

CLEARING THE AIR: THE HUMAN RIGHTS AND LEGAL DIMENSIONS OF CHINA'S ENVIRONMENTAL DILEMMA

ROUNDTABLE BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ONE HUNDRED EIGHTH CONGRESS FIRST SESSION

JANUARY 27, 2003

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MONDAY, JANUARY 27, 2003

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA
Washington, DC.

The roundtable convened at 2:34 p.m., in room 2255, Rayburn House Office Building, Mr. John Foarde (staff director of the Commission) presiding.

Also present: Selene Ko, senior counsel for commercial rule of law; Keith Hand, senior counsel; Andrea Worden, senior counsel; Tiffany McCullen, U.S. Department of Commerce; Mike Castellano, Office of Representative Sander Levin; and Melissa Allen, Office of Senator Chuck Hagel.

Mr. FOARDE. Good afternoon, everyone. And welcome to the first staff-led issues roundtable for the Congressional-Executive Commission on China [CECC] of the calendar year 2003. We are delighted that you are here to join us; and our practice has been to start on time and end on time, because we understand that people have things to do and our panelists have things to do as well. We are delighted that they are sharing their time and expertise with us.

Before I introduce our panelists for this afternoon and speak just a little bit about the format, I would like to mention that the Commission staff will be having its second issues roundtable of 2003 next week on Monday, February 3, from 3 p.m. until 4:30 p.m., so a little bit later, in room 2168 of the Rayburn House Office Building. That is the Gold Room. The roundtable is entitled "Ownership with Chinese Characteristics, Private Property Rights, and Land Reform in the People's Republic of China." And as with all of our issues roundtables, this session is open to the public and to the press.

The panelists will discuss a range of topics related to development and protection of private property rights in China, including China's new rural land contracting law, legal limitations related to the ownership of land and personal property in China, enterprise privatization and access to capital markets, and intellectual property protection. The panelists will be Jim Dorn, vice president at the Cato Institute; Patrick Randolph, a professor of law at the University of Missouri at Kansas City Law School; Brian Schwarzwald, a staff attorney with the Rural Development Institute in Seattle, WA. And we hope a representative from the U.S.

Patent and Trademark Office. But his participation is not yet been confirmed, so I will mention him in a subsequent announcement, I hope.

My name is John Foarde. I'm staff director of the Congressional-Executive Commission on China. Neither the Senate nor the House leadership has formally designated our Commission members for the 108th Congress. We hope that will happen soon. But we expect that my boss, Congressman Doug Bereuter of Nebraska, will be chairman for the 108th Congress. And we understand from the Senate majority leader's office that Senator Chuck Hagel of Nebraska will be the Senate co-chairman. So we look forward to working with Senator Hagel as well. The other Commissioners have not been named yet, but we hope that they will be many of the same ones that worked with us in the 107th Congress.

I'm delighted to welcome you to this first issues roundtable. We are calling it "Clearing the Air, the Human Rights and Legal Dimensions of China's Environmental Dilemma." We have four distinguished panelists with expertise in this area to share their expertise with us and to answer some questions when their presentations are finished.

We are going to follow the procedure that we did last year and start in what, in the Senate Finance Committee room, was window to wall, and now we are going to go wall to window, and start with Elizabeth Economy, the C.V. Starr Senior Fellow and Director, Asia Studies, at the Council on Foreign Relations. We will also hear from Tad Ferris, a principal in Beveridge & Diamond, P.C., Brian Rohan, Associate Director for the American Bar Association's [ABA] Asian Law Initiative, and Jennifer Turner, Senior Project Associate for China at the Woodrow Wilson Center here in Washington.

Our format is that each panelist will be permitted to speak for 10 minutes. When there are 2 minutes left, I am going to hold up this very elegant sign so you can see and wave it a little bit so you can see it, and when you are out of time, this second elegant sign, so you can tell that your time is up. Some of the points that you miss we will be able to take up in the question and answer session. When all four panelists have finished their presentations, we will open it up from questions from the staff panel here and we will go until approximately 4:15. So with that, let me introduce Liz Economy. Liz, thanks.

STATEMENT OF ELIZABETH ECONOMY, C.V. STARR SENIOR FELLOW AND DIRECTOR, ASIA STUDIES, COUNCIL ON FOREIGN RELATIONS, NEW YORK, NY

Ms. ECONOMY. Thank you, John. And thanks to the rest of the Commission staff for inviting me to speak here today as part of such a distinguished panel. It is a real pleasure, and I am especially delighted that the Commission has decided to include the environment as one of the areas that it is examining in their assessment of China and the future Sino-American relationship. I am going to focus my remarks on the nature of the challenge that the Chinese Government and the Chinese people confront in integrating environmental protection with economic development and the implications for human rights.

While China's spectacular economic growth over the past two decades or so has provided a significant increase in the standard of living for hundreds of millions of Chinese, it has also produced a monumental environmental challenge. There has been a dramatic increase in the demand for natural resources of all kinds, including water, land, and energy. Forest resources especially have been depleted, triggering a range of secondary impacts such as desertification, flooding, and species loss. At the same time, levels of water and air pollution have skyrocketed. Small-scale township and village enterprises, which have been the engine of Chinese growth in the countryside, are very difficult to monitor and regulate, and routinely dump their untreated waste directly into streams, rivers, and coastal waters.

Just to give you a few specific statistics, more than 75 percent of the water in rivers flowing through China's urban areas is unsuitable for drinking or fishing. 60 million people have difficulty getting access to water, and almost three times that number drink contaminated water on a daily basis. Desertification, which affects one quarter of China's land, now threatens to envelop China's capital, Beijing, and is forcing tens if not hundreds of thousands of people to migrate every year.

In terms of air quality, in 2000, China's State Environmental Protection Administration [SEPA] tested the air quality in more than 300 Chinese cities, and found that almost two thirds failed to achieve standards set by the World Health Organization [WHO] for acceptable levels of total suspended particulates, which are the primary culprit in respiratory and pulmonary disease. To identify an overall environmental trend for the country, however, is very difficult. Some areas, such as Shanghai or Dalian may be moving relatively quickly to clean up their environment and to put in place technologies and policies to meet the environmental challenges of the future. Many other areas, however, continue to evidence worsening trends in levels of water and air pollution. Moreover, it is clear that China will face new challenges as its economy grows, such as that from the growing transportation sector. In 2000, Beijing boasted 1.5 million vehicles, roughly one-tenth the total in Tokyo or Los Angeles, yet the pollution generated by these vehicles equalled that of the other two cities.

For the region, China's continued economic development and weak environmental protection mean rapidly growing problems with acid rain, dust storms, and marine pollution. For the past several years, in fact, China's dust storms have traveled as far as the United States, resulting in a noticeable spike in respiratory problems in California. Globally, China is one of the world's largest contributors to ozone depletion, biodiversity loss, and global climate change.

Beyond the challenge for the natural environment, however, is the impact that environmental degradation and pollution have on the health and welfare of the Chinese people. Certainly I think the most devastating impact has been that on public health. Since the early 1990s, the Chinese Government and the people themselves have increasingly begun to associate local pollution with local health problems. Along many of China's river systems, and particularly the Huaihe River and the Yellow River, there are entire

towns where the incidence of cancer, stillborn births, and developmental delays is far above the norm. Even in the suburbs surrounding Beijing, the rice produced now evidences high levels of mercury. Air pollution is also a leading cause of death in China. The World Bank estimates that 178,000 people die prematurely in urban areas annually from respiratory disease not associated with cigarette smoking.

Environmental degradation, in particular water scarcity, is also contributing to growing numbers of environmental refugees. Over the past decade, 20 to 30 million people have migrated because of water scarcity or desertification. And over the next 2½ decades, another 30 to 40 million are expected. Often, these migrants end up living in squalid conditions in cities without access to running water or heat. In Taiyuan, Shanxi Province, the city leaders considered moving the entire city of 2.5 million people because of water shortages. Instead, they undertook a very expensive river diversion project.

Of course, these types of large-scale public works projects may also produce a different kind of environmental migrant, who is forcibly resettled, as in the Three Gorges Dam or the just launched “South to North” river diversion project. Of course, such projects happen in every country, but people in China suffer additionally from their lack of ability to participate in the decisionmaking process leading up to the project, the systemic corruption that often prevents them from being compensated properly, and the weak legal system that offers little redress for the injustices that they experience.

In addition, environmental degradation and pollution are costly to the Chinese economy. For example, water pollution or scarcity may lead factories to close, crops to be ruined, and fish to die. In terms of actual economic costs, the numbers are really all over the board, but I think a good middle ground seems to be the World Bank’s estimate of somewhere around 8 to 12 percent of GDP annually.

Taken together, these social and economic problems also contribute to popular unrest. For example, in October 2001, hundreds of farmers demonstrated against a factory in Kunming, Yunnan Province, for poisoning their crops with arsenic and fluorine. No one would buy the farmers’ grain. Even though the factory possessed the necessary pollution control equipment, it believed it was simply too costly to use.

While there are no good overall figures as to how widespread such environmental protests are, we do know that in the late 1990s, the Minister of Public Security stated that environmental pollution was one of the four sources of social unrest in the country.

So we can see that the Chinese people, in many regions of the country, lack the basic human rights to access clean water and clean air, the right to participate in the decisionmaking processes that will affect their welfare, and the right to fair adjudication of environmentally related disputes.

Having shared a bit about the nature of the environmental challenge that China faces, I want to spend a few minutes talking

about what the government is actually doing to respond to these challenges.

First, it is important to remember that China, like all countries, is facing a range of challenging social issues, including HIV/AIDS, which I know this Commission has already discussed, rising unemployment, growing drug use, and an almost non-existent pension system. All of these make demands on the leaders' attention and the country's resources. I would argue that the environment has certainly risen on the agenda of the leadership. This is evidenced from the steadily increasing levels of central investment from 0.8 percent of GDP during 1996 to 2000 to an anticipated 1.3 percent during 2001 to 2005. However, Chinese scientists themselves say the country should be spending around 2.2 percent of GDP merely to keep their environmental situation from deteriorating further.

There are, however, some important changes afoot. First, China has worked assiduously to court international assistance, in financial, technological, and policy areas. Indeed, China is the largest recipient of environmental assistance from the World Bank, the Global Environmental Facility, the Asian Development Bank, and Japan. Multinationals are also beginning to play an important role not only in transferring the best technologies but also in supporting environmental education and other such activities. One case that I will note is that of Royal Dutch Shell, which is the lead multinational in the consortium working with PetroChina to develop the 4,000 kilometer west-to-east pipeline to bring natural gas from Xinjiang to Shanghai. Even though the joint venture contract has yet to be signed, Shell hired the environmental consulting firm ERM to undertake an in-depth environmental impact assessment, and hired United Nations Development Program [UNDP] to do a social impact assessment. This is another way in which multinationals can also improve the environmental practices of their Chinese counterparts.

A second conscious strategy of the central government has been to devolve responsibility for environmental protection to local officials. This has produced what I call a patchwork quilt of environmental protection, with some local officials, generally in wealthier areas with more international investment, working proactively to address environmental degradation, while others simply do not have the resources. Shanghai, for example, has been investing 3 percent of its local revenues in environmental protection, and there has been talk of increasing this to 5 percent, while Sichuan only invests around 1 percent. The question for these poorer areas, which remain the vast majority of the country, is whether they can or will take action before irreparable damage is done to their water or land resources.

Third, Beijing has permitted, and in some cases encouraged, the establishment of non-governmental organizations [NGOs] and active and investigative media and more proactive individual action. More than three-quarters of Chinese citizens in a recent survey indicated that they received most of their information about the environment from television and the radio. In sometimes limited and sometimes extremely significant ways, this activity is changing the face of environmental protection in China. There has also been very significant progress and development in application environmental

law, but I know that Tad and Brian and Jennifer are going to discuss all of these extremely interesting things in depth, so I am not going to say any more.

Let me just conclude, then, by noting that while environmental pollution and degradation in China clearly have deleterious effects on public welfare, the current system denies the Chinese people the right to directly challenge government policy in many ways. The environment has also become an important arena for addressing some of the human rights challenges I mentioned before. Developing a legal system, for example, contributes to greater transparency in the government and society, may afford people the opportunity to have input into the decisionmaking process by publicizing environmental laws for public comment before their adoption, and provides the opportunity for a fair hearing when rights are abrogated.

Non-governmental organizations provide a new form of social organizations to agitate for change through quiet lobbying and pressure, and could, in fact, become a focus for much broader political discontent over the time. The environment therefore is an arena in significant flux with great potential to have a transformative effect on the future economic and political situation in China. Thank you.

[The prepared statement of Ms. Economy appears in the appendix.]

Mr. FOARDE. Liz, you are a pro at this clearly, because you came in right on time. And I am grateful, and so are your fellow panelists.

We will move on now to Richard Ferris, better known as Tad. Tad is an attorney specializing in international environment, health, and safety issues, with a focus on China. He is an expert on environmental health and safety law, and lawmaking in China, and advises the Chinese Government entities and transnational corporations on these levels. Tad, welcome, and thanks for your help.

STATEMENT OF RICHARD FERRIS, PRINCIPAL, BEVERIDGE & DIAMOND, PC, WASHINGTON, DC

Mr. FERRIS. Thank you, John. Thank you also to the rest of the staff members of the Congressional-Executive Commission on China for allowing me to participate in this important discussion today. And if you will excuse my hoarse voice, I just returned from China yesterday so I am still a little travel weary.

Liz's discussion really provides a substantial backdrop to a lot of the lawmaking initiatives that are underway currently in China. In the next 10 minutes, I will try to give the Commission and the other participants an overview of some of the significant developments in the environmental lawmaking area as well as some of the substantial challenges that China's lawmakers are facing currently. To begin with the current challenges, it is important to note that, at the 10,000 foot level, when you are looking at the development of Chinese environmental laws, if you had an accurate list of all the laws that have been issued in the area of environmental protection to date, it would represent a daunting catalog. There are over 2,000 environmental, health and safety standards that have been issued to date. Many of these, of course, are not widely available to the public. Solely covering environmental, health, and safety

standards—as opposed to other legal documents—that number is quite substantial. I think the important thing for the Commission to understand is to look, when you are on the ground in China, at how these legal measures are really brought into play and how they affect environmental governance within China, including how they change behavior within the regulated community.

In terms of recent history, understanding the challenges to implement China's environmental laws is quite important. For example, within the State Administration for Safe Production, Supervision and Management, an agency which deals with issues related to toxic chemicals, et cetera, which is an important aspect of environmental protection, there are currently four senior officials that have responsibility for a wide array of industry issues, from nuclear power to tobacco, to petrochemicals to general chemicals management. These individuals also effect a subject of possible future Commission discussion—that of worker health and safety. But key in any discussion of China's environmental law implementation challenges is an understanding that these four individuals often must respond to mining and other workplace accidents. In the first 9 months of 2002, there were over 100,000 deaths largely resulting from mining accidents in China. And that is considered a lower number than in previous years.

