

# The German-Chinese ‘Rule of Law Dialogue’: Influence and Outlook

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**Abstract:** *This article first defines the concept, aims and means of the “Sino-German Rule of Law Dialogue” (GCRLD). It then focuses on the role of GCRLD in the promotion of the Sino-German relations, particularly in the process of promoting China to become a rule of law state. On this basis, the article analyzes the reasons why the results of GCRLD are not very satisfactory until now.*

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## I. Introduction

The “German-Chinese Agreement on Exchange and Co-operation in the Legal Field” was signed on June 30<sup>th</sup>, 2000 with the proposals and support from Gerhard Schröder (the former German Chancellor) and Zhu Rongji (the former Chinese Premier). One year later in June 2001, the general proclamation of the Agreement was substantiated by the first “Two-Year Program on the Implementation of the German-Chinese Agreement on Exchange and Co-operation in the Legal Fields”, with the second “Two-Year Program” in December 2003, the third in September 2005 and the fourth in April 2008<sup>1</sup>. On November 16<sup>th</sup> 2010, both sides agreed to switch “the Two-Year Program” to the “Three-Year Program”.<sup>2</sup> Based on this agreement and the four programs, dozens of the “German-Chinese Rule of Law Dialogues” (GCRLD) in different forms have taken places in the last twelve years.<sup>3</sup> The GCRLD is highly regarded by politicians from both countries. Cao Kangtai, Chief of the Legislative Affairs Office of the State Council of China, stressed that the GCRLD set a good example for the two countries with different cultures and different social systems to

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1 *Katja Levy*, Die deutsche Regierung hat gewechselt, der Deutsch-Chinesische Rechtsstaatsdialog geht weiter, China aktuell 5 (2006), S. 64, 65 ff.; *Nicole Schulte-Kulmann*, The German-Chinese “Rule of law Dialog”: Substantial Interaction or Political Delusion? China Analysis 47, p. 1, [http://www.chinapolitik.de/resources/no\\_47.pdf](http://www.chinapolitik.de/resources/no_47.pdf) (last accessed on 2 May 2014).

2 Dreijahresprogramm zur Durchführung der Deutsch-Chinesischen Vereinbarung zu dem Austausch und der Zusammenarbeit im Rechtsbereich, 2010- 2012. [http://www.bmj.de/SharedDocs/Download/DE/pdfs/Dreijahresprogramm\\_zur\\_Durchfuehrung\\_der\\_Deutsch-Chinesischen\\_Vereinbarung\\_zu\\_dem\\_Austausch\\_und\\_der\\_Zusammenarbeit\\_im\\_Rechtsbereich.pdf?\\_\\_blob=publicationFile](http://www.bmj.de/SharedDocs/Download/DE/pdfs/Dreijahresprogramm_zur_Durchfuehrung_der_Deutsch-Chinesischen_Vereinbarung_zu_dem_Austausch_und_der_Zusammenarbeit_im_Rechtsbereich.pdf?__blob=publicationFile) (last accessed on 2 May 2014).

3 See the description under II. 3.

discuss equally and friendly the issues of “rule of law-state.” Brigitte Zypries, ex-minister of the Federal Ministry of Justice, believed, “Not only does close economic cooperation connect Germany and China, but both countries are also collaborating tightly with each other in the field of laws and politics. Thus, the GCRLD can help us to reach this aim.”<sup>4</sup> However, the Dialogues have repeatedly come under strong criticism from Germany. For example, some German politicians complained that the topics of the Dialogues were confined to economic laws and administrative laws without covering the issues of equal treatment of ethnic minority groups and migrant workers.<sup>5</sup> It was argued that the Dialogues were used as a fig leaf by both parties so that the German and the Chinese Governments need not discuss the issues of human rights.<sup>6</sup> Others thought the Dialogues were treated only as “a troublesome task for universities” because most of the active Chinese participants come from universities (and they only speak in broad generalities about laws). In one word, German observers are not satisfied with the results of the Dialogues. German politicians have criticized their government very harshly, stating that the government did not dare handle the issues of human rights directly. Thus, they asked the government to explain itself on this issue.<sup>7</sup>

These critical opinions indicate that scholars and politicians in Germany began to reconsider the meaning of the GCRLD. They have raised questions as follows: Are these Dialogues the one-side wish of the German side? What are the effects of the Dialogues? Do the Dialogues influence China’s process of building “a rule of law state”? If they do, then why are there no improvements in the field of human rights protection in China? Is it worthwhile to continue the Dialogues in the future because Germany invests not only a lot of money, but also many human resources in it? Unfortunately, no queries have ever come from China. With this article we as law professors from China would like to try to express our opinions on the questions mentioned above.

## II. *Concept of the GCRLD*

Before responding to the questions mentioned above, we will first clarify the definition of the GCRLD, its aims and its forms, as they are the basis for any further discussion.

### 1. Definition of the GCRLD

Although the term “Rule of Law Dialogue” appeared in the agreement and the relevant documents in connection with many projects implemented so far, there is no definition of this

4 *Wu Jing*, Report about on-going GCRLD, *People Daily*, 29 April 2009.

5 Kleine Anfrage der Abgeordneten Wolfgang Neskovic, Dr. Hakki Keskin, Michael Leutert und der Fraktion DIE LINKE, *Deutscher Bundestag*, 16. Wahlperiode, Drucksache 16/14085, 24. September 2009, p. 1.

6 See note 1, p. 64, 75 ff.

7 See note 5.

term. Even the “German-Chinese Agreement Concerning the Exchange and Cooperation in the Field of Law” did not define it. The prevailing view in both Germany and China is that the GCRLD is more than a mere “Dialogue”. It is a framework which includes all kinds of activities like consulting-projects, exchange-projects and translation-projects as well as governmental and nongovernmental legal cooperation initiatives. For example, among the governmental initiatives, there are annual official two-day Symposia which alternate between Germany and China, the consulting activities for the Chinese legislations by the Germany Development Cooperation (GTZ, now GIZ), and the German-Chinese Dialogue on Human Rights organized by the Foreign Ministries. All these activities are also listed in the “three-year Program”.

