ECLS 2008 Annual Conference
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The 2008 Annual Conference of the European China Law Studies Association was held upon the generous invitation of Prof. Dr. Gianmaria Ajani (University of Torino) and Prof. Dr. Marina Timoteo (University of Bologna). The conference venues were also divided between the institutions in Bologna and Torino. Up to 80 scholars, researchers, students and practitioners from Europe and Asia participated in the four-day programme.

The Bologna sessions of the conference were held in the amazing "Sala Armi" at the Faculty of Law of the University of Bologna. After a welcoming address by Prof. *Marina Timoteo,* comments were made by the Vice-Rector for International Relations of Bologna University, *Roberto Grandi,* and the Dean of the Faculty of Law, *Stefano Canestrari* .

Opening Session: EU-China Law School Enhancing EU-China Cooperation
The **Opening Session**, pleasantly chaired by Dr. *Marina Timoteo* (Bologna University), concerned the role of the China-EU School of Law (CESL) in enhancing EU-China cooperation. Prof. *Hans-Heinrich Trute* of Hamburg University gave an introduction to the CESL outlining its aims: creating a society geared towards the development of rule of law in China, contributing to the sustainability of legal, social and economic reforms, providing a platform for exchange between the EU and China, and building a bridge between China and the EU. The China-EU School of Law was inaugurated at the China University of Political Science and Law on 23 October 2008. CESL offers masters courses (leading to a Chinese JM and a European LL.M degree) admitting 120-150 students, 30 per cent of whom will be able to receive a scholarship. Furthermore the CESL will be a centre for professional training, research and consultancy. Associated institutions include universities, law firms, social and public services, and professional training institutions. The professional training involves judges, prosecutors and lawyers. The plan is to train about 5,000 Chinese judges and prosecutors, as well as about 700 Chinese lawyers and 900 European legal practitioners. Areas of research include legal and administrative transformation in China, China and Europe in a globalized world, as well as legal theory, law and culture, and other general aspects of law. The research programme will start with an academic workshop in January 2009.

Vice President Prof. *Yong ZHU* of the China University of Political Science and Law (CUPL) elaborated on the role of the School to meet the challenges Chinese legal education is facing. One of the problems is that the legal educational system at university level is too complicated. The levels of legal education include specialized training, bachelor and master as well as Ph.D. degrees, however, there is no restriction as to who may take the judicial exams (司法考试) in China. This further increases the problem of poor legal scholars and lawyers and explains the poor quality of judges and prosecutors. CUPL and the Southwest University of Political Science and Law have been engaging in the training of judges and prosecutors in Western China to help remedy this situation, however, there is need for more efforts, and CESL is an important contribution to these efforts. CUPL's contribution to the CESL is to provide a special lecture hall building,

including a moot court hall and over 20 offices. The Ministry of Education approved the CELS in September 2008.

Module I: Chinese Law in a Global Context

The first session following the opening remarks was dedicated to the topic of "**Chinese Law in a Global Context"**, proficiently chaired by Prof. Gianmaria Ajani of Torino University and the Centre for Advanced Studies on Contemporary China (CASCC). The session was led off by Andrea Wechsler of the Max Planck Institute for Intellectual Property, Competition and Tax Law in Munich under the heading "Intellectual Property Law in the P.R. China: A Powerful Economic Tool for Innovation and Development".

Ms. Wechsler noted that 'Intellectual Property' (IP) and 'protection' are two terms that do not go well together in a Chinese context, in view of piracy of goods and widespread patent, copyright and trademark infringements. Nevertheless, it is well recognized that intellectual property rights (IPRs) do have a positive impact on economic development both in China and worldwide. However, at the same time it is criticized by some commentators that IP protection is a necessary but not sufficient factor for economic growth thereby raising the question how far economic development is triggered by IP protection. The question then is what these mechanisms mean for the study of IPRs in China. While recognizing that a lack of enforcement does play a role regarding IPR infringements in China, the author wanted to avoid an "enforcement obsession" often found in debating IP protection in China, and focused instead on the "China puzzle" in IP development that picks up on the seemingly spurious relationship between strong IP laws and economic development.