That being said, understanding that these four individuals may have to drop their activities in other key areas and respond when those accidents occur, and are increasingly responsible for making sure that the accident number goes down even further, makes it perhaps more comprehensible why the officials aren't able to bring the full array of resources to bear on the development of other environmental protection measures. So, you have situations in China which you may have regulations that are issued and enter into effect but that cannot be implemented. For example, in the case of the toxic chemicals regulations that I mentioned, the application forms that companies need to fill out in order to receive their operating permits or their chemical management registration licenses were not available when the regulations entered into effect.

In this particular case, the toxic chemicals regulations entered into effect on November 15, 2002 and the application forms were posted on the Web site of the relevant agency in January, 2003. With this situation in mind, it is perhaps easier to understand that when you represent a transnational corporation or another member of the stakeholder community that is looking to identify their obligations or the obligations of local companies, when those obligations enter into effect and what behaviors the obligations require, it is very difficult to obtain this information just by looking at a particular legal measure.

Often in China, because of lags in the development of legal measures, you are faced with “working toward compliance” over an extended period of time as opposed to confirming you are doing the environmentally right thing in China as of the date new environmental laws enter into effect.

Other challenges that stakeholders in China face include, at least at the present time, the tendency, with which you may be familiar, to draft very broad legal measures. This tendency provides the regulators with maximum interpretive flexibility. This tendency to

reserve in the laws interpretive flexibility for authority figures, at least in the current evolution of Chinese lawmaking, is something that continues to the present time. For example, at the local level, if you ask a village head, what are my legal duties if I wish to dispose of this heavy metal? The village head will generally not go and flip open a State Environmental Protection Administration Gazette or Shanghai Environmental Protection Bureau [EPB] Register; instead, if they do not have an answer, they will likely ask a superior-level authority figure for guidance. And still, this reliance on verbal interpretations that are not memorialized in any publicly available written document is the great challenge that regulated community members face in China as the country evolves from this rule of authority stage to something that we perceive as more consistent with a rule of law approach.

Often, not only personnel deficiencies but also financial deficiencies result in the development of laws that provide very little compliance guidance. Law drafters lack resources to be able to issue the interpretations; they are not able to respond to requests for interpretive guidance. Although, that being said, it is important to point out that the State Environmental Protection Administration at least is among the more proactive agencies in terms of providing compliance guidance to the regulative community. They have actually published a compilation of interpretive letters that actually specifies the definitions of certain terms, clarifies exemptions, et cetera—something that is very rare still in Chinese agency rulemaking. And this is very helpful.

The next step probably would be to provide this in a form that could be readily accessible to anyone no matter where they are. Right now, these interpretive letters exist in a book that very quickly will be out of print. This would be lost as a helpful tool without the kind of resources that they need to put that into CD format, et cetera, or gazette format.

Another challenge is that regulatory authorities in China rarely repeal older and/or inconsistent measures after new laws are issued. So often you are dealing, even if you have a gazette, with a law that is apparently still in force from 1954 and a new law in 2001, and how do you reconcile conflicts between these measures? They do not sufficiently consider the role of measures and laws such as trade laws, that relate to areas of environmental protection, et cetera, and provide needed instructions on the relationships between these laws to facilitate compliance.

Also, even though moves are under way to change this practice in light of China's increasing participation in the international trade community, including the WTO in particular, the Chinese Government still classifies some laws or other documents as internal, and these laws are not officially disseminated to the public. This is one of the greatest challenges, especially to some members of the legal community, because we deal in information, we look at information, and we scrutinize information. And if it is off limits, it is something that cannot be helpful to the promotion of appropriate compliance behavior in China. And in one anecdote in that regard, I recently requested environmental protection standard from a regulatory official in China who sent it to me since he had drafted the standard, the standard was promulgated and the stand-

ard was available in a bookstore in China. It was returned to him by the post office because they said that it was an “official document” and that it could not be sent outside the boundaries of the People’s Republic of China [PRC].

So you see, access to law is not only an issue of internal coordination within an agency, but also an issue of coordination among the many agencies that are acting often individually in terms of their understanding of really what are China’s information access obligations under the WTO.

And I would close just before questions in saying that my 20 or more years in China, only 5 years ago, Chinese legislators that I have work with would strongly resist any foreign—meaning non-Chinese—input into the legislative process. It was perceived then as an intervention or a challenge to their sovereignty. At present, in converse, most Chinese legislators actively encourage the involvement of foreign experts in development of Chinese statutes, and I think at the grand level this is a very positive change. Thank you.

Mr. FOARDE. Thanks very much, Tad. Very useful. And we will return to some of those questions during the Q and A period.

Our next panelist is Brian Rohan, associate director of the ABA’s Asia Law Initiative. Brian is an attorney specializing in environmental law, and he currently coordinates the ABA’s China Environmental Governance Training Program. Brian, welcome. Thanks for your assistance today.

STATEMENT OF BRIAN ROHAN, ASSOCIATE DIRECTOR, AMERICAN BAR ASSOCIATION [ABA] ASIA LAW INITIATIVE, WASHINGTON, DC

Mr. ROHAN. Thanks very much. It is truly a pleasure to be here. And having spent a lot of time on environmental law in China, it is particularly rewarding to see that there is a lot of attention being paid to the issue. And there are a lot of interesting developments afoot in China, so it is wonderful that we all get a chance to talk about what is happening.

The Asia Law Initiative of the ABA has a few projects going in China. We are working on criminal defense, we are working on property rights, and so on. But the largest project that we have worked on to date is a rule of law and environmental governance project. And that is what I want to outline a little bit. I will go through some of the interesting highlights of that project to offer a window into what is going on in not only environmental law but other rule of law and governance aspects of our work.

We implemented this project beginning in February of 2002, and placed a pro bono ABA liaison in Beijing, and that person has been working with central government authorities, local government officials, and various other stakeholders to pull this project together. And under the banner of environmental law and environmental governance, this project is really getting to rule of law and governance issues, such as: “How do citizens access information from governments? How do they participate in decisionmaking processes? And how can they advocate to defend their legal rights.”

So we see what we are doing as sort of a Trojan horse approach, using environmental law as a substantive theme, and then engage the reform-minded community within China.

What we have done over the course of the last year is, first, to form some very important partnerships with SEPA and with the Center for Environmental Education and Communication within SEPA. We formed a project advisory committee to inform the project and direct it in substantive terms. And I mention that because it is extremely important when working in China, and when one is looking to work on a reform of the system from within, to engage central government, to have them brought on as partners, not to be coming in from the outside with some sort of independent agenda. We found that the support we have gotten from people at the National People's Congress, from the China Law Society, and then others, has been really instrumental as the project has evolved over time.

So in terms of what we have done, we have conducted three training sessions in three separate cities. Chifeng, Wuhan, and Shenyang have been the training locations. And we have engaged primarily Chinese experts, sort of the cream of the crop of environmental law and policy in China, to be our experts and presenters, and go out to the Environmental Protection Bureaus and the other stakeholders in these three cities, and engage them on environmental law and focus on the themes of what provisions of environmental law provide governmental responsibility to give information, to operate transparently, to involve citizens, to give citizens rights and standing before government. And the response has been tremendous.

I will give you a sense of what is going on in Shenyang, where we have been conducting one of our follow-on activities. The format has been to conduct the training and then do these substantive follow-on activities to really highlight good governance projects.

And in Shenyang, when we went up for the training, the Environmental Protection Bureau officials informed us that they were working on a draft public participation law. So we conducted our training with them, and then we went back and engaged with them on a series of workshops to get this law right. And in the process of assessing the law and talking with them about the details of how you set up systems to give information transparently to citizens and so on, the draft law was published twice in local newspapers. Each time there were over 100 comments received back. And not only has there now been an interesting competition over the promulgation of this law, with the municipal government trying to claim responsibility and the Shenyang People's Congress also fighting for jurisdictional control of this law, they have all collectively very warmly invited us back up to talk about the implementation of the law; i.e., "How are we going to engage citizens? How are we going to teach citizens about their rights to get the information, to participate in the decisionmaking processes?" And so on.

From an international standard, the essence of this innocent little municipal regulation of Shenyang is profound. It is a cutting-edge participatory democracy sort of concept, and the relevant officials in the province are asking us back specifically to train their

citizens so that they can properly exert their rights under this law. This is quite encouraging and, honestly, extremely exciting.

In terms of what we have accomplished and where we see the project going, we would like to do a lot more of these training sessions, focusing very much on Chinese environmental law, going out to different cities, doing different kinds of follow-on activities, be it this kind of public participation law or a transparent pollution data base available on the Internet, or whatever it may be, in every individual city in which we work.

And then we have also seen a wonderful phenomenon starting to emerge, and that is, public interest lawyers are catching on that the environment is a wonderful theme. And every time I go over to China, I am meeting more lawyers, and it is not uncommon for one of them to pull a little bottle of water out of a plastic bag, and, you know, the color of it is not exactly inviting. This sample is something that was drawn from a municipal well, and they are in conversations and working with local government and considering filing a lawsuit and so on and so forth. There is a lot of legal movement in the environmental law sphere right now. And, as Tad mentioned, a lot of the laws are ambiguous and there is a lot of uncertainty. It is by no means well-trodden legal practice at this point. But I think that is what excites the Chinese lawyers. They see that there is a real opportunity here, and there aren't a lot of sectors of the law in which you are able to test the bounds of tolerance and test your ability to recover damages for citizens who have been aggrieved or damaged by governmental actions. So it is an exciting, dynamic area right now.

We are funded by the State Department in this project, and we were funded for 1 full year and are hoping to continue this kind of work. I mean, obviously in Shenyang, it is sort of at the first step right now. And to roll this out and do it in more provinces and support the advocates in the way that they really need the support right now is a much longer-term prospect. I mean, not that I need to bore us all here with the minutiae of funding issues and so on, but it is something that we hope will be able to expand and continue, because the window of opportunity is there. Environmental law has a certain political space that other sectors of reform aren't enjoying right now. It is no surprise that environmental law is getting approval of the central government and that we are going out and finding reform-minded individuals in the local EPBs. This is packaged as perfecting the environmental law system, and as a result, we are not ruffling the feathers that could be concerned otherwise when you have a project where an American organization is coming in and bringing new ideas along with it.

To give a couple of other perspectives on it, in terms of why the Chinese are participating in this project, I think it is very much the sense that there is the political space and that this project is accomplishing things, and that they have an opportunity to be a part of something that is the leading edge of a new kind of legal practice in China. And there is a sense that the rule of law is almost inevitable, and this project may be one of the ways in which windows into that new world of rule of law are possible.

And, in something of an anecdote as well, as Americans we tend to think of the American Bar Association and quickly think of

lawyer jokes and so on and so forth. But for the Chinese, there is tremendous cachet in working with the American Bar Association. They remind me that we are a serious organization with 400,000 members, et cetera, and so forth, and they enjoy being part of something that is very prestigious. So that has been an interesting thing, as well as sort of a reminder for me.

And the project is also very inclusive. In terms of our working style, we have taken great pains again to involve the central government, have them participate as members of the Project Advisory Committee, and so on. By engaging the Chinese officialdom, we have ensured that we have maintained the political space as the projects evolve. And I think that has been important for us.

There are other issues here. You know, "What does this all mean for the potentially burgeoning NGO community?" I frankly don't see the NGO community blossoming in a way that would be recognizable to Western eyes any time soon, but the legal reformers are there. We are finding them in the local government, we are finding them in the private law firms, we are finding them doing NGO-style work in academia. So it is just a matter of continuing to work with them and empowering them wherever they may be, and not worrying about the fact that they aren't organized as an NGO. The energy is there. The potential for change is there. So long as you are working on the right substantive areas. And I again would come back to that political space issue.

So in terms of the lessons learned from the U.S. approach, seeing the devastation of the environment being so clearly and widely understood throughout China, and Tad describing some of the dynamic aspects at play here in the environment right now, it is a wonderful area. It is a perfect sector in which to work, and we are hoping to continue at it. Thank you very much.

[The prepared statement of Mr. Rohan appears in the appendix.]

Mr. FOARDE. Thank you, Brian. It sounds like very exciting work indeed.

All of our panelists this afternoon are very distinguished in this interesting area, but here in Washington when we start talking about China and the environment, the first name on our lips is the next panelist, Jennifer Turner. Jennifer is senior project associate for China at the Wilson Center. She coordinates the Working Group on the Environment in United States/China Relations and the Environmental Change in Security Project, and is editor of the China Environment Series. Jennifer, thank you very much for coming.

STATEMENT OF JENNIFER TURNER, SENIOR PROJECT ASSOCIATE FOR CHINA, WOODROW WILSON CENTER, WASHINGTON, DC

Ms. TURNER. Thank you. We also have a svelter name now. We are the China Environment Forum. And actually, because I do this work, I was obviously thrilled that you were putting on this panel and I was excited that you would invite me to speak. In the course of my work in putting on meetings and putting out publications, I have gotten to know a lot of folks who I call "eco-entrepreneurs" in China: Government, NGO, academic, and sometimes even business people who are pushing for better environmental quality in

China, and maybe sometimes pushing the envelope on what NGOs can do.

In fact, I have to say, and I guess you too Brian, we are working in one of the bright spots in China. And for me, I have had a lot of contact with Chinese NGOs, and so for me, mine is more of a “glass half full” kind of comment today. And I did—maybe because I used to be a professor—I arranged my points 1, 2, 3, 4. I have major points, and so if I don’t get through all the details we can do it in the Q and A.

But the biggest point, to reiterate some of Brian’s comments, is that the Chinese Government has opened up a political space for environmental protection activities, and that has enabled what I see as an impressive—I know they seem invisible—but really an impressive growth in independent NGOs, but also in activities by universities, government research centers, student groups, journalists, and my favorite—government-organized NGOs [GONGOs]. And when you look at the Chinese independent NGOs, you have to see them as part of a larger movement of all these different groups getting active in this area.

I see independent Chinese environmental NGOs at the forefront of civil society development in China. They were first, and they have done more experimentation than other groups, and I think they are a good model.

On the journalist side—and because there are a lot of journalists who work in environmental NGO groups, I kind of see them together sometimes—environmental journalists enjoy more freedom in pursuing their stories than other beat reporters, and I think they are quickly becoming a force pushing for more environmental awareness and investigations of local problems; not as much criticizing national policies and government agencies, but at the local level I think they can be an important force to look at.

In the short term, the future of “green” civil society in China, I think, is more an issue of improving the capacity of these organizations and less an issue of political space. They have got some of the space. They now need to fill it up, because it is not all being used as effectively as it could be, which is actually an opportunity for international NGOs, and, conceivably, the U.S. Government in supporting NGOs. An example is USAID supporting NGO-business partnership development in South and Southeast Asia. There are a lot of opportunities for that kind of support in China.

