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Emergency Law, Patent Law, Social Law – Celebrating the tenth anniversary of the Sino-German Rule of Law Dialogue Initiative

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In November it will be 10 years ago, that the rule of law dialogue was initiated in Sino-German talks in 1999. The single issues mentioned in the title of this paper show that the dialogue has already addressed some ambivalent problems since it came into being.

Criticisms keep coming up

The Rule of Law Dialogue has been under constant criticism. Human rights organizations and the German press found fault with it especially in the beginning years. They mainly criticized that its focus lay on law of economics and administrative law, but not on human rights or democracy related issues. To see if this criticism was justified, a look into the program should help.

Since the Rule of Law Dialogue was established in June 2000 in Beijing, every year a high-level symposium takes place – alternating between Germany and China. These meetings with participants up to the ministerial level have dealt with

Table 1: Distribution of projects of the Rule of Law Dialogue by subject

Subject	Number of Projects
Labour and Social Law	6
Legal Education	16
Implementation of Laws and Procedural Law	16
University Cooperation	14
Human Rights	8
Administrative Law	16
Civil-, Commercial-, and Economic Law	21

Source: Own Compilation according to GTZ 2009, ©Levy.

legal questions concerning public administration, market economy, information technology, emergency regulations, transparency of government

information, administrative coercive measures, protection of intellectual property rights as well as the pension law.

But the dialogue is much more than that: the second edition of the dialogue's image brochure has been published just recently on the occasion of this year's symposium.¹ The German-Chinese book with over 500 pages shows all projects and actors under the „roof“ of the rule of law dialogue. The 97 projects listed in the brochure give a heterogeneous picture of the subjects dealt with. Table 1 shows the distribution of projects by subject.

By numbers the focus of all projects lies on civil-, commercial- and economic law on the one hand and equally distributed on the subjects legal education, implementation of law, and administrative law on the other hand. Administrative law is the area of law which deals with the regulation of public administration, in other words the dos and don'ts for the state and other holders of public power. As one of the important actors in the dialogue the *Gesellschaft für Technische Zusammenarbeit (GTZ)* conducts long-term legal advisory projects and an increasing number of projects on the implementation of laws. The GTZ, as well as the organization *InWent*, is also engaged in training programs for Chinese judges.

The Rule of Law Dialogue includes two human rights dialogues. One is a top-level human rights dialogue conducted by the Federal Foreign Office since 2003. This dialogue is a political conference, where highly controversial matters in the bilateral relations of China and Germany are discussed.

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¹ GTZ (Hrsg.) (2009) Der Deutsch-Chinesische Rechtsstaatdialog – Ein Überblick (2000-2009). Eschborn: Eigenverlag, 2. Auflage.

Germany usually raises topics like political persecution, administrative detention, and death penalty, while China, on the other hand comments on the German human rights situation. The Friedrich-Ebert-Foundation organizes the other human rights dialogue together with Chinese partners since 1999: an annual forum where specific human rights issues, e.g. women's rights or citizens' involvement in civil society, are discussed. This dialogue can be described as academic symposium rather than a political conference.

Taking all of these activities into consideration leads to the conclusion, that the wide-spread assessment of the Rule of Law Dialogue as being mainly concerned with subjects in the interest of foreign companies rather than dealing with issues in the interest of the individual citizen, cannot be sustained.

Several particular agenda topics of the dialogue were criticized as well: In 2005 for example the subject Emergency Law (*Notstandsgesetzgebung*) caused critics to suspect the dialogue to follow the wishes of the authoritarian partner unquestioningly, and, by dealing with the question of emergency law, informing China about legal ways of suppressing human rights. A whole generation in Germany remembers the Laws on Emergency of 1968 as an attempt of the government to curtail citizens' rights, causing thousands of people to demonstrate against this legislation. When this issue was put on the agenda of the Rule of Law Dialogue in 2005 the public opinion in Germany as well as a number of legal experts involved in the dialogue would not comprehend this choice. To the view of the German organizers of the symposium on the other hand the Emergency Law was a subject exactly *for* the protection of individual rights – even in emergency situations like pandemics or floods. But this point of view went unheard.

New Developments

The Rule of Law Dialogue, which does not bear this name officially, but the officialese title „Sino-German Agreement on the Exchange and the Cooperation in the Area of Law“, needs to be extended and substantiated regularly. This is the function of the two-year-programs, which are signed bi-annually and name the particular projects of the German-Chinese legal cooperation.

Meanwhile not much was heard of the Rule of Law Dialogue so that one could suspect it had ceased to exist. In fact the dialogue was interrupted on its higher levels for several months: the

Chinese side cancelled the annual symposium, which was supposed to take place in Munich in April 2007 on the subject of patent rights, on a very short notice. The cancellation followed the visit of the Dalai Lama in the Federal Chancellor's office just a day before, but was excused with „technical reasons“.² Official relations normalized in the following year and the high-level symposium finally could take place. The question of patent rights and the protection of intellectual property are of high importance for the bilateral relations, as German and other foreign companies suffer considerable losses due to trademark and product piracy as well as forced technology transfer. The symposium was held in the German Patent and Trade Mark Office in the city of Munich.

On this occasion, Federal Minister of Justice Brigitte Zypries and the director of the Legal Affairs Office of the State Council, Cao Kangtai, extended the dialogue through 2009 by signing the fourth two-year-program. The first two-year-program, which was signed in 2001, contained 17 projects of which 15 had been running already. With each new program the number of projects increased. The second program contained 23, the third 26 and the current program even contains 32 projects.