The solution suggested lies in the "IP Balance" in China, a new term delineating a balance broader than a bi-polar balance between rights and obligations, adding more factors or stakeholders to the equation, including four major factors revolving around the question of IPR, policy and strategy. These factors or stakeholders are the inventor-author-owner group, publishers, state interests and the consumer-user group. This complex model could support a striving towards a balanced IPR regime with the maximization of global social welfare as its objective. However, in conclusion the author points out that China will most likely not be a leading force towards such an IP Balance given that China has proven in the IP-context that it prefers to place state or national interests over the maximization of international social welfare.

The second contribution in this session was the presentation, "Climate Change Law in China" by Christiane Trüe of Göttingen University. Dr. Trüe began by acknowledging that China is seeing an increase in emissions, and is now the largest absolute emitter of GHG in the world, although per capita emissions are only about a fifth of US per capita emissions. The environmental consequences of global warming are already to be seen in several areas in China, in terms of record temperatures, sea level rise (HK) and the disappearance of glaciers.

China is party to the Framework Convention on Climate Change (FCCC) and the Kyoto Protocol. Under the principle of 'common but differentiated responsibilities' enshrined in these instruments of international law, obligations for developing states are assessed considering their right to development and the fact that existing man-made concentrations of GHG in the atmosphere mainly originate from the developed countries;

thus countries like China have not undertaken a commitment to specific emission reductions. Even so, China has taken action to contain its GHG emissions, too. The environmental protection law in China has seen considerable development, and the first National Climate Change Program sets out to restructure the economy in order to promote cleaner and more energy efficient technology and control emissions. In her paper, Dr. Trüe introduced and analyzed the salient legislation, including the general Environmental Protection Act as well as more specific Acts on the Prevention and Control of Atmospheric Pollution, Energy Conservation, Clean Production and Renewable Energy. She highlighted that these acts share a similar structure, starting with traditional supervisory measures, but also that the more recent acts move towards a more promotional approach based on guidance and incentives. The Acts may not have been drafted specifically with climate change issues in mind; however, they provide tools which are available for combating it, in particular if the Acts are interpreted with China's commitments under international environmental law in mind. Such an interpretation may be based on a provision in the Environmental Protection Act which gives international treaties ratified by China priority over national law.

Dr Trüe concluded that China has quite an impressive legal framework; modelled on international climate change law and comparable to what is known in other countries. Still, although existing law may remain fragmented and repetitive here and there, the main weakness lies in the lack of enforcement. Here Dr. Trüe expressed the hope that such elaborate legislation has been made in order to be applied effectively in due course.

Module II: Chinese Law between Politics and Society

The morning session of the second day discussed "**Chinese Law between Politics and Society"** eminently chaired by *Romeo Orlandi* of the Osservatorio Asia in Bologna. The session started with a presentation by Prof. *Stefania Stafutti* of Torino University and CASCC titled "Being Attorney in Tianjin: Law and Fiction in Jiang Zilong Stories" elaborating on the link between criminal literature and social change in China. Dr. Stafutti elaborated on the historical link to "Magistrate-detective stories", such as the stories about Judge Li, which outline paternalistic perspectives on legal enforcement that – to some extent – are still found in modern literature, and also on the link between the real situation and fiction in Jiang Zilong's stories. The literary message is quite Calvinist in the sense that morality is absolute and disregards degrees of culpability, leading also to very clearly defined characters in the stories, leaving out the ambiguity of human nature.

The second contribution under this heading was presented by *Manuel Delmestro* of Academia Sinica in Taiwan ROC, elaborating on his paper titled "The CPC and the Law". Delmestro has found that in discussing rule of law, legal issues, etc, the question of who creates the laws and how is often forgotten. While looking at this issue in China and considering that the "socialist legal system" is tied to the CPC as a concept (defined as "party-ruled socialism"), and that state rules are created by CPC rule development, the question then arises whether we need a new "legal" category to conceptualize CPC regulations.

The Communist Party of China (CPC) has a complex corpus of internal rules, and the production of party norms and regulations comes through the CPC Interim Regulations on the Procedure for Establishing Internal Party Regulations, an internal

legislation law established in 1990, about 10 years prior to the national Legislation Law. Delmestro concludes that, as the framework for inner party rule of law existed prior to state rule of law, there is indeed a need of conceptualization of CPC rules, and a possible alternative to the binding 'normative' rules of state would be to consider the *soft* CPC rules as 'nomopoetic' or rule-creating rules for the state.