So there is growing political space for NGOs and others. The government has opened up opportunities for these State and non-state sector groups to operate. And individual greenies were the first to register. Now, registration is a bit of a headache in China, and there are some details in the notes I gave you, and I can answer more questions on it. It is a real headache, but actually my eco-entrepreneurs find other spaces to operate. They form nonprofit corporations, Internet groups. Other types that don’t have to register; they are just kind of there, such as low-level volunteer groups. A bird-watching group doesn’t seem that dynamic, but I have actually met some pretty dynamic bird-watching groups that are making some changes at the grassroots level. Students also get involved in activities. I think a lot of these environmentalists that I have met feel that they are inspired by the fact that a lot of State

sector groups, the GONGOs and the universities and the research centers, are going after international grants for the environment and doing a lot of projects that look like NGO work, so they feel like that they can move into that space as well.

There are approximately 50 environmental groups that are registered with the government. Fifty doesn't sound like a lot in China, but again I think there are hundreds—I know that there are hundreds of environmentalists doing work in other forums. A lot of the GONGOs in China, have gone “green.” It helps them, they can kind of download jobs from government agencies and attract international funding. They are probably major competitors for a lot of Chinese independent NGOs for some international funds. What is interesting, though, is that some of these GONGOs, like the Women's Federation groups that are doing “green” work, they are being weaned off central funding. So eventually a lot of these GONGOs are going to become independent NGOs in the future. And that is a trend to look for, because they will be independent groups someday, albeit with close government connections.

Student environmental organizations have exploded in number: 22 in 1997, to 184 today, and they are spread all across the country. They do education, waste reduction, environmental monitoring work both on and off campus. And they have been very good at networking among themselves, even better than a lot of NGO groups are, I have found. And they are producing future environmental activists. I made the bold statement that environmental groups are in the forefront of civil society. I think they really do inspire other groups, because they were first; they actually registered and succeeded. They started doing activities. They partnered with international organizations, got international funds from U.S. foundations, foreign governments, or multilateral organizations.

To me, the most striking point about this small NGO movement is that when NGOs partner with international groups, international NGOs create new horizontal partnerships, where you will have foreign and Chinese NGOs working with local government and local research centers. For those who know China, you don't generally see this kind of cooperation horizontally; and, similar to ABA's rule of law project, there is an opportunity here. The problems are so severe in the environmental sphere that everybody realizes that we must come together. So, that is what I find a particularly exciting trend.

Most NGOs do undertake activities that are considered safe—public education, surveys on endangered species. But you do have some groups, particularly professional groups such as lawyers. Someone who works with Brian here created an NGO that gives free legal assistance to pollution victims, helping the whole legal system do its work. I was amazed that he did this work, but he is not getting into any trouble partnering with other organizations. And there are other types of examples that I can give you as well.

I think that by being in the safe area of public policy and by being nonconfrontational, these “green” NGOs have been given the freedom to do their work; but they are not notable just because they “exist” and they are doing environmental work, but because they are exploring the possibility of advocacy in China, and that is where they become a good model.

Environmental journalism in China developed in a distinctly Chinese way. A lot of the increased environmental reporting started from the top. The National People's Congress said, "We need more environmental reporting," so they set up a campaign, and in 1990 there was a command post up in Beijing that rallied reporters and commanded that they do reporting in this area.

But a lot of journalists found that this was a very interesting area to report on, and when combined with upper-level sanction, they have a lot more freedom. Local governments must talk to them. I have met some of these reporters and they say that they have a lot more access than they might have otherwise.

TV stations and radios have growing programs. On the radio, it is striking to me that they have hot lines and more exposés on local government pollution violations. And there is also an intriguing cross-fertilization between the NGO and journalist communities. A lot of journalists volunteer or they create environmental NGOs. And some journalists are also aware, similar to the problems with the NGO communities, that they lack capacity. You don't want to have just activist journalists, and so it is kind of unbiased. And so they know they need to improve their capacity in terms of being more unbiased, but also in understanding the scientific background of the issues. So they have created their own kind of internal NGOs where they have networks and salons to help each other in doing their work.

In the short term, as I said in the beginning, the expansion of "green" civil society is going to depend on the NGOs improving their capacity. And now there is the obstacle of the official registration that will have to change, and the Chinese Government has been considering maybe changing the registration requirements. But it is meant to be a little bit difficult, because the government is protecting its own GONGOs and is a wee bit unsure about this new sector in China.

As I have said, the environmental sector has been given a fair amount of leeway. But funding challenges also exist, of course, and plague a lot of groups, which have become reliant on international funding, something I think in the long-term could be a problem. In the short term this is OK. That's my personal opinion. But the fact that they haven't yet developed membership systems—and I think that is a capacity issue—raises the question, "how do you develop membership?" The Chinese public asks, "I give you money to do this?" And so the new NGOs are trying to manage these kind of organizations. With low salary, people don't stay, and you lose your institutional memory.

There is also not enough networking across sectors. And Liz has made me think about the health problems in China. I think you really need to see the environmental groups and the health groups working together, but they don't do that yet. And I think that there is a lot of potential with international NGOs and a lot of other governments. The Europeans, in particular, have been doing some NGO capacity-building work. And I really think this would be a good opportunity.

I like thinking in terms of capacity building to strengthen their environmental groups. You don't build civil society; you build organizations that function well, and then who knows what goes on

from there? But I think with the capacity building focus, there are about 60 international NGOs that are operating in China. Most foreign governments have pretty extensive environmental programs. The U.S. Government, as you know, doesn't do as much in China—particularly in the NGO sector, more government-to-government work. And I think that there can be a lot done to help them use that space. And I'm going to stop.

[The prepared statement of Ms. Turner appears in the appendix.]

Mr. FOARDE. Your timing is impeccable. That was 9 minutes, 59 seconds. Great work.

We are going to go on to the question and answer session. All four of you have given us rich themes to explore. I am going to exercise the prerogative of the Chair and ask questions and hear the answers for about the first 5 minutes, introduce my colleague next to me to carry on, and then the other members of the staff here. We will try to keep it to 5 minutes each so that everybody gets a chance to ask questions, and then we will do as many rounds as we have before 4:15 or until we are out of steam.

I guess I would direct this question to all of you, and you can step up to it if you would like for however long you like. I am interested in the general observation that a couple of you made about the environment and environmental issues having more political space in China with the government and the Communist Party than other issues, particularly human rights issues. Tell me why you think that is, and whether there are any lessons there to be learned that we might apply to other parts of Chinese public discourse.

Ms. ECONOMY. I will start with a little bit of history. I think there is a historical component to this in the sense that in the 1992 Rio Conference, which was the United Nations Conference on Environment and Development, half of what went on at Rio were negotiations on climate change and biodiversity, formal government-to-government talks. The other half of what went on was in the non-governmental sector. And here China was embarrassed. It was made very clear to the Chinese that they could not participate in the same way as other countries because they didn't have genuine non-governmental organizations. What they had were what Jennifer described as GONGOs, which at that time were substantially less sophisticated than they are today in fact.

And after Rio, I know that Liang Congjie, who started the first environmental non-governmental organization in China, had a discussion with one of the vice chairmen of the National Environmental Protection Agency, where that person encouraged him in fact to startup an NGO, in part to rectify this situation.

I think also that there has been a recognition on the part of the State Environmental Protection Administration that it cannot do its job alone and that it needs society to participate. It really is so poorly staffed—and Tad has done work on this—so poorly staffed and so poorly funded, that in order to even begin to address the challenges, it needs to look outside the realm of the government. And so it has opened the space to these non-governmental organizations and to individuals and to the media as a form of enforcement at the local level, so that it uses these groups and the media to report back to them on what is going wrong.

And just to support what Jennifer was saying earlier, with the media, some of these television programs in China have brought the attention of Zhu Rongji to problems in the “ban on logging” campaigns or reforestation campaigns. That is how the central government leaders find out that what they are ordering is not being carried out.

Mr. FERRIS. I would add to that, just from my experience with the lawmaking process and the development of that process in the environmental sector, and why that is currently much more robust than, for example, the indoor environment or worker protection area. It has been my experience and that of my colleagues that I closely work with that currently a lot of government officials perceive that having a “green” reputation is something that is sought after very vigorously. Environmental protection is something that, one, has placed China more in the spotlight on the international stage than many other issues. Chinese leaders are going to pick an issue of concern to China and when they can choose among labor rights, environmental protection, et cetera, they will pick the environmental protection issue. Issues of significant contamination recently have been identified by Cheeka Peak Observatory, et cetera, in North America that is traced back to manufacturing operations in China. Reports like that are very much taken as an issue of concern to Chinese policymakers.

China has an increasing desire to be considered and respected on the international scene. Multilateral environmental negotiations constitute one area in which, if not in an outspoken fashion, China at least internally within the Group of 77 developing nations—much more than 77 now—is a leader. And looking more closely at the issue of government scrutiny of the environmental sector, I find that often in the area of environmental protection laws, the government authorities at the highest levels give the rulemakers a little more breathing room to innovate, and they look at environmental journalists as a means to augment their regulatory monitoring capacity.

There have been numerous instances in which an enforcement team from the resource-starved administration goes down to inspect a manufacturing facility. Everything looks fine. All the environmental protection facilities are in operation, the scrubbers are working, looks pretty nice, the effluent seems reasonably compliant with national standards, et cetera. Then that team goes away, and it is followed up by a number of journalists who come in, see that the environmental protection facilities are turned off, everything is different. No one is wearing their safety equipment. The effluent looks pretty bad, even by visual inspection. And then they report back to the national team. Often when officials need to work with minimal resources, the officials face a “fight the largest fire” kind of situation when they need to decide where they will go. However, in deciding to proceed with an investigation, often many bureaucratic signals are flipped that may alert the inspection target to the upcoming inspection. And then of course, the local facility knows long before the enforcement inspection team shows up.

So, increasingly, China is using environmental journalists, and in doing so is giving them a much broader mandate than would otherwise be typical of a reporter in China.

Mr. FOARDE. Let us go back to that in the next round, But thank you both.

Mr. FERRIS. Sure.

Mr. FOARDE. We are going to follow the practice that we used last year; that is, when a CECC staff member has a particular expertise or is looking into a particular issue, we invite him or her to join us here at the panel table and ask questions as well. In this case, I am delighted to introduce my friend and colleague, Keith Hand, who is a senior counsel working on the macrolevel, national-level legal reform issues, who helped set up this panel today. So we are delighted to give you the floor for 5 minutes to ask some questions.

Mr. HAND. Thank you. And thanks for a very informative set of presentations today, and your time and expertise. One of the themes that I think is coming out in the discussion is the level of citizen involvement in environmental law and on environmental issues. That is something of great interest to the Commission, particularly citizens' use of the legal system.

Could you please go into a little more detail about what types of legal mechanisms are available to the average citizen in cases of very serious pollution, whether such mechanisms are being put to use, and how effective they are. This question is directed to the entire panel.

Mr. ROHAN. As a lawyer, I will try to address this question. There are, as Tad mentioned, a lot of laws in China, but there are great ambiguities in this body of laws. Look, for example, at the new Environmental Impact Assessment law. It talks about how citizens will have the opportunity to participate in some sort of hearing or forum. It doesn't say a whole lot more than that. There is no sense that there are going to be a certain number of days that elapse after a draft document is put out, and then citizens will be able to provide written comments, and the things that an American lawyer thinks about in terms of administrative procedure. It is just not that well defined. So the lawyers, as a result, are working with these vague provisions and trying to find out where they can go with them, and often they can go very far with them just because of that vagueness.

As an American lawyer, you think, "Well, there are certain evidentiary standards. I need to have a certain showing of proof that that effluent caused those ducks to die." Using very real-life examples of the kind of legal case that is going on now. And a Chinese judge isn't looking for this intense evidentiary burden. It is almost like there is a bit more of "what are the equities of the situation?" And so that is maybe one example of how the Chinese lawyers are seeing that they really have great latitude.

In terms of what might be the proper development of Chinese environmental law, I am not sure Chinese environmental lawyers would say, "Well, really what we need is a lot of very strict regulation to interpret all of these laws and make it all perfectly crystal clear." They like having the operating space. That is something that is tolerated and is indeed part of the legal culture, not only for the public interest lawyers, but the judges and the government officials. They all sort of operate within the same milieu.

Ms. TURNER. I am not a lawyer, but could I say something? This just brings to mind when you think about mechanisms, there is a lot of experimentation going on, and one notably is the World Bank and its environmental projects. The bank makes public participation a requirement. And the Chinese Government hemmed and hawed, and went back and forth on this question. And what I think will be interesting to see is that this is also a way to an experiment. It is a safe way. And so now the Chinese want the loans, and so in many World Bank projects there is a public participation component. And I don't know if the hope is eventually that some of these vague laws could put a little bit of meat on it or something.

Do you want to say anything about public participation? That is a very concrete example.

Mr. FERRIS. Well, in terms of the legal basis, Brian mentioned the Environmental Impact Assessment law. Often you will see layers and layers of laws, and within those are specific, very brief provisions that require solicitation of comments or opinions on draft measures, or the environmental impacts of this activity or project.

What is needed is more guidance. What I find often in dealing with Chinese Government officials, especially at the local level where a lot of these activities are initiated before they reach the central government attention, is that the local officials need guidance. They are very much, I wouldn't say afraid, but they are resistant to being a test case for the implementation of "new laws." They don't want to be the first, and therefore possibly run up against the next higher level of authority, because they are perceived as doing the wrong thing.

A lot of the activities that Brian mentioned are moving toward this kind of test case. And we are developing this kind of understanding, this guidance. But still, there is no national guideline for how to approach these issues. For example, when they solicit comments on these draft laws, there's nothing that says what you have to do with them. My colleague who is sitting behind me from the National People's Congress, who drafted many of China's environmental laws, received thousands of comments on the drafts of laws published in the People's Daily, et cetera, but often then it became an additional burden on the staff, on the resources of the committee within the National People's Congress to pore through those and decide which to consider and which not to, and without any guidance as to how they were to approach that task. It is a good thing that is gaining momentum. But again, we're still at a very early stage.

Mr. FOARDE. Thank you all. We are going to move on to questions from our colleague Tiffany McCullen, who represents Under Secretary of Commerce Grant Aldonas.

Ms. MCCULLEN. I would like to thank all of the panelists for coming and sharing with us today. You have a lot of informative information. I wanted to ask Elizabeth, if you could follow up on one of the statements you made and open it up to the panelists if anyone else would like to answer. Could you give any other examples of United States companies being involved in environmental cleanup initiatives in China or doing things like Shell and BP that you mentioned in your opening statement.

Ms. ECONOMY. I am tasked to think of U.S. companies off the top of my head, but I think BP is British Petroleum. I am sure there are some.

Ms. TURNER. BP solar. I know BP Solar—I know it's not cleanup but they are helping to install some solar energy equipment for rural villages in Tibet. I know the BP folks, but I am sure that's one thing they have been doing.

Mr. ROHAN. One other example, maybe not right on point, Ford Motor Company. Ford has just started selling cars in China, but they have been active in China for quite some time and have a small grant making program that has been engaged on a variety of issues, including environmental, for some time.