## 2. The Aims of the GCRLD

It is necessary to find out the aims of the GCRLD in order to evaluate whether the Dialogue is successful or not. First we will clarify what kind of aims the Dialogue is trying to reach.

Although the Chinese and the German sides have different understanding about the aims of the Dialogue, we can find three points in common. The first is that the Dialogue should serve as a platform for better communication and better exchange of ideas between the two countries.<sup>8</sup> The second is that the Dialogue should improve the situation of human rights protection.<sup>9</sup> The third is the Dialogue can help China become a rule of law state.<sup>10</sup> We can find such evidence in the preamble of the official agreement about the GCRLD, which states that “through the exchanges and corporations between the two sides, the right and freedom of the people should be guaranteed, the human right respected and protected, and the country ruled by law”.<sup>11</sup>

## 3. The means of GCRLD

There is always a close relationship between the aims and the means used to achieve these aims. Therefore, the means of the GCRLD will be described hereafter. Since the means of the GCRLD are manifold, we shall highlight the most important of them:

8 Interview: Der deutsch-chinesische Rechtsstaatsdialog, <http://www.boell.de/de/demokratie/asien-deutsch-chinesischer-rechtsstaatsdialog-interview-xie-libin-15130.html> (last accessed on 20 May 2014); see the homepage of the Federal Ministry of Justice, [https://web.archive.org/web/20140403004321/http://www.bmj.de/DE/Ministerium/StabEU/\\_doc/Der\\_deutsch\\_chinesische\\_Rechtsstaatsdialog.html?nn=1471926](https://web.archive.org/web/20140403004321/http://www.bmj.de/DE/Ministerium/StabEU/_doc/Der_deutsch_chinesische_Rechtsstaatsdialog.html?nn=1471926), (last accessed on 20 May 2014).

9 See note 5, S. 1; *Schulte-Kullmann*, note 1, p. 1. ff., *Levy*, note 1, p. 64, 75 ff..

10 Chinese Ambassador *Shi Mingxian*'s speech at the opening ceremony of the 11<sup>th</sup> annual conference of “German-Chinese Rule of Law Dialogue” in Qingdao, 19 September 2011; [http://www.china.diplo.de/Vertretung/china/zh/\\_pr/2011/reden-bo-2011/110919-rechtsstaatsdialog-ps.html](http://www.china.diplo.de/Vertretung/china/zh/_pr/2011/reden-bo-2011/110919-rechtsstaatsdialog-ps.html) (last accessed on 2 May 2014);

*Katja Levy*, *Der Deutsch-Chinesische Rechtsstaatsdialog*, Baden-Baden 2009, p. 28 f.

11 *Levy*, note 10, p. 67f..

### a. Annual conferences

The GCRLD-conference is one of the most important events, which takes place once a year alternately in China and in Germany. After the German Ministry of Justice and the Chinese Legislative Affairs Office of the State Council have exchanged their opinions and reached a consensus, the topics are fixed. Twelve GCRLD-conferences have taken place so far with contents covering a very broad area from 'administration law', 'law of state authorization procedures', 'the internet law to "protection of copyright, trademark and persona rights in internet"<sup>12</sup>, 'the improvement of law of pension insurance in China'<sup>13</sup>, 'legal system of anti-unfair competition laws'<sup>14</sup>, 'criminal procedure laws'<sup>15</sup>, 'legal system of internet'<sup>16</sup>, etc.

### b. Round tables

The round table, as part of the GCRLD, plays an important role in exchanging opinions among the different participators of GCRLD and assisting the Germany Ministry of Justice in gathering information. The participators are usually state secretaries or other deputies from the Germany federal ministries, who take part in the GCRLD as carriers of the projects of the program. Besides, various groups which do not belong to the program also get involved in the round tables, such as the universities, legal societies, foundations, judges or lawyers.<sup>17</sup>

12 *Levy*, note 10, p. 82 - 110 f.

13 The ninth annual conference of "Der Deutsch-Chinesische Rechtsstaatsdialog", 27.-28. April 2009 in Shenzhen, <http://fzj.sz.gov.cn:8080/cms/fzbDetails.action?siteName=fzb&pageId=3385> (last accessed on 2 May 2014).

14 The tenth annual conference of "Der Deutsch-Chinesische Rechtsstaatsdialog", 15-16. November 2010 in Berlin, [http://www.law-reform.cn/index.php?option=com\\_flexicontent&view=items&cid=5&id=214&Itemid=5&lang=zh](http://www.law-reform.cn/index.php?option=com_flexicontent&view=items&cid=5&id=214&Itemid=5&lang=zh) (last accessed on 2 May 2014).

15 The eleventh annual conference of "Der Deutsch-Chinesische Rechtsstaatsdialog", 19-20. September 2011 in Qingdao, [http://news.xinhuanet.com/legal/2011-09/20/c\\_122063144.htm](http://news.xinhuanet.com/legal/2011-09/20/c_122063144.htm) (last accessed on 2 May 2014).

16 The twelfth annual conference of "Der Deutsch-Chinesische Rechtsstaatsdialog", 16-17 July 2012 in Munich, [http://news.xinhuanet.com/legal/2012-07/23/c\\_123455818.htm](http://news.xinhuanet.com/legal/2012-07/23/c_123455818.htm) (last accessed on 2 May 2014).

