will provide capacity building support, training programs and peer-to-peer learning
	<i>American Educational Traditions</i>	US\$ 500,000	Support for strengthening American studies programs and introducing Western journalistic traditions and practices to Chinese journalists in order to promote an understanding of democracy and the U.S. political system
	<i>Community College for Migrant Workers in China</i>	US\$ 370,000	Support for the build up of a Community College for migrant workers. In the college, workers are taught about labour law, workplace health and safety etc.
	<i>Good Governance in China</i>	US\$ 205,000	Support for measures promoting good governance through strengthening legislative hearings, training of newly elected community office leaders and staff on how to effectively represent the interests and preferences of local residents
	<i>Criminal Defense Training</i>	US\$ 200,000	Support for training measures for criminal defense lawyers; engagement of these lawyers in the need for criminal defense reform

<sup>122</sup> Information available at: <http://www.state.gov/g/drl/rls/32966.htm> (visited 12.07.2004)

<b>2004/2005</b> <sup>123</sup> US\$ 10,068,000	<i>Rule of Law program in China</i>	US\$ 2,100,000	Support for the promotion of rule of law through a foreign LL.M. degree program which educates Chinese legal professionals in China to earn an American law degree. The program also includes short-term training for prosecutors and judges.
	<i>Collaborative Action on Workplace Conditions in China</i>	US\$ 400,000	Support for measures aiming at improving labor conditions, mainly in the areas of health and safety, wage and overtime violations, and HIV/AIDS prevention.
	<i>Promoting Democracy and Labor Standards in China's Education Sector</i>	US\$ 220,000	Support for the promotion of democracy and labor standards in the education sector by establishing a pilot project in selected cities to assess the role of teachers in the educational labor system, identifying organizations of teachers and professors that exist outside the official trade union structure, developing a working relationship and working with those teachers and organizations through workshops and educational discussions to build awareness of worker rights and democratic principles.
	<i>Expanding Initiatives to Promote Worker's Voice and Rule of Law</i>	US\$ 580,000	Promotion of workers' rights and the rule of law by supporting labor rights organizations that serve as a source of information about worker rights, unrest and the resolution of grievances; support for intervention and legal defense work; support for advocacy with local media; promotion of the rights of internal migrant workers; support for the provision of pre-migration education for workers; support for paralegals representing workers; training activists on "discovery", impact litigation and petition.
	<i>Grassroots NGO Development and Local Community Empowerment Program</i>	US\$ 295,000	Support for measures aiming at the promotion of practical local community empowerment for independent rural associations by assisting a number of Chinese NGOs to launch activities that address the needs of China's farmers and poor urban dwellers; measures in particular encompass: establishing pilot farmer consultancy centers, training volunteers in simple but specialized mediation skills, convening a series of four stakeholder workshops around the country, producing materials for farmers explaining the amended agriculture law and discussing the pros and cons of a separate law, selecting local farmer-leaders to receive training in cooperatives management, initiating a number of strategically located demonstration cooperatives around the country, and providing legal aid and advisory services for those who have been displaced.
	<i>Promoting Rule of Law in China's Labor Relations System</i>	US\$ 205,000	Support for measures aiming at the promotion of labor rights and rule of law by strengthening legal representation for workers through a training program for labor lawyers, developing a labor lawyers' training course and producing a labor litigation manual.
	<i>Training Workers in China in Legal Strategies</i>	US\$ 164,000	Support for the promotion of rule of law by educating workers through basic educational seminars to discuss their legal rights and appropriate strategies for taking legal action in the context of specific conditions they experience; support for the provision of advanced training to a smaller number of workers who have demonstrated leadership capabilities.

