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**The German-Chinese
'Rule of Law Dialogue': Substantial
Interaction or Political Delusion?**

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Introduction

In March 2005 German Chancellor Gerhard Schroeder spoke decisively for abolishing EU arms embargo measures that continue to be directed against the People's Republic of China (PRC) since 1989. Economic considerations palpably were at the root of the Chancellor's initiative. The PRC is one of the most important economic partners of the Federal Republic of Germany (FRG). In 2003 Chinese imports from Germany amounted to goods and services worth more than 41 billion US\$, and realized German FDI in the PRC reached 9.4 billion US\$ (1999-2003). Thus amicable bilateral relations between the FRG and the PRC are of utmost importance to the prosperity of economic relations.

Yet to the detriment of not only the incumbent, but also previous German governments, FRG-PRC relations are not driven exclusively by economic considerations. German mass media and most prominently the Green Party, the smaller partner in the post-1998 coalition government, are at least equally concerned about human rights issues and political repression in the PRC. This concern is event-driven, blazing up in response to more dramatic events covered by the media such as the adoption of the PRC's Anti-Secession Law in March 2005 interpreted by many Western observers as a direct threat to Taiwan. Since the Chancellor's move to support the arms embargo's abolition came only weeks after this controversial law had been passed, his demands fuelled open suspicion even among the ruling coalition's ranks that German China policy might be unacceptably one-sided and business oriented, compromising 'morals' for 'money'.

In response to criticism of his China policy, Chancellor Schroeder confidently states that China has changed significantly during the last fifteen years and that today's China no longer resembles the China of 1989. In the Chancellor's view, political and legal change within China continues to be positively promoted by the 'German-Chinese Rule of Law Dialogue' (*henceforth: 'the Dialogue'*) that was initiated already in 1999. This Dialogue is presented as a substantial and continuous effort at improving the human rights situation in China and as proof for the German government's political and moral dedication in its China policy.

But to what extent is the 'German-Chinese Rule of Law Dialogue' indeed up to significantly influencing the rule of law and human rights situation in the PRC? This question proves rather difficult to answer since the main elements of the Dialogue – aims, program, activities and participants – are only partially disclosed to the public. This stands in stark contrast to the importance assigned to the Dialogue by the German Government and, in particular, Chancellor Schroeder.

Therefore, this article aims at presenting some details on the 'German-Chinese Rule of Law Dialogue', the political background to its initiation as well as an overview of the different activities encompassed, thereby providing a foundation upon which to develop an assessment of the Dialogue's relevance to the improvement of the human rights situation in the PRC.

1 Genesis of the ‘German-Chinese Rule of Law Dialogue’

Dealing with human rights issues in the PRC has been a central concern to the Social Democrats (SPD)/Green coalition government from the very beginning. In 1998, the coalition treaty stated that respect for and implementation of international human rights standards as contained in the Universal Declaration of Human Rights constitutes the central guideline for German foreign policy.¹ This commitment was reiterated by the 2002 coalition treaty which again proclaimed support for human rights and the rule of law as one of the foreign policy foundations.² Thus, the initiation of the Dialogue in 1999 was meant as the new coalition government’s first step to substantiate these claims as to the importance of human rights in German foreign policy.

1.1 The ‘Rule of Law Dialogue’ 1999 to 2003

At the occasion of his state visit to the PRC, Chancellor Schroeder agreed with then-Chinese Prime Minister Zhu Rongji on initiating cooperation in the area of law between the FRG and the PRC. Premier Zhu was receptive to this proposal since the PRC needed more foreign support in restructuring her legal and judicial system in order to adopt successfully to international legal standards in the area of commercial and administrative law. Improvements in these areas are crucial to the imminent WTO accession of the PRC. Thus, legal cooperation with the FRG was valued as a complement to legal cooperation measures offered by American private and governmental donors since long.³ However, according to the Schroeder-Zhu agreement, cooperation should not be limited to technical legal aspects but was intended to comprise human rights discussions as well.

On June 30th, 2000, the German and Chinese ministers of Justice then signed a bilateral ‘German-Chinese Agreement on Exchange and Co-operation in the Legal Field’,⁴ detailing the specific areas of cooperation. These covered the areas of Administrative Law, Civil and Commercial Law, Labor and Social Security Law, improvement of the implementation of

¹ SPD/Bündnis90/Die Grünen (1998). *Aufbruch und Erneuerung – Deutschlands Weg ins 21. Jahrhundert*. Koalitionsvertrag zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis90/Die Grünen, 20.10.1998 (available at: http://www.spd-bildungsserver.de/dokumente/koalition_brd.pdf [visited 04.04.2005])