Mr. FERRIS. Just in terms of general comments concerning transnational corporations from the United States and what they're doing in China, I see two significant movements. One is that for the most progressive of these companies, the drivers are not necessarily the Chinese laws, although they generally seriously take those measures into account; it is the corporate environmental health and safety [EHS] standards. Often they will get into very protracted discussions and analyses of details of Chinese law that even the Chinese regulators have never addressed and they are driven by the fact that, for example, a particular corporate code of conduct will require compliance with the letter of the Chinese law even though, in reality, you may not be able to find all relevant laws in China. Often, a lot of progressive corporate EHS initiatives are driven in this fashion.

Another significant development is that some of these companies are getting involved in EHS audits of their suppliers. Increasingly, government regulators see this as a very significant activity to monitor as a bellwether for understanding how local Chinese companies think about things such as child labor, environmental protection matters, et cetera, because the suppliers may become aware that they may not get that next big contract if they fail a particular test when the auditors come by.

Ms. MCCULLEN. Thank you.

Mr. FOARDE. Melissa Allen represents Senator Chuck Hagel.

Ms. ALLEN. Thank you for taking the time to be with us this afternoon. Something that's been raised here this afternoon is the relationship between increasing environmental degradation and the effects it's having on overall public health in China, and I was hopeful that maybe one or all of you would comment on what the central government is doing to formulate an overall strategy to address these concerns and perhaps cite policy initiatives that may be underway as examples.

Ms. TURNER. The push in Beijing, Shanghai, and Guangzhou for lead-free gas and also a little bit of a "green" Olympic impetus to this as well—also changing from coal heating to natural gas heating in Beijing. The people in the cities—the leadership in Beijing, too—I mean you can see the sky now in Beijing. So I think the whole human health question there was big. And a number of universities have been doing studies on impact of leaded gas on human health. So that's the first one that leaps to mind.

Ms. ECONOMY. That's an interesting example because it goes back to your question. General Motors was actually instrumental

in pushing for the lead-free gas and worked closely with local officials to try to persuade them that this was something worth pursuing. And this is an example of how laws develop from the local level up in China. So that's a really good example.

You know, it's interesting, I think a counter example or a problem that has emerged is offered by this case that MIT has been involved in which they have been trying to push for these more energy-efficient industries in the northeast to try to get them to use more energy-efficient boilers. And when they couldn't get these industries to adopt these very simple and inexpensive measures, they went to the local public health bureau to try to get the statistics to show the degree to which the local health is being affected and they thought they would be a natural ally. But in fact they wouldn't offer up the local health statistics to support their case. So they have really been stymied, and I think that's a problem.

Jennifer talked before about the coordination among ministries, and I think the real push is going to come from the universities and outside actors in this. I haven't seen very much, if anything, that's emanated from the Ministry of Public Health or even from SEPA.

Ms. TURNER. Last March I had some folks from United States Environmental Protection Agency [U.S. EPA] and the Shanghai Environmental Protection Bureau, and they did a 3-year study on an energy path and health benefits. And they have done extensive studies working with local EPBs—the Shanghai EPB is very dynamic and very forward-thinking and an ideal partner for outsiders. I met also with local university folk, and that was the first time that I had seen that kind of environment-health linkage, which I bring up with anyone whenever I can, because I think it needs to be pushed a little bit more because it will empower SEPA if they can get that linkage.

Mr. FOARDE. Representing Congressman Sander Levin is our friend and colleague Mike Castellano.

Mr. CASTELLANO. Thank you for your informative and interesting comments. I want to follow up on the question that John started out with, because this issue of space is interesting and I think it's something that might be helpful in other areas. The word "space," in and of itself, isn't very helpful to us. So if you could each explain why you think the government is allowing this space. Is it as simple as they actually understand that there's a problem and it's useful to have this, or is it something less admirable in that they see this as not really a threat and so sort of a "green" opiate for the masses? Those aren't the only two options. And the other thing is that you talk about space and there's the space, but I haven't really gotten a good sense of exactly how that space exists. Besides neglect of some of the things that have been happening in other areas in terms of labor rights—you know, pick an issue—are there formal mechanisms by which the space has actually been carved out?

Mr. ROHAN. Maybe I will give that one a shot. I think perhaps there's a bit of "green" opiate for the masses. I just wanted to be able to repeat that. [Laughter.]

But in fact, you are on to something, because with the environment, everyone is affected. I mean, look at some of the other potential issues that get to rule of law, reform and societal change,

human rights abuses. Certainly not to be crass, but there's a small subset of society that is bearing the brunt of some very questionable policies, whereas the environment is something that everyone can see when they walk outside the door in Beijing. As soon as you smell, as soon as you can't see the sky on many days, you know there's something wrong. And you do not have to have an advanced degree to have a sense that this is not good for you and something ought to change.

So the very sort of directness of environmental problems, I think, is part of the situation here, and we live in an information age in China as well. So these kinds of problems cannot be hidden from view, and there is a stirring of civil society in all of the forms that we have tried to describe. And I think there's a sense that this is a safe outlet, that there is some sort of energy building, there's some sort of steam that the government has to deal with. And, on the one hand, this is able to let off that steam in a safe way, not confronting the structure of the political system and not taking on labor standards and fundamental human rights and so on. But also in the course of it, it's helping environmental degradation to be addressed. And as was mentioned, the government can't do it all by itself. They realize that they need popular support and they have to take their own political risks by involving other parties and allowing this political space to occur.

Your second point, how does the political space exist? It exists in knowing that your official Chinese partners are going to work with you and going to go forward with a workshop, that they want you to come back, that people are opening up and you're able to do more programming after you've done your first several steps as opposed to hearing back that "OK, we need to be very cautious now." You feel it in subtle but quite apparent ways.

Ms. TURNER. Also it comes down to Liz's comment when she gave the quote from the World Bank. It's going to hurt economic development and economic development is something that the government has placed a lot of its legitimacy on. So, that's an important factor. Also in public opinion polls, after corruption and economic worries, comes the environment—I don't know if they are super big poll watchers, but they are polling now in China and they see that people are concerned. And Liz mentioned protests and conflicts. I do things on water pollution. There are a lot of conflicts over water in China, fights about degradation and lack of water. And so it's not just all pollution issues. It's economic, and it's an issue of stability. And it's—I think it's enough.

Ms. ECONOMY. If I could add one thing. It would be a mistake to leave with the impression that the government doesn't see some implicit risk in all of this, and that is precisely why they have these regulations and these restrictions that Jennifer mentioned, one of which is a restriction on setting up branch organizations of these non-governmental organizations so that you have a giant Friends of Nature in Beijing with 700 members, but you can't have a Friends of Nature in Shanghai and a Friends of Nature in other parts of the country precisely because they are worried that there will be a movement of sorts that could develop. And they're right to some extent, I think, to be worried about this, because if you look at the makeup of a lot of these non-governmental organiza-

tions, they are filled with scholars—some of whom are refugees from the Tiananmen era who came to environment issues because they looked at them as an outlet for their political interests before they knew anything at all about the environment. You look at the next generation of environmental activists in China, some of whom have been trained by organizations like Greenpeace, International Rivers Network, these very bold lobbying types of organizations, and you can see a real potential for a push for broader democracy to emerge out of these organizations. So don't think that they don't know that, looking at Eastern Europe and some of the former republics of the Soviet Union, things couldn't move in that direction.

Mr. FOARDE. We will get another chance at more of this in a second. First I would like to recognize our friend and colleague Andrea Worden, who is senior counsel, looking at grassroots rule of law and legal reform issues in China. She just got back from China and I'm sure she's got some questions because she's interested in this subject, too.

Ms. WORDEN. Thanks, John. I have a question for Jennifer and then I would love to hear from the rest of the panel. I am curious what other countries are doing to promote environmental NGOs and rule of law efforts in China, and what you all think the United States could be doing to promote such efforts.

Ms. TURNER. Well, there are domestic NGOs and there are some U.S. NGOs and also other foreign governments that are doing work. The Canadians have a civil society program that has an office in Beijing and they do various trainings. They are not just focused on the environment though, some nuts and bolts management type issues to help. PACT China—I think it's a U.S.-based organization. They actually found there is a nonprofit organization network, a Chinese organization. So there are some Chinese that are also thinking about these issues as well. I mean, one example that I can think of—let's look at what United States-Asian Environmental Partnership [U.S.-AEP] did a couple years back in Southeast Asia. They gave grants to the Asia Foundation to help build the capacity of NGOs to do partnerships with businesses. It has been a 5-year program. The first few years was U.S.-AEP and then it went to a private foundation. But it's been a phenomenal project throughout South and Southeast Asia. So the NGOs have gotten the capacity and have gotten small grants and training to help local businesses “green” themselves. And that is an area that Chinese NGOs are not venturing into. They don't have the capacity. And again it could be a little bit sensitive.

But those are some of the examples. I can go on and on and on. Maybe let some of my colleagues here interject something.

Ms. ECONOMY. A number of multi-nationals like Unilever and I think General Motors, but definitely Shell and BP run educational programs through non-governmental organizations. They partner with them. Sometimes they will have environmental essay contests in high schools. They'll sponsor an environmental education bus that will take some officials into remote areas of the country to set up special seminars and educational opportunities for students in those areas to understand the particular environmental problems in those areas. There are those kinds of efforts going on, too.

Ms. TURNER. Germany, they supported the “antelope bus.”

Mr. FERRIS. It is also my experience that a number of foreign environmental agencies or ministries second members of the agency or ministry to Chinese agencies or ministries. The secondment is sometimes enhanced with substantial bilateral financial support to bring agency representatives to their countries. And in so doing, often part of the exchange program, so to speak, is to introduce Chinese regulations to public participation mechanisms, et cetera, as these exist in the country participating in the exchange such as Norway, Germany, the Netherlands.

Ms. ECONOMY. If I could just interrupt, the German Government brought over a journalist from China to look at battery recycling in Germany, and she went back and did a program on that and that spawned a number of individuals in China to undertake battery recycling.

Mr. ROHAN. I think part of your question is what could be done, what is out there remaining to be done. And Jennifer mentioned many times capacity building, capacity building, capacity building, whether you are looking at the universities and the role that they can play or the lawyers, the bar, the judiciary. There's so much to be done in a variety of sectors, just looking at the purely legal aspect of how you make the legal system function effectively so that citizens have a reasonable expectation of having their legal claim resolved effectively. And some of that will happen indigenously as "gonzo lawyers" do their thing, not describing anyone in the room of course, but there is a certain element of needing to bring in new ideas and facilitate that kind of development capacity.

Mr. FOARDE. We will now hear a question from our friend and colleague Selene Ko, who is senior counsel for commercial rule of law and knows about these things as well.

Ms. KO. Thank you very much. I would like to thank you, as everyone else did, for your insightful comments. I have a question concerning the impact of the WTO on environmental protection in China. I think this first question goes to Tad, but then to anyone else who would like to answer. In light of the WTO rules that require transparency and require at least some sort of formal mechanisms for input from the public into formulating rules, regulations and laws, including environmental rules regulations and laws, how familiar are the central authorities that are responsible for these areas with their WTO obligations and how familiar are the local EPBs with their obligations? Do you feel that the WTO is acting as a driving force in improving environmental laws and protection in China and will it do so in the future?

Mr. FERRIS. Thank you. I assume you have my article that provides a snapshot of what's happening in this area. But at the fundamental level, at the central government, officials are fairly well aware of the significance of WTO compliance and it is, although it's often overly discussed at a superficial level, a discussion topic that increasingly moves agency resources into the area of publication, of providing better notice. I think there is a fundamental disjoint between what actually has to be notified, i.e., what kind of laws. I think that often laws related to economic areas, e.g., joint venture provisions, tax provisions, securities regulations, et cetera, are what officials first think of in terms of what needs to be notified under WTO requirements. I think that laws affecting trade, includ-

ing those in the environmental, health and safety area, are not fully understood within the Chinese bureaucracy as triggers for WTO notification. I believe that when Chinese officials receive a WTO member complaint, they increase their understanding about the intersection. Why are the members complaining about our new laws on genetically modified organisms/biosafety? Why are the members concerned about mercury content limits in batteries? Where did this come from? We're supposed to notify that, too? That understanding among Chinese lawmakers is increasing, but still at a nascent level.

I think the next challenge that Chinese lawmakers face is the capacity issue that Brian mentioned. If they do have to notify all these laws, who's responsible, who in the agency is going to be designated as the notifier? Who has the authority to submit this to the Committee on Technical Barriers to Trade or the Committee on Sanitary and Phyto-sanitary Measures? And I think that process is still in the making. Even the more progressive agencies have only recently started publishing a gazette. You will notice under the agreement on China's accession to the WTO, that China must set up a centralized gazetting mechanism that will allow ready access by members to all of their laws. Well, this is still quite a long way off in coming. You see precursors of that when you look at the Chinese Government Web sites that now provide occasional notification of draft laws or recently promulgated laws.

I think the real issue is whether all the laws are publicly issued. Right now, they are not. And I think that this is partly the result of the fact that on the capacity side the implementing laws are not developed and issued at the same time as the enabling statute or regulation. You'll have the regulations that I mentioned, but then all the implementing measures will trickle out slowly thereafter.

Additionally, as Jennifer and Brian mentioned, the activities of all agencies often are undertaken in isolation. There's no general coordinating body that will look at the rulemaking work of the State Environmental Protection Administration and then that of the State Development and Planning Commission and say "You're issuing the same type of laws. Coordinate and make this work consistent." Or "You're issuing laws that are related. Both of you need to publish these laws." There is no senior level government authority yet that has set such a coordinating process in motion, and I think that's what needs to occur. I don't think that the agencies will be incentivized to do this work on their own without a senior-level authority taking responsibility for this action.

Mr. ROHAN. If I could add, among the rank and file environmental law community within China, WTO is an interesting buzz word. As Tad mentioned, there's a lot of work to be done and a lot of regulation that needs to be put into place in order to meet those WTO obligations. What one would wonder is if the Chinese knew what they were getting into. But it's going to be a very long process, indeed, to put all that in place. To return to the "gonzo lawyers" I was mentioning before, those sorts of folks, they're not thinking WTO. They're thinking that there are some very interesting Chinese laws and there are some very interesting areas to explore. And the WTO may one day become part of that legal equation, but it's not happening yet.

Ms. ECONOMY. Let me add quickly that the Ministry of Foreign Trade and Economic Cooperation has undertaken a massive effort to address the problem that Tad raised about interagency coordination with the Ministry of Agriculture, the State Environmental Protection Administration and I think about six other agencies to try to discuss how to coordinate in order to meet the environmental obligations and demands of WTO accession, but I don't know how far it has progressed.

Mr. FERRIS. Right now, it's on hold until the National People's Congress decides which agencies are going to be disbanded or reorganized. Reorganization is in play.

Mr. FOARDE. Let me direct a question to Jennifer Turner, please. We were talking about GONGOs and about independent NGOs in China and capacity building. How are independent NGOs in China funded? How do they get money to operate?