<sup>123</sup> Information available at: <http://www.state.gov/g/drl/rls/42809.htm> (01.03.2005)

	<i>Women's Rights Advocacy</i>	US\$ 295,000	Support for the promotion of women's rights by establishing a Women's Action Forum and a Women's Rights Watch, an independent permanent body to serve as a watchdog of the women's rights community and the NGO community that will monitor, document and report women's human rights violations, review legislation for gender discrimination and monitor the application of laws. The forum will revise and draft legislation related to women's rights, set up task force training programs, develop a workshop and manual to address gender discrimination in judicial decision-making within the human rights framework, investigate and document discrimination and women's rights violations, and charter a test case litigation strategy to incorporate international human rights.
	<i>Political Reform and Rights Consciousness</i>	US\$ 850,000	Support for the promotion of political reform and improved rights consciousness through training for election administrators, assisting in the development of a model of democratic urban management, conducting training on the administration of free and fair elections and participating in drafting of comprehensive regulations for direct democratic elections; support for training for women in political participation and empowerment, for the promotion government accountability, and for fostering political dialogue and debate.
	<i>Congressional Studies and Journalist-in-Residence Program</i>	US\$ 410,000	Support for increasing the understanding of the U.S. political system, democratic processes and western journalistic traditions through an educational program. Media reform will also be pursued by enabling leading American news executives and journalists to lecture, and conduct seminars and workshops on western journalistic practices and traditions.
	<i>Promoting Better Elections</i>	US\$ 380,000	Promote free and fair election standards in China and momentum for higher level elections by implementing a project to improve the information on elections available to the public and Chinese officials, maintaining a website with information about elections in China, providing a forum for Chinese officials and scholars to debate governance issues, and working with Chinese officials to design election procedures at the local level; support for the review of existing procedures for the homeowners association and for monitoring and disseminating information on new developments in accountability, transparency, and legislative reform.
	<i>Strengthening Political Parties and Civil Society in Hong Kong</i>	US\$ 377,000	Support for the promotion of democracy and civil society in Hong Kong by providing technical assistance to civil society through consultations and trainings to enhance their role as advocates for democratic development, focusing on voter contact and communication, fundraising and media strategy consultations, the development of public opinion polls, the ability to campaign for more open and accountable governance.
	<i>Encouraging Citizen Participation</i>	US\$ 471,000	Promote democracy and strengthen citizen involvement and openness in governance processes by supporting the development of legislative hearings, providing technical assistance to strengthen provincial and municipal hearings, addressing practical problems that hinder the development of more open and participatory hearings, and holding seminars on legislative hearings at the national or local level.
	<i>Legal Reform Project</i>	US\$ 750,000	Promote judicial reform in China by assisting in the development of independent, professional courts and law enforcement institutions capable of resolving criminal and civil disputes in a fair and transparent manner, implementing projects on regulatory reform, developing new mechanisms of public participation in administrative rulemaking, working to enlarge the rights that citizens have to sue government officials who violate the law, reforming rural land regulation, developing a system of government lawyers, and developing alternatives to incarceration, including developing pilot community corrections programs.



	<i>Citizen's Rights Advocacy Program</i>	US\$ 635,000	Promote environmental governance, citizen rights and public interest law by supporting and developing networks of public interest lawyers, providing advocacy training to public interest lawyers, supporting model projects, and convening an international conference on public interest advocacy to develop an Advocacy Action Plan for China.
	<i>Expanding the Model Advocacy Courthouse in China</i>	US\$ 300,000	Promote criminal justice through a training program for judges, prosecutors and defense lawyers in skills essential to an adversarial system of criminal defense and establishing within participating criminal courts, a procedural environment that will allow PRC defense lawyers, prosecutors, and judges to experiment with procedures and methods that will provide greater protection for the criminally accused.
	<i>Training of Chinese Criminal Defense Lawyers</i>	US\$ 300,000	Promote criminal justice and empower criminal defense lawyers by training defense lawyers in China through preliminary seminars and training programs in the in several cities.
	<i>Training Journalists to Cover Legal Issues and the Rule of Law</i>	US\$ 618,000	Promote rule of law by training journalists, editors, and media managers in the coverage of legal and rule of law issues through short-term seminars, a university course, resource center, and website. The project will focus on improving journalists' knowledge of law, covering court cases, seeking to increase transparency of court decisions through media, and promoting legal education and rights awareness through better journalistic practices.
	<i>Support for Chinese Rule of Law and Citizen's Rights Initiatives</i>	US\$ 718,000	Promote rule of law and heighten social awareness of individual rights that violate the Chinese constitution by implementing: 1) a comparative research and advocacy project that will raise awareness of discrimination both among the general public and government officials, 2) a research and public education project that will establish an informal action group of lawyers and other individuals and convene an international conference on discrimination and 3) improve the rural legal system, by sending students to rural areas to provide legal aid services, establish law clinics at several universities, and develop recommendations for non-legal measures to enhance the rights granted to farmers.
<b>Total:</b>			
<b>US\$</b>			
<b>19,777,000</b>			