17 According to *Levy*, there were two kinds of round tables. They are the internal round tables and the external round tables. The internal round tables distinguish itself from the external round tables in the following way: Firstly, their participants are not totally the same. The participators of the internal round tables are usually state secretaries or other deputies from the federal ministries, who take part in the GCRLD as carriers of the projects of two-year programs, while the participators of the external round tables include not only deputies of the governments and carrier of the projects, but also the diversities of groups, which does not belong to two year programs, such as universities, legal aid societies, foundations, judges or lawyers; Secondly, their topics are also different. During the internal round tables the principal questions will be discussed, such as contents of the GCRLD, its reportage, its future development, while the external round tables serve as a forum of coordina-

c. Legal consulting activities of Germany Development Cooperation (GIZ)

GTZ (now GIZ) began to support the legal transformation of China on behalf of the German Ministry of Economic Cooperation and Development in 1994. After the “German-Chinese Agreement on Exchange and Co-operation in the Legal Field” was signed in 2000, it has become a part of the GCRLD.<sup>18</sup> One of the most important tasks of GIZ is to give expert suggestions on how to make a new law or how to amend an existing law. If the Chinese Government or the National People’s Congress in China passes legislation, GIZ will allow German experts to express their opinions on how it should be made. At first the consulting service was confined to the field of labor laws and social security laws. Later it also covered the area of economic laws, civil laws, administration laws, budget laws, intellectual property laws and, to a smaller extent, criminal laws and others.<sup>19</sup> Additionally GIZ organizes many training programs for the Central Government and the Ministry of Justice in China so that the Chinese officials and judges can understand how to implement the regulations.<sup>20</sup>

d. The Human Rights Dialogue

The Human Rights Dialogue is another important part of the GCRLD.<sup>21</sup> It originated from the suggestions by Gerhard Schroeder and Zhu Rongji in 1999. The German Foreign Ministry and the Chinese Ministry of Foreign Affairs are partners in this Dialogue, which is usually held once a year.<sup>22</sup> The tenth and eleventh conferences were held on October 8<sup>th</sup>-9<sup>th</sup> 2012 in Wiesbaden, Germany and on May 14<sup>th</sup> and 15<sup>th</sup> in Yinchuan, China. Most of the participators are politicians or diplomats of the Ministries of Justice and the Ministries of

tion and exchange of information, where the participators can report their concerns or requests. *Levy*, note 10, p. 111 ff. But it is said there are no such differences any more. There is only one kind of round table.

- 18 Bundesministerium der Justiz, Informationen über den Stand des deutsch-chinesischen Rechtsstaatsdialogs, p. 1, 7, [http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/Informationen\\_uber\\_den\\_Stand\\_des\\_deutsch\\_chinesischen\\_Rechtsstaatsdialogs.pdf?\\_\\_blob=publicationFile](http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/Informationen_uber_den_Stand_des_deutsch_chinesischen_Rechtsstaatsdialogs.pdf?__blob=publicationFile); (last accessed on 13 May 2014) “Programm zur Durchführung der Deutsch-Chinesischen Vereinbarung zu dem Austausch und der Zusammenarbeit im Rechtsbereich 2013-2015”, [http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/Dreijahresprogramm\\_zur\\_Durchfuehrung\\_der\\_Deutsch-Chinesischen\\_Vereinbarung\\_zu\\_dem\\_Austausch\\_und\\_der\\_Zusammenarbeit\\_im\\_Rechtsbereich.pdf?\\_\\_blob=publicationFile](http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/Dreijahresprogramm_zur_Durchfuehrung_der_Deutsch-Chinesischen_Vereinbarung_zu_dem_Austausch_und_der_Zusammenarbeit_im_Rechtsbereich.pdf?__blob=publicationFile), (last accessed on 13 May 2014).
- 19 *Heinrich Julius*, Institutionalisierte rechtliche Zusammenarbeit: Die Erfahrungen der GTZ in China, *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 72 (1)(2008), pp. 55, 5.
- 20 *Christiane C. Wendehorst*, Rechtsstaatsdialog mit der VR. China – Fortschritt oder Feigenblatt?, in: Hiltraud Casper-Hehne/Irmy Schweiger (eds.), *Vom Verstehen zur Verständigung*, Göttingen 2009, p. 23, 24.
- 21 *Levy*, note 10, p. 111 ff.; *Wendehorst*, note 20, p. 23, 27ff.
- 22 <http://www.dw.de/der-deutsch-chinesische-menschenrechtsdialog/a-5847324> (last accessed on 2 May 2014).

Foreign Affairs in both countries. In the Dialogue, they discuss issues of the judicature of criminal laws and human rights protection, the discrimination of (ethnic) minorities as well as the international cooperation in the field of human rights protection.<sup>23</sup>

e. Cooperation projects among universities

Cooperation in the fields of legal education among the Chinese and German universities had started earlier than the commencement of the GCRLD. The first cooperation project between Nanjing University and Goettingen University began already in 1988/1989. The result of this cooperation was the setting up of the German-Chinese Institute of Law. Its most important task is to cultivate qualified Chinese postgraduates in the field of law with the partner universities in Germany. If the students fulfill the academic requirements of both universities, they receive two LL.M. degrees, one from a German University, the other from a Chinese University.

Such cooperation has been integrated into the rule of law dialogue since 2000 and the German Government has also supported it by sending short time lecturers to Chinese partner universities or offering Chinese students scholarships.<sup>24</sup>

There are two other cooperation projects in the fields of law between Chinese and German universities, which have the same function as the one between Nanjing University and Göttingen University.

The first one is the German-Chinese School of Law of the Chinese University of Political Science and Law, which was set up in 2002 and has six partners in German universities, among which are Freiburg University, Munich University, Köln University, Hamburg University and Frankfurt University. The other one is a project by the department of economic law of CDHK, Tongji University, which in 2003 began a cooperation with Humboldt University, Berlin with the aim of training postgraduates. At first the department had only one partner in Germany and enrolled only a small group of students. But from what was only a small project at the very beginning, a dual/double degree program has been developed from 2012 with two German partners, with one being Humboldt University and the other Konstanz University.

The three institutes have organized many legal conferences within the framework of the GCRLD.<sup>25</sup>

23 <http://www.fmprc.gov.cn/chn/pds/wjb/zjzg/t978172.htm> (last accessed on 2 May 2014).

24 See note 18, p. 1, 7.

25 Gao Xujun, Implementation of public tasks through private companies, *Deutschland Studies* (3) (2002), p. 64 ff.; Liu Ying, Bilanz des 2. Chinesisch-Deutschen Symposiums für Rechtswissenschaften des Chinesisch-Deutschen Hochschulkollegs, *Deutschland Studies*, (2) (2003) p. 64ff.; Winfried Huck, Xujun Gao (eds.), Aktuelle Rechtsprobleme deutscher Unternehmen in China: Viertes Deutsch-Chinesisches Wirtschaftsrechtssymposium am Chinesisch Deutschen Hochschulkolleg (CDHK) der Tongji-Universität, Shanghai, 26./27. Oktober 2005, Aachen 2007.