The following paper, "Non Profit Organizations in the People's Republic of China: A Case Study" presented by *Knut Pissler* of the Max Planck Institute in Hamburg, concentrated on presenting a statistical analysis of non-profit organizations (NPO) in China. There are three forms of NPOs in China: social organizations (社会团体), civil non-business institutions (民办非企业单位), and foundations (基金会). The legal basis for these institutions is found e.g. under Art. 50 of the General Principles of Civil Law (1986) and regulations promulgated by the State Council in 1998 and 2004. Dr. Pissler explained that NPOs are usually registered on local levels, with registrations often corresponding to funding possibilities.

In conclusion Dr. Pissler points out that, NPOs are becoming a more important part of China's economic system, something regulators are aware of and which explains the active response to NPO development. There is, however, skepticism towards NPOs, and the necessity of a "sponsor" (i.e. the need of a state or state near organ in the pre-registration procedure for NPOs and its involvement in the daily business of NPOs) leaves strong influence by the state upon NPOs. Recent developments in NPOs are reflected in two major reform proposals: revision of regulations for social organizations, including the possibility to register foreign related social organizations (涉外民间组织), and discussions about a change in the "dual management system" which currently includes besides the requirement of a "sponsor" the approval of the Ministry of Civil Affairs (or the corresponding organ on the provincial level); the second reform may be seen in the drafting of a Charity Law (慈善法). Both of which reflect a stronger regulatory trend on the management of NPOs. However, much uncertainty lingers with regard to the predictability of the existence of the present NPO system, and in the enforcement of duties of NPOs under the present legal regime.

The final contribution of this session was held under the heading "Creating Law-Abiding Citizens: A Study of Legal Programmes on Chinese Television" by Prof. *Marina Svensson* of Lund University, introducing the issue of law as lived experience in the context of media by discussing the development of law and law enforcement related television programs in China. Legal development has created a need for more legal information to be disseminated among the citizens. Such disseminations, "*pufa*" (普法), have traditionally been campaign style efforts undertaken in concert with the Ministry of Justice and the courts on the national, provincial and local levels. However, legal reporting in the media is increasingly becoming a major source for legal information on a number of issues, including legal aid, the legal system and legal reforms, crime and crime stories, civil suits, and economic cases, often made in close collaboration with the police and judicial organs for content and format. Legal programs on television were first introduced in 1985; today there are more than 200 legal programs on Chinese television, and in 2004 CCTV even set up a special legal channel. However, there is a question of accuracy, where influencing factors are among others a commercialized press and

sensationalistic crime reporting. One problem is the sensationalist programming on local and provincial level focusing on violent crime.

In conclusion Dr. Svensson has found that the perception of legal programs is a question of empowerment or control. The shows are clearly propaganda, with government watchdog (supervisory) functions, but also hold a social control element. They may be seen as a tool for justice in consulting individual problems. Yet, the shows may also be a channel for pushing legal reforms, indicating that the media actually has different functions and control mechanisms. While market forces and ideology pull the programs in different directions, one may identify three distinct discourses in media agendas, the socialist/legalist discourse, the market-oriented/neo-liberal discourse, and the rights-oriented discourse.

Module III: Chinese Law and the Socialist Market Economy

The second session this morning was skillfully chaired by *Giorgio Prodi* of University of Ferrara and Osservatorio Asia and titled "**Chinese Law and the Socialist Market Economy"**. The first paper of the session was presented by *Ignazio Castellucci* of the University of Macau and the University of Trento, Italy, on the topic "The Legal Framework of the Socialist Market Economy". Castellucci argued that the Chinese government already knows enough about rule of law and will probably reject the notion of a Western rule of law. A Government White Paper confirms this sentiment by focusing on the "Chinese legal heritage" – both ancient and modern. The creation, use and operationalization of law as such have different mechanisms than within the context of rule of law, where the mechanistic legal tools of rule by law are emphasized. A socialist market legal system does not necessarily mimic property rights based economies. This again leads to an incentive to dig out socialist/soviet legal theory, as a valuable element for analysis.

Prof. Castellucci identified three basic laws to illustrate the private and public relationships within the socialist system: contract law; competition law, facing unique challenges in the comparative legal landscape, in particular with regard to administrative mechanisms which create barriers enabling local governments to employ protectionist measures; and finally, property law. In his study he found that the "socialist mode", as well as the socialization of the benefits of the market, operates very much through administrative checks on market subjects and activities, like licensing and other authorizational devices, and that they also operate on rules that are not written, informing the formal legislation. China's ambition in this regard is to create a prosperous country and a well-off state, which seems to validate a rule of law model which allows for high levels of control on all levels of society.