Appendix II: Major Rule of Law and Human Rights related Projects funded by NED 2000 to 2003

Year	Grantee (U.S.)	Grant Amount*	Project Description
<b>2000</b> <sup>124</sup> <b>(funds total: US\$ 2,566,632)</b>	<i>Hong Kong Human Rights Monitor</i>	US\$ 48,000	Support for human rights reporting, casework, campaigning and public education
	<i>Human Rights in China</i>	US\$ 200,000	Support for a program of human rights information collection, reporting, publication and human rights advocacy; support for victims of political prosecution; production and distribution about legal rights information material
	<i>International Republican Institute</i>	US\$ 489,716	Support for electoral reform at the village level; support for a research program, publications, and communication with Chinese officials on political prisoners, legal reforms, and human rights
	<i>International Republican Institute</i>	US\$ 165,000	Support for seminars for newly elected village committee leaders and election officials on practices and transparent local governance; support for election monitoring through a conference for monitors and sponsorship of observation missions
	<i>Laogai Research Foundation</i>	US\$ 85,000	Support for the Foundation's research and publications program on the laogai ("Re-education through Labor) system; investigation of the human rights situation in the PRC in general
	<i>Press Freedom Guardian</i>	US\$ 48,000	Support for a Chinese language newspaper (published twice-monthly) providing information and analyses about democracy, human rights and the activities of the Chinese democracy movement
	<i>International Republican Institute</i>	US\$ 460,000	Support for a project promoting electoral reform at the village level, legal reform at the municipal and provincial level, legislative and public policy implementation at the provincial and national level
	<i>National Democratic Institute for International Affairs</i>	US\$ 209,666	Support for a seminar on the role of the legislature in democratic states; support for the development of an information clearinghouse on democratic legislative norms
	<i>The American Center for International Labor Solidarity</i>	US\$ 192,190	Support for labor rights organizations to educate workers about worker and trade union rights, labor standards and democracy; support for gathering and analyzing information on industrial relations and the status of Chinese trade union rights for international dissemination
	<i>The American Center for International Labor Solidarity</i>	US\$ 184,560	Support for democratic unions and labor rights organizations in Hong Kong working to protect worker and union rights in the South China region
	<i>The Center for International Private Enterprise</i>	US\$ 56,000	Support for a biweekly symposium on China's transition to a market economy, for the reproduction and distribution of symposium papers, and for the production of short studies suggesting policy improvements for technical and administrative reforms

\* These figures include funding from sources other than annual Congressional appropriation

<sup>124</sup> Information available at: <http://www.ned.org/publications/00annual/grants-asia.html#China> (visited 20.08.2004)