Ms. TURNER. A lot of the larger NGOs are getting grants from United States or European foundations. There are some small grant programs. Global Green Grants in Colorado has a couple of people in China seeking out grass roots greenies, giving them really tiny grants. But then there's also foreign—the Canadians and the Dutch—the Dutch—there was another question—the Dutch, it's not fully constituted yet but someone from Holland sent me an e-mail and I have to find out what they're doing, but they got a lot of money for a huge 5-year program. And one of the central foci is NGO capacity building in China. So my attention is heightened on this topic.

Mr. FOARDE. As far as you're aware, there are practically no government regulations or policies that prohibit real NGOs from taking grant money from foreign sources?

Ms. TURNER. My thought is no, there aren't any rules that prohibit it, so I guess it must be legal.

Mr. FOARDE. Until they decide it's illegal.

Ms. TURNER. What's interesting is that there was a law about tax-free donations from businesses to NGOs in China and a company did it and then it was, "Oh, my gosh, we have to rewrite these laws" because it was very difficult for the company to do it. And one of my journalist friends is writing a little commentary, so I can let you know in a few weeks. But that law is being redone so that there is thought that they do want to try to encourage Chinese businesses. A lot of the NGOs are based on volunteers, and a lot of Chinese that volunteer for them give from their own savings. It's pretty "nickel off the sidewalk" kind of groups. Most of them are getting money from international NGOs or international foundations.

Mr. FOARDE. And a little bit from domestic sources when it's available?

Ms. ECONOMY. Not much.

Ms. TURNER. It's very little.

Mr. FOARDE. Talking about capacity building, not everybody in the audience might understand, so for the record, it might be useful to say what you mean when you say capacity building for NGOs. Could you give us a thumbnail of what you mean?

Ms. TURNER. And you can jump in. Some of it is that many of these groups were created by an individual, a very charismatic,

driven person. They had to forge into this new field. And a lot of the organizations are very new. And I sometimes wonder would the organization exist if this leader actually left. It's the same problem that our NGOs faced when they developed in the United States. Just learning how to set up your internal accounting system maybe because there's not much money. It's not that difficult yet, but you do need to learn these kinds of things and just managing their time. I tell a lot of my NGO acquaintances "You guys have to learn to say 'no'" because they are overwhelmed, because a lot of international organizations are looking for NGOs to cooperate with. So they get overwhelmed with requests and setting goals. They get pulled in different directions, maybe like a lot of us. And also just having to learn for example, building up a staff that would have skills to do more technical things, like working with businesses. And there are a lot of areas—they could do environmental education, but could they help a hotel "green" itself? Do they have that kind of ability? Do they have transparency, because if you're going to start taking big bucks from some organizations, you're going to have to have transparency and have books, know how to write grant proposals. So it's kind of like starting from scratch.

Mr. FOARDE. That helps me and leads me to the next question, is there anything that the United States Government can do to help NGOs in China build their capacity for these purposes, environmental purposes, or for others?

Ms. TURNER. As mentioned briefly, the model should be the U.S.—AEP and the grant they gave to Asia Foundation. And DOE has given grants to some U.S. organizations that have done some work with Chinese research centers and NGOs on energy efficiency criteria setting and doing some nuts and bolts clean building projects. The National Resources Defense Council [NRDC] has also been involved in that in China. I fancy it would be somewhat politically sensitive if the U.S. Government said, "The United States can't give money directly to NGOs," but it's the model the U.S. Government has used supporting U.S. NGOs to go in and do what they do best. And there are, as I mentioned, about 60 international NGOs working in China and a number of them like WWF have been there since the mid-1980s. You wouldn't be just throwing your money out into the air. There are a lot of international environmental NGOs that have good experience and Chinese staff. That would be my first thought.

Ms. ECONOMY. One small effort that the United States Embassy in Beijing undertook about a year and a half ago now was to put together a forum for Chinese NGOs and multinationals to get together to try to develop some synergies. There were a few successes but not as many multinationals participated as you would hope. I think that kind of low key, slightly-under-the-radar kind of activity would be terrific, and not at all sensitive for the Chinese Government.

Mr. FOARDE. Keith.

Mr. HAND. I wanted to jump back to the issue of citizen response to environmental degradation for a minute and really look at it from two angles. One, Liz, you looked like you might have had a comment at the end of that first set of questions on citizen uses of legal systems when we ran out of time. So I wanted to give you a chance, if you would like, to expand on that issue. And to look

at this from a second angle, it sounds like lack of coordination and enforcement is one of the big problems in the environmental regulatory regime. Tad, you mentioned the vagueness of the laws, which leaves space for bureaucratic discretion. Is there also a problem with heavy handed and unfair enforcement of the laws? Do foreign and domestic citizens or entities tend to be treated differently? How much of a problem is corruption in this process?

Ms. ECONOMY. I'll start with the first part and that was the citizen participation in all of this. And I thought Jennifer or Brian would talk about Wang Canfa, who founded the first environmental legal NGO in Beijing. He has been cited in the New York Times. Everybody has written him up at this point. Wang is a very charismatic man who is actively involved not only in providing free legal advice and training future generations of advocates, but also in pressing lawsuits. And Chinese citizens contact him with the goal of getting reparations for whatever environmental injustices they have suffered. There was a case he undertook where the local ducks and fish were ruined from factories upstream. He sometimes has had to go to great lengths in involving other experts, such as scientific experts, bringing them in, fighting against the local EPBs that are afraid to be blamed, but I think this sort of mechanism, this ability to go to an environmental non-governmental organization for legal advice and support is an important positive trend for the future.

Ms. TURNER. Remember there is only one of those NGOs.

Ms. ECONOMY. Again, this process is going to be slow, but this is going to happen.

Mr. ROHAN. They are starting up and it is private lawyers out of otherwise standard commercial law firms doing what we consider pro bono work who are taking this sort of thing on. So something is definitely afoot.

Mr. FERRIS. They are given space to operate and to represent these victims of pollution because often the environmental area is seen as, I guess on the balance of things, less likely to create unrest if you resolve these problems that the victims have. Whereas, if you look in the other area of labor rights and occupational health and safety, often what government decisionmakers see is the public support or legal representation of workers, and grouping those workers together, as something that may incite, as opposed to minimize unrest.

Getting right to your question regarding enforcement of the law and whether there are issues of a level playing field in China, on the books of course, as you're well aware, foreign entities and domestic entities are treated quite equally. On the ground, it's often a case of differential treatment, to be certain. There are a number of reasons for this, one of which being the traditionally held perception that the domestic industries need that competitive opportunity to pollute. Of course that isn't the general government view of this. But when you get to the local level, the first folks who interact with those operations on the ground that affect the environment, they are grappling with comprehensive issues because they may need to show their boss, who is often the head of the municipality or the head of the province, that they facilitate—and not obstruct—investment. If they go right in and resist that investment for envi-

ronmental or other reasons, this act calls into question the very source of the income and the overhead for their Environmental Protection Bureau. Additionally, the larger—just by their very nature—transnational corporations create a big response on the regulators' radar screens. These officials would sometimes rather walk through the clean halls of a modern state-of-the-art facility than go to the facility that is literally spitting out heavy metals into the drinking water system and deal with locally-based Chinese managers who may have longstanding relationships with them. Often it's the transnational corporation that may have fewer connections with local officials that they target first. And in terms of corruption, that is something that is an overwhelmingly complex issue for government officials. At the national level, there currently is a great focus both within the national government and at the local level on this issue. There are a lot of great concerns over how corruption relates to the national government's or central government's ability to control what's happening at the local government level. And as you may also be aware, the State Environmental Protection Administration has the ability to request certain conduct of the local environmental officials, but the direct supervisor, the direct controllers of that activity of the local environmental protection bureau are the municipal government, the provincial government, et cetera. And in that context there is a lot of hand wringing at the central government level with respect to being able to ferret out and control certain unfavored conduct that could rise to the level of corruption.

There have been a number of incidents you may also be aware of where local environmental inspectors will go out to inspect a factory and they are beaten to a pulp by representatives at a local manufacturing facility. That is a great concern of national government representatives. If you are sensitive about unrest and sensitive about a challenge of authority, these activities certainly trigger extreme concern within the central government. And these events have actually resulted in internal orders that reassert national control over such situations, but it is not yet something that has been resolved by the national government. I believe that these issues of corruption, et cetera, or of undue influence, as it also may be termed in China, are widespread at the present time.

Mr. FOARDE. Let's take one more set of questions from Andrea.

Ms. WORDEN. Following up on a point Dr. Economy made earlier, I wonder if the panel could address briefly the role that environmental NGOs played in other places in Asia; for example, Taiwan, Japan, South Korea, in creating space for political reform and what that might possibly tell us about China.

Mr. ROHAN. To mention quickly an example that is not exclusively from Asia but from the Soviet Union and its collapse is a very, very telling analog. When there was glasnost and there was a sense that there needed to be some space created for civil society, it was in addressing the environmental issues. And when the Soviet Union ultimately broke up, many of the individuals who were at the forefront of the environmental movement while still within the Soviet Union, went on to pursue other kinds of political activity. So it's just a very interesting comparison and I'm sure one that was also not lost on the Chinese Government.

Ms. TURNER. In April 2001, the Woodrow Wilson Center with Hong Kong University, brought together Taiwanese, Hong Kong and PRC environmental NGOs and environmental journalists. And there is a report—if you don't have it, we can get it to you—where we do some comparisons. Taiwan is probably the example that Chinese Government officials would not want to follow because the Taiwan environmentalists are a fiery group of people. And they were out in the streets before martial law was ended and they actually led, a lot of people think, the democratization of Taiwan. Some people say, well, the democratization folks went to the environmental side, but there's a little bit of both, because a lot of people suffered from pollution from Kuomintang [KMT]-built factories and the KMT wasn't enforcing the laws. So the Taiwan environmentalists were rather fiery. But now things have toned down a lot.

There are about 300 environmental NGOs in Taiwan. And because they don't have access to international funding, they've developed very strong membership systems. And they've built their own capacity without a lot of outside help. That's what was intriguing about bringing the Taiwan people and mainlanders together. The Hong Kong NGOs are probably a bit more palatable to the mainland as well and similar because they came up dealing with a colonial government. Hong Kong environmental groups tended to work more with the government, belonging to government commissions, advising, and also working with business. They have no problem—they get a lot of their support from businesses in Hong Kong, so it's an interesting model.

Ms. ECONOMY. I guess Brian raised the point about the Soviet Union and similarly Eastern Europe. There are large development projects like the Danube Dam. They can be rallying points for discontent. They bring together lots of different kinds of opposition. In China already, there have been efforts to link environmentalists with labor issues and democracy. The China Development Union—the leader has now fled to Philadelphia, but first fled to Taiwan and then to Philadelphia. But there already have been these kinds of thoughts of broader based political change—using the environment as a mechanism to push for broader change.

Mr. FOARDE. We're out of time, unfortunately, because we could go on. There's so much to discuss. Liz, Tad, Brian, Jennifer, thank you so much for sharing your expertise and opening up our thinking to all these issues and their human rights dimensions today. Also thank you to my fellow panelists, some of them who had to go back to work for their bosses. And let me say again that the next roundtable will be next week on Monday, February 3, in room 2168 at 3 p.m., and that information will also be up on our Web site.

With that, I will gavel this first issues roundtable to a close. Thank you all for coming.

[Whereupon, at 4:15 p.m., the roundtable was adjourned.]

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF ELIZABETH ECONOMY

JANUARY 27, 2003

CHINA'S ENVIRONMENTAL CHALLENGE:
POLITICAL, SOCIAL AND ECONOMIC IMPLICATIONS

EXECUTIVE SUMMARY

China's spectacular economic growth—averaging 8 percent or more annually over the past two decades—has produced an impressive increase in the standard of living for hundreds of millions of Chinese citizens. At the same time, this economic development has had severe ramifications for the natural environment. There has been a dramatic increase in the demand for natural resources of all kinds, including water, land and energy. Forest resources have been depleted, triggering a range of devastating secondary impacts such as decertification, flooding and species loss. Moreover, poorly regulated industrial and household emissions and waste have caused levels of water and air pollution to skyrocket. China's development and environment practices have also made the country one of the world's leading contributors to regional and global environmental problems, including acid rain, ozone depletion, global climate change, and biodiversity loss.

Environmental degradation and pollution in China also pose challenges well beyond those to the natural environment. The ramifications for the social and economic welfare of the Chinese people are substantial. Public health problems, mass migration, forced resettlement, and social unrest are all the consequence of a failure to integrate environmental considerations into development efforts effectively.

This does not mean that the Chinese leadership is ignoring the challenge of environmental protection. Both as result of domestic pressures and international ones,¹ China's leaders have become increasingly cognizant of the need to improve the country's environment. The State Environmental Protection Administration and other relevant agencies have tried to do as much as they can, establishing an extensive legal framework and bureaucratic infrastructure to address environmental concerns. However, China's environmental bureaucracy is generally weak, and funding and personnel levels remain well below the level necessary merely to keep the situation from deteriorating further. Without greater support from Beijing, the regulatory and enforcement regimes also remain insufficient to support implementation of the best policies or technological fixes.

Much of the burden for environmental protection, therefore, has come to rest outside of Beijing and the central government apparatus. Responsibility has been decentralized to the local level, with some wealthier regions under proactive mayors moving aggressively to tackle their own environmental needs, while other cities and towns lag far behind. The government has also encouraged public participation in environmental protection, opening the door to non-governmental organizations and the media, who have become an important force for change in some sectors of environmental protection. The international community—through bilateral assistance, non-governmental organizations, international governmental organizations, and most recently, multinationals—has also been a powerful force in shaping China's environmental practices.

Still, much remains to be done. The particular mix of environmental challenges and weak policy responses means that the Chinese people cannot yet claim several basic rights: the right to breathe clean air, to access clean water, to participate in the decisionmaking process on industrial development or public works projects that affect their livelihood, and to secure justice when these rights are violated.

Without greater attention and commitment from the center, China's environment is likely to deteriorate throughout much of the country, causing further social and economic distress domestically and levying even greater costs on the environmental future of the rest of the world.

¹ These international pressures include those brought about by China's participation in international environmental regimes, the desire of many multinationals to ensure that they and their people are operating and living in a safe environment, and China's own desire to present a positive image when it hosts major international events such as APEC or the Olympics.

I. WHAT DOES CHINA'S ENVIRONMENT LOOK LIKE TODAY?

China's overwhelming reliance on coal for its energy needs² has made its air quality among the worst in the world. In 2000, China's State Environmental Protection Administration (SEPA) tested the air quality in more than 300 Chinese cities, and found that almost two-thirds failed to achieve standards set by the World Health Organization for acceptable levels of total suspended particulates, which are the primary culprit in respiratory and pulmonary disease. Acid rain, resulting from sulfur dioxide emissions from coal burning, also affects over one-fourth of China's land, including one-third of its farm land, damaging crops and fisheries throughout affected provinces.