#### f. Translation projects

In addition to the activities mentioned above, there are many translation projects, which make up another part of the GCRLD.<sup>26</sup> Among all of them, the translation project of DAAD is perhaps the most important and influential. Until 2011, 32 German legal academic books had been translated from German into Chinese, of which 27 had already been published, and 5 were in printing. Today, another 9 books have been translated. These books cover a very broad area of legal science, from the legal philosophy to civil laws, economic laws, criminal laws, procedural laws and administrative laws.<sup>27</sup> All the translations have been carried out by Chinese scholars, but financed by DAAD.

It is worth mentioning that Gao, Xujun are in charge of a small translation project financed by the Konrad-Adenauer-Foundation. In the past few years, he, together with other colleagues, has translated into Chinese “Law of Capital Company”<sup>28</sup> and “Introduction to Sociology of Law”<sup>29</sup> by Thomas Raiser. And his colleague Jiang Qingyun has translated into Chinese “International Economic Law” by Matthias Herdegen<sup>30</sup> and “Lehrbuch der ökonomischen Analyse des Zivilrechts” by Hans-Bernd Schäfer and Claus Ott.<sup>31</sup> All of them have now become standard reference books in the legal field of China.

#### g. Other activities

Besides the ones mentioned above, there are many other activities of the GCRLD which have either been carried out or will take place in the future. For example, experts of the German Patent Office (now Patent and Trademark office) and scholars of the Munich Max-Planck-Institute of Intellectual Property cooperated with their Chinese counterparts when the Chinese Patent and Trademark Offices were set up in the 1990s.<sup>32</sup> The Alexander-Hum-

26 *Levy*, note 1, p. 64, 71 ff.; GTZ (ed.), *Der Deutsch-Chinesische Rechtsstaatsdialog – Ein Überblick*, 2009, p. 103 – available at <https://web.archive.org/web/20061010102702/http://www.bmj.bund.de/media/archive/1227.pdf> (last accessed on 20 May 2014). Also see Bundesministerium der Justiz, note 18, p. 1, 7.

27 DAAD, Translation Series “Repräsentative deutsche Rechtsliteratur der Gegenwart”, (last update: May 2011).

28 *Gao Xujun*, *Recht der Kapitalgesellschaft*, Translation of the textbook by Thomas Raiser and Rüdiger Veil, 2005.

29 *Gao Xujun*, *Grundlagen der Rechtssoziologie*, Translation of the textbook by Thomas Raiser, Shanghai 2011.

30 *Jiang Qingyun*, *Internationales Wirtschaftsrecht*, Translation of the textbook by Matthias Herdegen, Shanghai 2007.

31 *Jiang Qingyun*, *Lehrbuch der ökonomischen Analyse des Zivilrechts*, Translation of the textbook by Hans-Bernd Schäfer and Claus Ott, Berlin 2009.

32 *Wendehorst*, note 20.

boldt-Foundation, the Bucerius Law School and the Federal Supreme Court are also in charge of different projects of the GCRLD separately.<sup>33</sup>

### *III. Evaluation of the GCRLD*

The effects of the Dialogue will be discussed in this part. In order to assess its real effects objectively, the activities of the GCRLD mentioned above will be divided into four categories according to their forms, and their results are analyzed separately. The four categories include the conferences of legal consulting, the human rights dialogue, the cooperation within the universities and the translations projects. However, only three of them will be dealt with. The human rights dialogue will not be discussed here.

#### 1. The conferences concerning legal consulting for Chinese legislation and their effects

No one can prove that the German consulting has something to do with the formulation of a specific China law. Even if the Chinese National People's Congress enacted a specific law directly after a GCRLD conference and if most of the suggestions of German experts were found in this newly enacted Chinese law, one can still question whether there is a direct relationship between the new law and the conference. But such comparisons can at least be used as indicators for possible causal relationship. The following part will analyze the contents of conferences and the related Chinese laws. As mentioned above, a dozen of conferences have taken place in the past. We will only take the 6<sup>th</sup> Conference on "Disclosure of Government Administration Information" in 2005 and the Promulgation of the "Chinese Government Information Disclosure Regulation (GIDR)" in 2007 as an example for a case study.

On June 20<sup>th</sup>-21<sup>st</sup>, 2005, the 6<sup>th</sup> annual conference of the GCRLD was held in Hamburg with three topics being discussed: "the legal basis of the disclosure of government administration information", the "disclosure of information about infrastructure construction plans" and the "disclosure of information about legislation". In 2007 the State Council in China promulgated the "Chinese Government Information Disclosure Regulation (GIDR)". A comparison between the contents of the conference and the GIDR will indicate the relationship between them.

#### a. The contents of the annual conference

During this conference the Chinese side paid special attention to the following issues: How can GIDR balance the interests of the people to receive more information and the interests of the state to keep secrets in favor of state security? How can GIDR deal with the relationship between an active disclosure and a disclosure on the basis of application? Should the

33 See note 27, p. 136ff.

disclosure be free of charge? How can the rights of applicants for information disclosure be protected?<sup>34</sup>

German expert gave detailed explanations on how these questions are dealt with by the “German Freedom of Information Act” (Informationsfreiheitsgesetz, IFG) in the following way:

Firstly, as to the first question, state interests such as military secrets and state secrets should be protected. If someone asks for the disclosure of such information, the application should be refused (Section 3 of IFG). Also, if the concerned information is related to the secrecy of a company or a third person and the disclosure will compromise his or her or its interest, such information can be disclosed only if the third party agrees (Section 5 of IFG).

Secondly, as to the relationship between active and passive disclosure, the German administrative department should disclose information actively, even without applications. But the relevant information should also be disclosed if citizens apply for disclosure.

Thirdly, as far as the charging of fees is concerned, disclosure of information must be free of any charge in most cases. But in some complicated cases, fees can be charged, but they cannot exceed their costs.