	<i>The Center for International Private Enterprise</i>	US\$ 59,000	Assistance to the privatization of state enterprises by supporting research, conferences and articles encouraging public participation in economic reform processes
	<i>The Center for International Private Enterprise</i>	US\$ 79,500	Support for the expansion of a nationwide Internet network on modern economic reform and for the provision of economics management courses for participants from all over China
	<i>Center for Modern China</i>	US\$ 55,000	Support for the publication of <i>Modern China Studies</i> , a quarterly Chinese language journal of economic and social science research concerning liberal, democratic solutions to contemporary policy questions in China
	<i>Democratic China Magazine</i>	US\$ 75,000	Support for the publication of its monthly Chinese language Internet magazine ( <a href="http://www.chinamz.org">http://www.chinamz.org</a> ) on politics, society, and culture, promoting democracy and pluralism in China through articles contributed by writers from China, the U.S. and other countries
	<i>Foundation for China in the 21<sup>st</sup> Century</i>	US\$ 60,000	Support for a program of research, publications, and seminars on inter-ethnic relations, globalization and modernization, and democracy in China
	<i>International Campaign for Tibet</i>	US\$ 30,000	Support for meetings, symposia, speeches, publications and articles designed to improve communication between Tibetans and Chinese
	<i>Tibetan Literary Society</i>	US\$ 20,000	Support for the publication of the <i>Tibet Times</i> , a Tibetan language newspaper providing information of Tibetan, local and international issues for Tibetans in Tibet, international audiences and Tibetan exiles
	<i>Tibetan Multimedia Center</i>	US\$ 30,000	Support for the dissemination of information about the struggle for a democratic Tibet inside Tibet and China, among Chinese democrats throughout the world, throughout the exile communities of Tibetans in India, and to the Indian public
	<i>Tibetan Review</i>	US\$ 20,000	Support for the publication and distribution of the <i>Tibetan Review</i> , a monthly English language news magazine, throughout the Tibetan community in exile and the international community
<b>2001<sup>125</sup></b>			
<b>(funds total: US\$ 2,991,418)</b>	<i>Centre for International Private Enterprise</i>	US\$ 98,602	Support for the organization of some bi-weekly symposia attended by private entrepreneurs, academics, government officials and journalists to discuss economic reform, privatization, liberalism and rule of law
	<i>Center for International Private Enterprise</i>	US\$ 82,763	Support for a two-day conference on establishing corporate governance standards in the PRC. Participants will include senior corporate executives, government officials and the media
	<i>Center for International Private Enterprise</i>	US\$ 63,100	Support for a two-day workshop on the political economy of corruption and anti-corruption strategies for senior Chinese policy analysts and researchers in the PRC
	<i>Hong Kong Human rights Monitor</i>	US\$ 51,000	Support for the Monitor's work in the areas legal defense of civil rights, cultivation of public opinion favorable to democratization and rule of law through public campaigns and education

<sup>125</sup> Information available at: <http://www.ned.org/publications/01annual/grants-asia.html#China> (visited 20.08.2004)

<i>International Republican Institute</i>	US\$ 409,850	Support for a project providing training for local election officials and newly elected village leaders; support for a conference on campaign techniques in developing and developed countries; support for a delegation of lawyers and legal aid supervisors to observe a successful legal aid program; support for a program engaging the Chinese government in dialogue on accountability, transparency, and the rule of law
<i>International Republican Institute</i>	US\$ 80,000	Support for a ‘train the trainers’ seminar on election monitoring and for a workshop for local election officials on direct election procedures. IRI will also conduct a regional networking seminar for local Chinese officials and observe elections in Hainan Province
<i>International Republican Institute</i>	US\$ 508,700	Support for projects on legislative, electoral and legal reform; support for a program encouraging accountability within the Chinese government on human rights
<i>National Democratic Institute for International Affairs</i>	US\$ 209,778	Support for a project which provides comparative research findings for the education of legislative staff members, researchers and students on democratic norms; support for the organization of two seminars on democratic legislative process; assistance for democratic reform in Hong Kong
<i>Beijing Spring</i>	US\$ 40,000	Support for the publication of the bi-monthly magazine <i>Chinese Spring</i> (in Chinese) that provides analyses of social issues, documentation of human rights violations, discussion on democratization etc.
<i>Democratic China</i>	US\$ 85,000	Support for the publication of a monthly Internet magazine (in Chinese), covering the topics democracy, human rights and modernization in the PRC
<i>Human Rights in China</i>	US\$ 200,000	Support for research and publication of reports on legal reforms, human rights abuse, and PRC national security laws. Support for the publication of a quarterly journal (“Human Rights Journal”) and the maintenance of a Web site
<i>Laogai Research Foundation</i>	US\$ 286,800	Support for conduction research and collecting information about China's laogai (labor camps) based on interviews with laogai survivors; support for a database, and for the publication of laogai survivor memoirs in Chinese. In addition, the Foundation will maintain its English-language Web site ( <a href="http://www.laogai.org">http://www.laogai.org</a> ) and develop a Chinese-language version ( <a href="http://www.laogai.org/cn">http://www.laogai.org/cn</a> ), publish and distribute a quarterly newsletter and produce publications on human rights in China
<i>Social and Resource Development Fund</i>	US\$ 38,500	Support for local Tibetan organization working to educate their communities about democracy and human rights and to increase participation in the political process
<i>Tibet Information Network</i>	US\$ 90,000	Support for the maintenance of a website ( <a href="http://www.tibetinfo.net">http://www.tibetinfo.net</a> ) and for human rights information gathering, analysis and dissemination; support for research publications
<i>Tibetan Multimedia Centre</i>	US\$ 30,000	Support for the dissemination of information about Tibet for exiled Tibetans as well as for audiences in the PRC; information of the Chinese public about the human rights situation in Tibet with the help of video and audio cassettes, debates with Tibetan high school students in exile and the publication of a Chinese language magazine
<i>Tibetan Review Trust Society</i>	US\$ 20,000	Support for the publication of a monthly English-language magazine, <i>Tibetan Review</i> , a forum for Tibetan intellectuals, policy makers and others interested in current issues and politics involving Tibetan society
<i>Voice of Tibet</i>	US\$ 14,400	Support for an independent Tibetan-language short wave radio station providing regular news about Tibet, the Tibetan exile community, and the Tibetan government-in-exile for listeners in Tibet and in neighboring exile communities