Economic development has also impinged on China's already scarce water resources. Industrial and household demand has skyrocketed more than 70 percent since 1980. About 60 million people find it difficult to get enough water for their daily needs, and in several water scarce regions in northern and western China, factories have been forced to close down because of lack of water. In addition, water pollution is posing a serious and growing threat to water reserves. A major source of this pollution is industrial waste from paper mills, printing and dyeing factories, chemical plants, and other small highly polluting and largely unregulated township and village enterprises. The result is that more than three-quarters of the water flowing through China's urban areas is considered unsuitable for drinking or fishing; about 180 million people drink contaminated water on a daily basis; and there have been serious outbreaks of waterborne disease along several major river systems. The impact of economic development on water scarcity is further compounded by water prices that do not reflect demand, poor water conservation efforts, and inadequate wastewater treatment facilities.

China's forest resources also rank among the lowest in the world. Demand for furniture, chopsticks, and paper has driven an increasingly profitable but environmentally devastating illegal logging trade. By the mid-1990s, half of China's forest bureaus reported that trees were being felled at an unsustainable rate, and 20 percent had already exhausted their reserves. China's Sichuan province—home to the famed pandas—now possesses less than one-tenth of its original forests. Even the worst examples of deforestation in the United States, such as the transformation of Vermont from 70 percent forest to 30 percent forest over the past century, are mild in comparison to China's experience. Loss of biodiversity, climatic change, and soil erosion are all on the rise as a result.

Deforestation, along with the overgrazing of grasslands and over-cultivation of cropland, has also contributed to an increase in the devastating sandstorms and desertification that are transforming China's North. More than one-quarter of China's territory is now desert, and desertification is advancing at a rate of roughly 900 square miles annually. In May 2000, then Premier Zhu Rongji worried publicly that China's capital would be driven from Beijing as a result of the rapidly advancing desert. In addition, an average of thirty-five sandstorms wreaks havoc in Northern China every year. Year by year, this dust has traveled increasingly far afield, darkening the skies of Japan and Korea, and even a wide swath of the United States. In Beijing, the sandstorms reduce visibility, slow traffic, and exacerbate respiratory problems.

China is also exerting a significant impact on the regional and global environment. Acid rain and depletion of fisheries are among the most serious regional impacts. Globally, China is one of the world's largest contributors to ozone depletion, biodiversity loss, and climate change, and it is an increasingly important participant in the illegal trade in tropical timber from Southeast Asia and Africa.

II. WHAT ARE THE SOCIAL AND ECONOMIC COSTS OF THIS ENVIRONMENTAL POLLUTION?

China bears several indirect and growing costs from its resources pressures: migration, public health, social unrest, and declining economic productivity.

Migration

Chinese and Western analyses both suggest that during the 1990s, 20 to thirty million peasants were displaced by environmental degradation, and that by 2025, at least 30–40 million more may need to relocate. These migrants are likely to place significant stress on cities already seeking to manage migrant populations of more

² China depends on coal to supply almost three-quarters of its energy needs. By contrast, in Japan, the United States, and India, coal accounts for 14 percent, 22 percent, and 53 percent respectively. Moreover, much of the coal burning in China occurs in notoriously inefficient household stoves or small scale power plants, which burn up to 60 percent more coal than more efficient larger scale plants.

than 20 percent of the population in many major Chinese cities. While thus far, burgeoning coastal economies have managed to absorb large numbers of migrant workers, as tensions have flared in urban areas over recent firings and growing unemployment, there have been attempts to discourage migration to the cities. In 2001, in Changchun, the capital of Jilin province, for example, officials attempted to drive out migrant workers by demanding extremely high fees for operating pedicabs. The drivers—overwhelmingly migrants who had been forced to leave their parched farmland—protested and blocked the entrance to a local government compound. While this incident was fairly short-lived, if not managed properly, a combination of growing numbers of migrant laborers and unemployed state-owned enterprise workers could trigger much larger-scale conflict in urban areas.

Forced migration or resettlement, as a result of large scale public works projects such as river diversions or dams, also is a source of social disquietude. In the case of the Three Gorges Dam, for example, resettlement has provoked demonstrations involving hundreds of farmers who believe they were being inadequately compensated. Probe International and Human Rights Watch have joined International Rivers Network in monitoring the resettlement process and the local political situation around the Dam and have issued several scathing reports regarding the corruption that has plagued the resettlement efforts. On December 27, 2002, the government also launched the grand-scale south to north diversion of the Yangtze River to bring water to Beijing, Tianjin and other northern cities at a cost of tens of billions of dollars. This will also necessitate the resettlement of two to three hundred thousand Chinese.

Public health

For Chinese citizens, perhaps the most frightening consequence of environmental pollution has been the range of public health crises plaguing local communities throughout the country. In 2000, the Ministry of Agriculture reported that almost 20 percent of agricultural and poultry products in major industrial and mining districts and in areas irrigated with contaminated water contained excessive levels of contamination. Chinese and western health officials have linked water polluted with arsenic, mercury, and cadmium to a high incidence of birth defects, cancer, and kidney and bone disorders near many major rivers and lakes. The World Bank also has estimated that 7 percent of all deaths in urban areas—about 178,000 people—could be avoided if China met its own air pollution standards.

Social unrest

The Chinese media have reported only sporadically on the impact of water scarcity or highly polluted water, damaged crops, and polluted air on social stability; but in the late 1990s, China's Minister of Public Security stated openly, "Incidents [that] broke out over disputes over forests, grasslands, and mineral resources" are among "four factors in social instability." Farmers and village residents whose produce or water source is poisoned by a local factory often feel they have little recourse other than violent protest. Resource scarcity similarly may provoke violence. In July 2000, for example, about 1000 villagers in Anqiu, Shandong province fought for 2 days when police attempted to block their access to makeshift culverts that were irrigating their crops. One policeman died, 100 people were injured, and 20 were detained.

Economic productivity

As local officials confront the social costs of environmentally degrading behavior, they must also negotiate the massive financial costs. There is widespread agreement among environmental economists that the total cost to the Chinese economy of environmental degradation and resource scarcity is 8 percent–12 percent of GDP annually. The greatest cost is in the health and productivity losses associated with urban air pollution, which the World Bank estimates at more than \$20 billion. Water scarcity in Chinese cities costs about \$14 billion in lost industrial output (when factories are forced to shut down); in rural areas, water scarcity and pollution contribute to crop loss of roughly \$24 billion annually. Although not much systematic work has been done to estimate the future costs of these growing environmental threats, the World Bank has predicted that unless aggressive action is taken, the health costs of exposure to particulates alone will triple to \$98 billion by the year 2020, with the costs of other environmental threats similarly rising.

III. WHAT IS THE STRATEGY OF THE CHINESE GOVERNMENT?

The Chinese leadership has developed a five-part strategy to address environmental problems: policy guidance from the center, devolution of power to local

governments, cooperation with the international community, the development of grassroots environmentalism, and the enhancement of the legal system.

Policy Guidance from the Center

First, there is policy guidance from the center. China's State Environmental Protection Administration (SEPA), the State Development and Planning Commission, the State Economic and Trade Commission and the Environmental Protection and Natural Resources Committee (EPNRC) of the National People's Congress, among others, all play important roles in integrating environmental protection and economic development and bring different interests and priorities to bear. The core agencies behind China's environmental protection efforts—the EPNRC, the SEPA, and the judiciary, headed by the Supreme People's Court—together claim responsibility for the full scope of central governmental activities, including drafting of laws, monitoring implementation of environmental regulations and enforcement.

Over the past decade or so, there has been a significant increase in both the skill level and capacity of the agencies' staffs. There is a growing core of bright and capable people who are committed to seeking out new and creative ways to integrate economic development with environmental protection. They experiment with pricing reform for natural resources, tradable permits for sulfur dioxide, environmental education campaigns, etc. Still, the central bureaucracy is grossly understaffed and underfunded. There is only 300 full time staff in China's SEPA; in comparison, the U.S. EPA has more than 6000. In addition, China's central budget for environmental protection is still limited to about 1.5 percent of GDP annually, and many analysts believe that much of this goes to non-environmental protection-related infrastructure projects and other programs. Chinese scientists themselves have estimated that China ought to spend at least 2 percent of GDP annually on environmental protection, merely to keep the situation from deteriorating further.

Devolution of environmental responsibility to local government

A second conscious strategy of the Chinese leadership, since about 1989, has been to devolve authority for environmental protection to the local level.³ The result, not surprisingly, is that wealthy regions with proactive leaders tend to fare very well. Shanghai, for example, routinely invests over 3 percent of its local revenues in environmental protection and has made substantial strides toward cleaning up its air and water pollution problems. Poorer regions, in contrast, continue to see their environment deteriorate, despite the overall improvement in the country's economy. They cannot count on assistance from the center, and are without sufficient local funds to invest. In addition, the central government closely monitors all World Bank activities in order to ensure that money does not flow to poorer regions with a higher probability of default on their loans.

Poorer regions also are more likely to suffer from a lack of trained personnel within their local environmental protection bureaus to carry out inspections and enforce the law. Moreover, local officials in these areas often place enormous pressure on environmental protection bureaus to limit or even ignore the fees they attempt to collect or fines they attempt to impose on polluting enterprises for fear of impinging on economic growth or increasing unemployment.⁴ (In some cases, too, local officials are part owners in these local factories.) Even when local environmental officials succeed in closing down a factory, it will often reopen in another locale or operate at night.

Cooperation with the international community

A third element of China's plan to improve its overall environment is to tap into the expertise and resources of the international community. China is the largest recipient of environmental aid from the World Bank, the Asian Development Bank, the Global Environmental Facility and Japan. The international non-governmental organization community has also become increasingly active in China. Organizations such as Environmental Defense, the Natural Resources Defense Council, the World Wildlife Fund, and the Rockefeller Brothers Fund all have extensive projects in China to introduce new policy approaches to environmental protection on issues as wide ranging as organic farming, energy efficiency, and tradable permits for sulfur dioxide. Moreover, multinationals, such as Shell and BP, have begun to support China's environmental efforts. They introduce better environmental practices and technologies, may undertake independent and thorough environmental impact

³By law, provincial and local leaders are required to be evaluated not only on the basis of how well the local economy performs but also on how well the local environment fares.

⁴All local environmental protection bureaus are susceptible to such pressure because they are beholden to their local governments for their remuneration, office space, equipment, and perks, such as cars or cell phones.

assessments, and fund activities by Chinese non-governmental organizations such as environmental education programs.

Foreign investment is not always clean investment—in fact, in many instances, the opposite is true.⁵ And the environmental implications of China's further integration into the world economy through its participation in the World Trade Organization are likely to be mixed: diminishing land intensive farming in favor of increased agricultural exports, for example, but also increasing the opportunities for heavy polluting industries such as textiles and tin mining. Overall, however, the international community has played a crucial role in terms of policy advice and investment in raising the level of China's environmental practices.

Developing grassroots environmentalism

Perhaps most interestingly, China has opened the door to the involvement of non-governmental organizations and the media in environmental protection. By permitting the establishment of these relatively independent efforts, Beijing hopes to fill the gap between its desire to improve the environment and its capacity and will to do so. At the same time, the government is very careful to monitor the work of these NGOs in order to ensure that environmentalism does not evolve into a push for broader political reform as it did in some of the republics of the former Soviet Union or countries of Eastern Europe. Generally, therefore, the NGOs do not lobby or criticize the central government publicly, and they tend to tackle less politically sensitive issues not directly involved in economic development. Most environmental NGOs devote their efforts to nature conservation, species protection, and environmental education. Other NGOs focus their attention on urban renewal: recycling activities and energy efficiency. These NGOs work very hard to co-opt local government officials to support their work. Finally, there are environmental activists with interests and goals that exist well outside the boundaries for NGO activity established by the central government. Dai Qing, a world-renowned environmentalist, who has consistently opposed the Three Gorges Dam for example, clearly falls into this category. She spent 10 months in prison for her book *Yangtze! Yangtze!*, which exposes in great detail the politics behind the Dam.

The Chinese government has also encouraged the media to develop programs and publish articles focused on the environment. Chinese newspapers, radio and television now accord a prominent position to environmental issues. Television, in particular, has become an integral part of environmental protection, often educating the public and sometimes spurring citizens to take action individually in the process. Two years ago, for example, a number of Chinese citizens in different cities began battery recycling programs after watching a television show devoted to the topic. The media also play an important investigative role. In several cases, they have been responsible for alerting authorities in Beijing to local corruption or ineptitude, demonstrating in vivid color that local governments are flouting environmental regulations or failing to carry out national environmental campaigns. At one television station in Beijing, people line up outside the door of the studio to bring attention to environmental problems in the hopes of having the station's reporters investigate the issue.

Enhancing the legal system

China's legal system has long been criticized for its lack of transparency, ill-defined laws, weak enforcement capacity, and poorly trained lawyers and judges. Over the past decade, however, the government has made great strides on the legislative side, passing upwards of 25 environmental protection laws and more than 100 administrative regulations, in addition to hundreds of environmental standards. While the quality of some of these laws could be improved, China's environmental lawmakers have demonstrated increasing sophistication in their understanding of how to negotiate and draft a technically sound and politically viable law. They also have taken to publishing some draft laws and regulations on their websites to invite public comment, an important improvement in the transparency of China's legal system. Still, there are numerous weaknesses within the judicial system, including the poor or complete lack of training of lawyers and judges, the intervention of external political or economic factors into the judicial decisionmaking process, and the difficulty of enforcing poorly written laws.

⁵ Chinese environmentalists have specifically cited Hong Kong, Taiwan, and South Korea for exporting their most polluting industries to the Mainland. One recent widely publicized case concerning the toxic waste caused by dismantling computers for their salvageable parts and burning and dumping the rest, however, did involve U.S. companies, who sold their electronic scrap to Hong Kong and Taiwanese brokers.

One bright spot is the emergence of legal environmental non-governmental organizations. The most prominent of these organizations is the Center for Legal Assistance to Pollution Victims in Beijing, headed by an energetic and innovative law professor, Wang Canfa. The center trains lawyers to engage in enforcing environmental laws, provides free legal advice to pollution victims through a telephone hotline, and litigates environmental cases. Wang has been quite successful in recovering damages for his clients, although there are many political and legal obstacles, including a reluctance of judges to open what they fear will be the floodgates to class action lawsuits.

IV. CONCLUSION: IMPLICATIONS FOR CHINA AND THE UNITED STATES

The rapidity and magnitude of the changes that are taking place in China and the complex way in which these changes are interacting and transforming the country leave both the Chinese leadership and the international community searching for an understanding of what China might look like over the next decade or two. While the environment has certainly moved onto the leadership's agenda over the past decade, it remains far below center priorities such as economic development, maintaining social stability, and enhancing military capabilities.

This suggests that in many respects environmental protection will continue to fall within the purview of local officials and the Chinese people. Positive trends in environmental education, the development of the legal system, and the growth of civil society will all support the ability of Chinese citizens to seek redress or take action to respond to the failure of the government to guarantee their rights.