Lastly, as to the question of protection of applicants’ rights, German experts mentioned two different practices in the German law. The first one is that a period of time for the disclosure must be fixed during which the information that has been applied for must be disclosed. According to the German law, the period is usually one month while the period for complicated cases is two months. The second is that the applicants can sue the government in the administrative court if the application is refused or not handled within the fixed period of time.<sup>35</sup>

#### b. The contents of the Chinese GIDR<sup>36</sup>

The four issues above are also regulated in the Chinese GIDR. When comparing the suggestions of German experts and the contents of the Chinese GIDR, it becomes clear that almost all the suggestions by German experts were accepted by the Chinese legislators. For example, Articles 14 and 23 deal with the relationship between the state and the individual. According to them, the application must be refused if the information concerns state secrets in the name of “Law on Guarding State Secrets”. If the administrative department believes that the information that has been applied for has a close relationship with the secret of a company or any third person and the disclosure will compromise its or his/her interests,

34 Bundesministerium der Justiz/ Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, Offenlegung von Regierungs- und Verwaltungsinformationen: Beiträge zum sechsten Symposium im Rahmen des Deutsch-Chinesischen Rechtsstaatsdialogs am 20. und 21. Juni 2005 in Hamburg, Bonn/ Berlin 2005, p. 101 ff.

35 See note 34, p. 35 ff.

36 [http://www.gov.cn/zwggk/2007-04/24/content\\_592937.htm](http://www.gov.cn/zwggk/2007-04/24/content_592937.htm) (last accessed on 8 May 2014).

then it can be disclosed only if the company or the third person agrees. Otherwise the application should be refused.

The Chinese GIDR also details both active and passive disclosure. In terms of active one, it states that the Chinese administrative departments should disclose information actively without receiving applications from a third person (Articles 15 – 19 of GIDR). If information is updated or the disclosed information is changed, the government must disclose it within 20 days (Article 18 of GIDR). Moreover, any citizen, legal person or other organization has the right to ask the government to disclose information (Article 20 of GIDR) and the government must disclose it.

The GIDR also regulates fee-charge requirements in Articles 27 and 28. According to them, the governments can only charge such fees that cover the cost of search, copying and stamps. Beyond this, no other fees should be charged. In addition to that, they cannot entrust a third person to disclose the information on the basis of fee-based service (Article 27 of GIDR). If the applicant really has difficulty to pay the fees, he or she can be exempted from it or the price can be reduced (Article 28 of the GIDR).

Finally, the Chinese GIDR offers two ways to protect the rights of the applicant. The first way is to fix a period of time for disclosure. The government must disclose the information usually at the moment when the application is received; if not possible, the information must be disclosed within 15 days upon receipt of the application. If this is still impossible, an extension can be granted for no more than another 15 days (Article 24 of GIDR). If the applied information concerns the interests of a third person, the time spent on asking for permission should not be calculated into the period above. The second way is to allow the applicant to protect his right by taking legal action against the government. For example, if an applicant believes that the government does harm to his rights under the GIDR, or that the government refuses to disclose information, or that government does not disclose information within the period fixed by the law, or that the disclosed information does not conform with the requirement of his application, he can sue the government in court, and the court must hear the case (Article 33 of GIDR in conjunction with “guideline on hearing the cases concerning the GIDR of the Chinese Supreme Court”<sup>37</sup>).

### c. Other topics of the conference and its effects on China

As mentioned above, at the 2005 annual conference both parties discussed not only the disclosure of information, but also “the disclosure of information about infrastructure construction plans” and “the disclosure of information about legislation”. The most important concerns of the German experts are that habitants should not only be informed about the

37 [http://www.law-lib.com/law/law\\_view.asp?id=358265](http://www.law-lib.com/law/law_view.asp?id=358265) (last accessed on 8 May 2014).

planning of infrastructure projects,<sup>38</sup> but also be allowed to participate in the planning. Furthermore, they should be allowed to take part in the legislations.<sup>39</sup>

By comparing the contents of the Chinese law and its implementation, we can also come to the conclusion that such suggestions are also respected by Chinese lawmakers.

The Chinese GIDR includes clear regulation that such information should be disclosed upon the ratification of important construction projects and its implementation, the exploitation or requisition of land, the housing resettlement, the payment of compensation and its distribution (Articles 10, 11 and 12 of the GIDR).

As to the participation in procedure of legislations, Article 34 of the Chinese Legislation Law of 2000 stipulates that public hearing should be organized if a specific law is to be drafted.<sup>40</sup> But in the very beginning, it was not a real public hearing. In 2004 Gao, Xujun was once invited to take part in such a conference, with the draft of the law sent to him by post. But the envelope was stamped with a seal of “State Secret”. But now this process has already been changed. The drafts of new laws are now published in newspapers or on the Internet. And everybody is asked to deliver his or her comments or opinions. For example, before the Chinese Labor Contract Law was promulgated in 2008, its draft had been publicized for discussion. The legislators have collected more than 190,000 different opinions or comments from different persons or organizations all over China.<sup>41</sup>

In short, the contents of GIDR are almost the same as the suggestions from the German experts.

#### d. Summary

From the discussion above we can come to the conclusion that German legal consulting played a very important role during the course of development of a “rule of law-state” in China, because a lot of suggestions from German experts have been accepted by Chinese lawmakers and integrated into the Chinese laws. But this is only one small part of such adoptions as in the last twelve years more than a dozen of such conferences were organized where either the draft of a specific new law or the revised draft of an old law was discussed. The relevant laws range from the administrative law, the patent law, the trademark law, the copyright law, the administrative procedure law, the administrative enforcement law to the internet law, the competition law, the civil law, the bankruptcy law, the company law and so on. We believe that we can also find more similar adoptions in Chinese laws mentioned above if we compare the speech of the German experts and the contents of the relevant Chinese laws carefully and thoroughly. The Chinese ambassador Dr. Shi Mingxian holds the

38 See note 35, p. 47 ff.

39 See note 35, p. 59 ff.

40 [http://lvshi.bj.bendibao.com/news/2009127/58651\\_2.shtml](http://lvshi.bj.bendibao.com/news/2009127/58651_2.shtml) (last accessed on 8 May 2014).