² SPD/Bündnis90/Die Grünen (2002). *Erneuerung – Gerechtigkeit – Nachhaltigkeit*. Für ein wirtschaftlich starkes, soziales und ökologisches Deutschland. Für eine lebendige Demokratie. Koalitionsvertrag zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis90/Die Grünen, 16.10.2002 (available at: <http://www.spd.de/servlet/PB/show/1023294/Koalitionsvertrag.pdf> [visited 04.04.2005])

³ On American-Chinese legal cooperation – as well as on German-Chinese legal cooperation initiatives – see: Schulte-Kulmann, Nicole. *Rechtzusammenarbeit mit der Volksrepublik China. Deutsche und amerikanische Initiativen im Vergleich*. Göttingen: V&R Unipress, 2005 (forthcoming). See also: Nicole Schulte-Kulmann/Sebastian Heilmann (2005a). U.S.-China Legal Cooperation – Part I: The Role of Actors and Actors’ Interests. *China Analysis* No.42 (April), available at:

http://www.chinapolitik.de/studien/china_analysis/no_42.pdf (visited: 20.04.2005); Nicole Schulte-Kulmann/Sebastian Heilmann (2005b). U.S.-China Legal Cooperation – Part II: An Overview of American Governmental Legal Cooperation Initiatives. *China Analysis* No.43 (April), available at:

http://www.chinapolitik.de/studien/china_analysis/no_43.pdf (visited: 20.04.2005); Nicole Schulte-Kulmann/Sebastian Heilmann (2005c). U.S.-China Legal Cooperation - Part III: An Overview of Private American-Chinese Legal Cooperation Programs. *China Analysis* No.44 (forthcoming).

⁴ Deutsch-Chinesische Vereinbarung zu dem Austausch und der Zusammenarbeit im Rechtsbereich” (“German Chinese Agreement on Exchange and Co-operation in the Legal Field; available at: <http://www.bundesregierung.de/Anlage254834/Deutsch-Chinesische+Vereinbarung+zu+dem+Austausch+und+der+Zusammenarbeit+im+Rechtsbereich+.pdf> [visited 04.04.2005])

existing laws and regulations, protection of citizens' legal rights, and combating corruption and white-collar crime. One year later, on June 22nd, 2001, the more general proclamations of the Agreement were substantiated by the first 'Two-Year Program on the Implementation of the German-Chinese Agreement on Exchange and Co-operation in the Legal Field',⁵ signed again by the German and Chinese ministers of Justice. This Program lists 18 projects to be implemented from 2001 to 2003 in the areas outlined by the Agreement and denominates the respective German and Chinese institutions responsible for the implementation.

1.2 The 'Rule of Law Dialogue' 2003 to 2005

The new Chinese leadership headed by President Hu Jintao and Prime Minister Wen Jiabao, too, values the Dialogue. Thus, during the state visit of Chancellor Schroeder to China in December, 2003, the second 'Two-Year Program on the Implementation of the German-Chinese Agreement on Exchange and Co-operation in the Legal Field 2003-2005'⁶ was signed by the German and Chinese ministers of Justice. In the same vein as the first Two-Year Program, the second Two-Year Program, too, lists the areas and projects of cooperation. In addition to the fields of law already covered by the first Program, the second Program broadens cooperation by including projects explicitly concerned with recognition and protection of human rights as well as German-Chinese academic cooperation in the field of law.

As far as future developments are concerned, the German and the Chinese side have already agreed upon signing a third Two-Year Program which is currently under preparation.

2 Organization of the 'Rule of Law Dialogue'

With the initiation of the Dialogue, the organization of German-Chinese cooperation in the field of law changed considerably. Indeed, as one specific form of development cooperation, German-Chinese governmental as well as private cooperation in the field of law already dates back to the early 1980s, when the German patent office (Munich) started a cooperation with its Chinese counterpart in order to support the drafting of the first patent law of the PRC. This cooperation was financed by the German Ministry for Economic Cooperation and Development (BMZ) via the *Deutsche Gesellschaft für Technische Zusammenarbeit* (German Corporation for Technical Cooperation – GTZ).⁷ Since then, the bulk of German-Chinese legal cooperation measures has been financed and planned by the BMZ and implemented by the GTZ. In addition, partisan foundations such as the Friedrich-Ebert-Foundation, Konrad-Adenauer-Foundation, Heinrich-Böll-Foundation, and Friedrich-Naumann-Foundation (until 1996), as well as university law schools and research institutes (mainly the Max-Planck-Institutes) engaged in legal cooperation projects with different Chinese governmental as well as academic partners, amongst these the National People's Congress, the State Council, the Chinese Acad-