Yet it is in the interest of both the Chinese people and the world that such advances take place sooner rather than later. This argues for continued significant involvement from the international community in assisting China's environmental protection effort.

For the United States, cooperating with Chinese actors on environmental protection offers the opportunity not only to serve U.S. environmental interests but also to pursue top priorities in the Sino-American relationship: the advancement of human rights and democracy, the development of a more transparent legal system, and greater access to the Chinese market for U.S. goods and services. It is an especially opportune time to pursue such goals given the overall relatively positive State of U.S. relations with China.⁶

Several simple steps could be taken to raise the profile of the United States in helping to shape China's future environmental, political and economic development.

- *Remove Restrictions on the Overseas Private Investment Corporation and the U.S. Asia Environmental Partnership*, both of which would provide assistance to U.S. businesses eager to gain a foothold in China's environmental technologies market, which is thus far dominated by Japan and the European Union.
- *Lift the ban on involvement by the United States Agency for International Development (USAID) in China*. US AID, with its broad emphasis on governance, public health, rule of law, and poverty alleviation could be especially valuable in addressing China's most pressing needs and the United States' most direct interests.
- *Make better use of existing fora for Sino-American partnership on the environment, including the U.S.-China Forum on Environment and Development and the China-U.S. Center for Sustainable Development*. Both organizations—the first government to government and the second, a non-governmental organization with several former high-ranking government officials, heads of non-governmental organizations, and business leaders—were established during the Clinton Administration. While both organizations were still in a nascent stage by 2000, the Bush administration now has a unique opportunity to move both efforts forward through both political and economic support. Both organizations are extremely well-qualified to accomplish the public-private environmental partnerships that have served Japan and the EU so well in advancing their environmental and economic interests in China.

⁶While the current context of Sino-American relations is positive, there is still sensitivity in many quarters in China to the idea that the United States will push environmental concerns on China in an effort to prevent China's emergence as an economic power. Even seemingly innocuous demands by the international community for monitoring enforcement of international environmental agreements can also provoke claims of infringement on Chinese sovereignty. And, with regard to questioning the environmental implications of China's earlier efforts to promote grain self-sufficiency or the current grand development plans for China's West, claims of national security are occasionally invoked.

- *Enhance existing efforts to promote the Rule of Law and Environmental Governance.* The State Department's Democracy, Human Rights and Rule of Law program has embraced the environment as one of its primary targets for assistance in China. And the U.S. Embassy in Beijing has thrown its (limited) economic weight behind supporting environmental governance in China. Coupled with work by organizations such as the American Bar Association and the Woodrow Wilson Center, the United States has established an important foothold in this area. Given the long-term reform benefits of these nascent efforts, however, significantly greater resources—through training, education, and exchange—should be provided to strengthen both the legal and NGO sectors in China. Here, too, the opportunities for public-private partnership are extensive.

PREPARED STATEMENT OF BRIAN ROHAN

JANUARY 27, 2003

It is a privilege to appear before the Congressional-Executive Commission on China at this important roundtable. For the past 12 years I have worked on environmental law and international development issues. I began my environmental law career with the U.S. Environmental Protection Agency, where for 5 years I led efforts to clean up hazardous waste sites and obtain financial commitment from companies responsible for the contamination. Afterwards, I spent several years working in Africa and the former Soviet Union, including 2 years in Moldova and Ukraine as a liaison for the ABA's Central Europe and Eurasian Law Initiative (CEELI). Upon returning to the United States, for several years I have been working in the ABA's Washington D.C. office. Initially, I served as Director of Environmental Law Programs at CEELI, where I managed environmental governance programs in Moldova, Ukraine, Uzbekistan and Uganda. I also supervised broader rule of law reform efforts, including human rights advocacy, judicial training, and bar association development in Moldova and Ukraine. Currently, I am Associate Director of the ABA's Asia Law Initiative. In this capacity, I manage legal reform projects in China and throughout Asia.

ABA'S ASIA LAW INITIATIVE

The American Bar Association's Asia Law Initiative—ABA-Asia—is a public service project that provides technical assistance in support of legal reforms in the countries of Asia. The project is governed by a nine-member Council that includes U.S. Supreme Court Justice Anthony Kennedy, former White House Counsel Lloyd Cutler, former White House Counsel A.B. Culvahouse, Director of the Yale China Law Center Paul Gewirtz, and other distinguished American attorneys. The Council's Chair is Roberta Cooper Ramo, the first woman president of the ABA.

ABA-Asia is similar to the ABA's successful CEELI program, which has been active in Eastern Europe and the former Soviet Union since 1990. Working in partnership with local organizations (both governmental and non-governmental), ABA-Asia provides ongoing assistance in a variety of areas, including judicial reform, legal profession reform, legal education reform, criminal law/anti-corruption, citizens' rights advocacy, and gender issues.

ABA-Asia has available to it the expertise and experience of the ABA's over 400,000 members, as well as other legal experts in the United States and abroad. ABA-Asia is therefore able to offer the highest level of practical expertise to address host countries' requests for assistance. A full listing of our current project activities is attached as Appendix A (retained in Commission files).

THE ABA APPROACH IN CHINA

ABA-Asia's strategy in China is to implement programs that (1) enhance Chinese citizens' access to the legal system; (2) create legal norms by which citizens can defend their legal rights and demand governmental transparency, and (3) strengthen the capacity and impartiality of the Chinese legal system. ABA-Asia pursues these aims through trainings, practical skills-building programs and demonstration projects that highlight rights fundamental to citizens' relationship with government. These rights include access to governmental information, transparent and participatory decisionmaking, and standing of citizens to challenge governmental action. By focusing on these rights, ABA-Asia's aim is to help foster a culture in which citizens know their rights, are empowered to assert them, and have a reasonable expectation of fair and impartial resolution.

To produce long-term reform, programs must be indigenous in their conception, design and implementation. When beginning a project in any substantive area, ABA

develops partnerships with leading Chinese experts, being sure that these experts represent a variety of stakeholder perspectives, such as academia, industry, NGOs, local government, central government, media, and private legal practice. When empowered with real program design decisions, these Chinese leaders develop a strong sense of ownership of the project, and the substance is more effectively tailored to the Chinese context.

To the greatest extent possible, programs are delivered outside of Beijing. Target audiences are those groups with the greatest capacity and inclination to advocate on behalf of citizens' rights, such as local government officials, public-spirited lawyers and academics pursuing reform agendas. Through these related strategies, ABA strives to implement projects that demonstrate the fundamental value of the rule of law, while simultaneously training reform-minded stakeholders in the actual provision of those rights.

THE CHINA ENVIRONMENTAL GOVERNANCE PROJECT

In February, 2002, with funding from the East-Asia and Pacific Bureau of the U.S. State Department, ABA placed an attorney liaison in Beijing on a pro bono basis to implement its Rule of Law and Environmental Governance Project in China. Using environmental law as the substantive theme, the project has the much broader goal of increasing capacity in rule of law and developing replicable models in good governance, particularly in such areas as access to information, governmental transparency, citizen participation in decisionmaking, and defense of citizens' rights through legal advocacy. In brief, the project is conceived to conduct a series of training programs on Chinese environmental law, focusing on those aspects of law where citizens have substantive and procedural rights vis-a-vis government. The trainings, in turn, are stepping-stones to follow-on demonstration activities, in which participants actually implement a legal tool that creates and delivers greater citizens' rights and access to the legal system. Further information about this project can be found in an article about a December 17, 2002 ABA presentation at the Woodrow Wilson Center for International Scholars at <http://ens-news.com/ens/dec2002/2002-12-17-10.asp>.

The project has generated strong interest in China, and attracted prominent participants from many sectors to an ABA-initiated Project Advisory Council. By all accounts, the project accomplished its 1-year objectives and more. Based on its warm reception, its demonstrable success, and the strong Chinese enthusiasm for continuing the project, it is clear that there are substantial further gains to be made in rule of law and governance in China by working through the lens of environmental law.

The Project's First Steps—Set Up and Formation of the Project Advisory Council

During the first quarter of 2002, ABA overcame a variety of bureaucratic obstacles to structure a working partnership with the Center for Environmental Education and Communication (CEEC) of the State Environmental Protection Administration of China. ABA's next step was the creation of a Project Advisory Council (PAC). These steps allow a variety of stakeholders in environmental governance, from government, NGO, academic, industry and private law practice perspectives, to offer insights and input that guide the development of the project, including selection of sites for the workshops, curriculum content and training style, and development of follow-on activities. Equally as important, the members of the PAC, all prestigious experts in various aspects of Chinese legal and environmental affairs, imbue the project with elevated status, and afford the ABA liaison access to many contacts in central government, academia, the NGO community, media, and the training cities.

The PAC selected the three cities where the environmental governance training sessions were conducted. The three cities, Shenyang, Wuhan, and Chifeng, present a variety of environmental problems, diverse geographic locations, and differing size and population considerations. Thereafter, the PAC set about designing the training curriculum. More than half of the 21 member PAC agreed to be presenters at the three sessions. The final curriculum focuses on Chinese environmental law and the roles and relationships among stakeholders in processes such as environmental impact assessment, public participation in environmental decisionmaking, and the role of advocacy to defend citizens' rights. A composite curriculum from the three sessions is attached as Appendix B (retained in Commission files).

The Next Step—Three Training Sessions

The three trainings took place in July and August, 2002. Each consisted of 3 days of instruction, panel presentations, roundtables and informal discussion. In each city, there were between 50 and 60 participants, ranging from lawyers, judges,

media, industry, NGOs, and government. With presenters drawn from the PAC and including the most prestigious and compelling experts on Chinese environmental law and advocacy, the sessions were lively and engaging. The last day of each 3 day program was devoted to local environmental problems, and included an interactive session in which attendees discussed options for a substantive follow-on activity to implement the training's content. In the end, participants in each location developed consensus on a follow-on activity, and have set their attention to its implementation.

All three sessions were video taped by CEEC and a composite training VCD is being created from the edited tapes. The VCD will be distributed to several dozen provincial level Environmental Protection Bureaus (EPBs) throughout China.

The Critical Step—The Follow-on Activities

Building on these training programs, ABA conducted a series of follow-on activities that highlight innovative environmental management techniques in the context of Chinese environmental law. Each activity also demonstrates best practices in rule of law and good governance. In this way, ABA is helping its Chinese partners not only to adopt techniques that increase efficiencies and public participation in environmental protection, but also to undertake measures that get to ABA's core objective in this project: developing models that provide for greater governmental transparency, increased citizen participation in decisionmaking, and enhanced respect for and implementation of Chinese law.

In Shenyang, the follow-on activity consists of drafting, enacting and implementing a law to ensure access to information and public participation in environmental decisionmaking—the first such law of its kind at the municipal level in China. In Wuhan, participants are working on development of a publicly accessible computer data base to provide comprehensive data on environmental conditions. In Chifeng, the emphasis is on a participatory process to formulate an affirmative role for local government in devising sustainable land use practices that combat desertification.

Focus on the Shenyang Follow-On

The Shenyang EPB prepared a draft of the first municipal-level public participation law of its kind in China. The draft law included elements of citizen access to information, public participation requirements, and mandatory transparency among facilities releasing pollutants into the environment. Prior to the July training session, the first version of the law was published in the June 24 edition of the Shenyang Evening News. The draft law was discussed during the training session and about 100 people sent comments to the EPB following the newspaper publication.

In August and September, ABA coordinated an assessment of the draft law by a team of Chinese and international experts; in September, ABA and the EPB hosted a drafting and analysis workshop in Shenyang attended by EPB officials, Shenyang People's Congress representatives, and about a dozen other stakeholders, including visiting Chinese and foreign experts. This yielded extensive written comments on the draft law, which ABA compiled and presented to the EPB and all participants.

Based on these comments, the EPB made significant changes to the draft law, and published a revised version of the law on October 14 in the same newspaper. This publication also yielded approximately 100 comments, to which the EPB has responded by making further changes to the law. Commenters included ordinary citizens, students, and academics, as well as technical experts.

In November, Mr. Li Chao, Deputy Director of the Shenyang EPB, informed ABA of a sharp competition between Shenyang Municipal Government and Shenyang People's Congress for the right to promulgate this law. The People's Congress wanted to enact it as a local law, but ultimately the Municipal Government prevailed. The law has received the necessary final approvals, and shortly will be published a third and last time, whereupon it will take effect as a Shenyang Municipal Government Regulation. The Shenyang People's Congress is expected to elevate it to local law status within a year. An English translation of the final law is included as Appendix C (retained in Commission files).

Mr. Li has expressed a strong desire for further collaboration between the Shenyang EPB and ABA. The EPB has asked ABA to host a second series of trainings in Shenyang, to focus specifically on implementation of the new law. Mr. Li specifically envisions trainings for citizens on how to assert their new rights granted under the law. Assuming adequate funding resources, this training will be held in Spring, 2003.

The Shenyang EPB also hopes to undertake a similar process in revisions to all of its environmental laws, including expert commentary and public comment and participation. Mr. Li wants to improve other rules and laws in Shenyang to a level

similar to the Public Participation Law, and ensure that they comply with WTO requirements. He also has expressed an interest in holding public hearings on the role of the public in environmental impact assessment.

FUTURE DIRECTIONS: TRAINING AND FOLLOW-ON ACTIVITIES

Continued implementation of the existing follow-on activities is essential. The follow-ons present a unique opportunity to design and implement governance tools that are readily accepted and applicable in the Chinese context. While the project's achievements in its first 12 months are impressive, much more remains to be done in order to institutionalize these efforts and demonstrate their applicability on the national level.

ABA also plans to memorialize the three existing follow-on activities by means of self-contained modules covering both the procedural and substantive elements. For example, not only will the various texts of the public participation law in Shenyang be documented, but also the content of trainings, roundtables, and citizen comments received in connection with the law's development.

As the three existing follow-on activities progress, ABA also will develop stakeholders in these efforts as local experts, trainers and spokespeople for the project and for rule of law and governance reform generally. In conjunction with the materials documented in the modules, this cadre of trained stakeholder experts from each training/follow-on location is critical to ABA's long-term efforts to both build capacity in good governance tools among Chinese stakeholders and to strengthen indigenous leadership on broader rule of law reform.

ABA also hopes to begin additional training programs and follow-on projects in three more cities, leveraging both the modules created from the existing follow-ons and the local expertise developed in each. Specific locations, project themes, and kick-off events will be developed in a manner similar to the trainings and follow-ons in Shenyang, Wuhan and Chifeng, with substantial involvement of the PAC and other partners.

FUTURE DIRECTIONS: CITIZENS' RIGHTS ADVOCACY

Building on the experience, relationships, and credibility developed during the project's first year, ABA also hopes to expand its presence in China in an important direction: by providing direct support to emerging citizen advocacy efforts. Building on relations developed through the PAC, through ABA's outreach to the broader legal community in China, and particularly through relations developed during implementation of the follow-on activities in the target cities, ABA will support advocacy that accomplishes a range of activities, including direct representation of citizens' legal claims, lobbying and campaigning on public interest matters, publications, and indigenously conceived trainings and other events focusing on rule of law and good governance themes.