41 The final report on Chinese-German Labor Contract Law Conference (China, Beijing, 11 – 12 May 2006) by GTZ, p. 2.

same opinion: “In the last ten years China has already enacted many laws reaching international standards. The total number has surpassed the number of the laws which have been enacted in the last 100 years altogether. We are very glad to see that some of the legal principles or standards discussed in the framework of the GCRLD are accepted by China during the reform of the modernization of the Chinese legal system”.<sup>42</sup>

## 2. Cooperation among universities

Just as mentioned above, cooperation among different German and Chinese universities in the field of law is also one important part of the GCRLD. All these projects have been jointly financed by the Chinese government and the German government. The typical case is that the Chinese partner universities take up the responsibility not only to choose a group of qualified students and arrange them to learn the German language intensively for one year in China, but also to ask Chinese professors to deliver lectures about Chinese law and German law to these students. Meanwhile, German partner universities take up the responsibility of sending three or four law professors to their Chinese Partner Universities to deliver to the students lectures about the German constitutional law, administration law, civil law, etc. for one or two weeks. Most of the Chinese students who have passed the German language examination (TestDaf) have gone to study German law in Germany for one year with the help of a German scholarship (DAAD). Some of them got a scholarship from the Chinese government.

This cooperation is very successful. About 200 Chinese students have finished their postgraduate studies in Germany and in China and obtained the two LLM Degrees because of these three projects.<sup>43</sup> In addition to that, one-third of them have stayed in Germany for further studies and have written a doctoral dissertation to obtain a Dr. jur. title from universities in Germany. Some of them are still working hard for this title.

What is most important, however, is that the concerned students not only have a better understanding of the meaning of “rule of law state” themselves, but that they could also influence hundreds or thousands of Chinese when they return to China and work as a teacher at Chinese universities, or as judges in Chinese courts. If they can translate German legal books from German into Chinese and have them published in China, they will influence many more people. Cooperation in the field of education can even influence the Chinese legal system directly. One example is Tian Lipu, now the president of the Chinese Patent Law Office. He received further education from the European Patent Office, the German Patent Office, the Federal Patent Court and at the Max-Planck Institute Munich in the years 1980–1992. Because of his influence, the Chinese patent law is almost identical to the German patent law.

42 See note 34, p. 4.

43 See the description under II.3.e.

In one word, the cooperation among the universities is a very good form of the GCRLD and turns out to be very successful.

### 3. Translations projects

The translation projects are also very important. In order to make sure that both law professors and law students will read translated books, the Chinese translation ought to be very good. For example, the translated “Law of Capital Companies” and “Introduction to Sociology of Law” by Thomas Raiser have become the standard reference books in most Chinese law schools. Already, about 10000 copies of “Law of Capital Company” and 6000 copies of “Introduction to Sociology of Law” have been sold in China. In addition to that, Chinese judges are also readers of such books. If they face a complicated case without knowing how to reach a reasonable and lawful decision according to the Chinese law, they read such translated books and try to find another approach for their decision.<sup>44</sup>

All in all, one should not underestimate the influences of the translation projects.

### 4. Summary

From the discussion above, we can make judgments on whether the GCRLD has reached its aims. The answer depends on how the aim of the GCRLD is defined.

If the GCRLD is only a platform for two countries to exchange their opinions and experiences so that they can better understand and trust each other,<sup>45</sup> I think that this aim has been reached already. Through so many discussions in so many conferences in the last twelve years, both Germany and China know and understand the thoughts, requirements and difficulties of the other side very well. As for another aim, the situation of human rights protection has improved greatly in China, though there are still cases where the human rights of some persons are restricted. Regarding the aim of improving legislation, we would say a part of it is already realized: China has enacted over one hundred laws with the help of German experts within the framework of the GCRLD in the last few years and a lot of suggestions of the German experts were adopted in these laws. So if the aim of the GCRLD is to help China legislate rationally, the results are more than satisfactory.

To sum up, China has made great progress in its way to becoming a rule of law state while the GCRLD has played an important role during the process. But China has not turned itself to a rule of law state yet according to the understanding of German legal science; the country still has a long way to go before this goal is reached.

44 Here I mean the book with practical analysis, such as “Law of Capital Company” by Thomas Raiser.

45 See *Levy*, note 10, p. 28; see also note 8.

#### *IV. Reasons for dissatisfaction*

The key aim of the GCRLD is a “rule of law state”. Most German scholars and politicians hope that the GCRLD can help China to transform itself into a rule of law state. Once China is a rule of law state, the human rights of the Chinese will be better protected and China will also be a safe place for German investment. Since they have such an ambitious aim, they are very disappointed to find that China is still not a rule of law state – judged by German standards – after so many years. What are the reasons? Maybe both Germany and China are responsible for the unsatisfactory result. In the following part, I will try to analyze the reasons from the German side and the Chinese side.

##### 1. Reasons on the German side

We ourselves believe that German the German actors are partly responsible for this unsatisfactory result because of the following reasons:

###### a. Too ambitious an aim

The German side's goal to help China turn itself into a rule of law state according to the German understanding through the GCRLD might be too big and too ambitious. “Rule of law state” is not a simple concept, an idea or a specific law, but a complex combination of legal, political, administrative and judicial issues. It is not very easy for an average person to understand what the concept of “rule of law state” is, what it consists of and how it works. Only when people spend years studying and doing research on it can they understand it. But it will surely take a much longer time to build such a legal system in such a large and complicated country like China. Compared with China, Germany is a small country with much smaller population, but still, it required some time to turn itself into the modern rule of law state that it is today. China is a huge country with a population of more than 1.3 billion. It is much more complicated to build a rule of law state in China. Therefore, twelve years is not enough time.

###### b. Unsuitable means

As I mentioned above, the rule of law state is not only a concept, an idea or a specific law, but also a complete social system. It is not very easy for an average person to understand the real spirit of the rule of law state, its structure and its system. Even through the programs of the GCRLD, it is also very difficult for a participant to get a whole picture of the rule of law state.

The most important form of the GCRLD is the conference, which usually lasts for two days. Each conference has a different topic. Even if a participant has attended all the conferences, he or she cannot understand the meaning of the “rule of law state” very well, not to mention the way it works. In addition to that, the topics of all the conferences are not

arranged according to the contents or logic of the rule of law state, therefore, usually different people from different backgrounds participated in different conferences.