Under the heading "The State Owned Enterprises in China and the WTO Agreement on Subsidies and Countervailing Measures" CASCC Fellow *Paolo Davide Farah* presented a four-part paper discussing the questions of how to define subsidies, Chinese compliance with the Agreement on Subsidies and Countervailing measures, state-owned enterprises (SOEs) in China in relation to subsidy issues, and the general exceptions to subsidies applied to developing countries and the special treatment for China. Farah argues that the term "subsidy" has been often misused or confused with the term "state-aid", because these terms were not definitely defined. They were described differently in the GATT

context and in the previous EU and US legislations. The term subsidy was commonly used in the GATT system and the term state-aid in the EU law, until the adoption of the Uruguay Round Subsidy Code. The 1979 Subsidy Code and later the 1986 Punta del Este Ministerial Declaration gave a better definition of the subsidies and on the limitation of countervailing measures' use. Nonetheless, interpretations are still varied to the point of being contradictory. China is adopting a restrictive interpretation of the concept in the WTO context.

Under the Agreement on Subsidies and Countervailing Measures (SCM), subsidy programs can be justified if there is no serious prejudice in the sense of paragraph (c) of Article 5 and if none of the conditions of Article 6.3 applies. Non-discriminatory practices are emphasized, as such the "Go West" policy in China, which was a subsidy campaign (through tax-breaks), applied to all the companies in a relevant geographical area.

Regarding the question of Chinese compliance with international agreements, the paper focused on the Transitional Review Mechanism (TRM) that was added to China's accession to the WTO. The TRM is perceived as discriminatory by China, because it is applicable only to China. The TRM reviews all legislations with regard to China's compliance with WTO agreements such as the Agreement on Subsidies and Countervailing Measures (SCM) in contrast to the Trade Policy Review Mechanism (TPRM), which is a trade policy monitoring mechanism to which all the WTO member States are subject to.

Usually, developing-country WTO members are not subject to the presumption of serious injury of a subsidy granted, and action against "actionable subsidies" may not be authorized or taken under Article 7 unless nullification or impairment of tariff concessions or other obligations under GATT 1994 is found upon the implementation of national subsidies. However, China is not considered a developing country with regard to these benefits.

China is still maintaining subsidies, not in compliance with its WTO obligations, in a number of areas including the banking sector and SOEs. Those violations can be the ground for new disputes in front of the WTO dispute settlement system.

On the afternoon of the second day the conference location was transferred from Bologna to Torino.

Module IV: Chinese Law Reforms: Mixing Legal Models

The morning of the third day was held at the premises of the Centre of Advanced Studies on Contemporary China's in the center of Torino. The session was dedicated to the topic of **"Chinese Law Reforms: Mixing Legal Models"** and expertly chaired by Professor Gabriele Crespi Reghizzi of Pavia University. The first contribution was made by Christiane Wendehorst of the University of Vienna with the presentation of her paper titled "The Quest for a Coherent Civil Law: Comparing EC and PRC", which she began by asking why jurists with an interest in European Private Law should care about Chinese law.

After a brief elaboration on private law development in the EC and in the PRC, Christiane Wendehorst stressed significant differences between the two, in particular the nature of a future Chinese Civil Code as a national project and as binding state law, in

contrast to endeavours at European Community level which will most probably result in supra-national, non-binding soft law only.

However, there are several similarities in the development of private law in the PRC and in the EC. First of all, there is a striking coincidence of subjects covered as well as of time schedules. Both drafting processes are heavily driven by university efforts, enhancing the influence of academics in the drafting process. Furthermore, despite civil law codification in the PRC being a national project, factions within the debate much resemble the national factions (Germanicists, Romanicists, Anglicists etc.) in Europe. This is partly due to the guiding role of comparatists within the drafting process. Also, the problems related to a comparative method are similar, e.g. the difficulty of mixing common law and civil law, both with regard to form and content, or possible frictions between a legislative approach and a restatement approach.

Professor Wendehorst put forward the provocative thesis that, in this process, there might be a competitive edge on the part of the PRC. One of the factors which facilitate the development of a truly innovative and coherent private law in the PRC is the "single track" nature of the whole venture, contrasted with private law development in the EC, which currently takes the two tracks of *acquis commun* and *acquis communitaire*. Also, there is significantly less codification scepticism and reluctance to accept changes in the PRC. As far as drafting techniques are concerned, the technique of *lì* and *lü*, of having very general and incomplete rules first, and then refining them gradually by adding more detailed norms, has a longstanding tradition in China and may help to overcome hurdles which are of a temporary nature. At the end of the day, private law development in China might serve as a model test for legal development in Europe.