	<i>International Campaign for Tibet</i>	US\$ 30,000	Support for enhancing knowledge and understanding of Tibet among Chinese opinion leaders. ICT activities will include arranging face-to-face encounters between the Dalai Lama and leaders of the Chinese democracy movement in exile; hosting conferences and disseminating information; establishing a new Chinese-language Web site ( <a href="http://www.savetibet.org/Chinese/ChineseMain.cfm">http://www.savetibet.org/Chinese/ChineseMain.cfm</a> ); and organizing a panel discussion featuring Tibetan and Chinese perspectives on the 1951 17-Point Agreement.
	<i>Tibetan Literary Society</i>	US\$ 20,000	Support for distributing the independent newspaper <i>Tibet Times</i> , covering news from Tibet and the exile community to Tibetan schools, libraries, and scholars throughout Nepal and India, as well as increase distribution inside Tibet. The society will also maintain a Web site and an e-mail service
	<i>American Center for International Labor Solidarity</i>	US\$ 181,114	Support for labor rights organizations to educate workers about worker and trade union rights, labor standards and democracy issues; support for gathering and analysing information on industrial relations and the status of trade union rights in China for international dissemination
	<i>American Center for International Labor Solidarity</i>	US\$ 198,073	Support for democratic unions and labor rights organizations in Hong Kong that are working to protect worker and union rights in the South China region
	<i>American Center for International Labor Solidarity</i>	US\$ 51,724	Support for pilot programs in China promoting worker rights in the areas of health, safety, and women's rights in the workplace
	<i>Center for Modern China</i>	US\$ 65,000	Support for the publication of 3,000 copies of each issue of its quarterly academic journal, <i>Modern China Studies</i> , covering issues of economic, legal and political reform in China. The journal will be distributed to institutions and individuals inside China, including central research and policy agencies, graduate students, professionals, and leading scholars
	<i>China News Digest</i>	US\$ 35,000	Support for upgrading computer equipment for the production of regular China-related news digests in Chinese and English and the on-line archiving of information banned in China ( <a href="http://www.cnd.org">http://www.cnd.org</a> )
	<i>Press Freedom Guardian</i>	US\$ 48,000	Support for the publication and distribution of a Chinese language newspaper and build a Web site ( <a href="http://www.pressfreedom.com/gb/gb.htm">http://www.pressfreedom.com/gb/gb.htm</a> )
	<i>Robert F. Kennedy Memorial Center for Human Rights</i>	US\$ 54,014	Support for the development of a proposal, through identification of existing and unmet needs for assistance to Chinese pro-democracy advocates and potential programs, and for critically evaluating the purpose, role and innovative application of future projects
<b>2002<sup>126</sup> (funds total: US\$ 2,852,530</b>	<i>American Centre for International Labor Solidarity</i>	US\$ 198,063	Support for democratic unions and labor rights organizations in Hong Kong that are working to protect worker and union rights in the South China region.
	<i>American Centre for International Labor Solidarity</i>	US\$ 57,202	Support for a bilingual Web site that serves as a basic information clearinghouse for activists and scholars involved with labor issues in China.