Universities' Cooperation and the translation of standard legal works are very effective. Learning and reading Chinese translated version of German legal literature can help the Chinese people to understand the German legal system much better. But one cannot hope that China could be turned into a rule of law state because of such cooperation and translation project alone, considering most of the involved parties are still students, who have no real influence over Chinese political and social life at the moment.

### c. Provisory result

To sum up, we can come to the following conclusion: The aim of German side is too ambitious; and the forms of the GCRLD are not suitable to realize its aim within such a short period of time.

## 2. Reasons on the Chinese side

The German side expresses their disappointment over the unsatisfactory results of the GCRLD. China is also responsible for it because of the following reasons:

### a. No political will

The GCRLD is something like marriage. Both partners must not only appreciate each other and love each other, but also have some common ideals. Then they can live together. It is also something like a business deal. A contract can only be signed by both parties if they have common goals. Therefore, the aim of the "rule of law state" can be reached only if it is the common will of both China and Germany. Although the term "rule of law state" is mentioned in the preamble of the agreement between both countries,<sup>46</sup> it is a pity that this is not the common will of both countries. Germany and China have their respective understanding of this term. The official attitude of the Chinese government is that the Chinese political systems should be further democratized, but that China does not need democratic systems as they can be found in western countries. Therefore, China wants to pursue a new democratic system with Chinese characteristics.<sup>47</sup> We are not experts of political science. But if we are not mistaken, "the rule of law" is one important and indispensable part of a democratized political system. If the Chinese government does not need the democratized political system from the western countries, it means that it does not need the system of "the rule of law state" as understood in western countries either. We totally agree with the reading of

<sup>46</sup> Levy, note 10, p. 67 f.

<sup>47</sup> People democracy is the life of socialism, the democracy in western countries will lead to the collapse of China (《人民民主是社会主义的生命，西式民主必将拖垮中国》), People's Daily (《人民日报》), <http://www.xj71.com/2012/0305/660975.shtml> (last accessed on 8 May 2014).

one German expert in the GCRLD, Katja Levy. She believes that China has already established a well-developed legal system, but that China is also trying to explore its own way during the procedure of building this system.<sup>48</sup> In the end, building a rule of law state in China in the German sense is not the common goal of both partners. Thus, it is not strange that this aim cannot be reached.

#### b. Traditional Chinese social and cultural background

As just mentioned above, China has already established a well-developed legal system. The Chinese government must also exercise its administrative power in accordance with these laws. Considering this, we have to respond to very tough questions concerning why there are still many cases where the right of freedom of speech or even personal liberty is infringed. Not all these infringements are in line with the Chinese law. These questions are not very easy to answer. But we ourselves believe that both the modern legal system and the Chinese traditional culture have played an important role here.

##### aa. Modern legal system – Personal account for instability

Everybody knows that maintaining social stability is one of the central tasks of the Chinese government. Every official in the Chinese local government is responsible for the stability of a specific area. If something happens in an area which leads to social unrest, the official will be held liable for it.<sup>49</sup> Therefore he or she can lose his or her position, or be reduced to a lower position. This is one regulation of the modern legal system. The original intention of such regulation is very good so that the local officials will be motivated or forced to solve all the social problems emerging in their area with lawful methods. This is also one of the important tasks of the local government. But such regulation also has some side effects. In order to protect him- or herself from such negative influences, the first reaction of the local official is trying to withhold the truth if something bad which could attract the public attention has happened in his or her area. He or she usually takes different measures without examining why such things have happened and without considering whether the actions are reasonable and lawful. One of them is to pay money to the concerned person so that he keeps quiet. The other is to restrict his or her personal freedom. Both measures are not only illegal according to Chinese laws but also have negative effects. The first one is a kind of encouragement for people to act unlawfully and unreasonably. They tend to think the government can be blackmailed if they try to cause havoc. This can only intensify or sharpen the conflict without solving the problems. That is one of the reasons why the social conflicts in the last few years are much more intense than before. Although the Chinese gov-

48 Levy, note 10, p. 258.

49 “Accountability system of the officials for the petition und keeping stability” 《信访维稳领导干部责任制度》, <http://www.jxjxsj.com/2010-1/2010114162017.htm> (last accessed on 8 May 2014).

ernment has been trying to maintain social stability for years, the Chinese society is still somewhat chaotic.

#### bb. Special aspects of Chinese traditional culture

In addition to the reasons mentioned above, maybe special aspects of the Chinese traditional culture are also the root for some dishonest and illegal behaviors of the government officials.

Firstly, we shall highlight the mixture of the national affairs with family affairs. As we all know, a country consists of numerous different families. This statement holds true not just in China but across the world. But there are differences in various cultures about the relationship between the country and the family. According to western countries' culture, a country is a country and a family is a family. They are two totally different social institutions. But this is not the case in Chinese culture. Only from the meaning of the word "country" can we perceive the differences. In western countries there is only one term for "country". Of course it can also be called "a state", "a nation". But no matter which term is used, it has nothing to do with "family". But the Chinese expression for "country" consists of two different Chinese characters: "land" (国) and "family" (家). The Chinese word for country as "国家" already indicates that there is a close relationship between "country" and "family" in the Chinese culture.

In Chinese traditional culture, "country" was directly compared to "family". In one of the four classics of Confucianism, there was one famous maxim "正心、修身、齐家、治国、平天下"<sup>50</sup>. In English it means "To rule his state well, he has to first govern his family well. To govern his family well, he has to first cultivate himself. To cultivate himself, he has to first set his heart right". From this famous maxim we can see that the ability to govern a family is compared with the ability to rule a country. And this comparison between "country" and "family" has great influence on the Chinese legal culture. Behind it lies the rule of traditional Chinese social order and the related punishment in case of violation of such rule. So in China, a son must be absolute filial towards his father. The officials and the people must be absolutely loyal to the emperor, and the people must always be filial to the official because the official governs the area on behalf of the emperor. If somebody was not "filial" or not "loyal", it was one of the worst crimes in traditional Chinese legal culture. He or she was bound to be punished.