The second presentation of the session was held by Dr. *Laura Sempi* of the ISUFI – University of Salento with a paper titled "The Chinese Anti-Monopoly Law: When IPR Met Antitrust". The paper argues that the cornerstones to antitrust developments. the introduction of the "Gaige kaifang" policy, market economy and China's entry into the WTO (2001), led up to the 2007 adoption of the Anti-Monopoly Law (AML) after a 13-year debate. The entry of foreign competition after WTO accession created a demand for a new competition law.

In general the Chinese AML, which is characterized by declaratory tones, a gradual and incremental approach, repeated references to public interest and to the socialist market system, seems to echo the EU model rather than the US model, focusing on anti-competitive conduct rather than demonstrated offense of substantial restraint to competition, or the "rule of reason" principle. More specifically, anti-trust in the context of IPR protection is covered under Art. 55 AML. The question lies in the use or abuse of IPR under Art. 55 AML, a notion that invokes the "misuse doctrine" of US law (1917). However, as Dr. Sempi concluded that, despite the existence of a number of supplementary rules and the changes to IPR legislation in light of WTO accession, the enforcement of the AML is still vulnerable to the courts' capabilities and the lack of independence of the administrative enforcement agencies.

Module V: Chinese Law in Action: Rules and Judicial Innovation – I

The second session this morning was titled "**Chinese Law in Action: Rules and Judicial Innovation – I"** and was gracefully chaired by Prof. *Christiane Wendehorst*

from the University of Vienna. The first speaker during this session was Prof. *Chao XI* of the Chinese University of Hong Kong presenting his paper "The Role of Local Courts' Interpretative Documents in Judicial Innovation in China: Piercing the Corporate Veil as Case". Dr. Xi explained that interpretative documents have different forms and functions. They may be an extension of normative rules dealing with specific rules or local judicial interpretations, they may come from high courts or sometimes intermediate courts and they are usually issued by courts but are sometimes jointly issued by the Procuratorate or the judicial bureau. However, these interpretations are of an uncertain legal nature, and they are given no space under the Legislation Law, and actually the Standing Committee of the National People's Congress even prohibited – as suggested in a 2007 document issued by the Standing Committee of the Jiangsu Provincial People's Congress – local courts from making normative statements/interpretations concerning the application of laws. The Supreme People's Court's (SPC) attitude to these interpretative statements is not clear, although local interpretative documents are not encouraged. In 2001 SPC ordered the "cleaning up" of contradictory rules, and in 2007 the SPC allowed local courts to submit requests to the SPC for interpretations. Yet, a practice has developed for local courts to use the term "questions and answers" – instead of "opinions" – in the title indicating an attitude with regard to making interpretations saying "do it, but don't say you are doing it".

One of the reasons for issuing such interpretative documents is that lower courts are facing a large increase in new types of cases. Between 2000 and 2003 Beijing courts saw an increase of corporate related cases from only 56 to over 800. However, inconsistencies in court decisions undermine the courts' authority and there is pressure from lower courts to issue guidance on general issues – as opposed to a case-by-case approach. Moreover, the competition between different provincial high courts in taking the lead position in legal development helps to explain why some local courts have been more proactive in making interpretative documents. In conclusion Prof. Xi Chao has found that there is a tension between the SPC's self-proclaimed monopoly of interpretation and the SPC's concern for inconsistent and, in many cases, contradictory local implementation of laws. There is also a tension between local and national uniformity of legal application, leading to the question of experimentation in judicial interpretation and application. The role of interpretative documents may be seen in the promotion of uniformity of legal application at the local level.

They work as a mechanism to prevent "*cuo an*" (错案), although they are not legally binding. However, procurators and lawyers use these documents in their arguments, and the documents are cited in judgments and adjudication reports. They may also have a "reference" use on the horizontal level between the courts.