⁵ Zweijahresprogramm zur Durchführung der Deutsch-Chinesischen Vereinbarung zu dem Austausch und der Zusammenarbeit im Rechtsbereich (Two-Year Program on the Implementation of the German-Chinese Agreement on Exchange and Co-operation in the Legal Field; available at: <http://www.bundesregierung.de/Anlage254838/Zweijahresprogramm+zur+Durchf%fchrung+der+Deutsch-Chinesischen+Vereinbarung+zu+dem+Austausch+und+der+Z.pdf> [visited 04.04.2005])

⁶ Zweijahresprogramm zur Durchführung der Deutsch-Chinesischen Vereinbarung zu dem Austausch und der Zusammenarbeit im Rechtsbereich 2004-2005 (Two-Year Program on the Implementation of the German-Chinese Agreement on Exchange and Co-operation in the Legal Field 2004-2005; available at: <http://www.bmj.bund.de/media/archive/614.pdf> [visited 04.04.2005])

⁷ Information on GTZ legal cooperation projects in the PRC is available at: <http://www.gtz-legal-reform.org.cn/> (visited 04.04.2005)

emy of Social Sciences, the National School of Administration, the Supreme People's Court, Peking University, Chinese University of Political Science and Law etc.

With the initiation of the Dialogue, annual two-day Symposia which take place alternately in Beijing and in Berlin were introduced in addition to these substantial initiatives. Attendants to these Symposia comprise the German and Chinese ministers of Justice, high ranking ministerial officials, ambassadors, members of the business community as well as selected renown legal experts from both sides. Although these symposia, which are termed the 'official' Rule of Law Dialogue, are presented as the 'core' of the Dialogue, they can only superficially address the subjects agreed upon for discussion between the Chinese and German side. Hence, the symposia mainly fulfil protocolary functions, conveying the goodwill of the German and, more so, of the Chinese Government to participate in discussions about legal reform and rule of law related questions.

Thus, as far as substantial work in the field of law is concerned, the initiation of the Dialogue, then, does not constitute a separate, additional venue for German-Chinese legal cooperation; instead, the Dialogue mainly tries to embrace the diverse German governmental and nongovernmental legal cooperation initiatives under one 'heading'.⁸ Moreover, this also involved attempts to change the structure of responsibility for German-Chinese legal cooperation: since the Dialogue is the brainchild of Chancellor Schroeder, more responsibility for negotiating the contents at least of the governmental legal cooperation projects was transferred to the Office of the Chancellor (at the expense of the BMZ), and the German Ministry of Justice (BMJ) was charged with formally coordinating the different activities as well as the symposia. Thus, the initiation of the Dialogue in essence constitutes an effort to centralize legal cooperation activities with the PRC under the aegis of the Chancellor.

3 Main Focus of the 'German-Chinese Rule of Law Dialogue'

As far as the contents of the Dialogue are concerned, one has to differentiate between the 'official' Dialogue and governmental legal cooperation initiatives, on the one hand and the diverse private programs on the other.

For one, the symposia constituting the 'official' Dialogue until today have dealt with the topics 'Administration according to law and the protection of individual rights' (Beijing, June 12-13, 2000); 'Establishment of a legal framework conducive to entrepreneurial activities under the conditions of a market economy – governmental regulation and protection of the interests of citizens and entrepreneurs' (Berlin, October 8-9, 2001); 'Support for legal certainty in overall legal relations as well as with regard to assessing the creditworthiness of citizens and enterprises' (Beijing, May 20-21, 2002); 'Legal and political issues relevant to the utilization of modern information technology on a global scale' (Berlin, November 10-11, 2003); 'Protection of basic human rights through judicial procedures and state of emergency regulations reconcilable with the rule of law' (Beijing, May 17-18, 2004). In June, 2005, a sixth symposium will deal with the topic 'Disclosure of governmental and administrative decisions'.

This overview illustrates that the focus of the symposia is laid on highly technical legal questions originating mainly in the area of commercial rule of law. Human rights related topics figure less prominently on the 'official' Dialogue agenda and are treated more implicitly.

⁸ An overview of all German-Chinese private and governmental legal cooperation activities subsumed under the Dialogue is available at: <http://www.bmj.bund.de/media/archive/882.pdf> (visited 04.04.2005)

This, however, should not be regarded as particularly astounding since the fact that the ‘official’ Dialogue – the symposia – is conducted at a high political level does not allow for sensitive questions to be addressed openly and critically between the German and the Chinese side. Secondly, the technical German-Chinese governmental legal cooperation projects implemented by the GTZ focus on support for legislative drafting in the area of commercial law (such as Bankruptcy Law, Company Law, Investment Fund Law, Law on Foreign Exchange, Partnership Law, Law for the Promotion of Small and Medium Sized Enterprises, Securities Law, Tendering and Bidding Law, Trust Law, Property Law) as well as on areas of administrative law which are of relevance to business activities (such as Administrative Enforcement Law, Administrative Licensing Law, Administrative Procedure Law). Thus, these legal cooperation activities which, judged by the financial resources available to these projects, constitute the bulk of German-Chinese governmental legal cooperation, also are not concerned with explicitly discussing and promoting human rights issues in the PRC.