Even in today's Chinese culture, the country is still seen as a big family while the individual family is regarded as the little family. "Filial piety" or "loyalty" is still regarded as an important part of the Chinese culture. Although there are modern laws in China, it is a fact that not all officials have a strong legal consciousness because of the strong influences of traditional cultures. Quite a lot of them still believe they are officials in the traditional

50 "The Book of Rites · Great Learning" (《礼记·大学》), <http://www.dfg.cn/big5/chtwh/rxjj/24-dxsd.htm> (last accessed on 8 May 2014).

sense; therefore the people must be filial to them. Therefore it is not surprising that one can still find cases where personal rights or right of freedom of speech are restricted.

Secondly, one should consider “settlement of family quarrels behind closed doors”. Chinese and Chinese experts who are familiar with Chinese traditional culture will know the expression “家丑不可外扬”. Many will have known it even before they had gone to school because their parents had told them about it. If we translate this idiom into English, it means “Family quarrels must be settled behind closed doors” or “family scandals should not be spread outside the house” or “Domestic shame should not be made public”. It is said that this idiom originated from one of the four famous classic novels of Chinese literatures “Journey to the West”<sup>51</sup>. But we ourselves do not believe in it. We are convinced that this has a close relationship with Chinese concept of a kinship family. Until the Qing Dynasty, kinship families had been one of the most basic and powerful social organizations in the Chinese society, because such families owned not only many properties but also had their own laws. And every kinship family was allowed to enforce its kinship law. In addition to that, such families were very big and influential. In the Tang Dynasty there was once a big kinship family with nine generations living together. It was not even the biggest one. There was even a kinship family with 13 generations, which had altogether 700 members living under the same roof.<sup>52</sup> The Shaikh – the oldest person of the family – would consider himself very lucky and happy to see so many people living together around him. But not everybody living within such a huge family was very happy. There were always a lot of problems such as a private vendetta, intolerable love affairs among the members and etc. According to the traditional Chinese idiom mentioned above and to the kinship law, such scandals must be settled within the family. If one member of the family discloses such scandals to the outsider, he or she is in open violation of the kinship law and therefore should be punished. Additionally, the good reputation of the family is ruined.

This aspect of the Chinese traditional culture exerts great influence even nowadays. If something terrible happens in a specific area – for example a farmer does not agree with the plan of relocation of his habitats, or the immigrant worker does not get his or her wages, or a river was polluted by chemical wastes – the local government is responsible for the peaceful settlement of such conflicts. But it is very tough. In some cases, the local officials think that such an event could lead to social chaos. If such unfavorable information is exposed

- 51 Journey to the West was written by Wu Chengen in the 16th century during the Ming Dynasty. In English-speaking countries, this novel is translated as *Monkey*, or *Adventures of the Monkey God*, *Monkey to the West*. It tells the adventurous story about the Buddhist monk Xuanzang, his three protectors in the form of disciples together with a dragon prince who acts as a white horse. The monk Xuanzang travelled to the India "Western Regions" during the Tang Dynasty, to obtain sacred Buddhist texts (sutras).
- 52 *Xu Wangsheng* (徐旺生): “Reasons for the formation of living in groups as characteristics in Chinese ancient society” (《中国古代乡村社会群体居住特征形成原因及相关问题》), in “the villages, farmers and agriculture in the historical perspective” (《历史视角中的“三农”》), <https://web.archive.org/web/20120319013320/http://www.yan-emperor.com/zhydw/show.asp?id=117> (last accessed on 22 May 2014).

outside, their administrative ability would be put into question. So the local officials would try to employ all possible means to prevent the news from spreading outside. They do not care if their measures are legal or not.

Thirdly, there is the idea of “Sweeping the snow from one's own doorstep”. In China there is another well-known traditional expression which has a close relationship with the traditional Chinese culture mentioned above. In Chinese, it is “各人自扫门前雪，莫管他人瓦上霜”. It means “Each one sweeps the snow from his own doorstep and does not bother about the frost on his neighbor's roof”. It can also be translated as “mind one's own business and do not interfere with other people's affairs”. It is said that this idiomatic expression came from one famous classic “Documents about All Kinds of Social Events 《事林广记》” written by Chen Yuanliang (陈元靓) in the Song Dynasty.<sup>53</sup> But we also believe that it has a close relationship with the kinship family. As mentioned above, every kinship family has its own secret scandals, which might be neither lawful nor moral. On the one hand, the patriarch of the kinship family tries to keep the scandal within the family. On the other hand, he tries to prevent any interference from his neighbor. The second traditional Chinese expression is a good justification and ground for his behavior. In fact, the second expression will help the kinship family solve its conflicts behind the scenes, because if neighbors say nothing about what the patriarch has done to his family members, he could not only keep the dispute within his family, but also take his own measures to settle such conflicts.

This aspect of the Chinese traditional culture even now exerts great influence on the behaviors of Chinese official. Chinese officials will only focus on the things or problems arising from their own area. They will not interfere with other areas' business even though the measures taken by officials in the neighborhood area are illegal because it is none of their business. That is also one reason why the Chinese government always criticizes foreign governments when they make comments on the policies or events in China.

### 3. Summary

From this discussion, we can come to the conclusion that both Germany and China are responsible for the unattainability of the aim of turning China into a rule of law state within quite a short period of time. But the most decisive reasons of all are that China has another legal tradition than the rule of law state and that there exists no consensus within China as to whether China should transform itself into a rule of law state in the meaning of the western countries. Under these circumstances it was not very realistic to hope that a rule of law state will be built in China within twelve years. Only when most of the Chinese are convinced that the rule of law state is very positive for the stability and development of the Chinese society will the realization of this aim be possible.

53 The Song Dynasty existed between 960—1279; see <http://baike.baidu.com/view/2070945.htm> (last accessed on 8 May 2014).

## *V. Conclusion*

How will the GCRLD develop in the future? The GCRLD is a common program between the German and Chinese governments. Both parties must have the will to continue the Dialogue.

The reform of legal systems in China and realization of the rule of law state in China are not only technically difficult but political challenging. Therefore China should first make political decisions to set the aim of building a rule of law state within China so that the GCRLD will play a much greater role during this process.