Dr. *Simona Novaretti* of the University of Milano held the second presentation of the session titled "General Clauses and Practice: The Use of the Principle of Good Faith in the Decisions of Chinese Courts", arguing that the term "good faith", or rather "objective good faith", is the "king clause" of PRC law. This is also with tied to the value system implied by the Chinese term "*chengshi xinyong*" (诚实信用). The paper is an analysis of the Chinese term and how the PRC courts utilize the principle, which is a neologism from the 1931 republican Civil Code, much influenced by German and Japanese law. The introduction of the term in 1931 was meant to strike a balance between modernity and

traditional Chinese values (中学为体，西学为用) and "good faith's" collective quality was considered instrumental to social justice.

The General Principles of Civil Law introduce the "good faith" principle in Art. 4 in order to weigh the interest of the party of the case against the interests of state and society. This later development also saw the linking of the "change of circumstance" doctrine to the application of the principle of "good faith" which later also influenced its introduction in the 1999 Contract Law (Arts. 6, 42, 60, 92, 125). Yet, Dr. Novaretti has found that socialist interpretation does not necessarily lead to particularly original solutions: The use of the notion of "good faith" in a judicial context is consistent with the judicial practice in several countries belonging to a Western legal tradition. However, "good faith" is often placed alongside traditional Chinese criteria such as "reasonableness" (合理) and "fairness" (公平), and as such "good faith" is frequently used to achieve the end of "justice" in specific cases, leading the author to conclude that the application of rules borrowed from Western legal cultures, in several cases, seemingly mirrored solutions developed within the Chinese tradition.

Module VI: Chinese Law in Action: Rules and Judicial Innovation – II

The afternoon session continued where the morning session left off – "**Chinese Law in Action: Rules and Judicial Innovation – II**" – expertly chaired by *Stefania Stafutti* of the Torino University and CASCC. The session was initiated by Prof. *Xin HE* of the City University of Hong Kong with his paper "China's Court Finance and Its Implications for Judicial Reforms". The paper focused on "law in action" rather than the "law in the books" and the behavioral patterns of local courts, especially with regard to funding effects on court reform. Prof. Xin HE explained that as all courts except SPC should get funding from the local level government, additional funding may come from other sources, e.g. litigation fees. However, court funding is inadequate in many parts of China. As a consequence clientelism has developed between courts and banks that need to file dept cases. In response to this need to fulfill financial needs of courts, quotas have been implemented in some areas, indicating the number of cases for judges to complete in order to generate income.

Another consequence has been that in hinterland areas court fees may be higher than what is mandated by the SPC. One case was cited where a divorce case rate originally stipulated at CNY 50 was increased by the local court to CNY 600. On the other hand, the Pearl Delta courts are set as an example of development. The area's GDP is adequate to maintain courts leaving the fees at the same level as stipulated by the SPC. There is also a trend that new graduates from the best schools are recruited to these courts. Yet, the heavy case load in the Pearl Delta has lead to a rejection of cases that are difficult to handle, as there is no incentive to take these cases if the court finds there is sufficient funding anyway.

In conclusion Prof. He found that in the hinterland courts the reforms have failed, they cannot get qualified personnel, and they are suffering from a poor enforcement record, resulting in less trust in the courts. The Pearl Delta courts on the other hand have as strong enforcement record (50% of plaintiffs get enforced results). The results indicate that there is a correlation between wealth (social wealth) and legal effectiveness and function. The courts in both poor and rich areas implement the same reforms on

professionalization and court quality, however, there is a clear difference between how economic conditions affect the effectiveness of the reforms.

The following paper was titled “Corruption in China's Courts: A Typology Based on Functional Power” presented by *Ling LI* of Leiden University. The paper elaborated on corruption and malpractices in the judicial process in China’s courts, starting by discussing the two C-words; corruption – the “misuse of public power for personal benefit” –, and courts, leading to the issue of “corrupt courts” which is even more sensitive than just the issue of corruption alone. Corruption is very secretive and corrupt practices are not something discussed in public. The paper discussed corrupt mal-practices in court work and in court administration. Malpractices in court work are found on three levels: getting the court to accept cases, adjudication, and in the enforcement of judgments.

The three areas see different corrupt practices ranging from delays, arbitrary determination of litigation fees due to wide court discretion, and bribe taking in case registration in re-trial (*zaishen/再审*) procedure, “twisting” the fact-finding procedure, including influencing forensic examinations (in tort and criminal law), asset evaluations and admission of evidence in adjudication, to enforcing too high punishments, stalling enforcement procedures or racketeering enforcement fees in the name of “actual-expense fees” (*shizhifei/实质费*). In the administration of the courts corruption may involve embezzlement and misappropriation of court incomes, taking kickbacks in court procurements, and corrupt practices with regard to the appointment of judges – extreme cases have involved the appointment of prostitutes and chauffeurs – as well as bribes paid for promotions.