Private German-Chinese legal cooperation activities mainly involve university law schools in Germany and in the PRC as well as German and Chinese legal research institutes. The projects implemented by these actors mainly focus on the education of younger Chinese jurists and on the scholarly exchange between German and Chinese legal experts for the purpose of conducting collaborative research projects. As far as the contents of these projects are concerned, human rights and rule of law issues take up a more prominent position. For example, introduction to normative rule of law conceptions and human rights issues is part of the curriculum offered by the ‘German-Chinese Law Institute’ (Universities Goettingen and Nanjing), and the Max-Planck-Institute for Foreign and International Criminal Law (Freiburg) also cooperates with Chinese legal experts on questions concerning the death penalty. However, even if these projects aim at introducing human rights and rule of law related ideas more explicitly into the Chinese legal system via the education of Chinese jurists and research activities, their impact is likely to be only limited due to a significant lack of funding.

Finally, even if the second ‘Two-Year Program on the Implementation of the German-Chinese Agreement on Exchange and Co-operation in the Legal Field 2003-2005’⁹ now includes reference to cooperation projects concerned with recognition and protection of human rights, this only at first sight constitutes an advancement of the Dialogue in qualitative terms. Indeed, paragraph 5 of the ‘Two-Year Program 2003-2005’ lists ‘Exchange on social, economic, cultural, and human rights developments’ as well as the German-Chinese Human Rights Dialogue as the main activities in this area. However, the ‘Exchange’ which is conducted since 1999 by the Friedrich-Ebert-Foundation, has already been part of the first ‘Two-Year Program’¹⁰ (paragraph 5 of that program). Furthermore, the German-Chinese *Human Rights Dialogue* also has been in existence before the initiation of the German-Chinese *Rule of Law Dialogue* in 1999. The Human Rights Dialogue is conducted at the bilateral level under the aegis of the German Foreign Office (*Auswärtiges Amt*). Thus, one has to conclude that although the second ‘Two-Year Program’ explicitly mentions human rights as part of the German-Chinese cooperation in the field of law, no substance is added to German-Chinese cooperation in this field since the activities listed by the ‘Two-Year Program’ 2003-20025 have already been implemented before this ‘Two-Year Program’ had been signed and even before the initiation of the Dialogue.

⁹ *supra*, note 6

¹⁰ *supra*, note 5

4 Summary

In assessing the function and the impact of the German-Chinese 'Rule of Law Dialogue' the following aspects must be stressed.

By initiating the Dialogue in 1999, the German federal government did not significantly intensify its efforts to improve the human rights and rule of law situation in the PRC. As has been demonstrated, most of the cooperation projects implemented by state actors as well as by private actors had already been under way *before* the establishment of the Dialogue. After setting up the Dialogue framework, the German Federal Government did not increase funding or financial support for already existing private and governmental legal cooperation programs. Officially arranged symposia were the only new element introduced as an additional venue for German-Chinese cooperation in the field of law. However, the symposia do not provide an appropriate framework for discussing sensitive human rights and rule of law issues since they are conducted in a formal, decidedly non-controversial atmosphere. In essence, the Dialogue thus only integrated already existing governmental and private legal cooperation initiatives under a common heading and symbolic umbrella.

The bulk of legal cooperation projects merged under the umbrella of the Dialogue (particularly the programs implemented by the GTZ) is mainly concerned with rather technical economic law issues. These programs can hardly be seen as a direct contribution to improving the human rights situation in China. And private legal cooperation programs that deal more explicitly with normative rule of law and human rights questions were not given the resources necessary for broadening their activities.

Based on these findings, one can reach the conclusion that the main function of the Dialogue is not a practical, but a political-symbolic one. Prior to the initiation of the Dialogue, the official approach of the German federal government to discuss human rights problems in the PRC had consisted of articulating individual objections, handing over lists of political prisoners and asking for their release. In the course of the 1990s, this approach was increasingly felt to be humiliating to the Chinese side, politically ineffective and potentially damaging to economic exchanges. By initiating the Dialogue it became possible to delegate discussion of the PRC's human rights record from the official diplomatic sphere to the working level involved with legal cooperation programs. With a view to public sentiment in Germany, the German government could present the Dialogue as a comprehensive human rights strategy directed towards the Chinese government. The Dialogue thus became valuable symbolic capital in the hands of the German coalition government for deflecting human rights sensitivities among its electorate and preventing human rights controversies from disturbing the rapid expansion of economic relations with China.