<sup>126</sup> Information available at: <http://www.ned.org/grants/02programs/grants-asia.html#China> (visited 20.08.2004)

<i>American Centre for International Labor Solidarity</i>	US\$ 60,517	Support for a center for the collection and dissemination of information relating to workers' rights in China established by the Wei Jingsheng Foundation
<i>American Centre for International Labor Solidarity</i>	US\$ 180,480	Support for labor-rights organizations which educate workers about worker and trade-union rights, labor standards, and democracy issues, and which gather, analyze, and disseminate information on industrial relations and the status of trade-union rights
<i>Beijing Spring Magazine</i>	US\$ 60,000	Continued support for the publication of the monthly Chinese-language magazine <i>Beijing Spring</i>
<i>Centre for International Private Enterprise</i>	US\$ 92,936	Support for the National Economic Research Institute in conducting a series of workshops to publicize the Institute's study on economic freedom in China and to promote public understanding of the link between economic freedom and economic development
<i>Centre for International Private Enterprise</i>	US\$ 97,573	Support for the China Center for Economic Research in expanding an electronic economics-information network and facilitating greater exchange of reform-oriented ideas and proposals among Chinese economists.
<i>Centre for International Private Enterprise</i>	US\$ 49,683	Support for the Unirule Institute of Economics in conducting biweekly symposia on issues related to China's transition to a market economy, and in reproducing and distributing symposium papers
<i>Centre for Modern China</i>	US\$ 115,000	Support for the publication of <i>Modern China Studies</i> , a quarterly Chinese-language journal of economic and social-science research concerning liberal, democratic solutions to contemporary policy questions in China
<i>China Information Centre</i>	US\$ 400,000	Support for the establishment and maintenance of a Chinese-language Web site that features independent news and analyses of world events and domestic Chinese developments
<i>Democratic China Magazine</i>	US\$ 100,000	Support for publishing its monthly Chinese-language Internet magazine on politics, society, and culture, promoting democracy and pluralism in China
<i>Foundation for China in the 21<sup>st</sup> Century</i>	US\$ 160,000	Support for carrying out a program of research, publications, and seminars on questions of interethnic relations, education, and democracy in China
<i>Human Rights in China</i>	US\$ 300,000	Support for HRIC program of human rights information-gathering, reporting, publicity, and advocacy; support for victims of political persecution; and for the production of materials informing Chinese citizens about their rights
<i>International Republican Institute</i>	400,000	Support for electoral reform at the village level, promotion and development of legal-aid programs at the national and provincial levels, legislative and public-policy-implementation reform at the national level, and for a project to promote the broadening of Chinese elections
<i>Laogai Research Foundation</i>	US\$ 261,000	Support for a research and publication program on the Chinese forced-labor prison camps (laogai) and for investigating and document other human rights violations
<i>National Democratic Institute for International Affairs</i>	US\$ 205,076	Support for organizing resources and activities, together with the Peking University School of Law Center for the Study of People's Congress and Foreign Legislatures which aim at educating Chinese legislative members and staff, researchers, and students about democratic legislative norms and processes; support for the provision of materials, direct technical assistance, and other resources to Hong Kong organizations advocating for democratic reform in the Hong Kong Special Administrative Region