On 27th and 28th of April this year another high-level symposium took place in Shenzhen, dealing with the subject of „Pension Law in a Rule of Law State“ (*Das Recht der Rentenversicherung im Rechtsstaat*). As usual the German and Chinese participants of this ninth symposium discussed in three working groups. The talks focused on the following issues: „Basic Framework and Benefits of the Pension Insurance“, „Financing and Administration of the Pension Insurance“ as well as „Judicial Protection of Rights and Interests in the Pension Insurance“. Questions dealing with social insurance like pension or health insurance are currently of high interest in the Peoples' Republic of China. Socials is one of the main factors expected to stimulate national demand, a key measure to fight the impacts of the global financial crisis in China.

Accomplishments of the Dialogue?

The Rule of Law Dialogue is less of a coherent program than a loose accumulation of various projects and events in the area of law under the „roof“ of the Federal Ministry of Justice (BMJ) with an extensive participation of the Federal

² On the working level, representatives of the Federal Ministry of Justice assure, the dialogue was not interrupted at all.

Ministry of Economic Cooperation and Development (BMZ).³ The coordination of the various projects, events and actors is limited to a yearly round table meeting on the one hand, where the actors on the German side of the dialogue can come together, and a list of all legal cooperation projects known to the BMJ on the other hand, published on the ministry's homepage.⁴

The question, if the dialogue wants to serve a certain purpose and if it really does serve this purpose, is still quite controversial. Representing the mainstream opinion of the German press the news magazine *Der Spiegel* writes in January: „As an instrument of long-term development policy the Rule of Law Dialogue is useful. But, as an institution to channel German criticism of the Chinese system of injustice, it does not work.“⁵ The representatives of the Federal Government on the other hand do see the dialogue as successful instrument by attributing concrete accomplishments to it: e.g. the new mentioning of the state's responsibility to protect human rights in the Chinese constitution in 2004, the improved working conditions of Chinese lawyers since 2007, the new property law and legislation on the transparency of government information.⁶ While the German advisory service in the legislation of the property law has in fact been quite intensive⁷ and the „Regulations of the PR of China on Open Govern-

ment“ of 2008 followed at least chronologically the 2005 German-Chinese symposium on „The Disclosure of Government Information“, such claims of causation between German advisory activities and Chinese legislative outcome are difficult to substantiate. A proof of causation between the measures of the Rule of Law Dialogue and the constitutional revision concerning human rights protection is even more difficult.

These attempts to suggest causation spotlight one central problem of the Rule of Law Dialogue: the lack of evaluation strategies. The dialogue's concept does not fix any targets nor does it include any evaluation methods. To make sure, the individual projects usually are evaluated, but the dialogue as a whole is not. The actors of the Rule of Law Dialogue are not looking for evaluation criteria to meet the main intentions of the dialogue – be it to keep communication channels open to China's decision makers, to improve legal conditions for German investors in China and/ or to influence the legal reforms of the People's Republic of China. But there is one argument against the clear spelling out of targets and evaluation criteria: Possibly the Sino-German Rule of Law Dialogue has its peculiar impact exactly because it does not aim at quick effects and measurable results, but because it is a forum of unconstrained exchange of views and information. In this case a measurable set of goals would be counterproductive. Nevertheless, after ten years of dialogue this problem should find a solution.

³ Actually, the costs of the Rule of Law Dialogue are borne mainly by the BMZ: The BMZ has budgeted the sum of 12,408,000 Euros for four long-term projects of the GTZ between 1997 and 2007 which are central to the dialogue. (Cf. Kurzfassung des Evaluierungsberichtes „TZ-Rechtsberatungsprogramm VR China“ im Auftrag des Bundesministeriums für wirtschaftliche Zusammenarbeit und Entwicklung – Evaluierungsreferat

(Online:<http://www.bmz.de/de/service/infothek/evaluierung/Projektuebergreifend/RechtsberatungChina.pdf>), last visit: 22.05.2008). A smaller amount of an average of 185,000 Euros annually is budgeted by the BMJ. (Confer BMJ information on various occasions, e.g.

http://www.abgeordnetenwatch.de/brigitte_zypries-650-5639--f99944.html#frage99944, last visit: 22.05.09).

⁴ <http://www.bmj.bund.de/files/-/1536/China%20Synopsis-Planung.pdf>, last visit: 22.05.09.

⁵ Beste, Ralf/ Lorenz, Andreas (26.01.09) Kritik auf leisen Sohlen. *DER SPIEGEL* 05/2009. Online:<http://wissen.spiegel.de/wissen/dokument/dokumentdruck.html?id=63806906&top=SPIEGEL>, last visit: 22.05.09. Translation by K.L.

⁶ The BMJ came out with a complete webpage about the accomplishments of the Rule of Law Dialogue: http://www.bmj.bund.de/enid/8dd1917e6cfc0ab8123a44d4d07f800c,f27bdb305f7472636964092d0935373039/Deutsch-Chinesischer_Rechtsstaats-dialog/Erfolge_des_Rechtsstaatsdialogs_1jz.html, last visit: 22.05.09.

⁷ <http://www.gtz-law.org/en/projects.php?id=3>, see key word „Property Law“, last visit: 22.05.09.

Bisher erschienene Hintergrundinformationen

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