Li Ling has found that the data on distribution of corruption in courts is limited, and any analysis must be done on a case-by-case basis. However, the research indicates that there is a certain hierarchy to corrupt practices. Although there are no cases found within the Supreme People’s Court for this study, this does not mean there are no cases. In high courts and lower level courts however corruption cases may be found. Higher courts are dominated by bribery and kickbacks, whereas lower level courts are often subject to a wider scope of corrupt acts. The differentiations between higher and lower courts are found in both the value and details in the different forms of corruption. Nevertheless, the occurrence of corruption in courts is prevalent, both with regard to economic development of regions and with regard to political influence. In this regard a typology among judges the occurrence of corruption is hard to define, there is no correlation between either level of education and gender, however, leadership positions are seeing an increasing number of exposed corrupt officials, as well as the abuse of powers of mixed functions.

Module VII: Criminal Justice

Deviating from the original schedule, and due to some unfortunate cancellations, the following day’s session on **Criminal Justice** was moved to the afternoon directly following the above paper. This session, confidently chaired by Dr. Knut Pissler of the Max Planck Institute in Hamburg, only held a single presentation titled “The Expanding Archipelago: Forced Drug Treatment Centres” by CASCC Fellow Dr. *Flora Sapio*. The paper picked up on the issues of the nature, structure, failure, and 2008 reorganization of

the Compulsory Drug Treatment (CDT, 强制戒毒) system in China. The detention centers were facilities used for detaining addicts sentenced to undergo compulsory drug treatment. Up to the 1980s it was found that the existing detention facilities could not provide the treatment an addict would need. The solution was to revive a Kuomintang (GMD) model in 1987, creating a measure completely independent of the Re-education through Labor (RETL) system and prison camps, that was to provide treatment (although not cost free), and where the detainees must take part in productive labor. The size of the system included 746 camps (numbers from 2005/2006), with a capacity of about 300.000 people, composed mainly of small to medium-sized camps (60-400 detainees), and concentrated mostly in the southern and south-western provinces. In comparison RETL can be considered a mostly "northern institution". A small number of the centers are located within Ankang facilities, or in so-called "multifunctional detention complexes", e.g. detention center, jiedu suo, administrative detention center and the People's Armed Police within the same facility (三所一队).

The failure of the system is found on a number of levels; there is a 90% relapse rate, high infection rate of serious diseases (HIV/Aids, HBV and STDs), overcrowding as due to lack of funding, and too expensive treatment. Lack of funds has also led to prolonged incarceration in order to produce income, and lack of medication has forced the use of cold turkey "therapy". Furthermore, lack of discipline has led to corruption in order to avoid treatment, get access to drugs, the existence of fake medicines, and pimping of female inmates – the latter two issues are also tied to funding.

The replication of a GMD-system was made with little or no adaption to a changed reality, e.g. a system created under the 1930s in the ROC, implemented in the 1990s PRC, and following the advance in the understanding of drug abuse and addiction in the late 1990s, the punitive approach has subsequently been found unsuited to problems as complex as substance addiction. The reorganization of the CDT system has consisted in the "abolishment" of the compulsory drug treatment system, and replacing it with "Isolation for Compulsory Drug Treatment" (强制隔离戒毒). Under the new system the term of detention is extended from maximum 1 year to maximum 3 years, with an additional possibility of further 3 years if relapse occurs, which may be instituted if initial community-style rehabilitation fails. The drug treatment centers are now a new component of RETL centers as enlargements or reconstructions of existing camps; however, in other cases the old drug rehabilitation centers are just given a new sign. Dr. Sapio concludes that while treatment is becoming more humane, there is a trend that the use and scope of detention facilities are expanding.

Final comment

The scope and quality of the presentations made during the ECLS 2008 Annual Conference illustrate the positive developments of China law studies on many levels, empirical and standards based studies dominated the presentations, invariably contributing to a clearer understanding of both legal and political challenges to the development of a rule of law in China, but most of all the development can be seen in the growing numbers of scholars in the field of Chinese law, and as Prof. Gianmaria Ajani observed during the conference: "*The lonely time for China law studies is over.*"

Otto Malmgren
Beijing, 21 December 2008