	<i>Press Freedom Guardian Newspaper</i>	US\$ 88,000	Support for the publication of its Chinese-language newspaper, covering issues related to human rights, democratization, and the activities of the Chinese democracy movement and which is disseminated in China and abroad through print copies, e-mail subscriptions, and a Web site
<b>2003<sup>127</sup></b> <b>(funds total: US\$ 3,306,906)</b>	<i>American Center for International Labor Solidarity</i>	US\$ 65,239	Support for the China Labor Union Base through the Wei Jingsheng Foundation which serves as a center for the collection and dissemination of information relating to the state of Chinese labor rights, and provides leadership and coordination for Chinese labor activists
	<i>American Center for International Labor Solidarity</i>	US\$ 90,584	Support for China Labor Watch for its bilingual website. This Website aims at serving as a basic information clearing-house for activists and scholars involved with labor issues in China; educating the Chinese people about worker rights, labor issues, and legal avenues provided to workers under Chinese law and internationally recognized standards; informing international human rights organizations, scholars, and others in the public policy arena about the current situation of labor in China.
	<i>American Center for International Labor Solidarity</i>	US\$ 373,944	Support for the expansion of China Labour Bulletin programs which educate Chinese workers about worker and trade union rights, labor standards and democracy issues, and gathers and analyzes information on industrial relations and the status of trade union rights in China for international dissemination.
	<i>Beijing Spring</i>	US\$ 90,000	Continued support for the publication of the monthly Chinese-language magazine <i>Beijing Spring</i>
	<i>Center for International Private Enterprise</i>	US\$ 88,610	Support for advocacy activities (especially public discussions, speeches, publications, and a conference) on reforms related to rule of law and privatization
	<i>Center for International Private Enterprise</i>	US\$ 531,532	Support for six projects designed to enable entrepreneurs, economists, and corporate actors to play an enhanced transparent and democratic role in public policy development, as well as to publish a new Chinese-language online periodical, <i>Journal of Private Enterprise</i>
	<i>Center for International Private Enterprise</i>	US\$ 85,760	Support for the China Center for Economic Research to maintain an electronic economics information network and to facilitate greater exchange of reform-oriented ideas and proposals among Chinese economists
	<i>Center for International Private Enterprise</i>	US\$ 53,151	Support for the Unirule Institute of Economics' bi-weekly symposia with private entrepreneurs, academics, government officials, and journalists on China's reform process; support for the dissemination of symposium papers to private entrepreneurs, academics, and government officials interested in economic reform
	<i>Center for Modern China</i>	US\$ 148,000	Continued support for the publication of <i>Modern China Studies</i>
	<i>China Information Center</i>	US\$ 404,105	Support for the dissemination of news and independent analysis of developments in China and important international events through two Chinese-language websites and an e-mail list
	<i>Democratic China</i>	US\$ 135,000	Support for the production of a Chinese-language monthly Internet magazine on politics, society, and culture, promoting democracy and pluralism in China; support for an experimental program providing subsidies to enable publication and distribution in China of books that would otherwise not be publishable due to their political sensitivity

<sup>127</sup> Information available at: <http://www.ned.org/grants/03programs/grants-asia.html#China> (visited 02.09.2004)

	<i>Foundation for China in the 21<sup>st</sup> Century</i>	US\$ 160,000	Support for the Chinese-language Internet periodical, <i>China E-Weekly</i> ; support for a program of publications and conferences on questions of rural governance, political reform, and paths to constitutional democracy in China
	<i>Human Rights in China</i>	US\$ 350,000	Support for human rights documentation, reporting, publicity, and advocacy; direct support for victims of political persecution; support for the production and circulation of materials informing Chinese citizens about their rights
	<i>International Republican Institute</i>	US\$ 350,000	Support for a program promoting the broadening of Chinese elections; support for electoral reform at the village and urban levels; support for the training of rural women in political participation; support for the development of materials on civic education
	<i>Laogai Research Foundation</i>	US\$ 292,981	Continued support for research and publication on Chinese forced-labor prison camps (laogai) and for investigating and documenting other human rights violations
	<i>Press Freedom Guardian</i>	US\$ 88,000	Continued support for a Chinese-language newspaper covering politics, current events, human rights, democratization, and the activities of the Chinese democracy movement, which is disseminated in China and abroad through print copies, e-mail subscriptions, and a website
<b>Total:</b>			
<b>US\$</b>			
<b>11,717,486</b>			



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