ABA has observed that public interest advocacy in China is emerging according to several models. Individuals and organizations housed within universities have conducted successful advocacy work; established lawyers in major law firms have achieved groundbreaking court decisions; and independent, lesser-known lawyers are exploring public interest advocacy through work resembling an advocacy NGO. ABA will support the efforts of carefully selected Chinese partners working through these models as well as through other creative approaches.

By assisting advocates working through varied structures ABA's goals are to create both the broadest possible field of public interest advocates and to achieve the strongest possible advocacy results. By supporting advocacy in various forms, ABA's efforts will build a comparative track record as to which institutional arrangements yield the most effective public interest advocacy in China. As different advocacy partners pursue different types of work (some focusing on client-oriented litigation, others pursuing cases with broader societal implications, still others doing client counseling and mediation, etc.) ABA's efforts also will shed light on which types of advocacy are most effective in China's political and legal environment.

As these advocacy efforts mature, ABA also will encourage an informal network among them and similarly minded legal professionals throughout China. This network will benefit from a variety of perspectives, backgrounds, and specializations. ABA will also seek to include public interest law firms, NGOs, and activists from outside China in appropriate partnerships with Chinese counterparts, to enhance the effectiveness and sustainability of the advocacy network.

Of course, all these proposed future activities are dependent on sufficient resources. ABA received \$385,000 from the State Department for its first year of activity; second year requirements may be as high as \$700,000. Discussions are ongoing with various bureaus within the State Department, and a small amount of money

has been secured to maintain the project on an interim basis. Considering both the project's track record and the tremendous opportunity to support citizens' rights that has now emerged, ABA is exploring all possible options to secure the funds necessary to properly implement all future activities described above.

WHY ARE THE CHINESE PARTICIPATING IN THIS PROJECT?

As described above, the Chinese participants in this project represent a broad range of stakeholders, both within the PAC and in the provincial trainings and follow-on activities. The level of enthusiasm and substantive involvement among all of these groups far surpasses initial expectations. Several factors explain this. First, the extent of environmental devastation is well known within China, and the government has made environmental restoration an urgent priority. At the same time, the awakening about the possibilities of—perhaps the inevitability of—the rule of law has many Chinese yearning for new legal approaches. Among participants in this project, there is a strong sense that this project—using environmental law as a means to promote broader rule of law—is the right approach at the right time. Put another way, the reform-minded community with whom we are working sees this project as a well-timed, viable approach to political reform.

Another important factor motivating the Chinese is the prestige that the project brings to participants. While perhaps inexplicable to those with an American's jaded impressions of lawyers, working with the American Bar Association carries tremendous cache in China. When thinking of the ABA, the Chinese do not think of lawyer jokes; rather they see an influential professional association with great credibility and substantive resources on the very legal topics that are of great interest in China today. That, combined with the sense that the project is showing important results, makes the Chinese keen to be a part of it.

The ABA's sincere involvement of local partners in project design and implementation is another important aspect of the project's success and the Chinese enthusiasm for it. As described above, from its inception, the program has been conceived and delivered by and for Chinese. The PAC is not a ceremonial board; its substantive involvement in design and delivery is real and comprehensive. The training curriculum was designed to emphasize domestic Chinese law and policy. While international themes have featured prominently in certain aspects of the trainings—such as norms of public participation, the role of public dialog in policy formation, etc.—these topics have been raised largely by the Chinese presenters and experts with whom ABA has worked. In this way, international experience is conveyed in a way that is relevant to the Chinese context, and that minimizes the sense of foreigners preaching to the Chinese about how to reform their system.

CENTRAL GOVERNMENT'S REACTION

ABA has been careful to solicit support for all aspects of the project from Chinese authorities. At its inception, officials were quite skeptical—indeed suspicious—of the project. Timely and tactful intervention from the U.S. Embassy helped to sort through bureaucratic obstacles, and by partnering with the CEEC, itself an entity within SEPA, ABA was able to allay initial fears and secure effective operating space, both literally and figuratively.

Another strategically important aspect of ABA's relationship with central government is the composition of the PAC. ABA invited senior officials from SEPA, the NPC's Environmental Protection and Resource Conservation Committee, and the China Law Society (whose leadership consists of very senior retired central government officials) to participate as PAC members. These relationships have been indispensable to the smooth progress of the project.

In just the past week ABA gained interesting insights about governmental reaction to our program when our Beijing-based liaison was summoned to meet with senior SEPA officials. From SEPA's perspective, the purpose of the meeting was to inform us whether SEPA would support continuation of our project and approve its extension. This was clearly more than a formality. Happily, the SEPA officials reported that they would continue to support the project. They described it as particularly "forward" for China, and did express some telling reservations regarding NGOs (See below.) However, they also explained that the primary factor motivating their continued support was the overwhelming interest in the project among the regional EPBs.

Indeed, focusing efforts outside of Beijing has been a cornerstone of the project, and this SEPA interaction confirms ABA's belief that not only are provincial institutions often isolated from Beijing-based information and initiatives (making them hungry for whatever they can get); they also are often the best level at which to undertake reform efforts. Further from Beijing, they can be and often are more

experimental. And highly desirous of increasing their status, regional offices also are interested to implement new approaches that may ultimately have national significance.

ABA's experience offers several clear lessons. To implement highly visible programs with multiple parties, particularly regarding legal reform, central government support is essential. At the same time, regional offices of government present a tremendous resource for partnership, and are given broad latitude as laboratories for reform. However, neither central government support nor local level interest is a given; to be able to work "within the system" in China, the substantive theme of an activity must be carefully selected to align with Chinese priorities and pose no overt threat to overarching governmental concerns. This is the crucial issue of "political space." Environment currently enjoys substantial political space in China. Other issues, such as human rights or labor rights, do not enjoy such space, making efforts to work with the Chinese in such areas far more difficult and the prospects for substantive results far less likely. This is not to say that other themes should not be pursued, but that in pursuing such topics the prospects for achieving reform from within will be reduced while the chances for antagonism and mistrust inevitably will be increased.

WHAT DOES THIS PROJECT SAY ABOUT "CIVIL SOCIETY" IN CHINA?

The very word "NGO" raises suspicions within some government offices in China. In fact, in a recent meeting, SEPA explained to ABA that one of its key initial reservations about supporting this project was that ABA seemed intent on energizing NGOs to criticize the government. As stated to us, the Chinese government has no intention of supporting programs whose aim includes training NGOs in the art of contesting governmental authority. Yet at the same time, SEPA has asked for assistance in implementation of the new Environmental Impact Assessment Law, which in several articles calls for public opinions and testimony to be incorporated into official decisions. The Shenyang Public Participation Law is even far more explicit in its grant of rights to citizens. This dichotomy raises an important set of questions: Who is going to represent citizens and "civil society" in these and other emerging legal contexts where citizens are given clear rights? Is there an NGO sector waiting to be nurtured? What are the "Chinese characteristics" of the third sector?

Answers to these questions are necessarily speculative at this point. However, in trying to provide effective civil society assistance to China, several observations are noteworthy. First, a blossoming of "Western-style" NGOs in China remains a distant dream. Concerned about threats to social stability, the Chinese government has no interest in sanctioning large numbers of organizations that are truly independent from government, and that will assert themselves in various sectors of politics and society in ways often critical of government. Those organizations that do brave the obstacles and function as NGOs must ever be cautious in their approach; further latitude from government is not likely to be forthcoming in the short term.

However, the situation is not as bleak as it may seem. The absence of strong and independent NGOs merely means that reform-minded elements of Chinese society must find other ways to express themselves. Often this includes affiliations and organizations that Westerners would not consider to be leading-edge reform entities, such as private law firms, academic institutions or even local government officials. However, in China it is these places where the greatest energy for reform resides. And quite importantly, these organizations, largely connected to the State bureaucracy in some or other form, offer an extent of political cover that an independent NGO does not enjoy.

Worth particular mention among these entities is the emerging phenomenon of public interest oriented lawyers in China. From private law firms, from academia, from local government posts, even from within the military, lawyers—particularly lawyers interested in environmental law—see new possibilities to test the outer limits of tolerance and activism as they undertake test cases seeking environmental damages for aggrieved citizens and seeking to enforce the novel public rights such as contained in the Shenyang law and the new EIA law.

Finally, reiterating the importance of political space, it is essential that all of these reform entities, from wherever they come, focus their energy on issues for which there is adequate tolerance and the ability to achieve results. The harassment of criminal defense lawyers in China is well known. However, using environmental law as the entry point, there is great potential to establish important precedents for citizens' rights that will extend to other substantive areas over time.

WHAT DOES THIS PROJECT'S SUCCESS SAY ABOUT USG ENGAGEMENT ON HUMAN RIGHTS
ISSUES WITH CHINA?

As described above, ABA's Rule of Law and Environmental Governance Project in China pursues aims far broader than simply the perfection of the Chinese environmental law system. The environment is the wedge issue, the Trojan Horse, by which the ABA is working with the legal reform community in China to advance cutting edge concepts of rule of law, governance, and transparency. Environmental law is unique among legal disciplines, in that its fundamental precepts are effective procedural interactions between citizens and government, transparency of information, and citizens' legal ability to challenge acts of government. Significantly, environmental law issues typically affect large numbers of ordinary citizens in direct, tangible ways. Thus, it is an ideal vehicle by which to enhance the relationship between the citizen and the state.

Considering this, combined with the desperate State of China's environment, the time is particularly ripe for programming on environmental governance in China. That is not to say that environmental law is the only substantive area of law in which to engage in China. Many areas of law also offer pathways to strengthen citizens' abilities to defend their rights through law, such as property rights and land tenure, criminal procedure law, and even domestic relations law. However, in some instances, these other areas are associated with taboos or sensitivities that make effective programming much more challenging. By leading with this project on environmental governance, ABA hopes to open the path to increased citizens' rights protections and civil society development, even to eventually include those areas, such as labor rights and or human rights, where sensitivities continue to run so deeply that open, on the ground programming of the kind undertaken in this project is not currently feasible.

PREPARED STATEMENT OF JENNIFER L. TURNER

JANUARY 27, 2003

THE GROWING ROLE OF CHINESE "GREEN" NGOS AND ENVIRONMENTAL JOURNALISTS
IN CHINA

Since 1999 I have coordinated the China Environment Forum within the Environmental Change and Security Project at the Woodrow Wilson Center. In the China Environment Forum we convene meetings and create publications that promote dialog among U.S. and Chinese scholars, policymakers and NGOs on environmental and energy challenges in China. In the course of my work I have become acquainted with many Chinese "eco-entrepreneurs," which is a term I use to describe people in the government, NGO, and news media sectors who are creatively pushing for improved environmental quality. I therefore have a familiarity with the dynamics of the "green" NGO movement.

The comments I make today on "green" NGOs and environmental journalists in China represent my personal opinion and do not reflect the views of the Woodrow Wilson Center. In my 10 minutes I have four points to make about China's nascent environmental movement and what it means for China's environment and civil society. Development in the environmental sphere is one of the bright spots in China's civil society and this sector presents many opportunities for cooperation from international organizations.

(1) The Chinese government has opened political space for environmental protection activities, which has enabled an impressive growth in Chinese "green" NGOs and an increase in environmental activities by universities, research centers, journalists, and government-organized NGOs (GONGOs).

(2) Independent Chinese environmental NGOs are at the forefront of civil society development in China.

(3) Because environmental journalists enjoy more freedom in pursuing their stories than other beat reporters, they are quickly becoming a force pushing environmental awareness and investigations of local problems.

(4) In the short term, expansion of "green" civil society in China is more dependent on improving organizational capacity of NGOs than an increase in political space.

(1) GROWING POLITICAL SPACE FOR "GREEN" NGOS, JOURNALISTS, AND OTHERS

The Chinese leadership is aware that the government cannot solve the serious environmental problems alone, which explains why political space has opened up for

eco-entrepreneurs in both the State and non-state sectors to create organizations to help government environmental policies by: (1) Promoting environmental education, (2) Acting as watchdogs for local governments, (3) Conducting environmental and energy-efficiency policy research, (4) Undertaking on-the-ground conservation and sustainable development projects.

How have independent NGOs and other organizations grown?

- In the mid-1990s, Chinese environmental NGOs were the first to register when Beijing passed legislation granting legal status to citizen-organized social groups. Individuals wishing to create “green” NGOs were inspired into action by not only the severe pollution problems, but also by the growing presence of international environmental NGOs in China. The growing environmental activities that universities, government research centers, and GONGOs were doing with international groups also signaled work in this area was acceptable.

- Approximately 50 citizen environmental groups are registered with the government, but since the registration process often can take years, hundreds of other environmental activists are doing their work as nonprofit corporations or within professional associations, Internet-based groups, or very small informal volunteer organizations or clubs (e.g., bird watching clubs). Some activists opt to join and learn from the numerous international environmental NGOs operating in China.

- Many central and provincial government agencies have created their own environmental NGOs (a.k.a. GONGOs) to create more jobs and attract international funding. These environmental quasi-NGOs (which number between 1000–2000) tend to have more technical skills than independent NGOs. Some GONGOs, particularly the Women’s Federations and Communist Youth Leagues, are drawn to an NGO model for environmental work as they adapt to China’s changing social context and their organizations are weaned from government support. Over the next 5 years central and provincial governments will be cutting most of the funding for all types of GONGOs and those environmental GONGOs that survive will become real independent (albeit with good government connections) environmental NGOs.

- Student environmental organizations at universities have exploded in number: From 22 at the end of 1997 they have now increased to 184 student groups, located at 176 universities in 26 provinces. In the early 1990s, university administrations created the first student “green” groups, but today most groups are initiated by students, who do “green” work on and off the university campus (e.g., waste reduction and environmental awareness activities, summer “green” camps for university students, monitoring water quality in local areas). Student “green” groups have created networks to share information on their “green” activities. These student groups are helping to cultivate a growing pool of environmental activists and more environmentally aware graduates entering the workforce.

(2) “GREEN” NGOS AT THE FOREFRONT OF CIVIL SOCIETY DEVELOPMENT IN CHINA

Despite their small numbers, environmental NGOs have been a model of inspiration for other kinds of civil society groups, for not only were they first to emerge, but they also have been creative in gradually expanding their activities through partnerships with domestic and international groups. In their work with international organizations, Chinese environmental NGOs have been able to work with local government and research centers, which represents a very new kind of horizontal policy cooperation in China. Moreover, by working with different types of organizations environmental NGOs are gaining valuable skills and capacity.

- First to emerge. Environmental NGOs were among the first type of independent organizations to emerge after the Chinese government permitted social organization registration. As pioneers in registering, they promoted confidence in other NGO activists. Other NGO sectors that are most successfully following in the footsteps of “green” groups include disabilities, women and children’s rights, health and poverty alleviation groups.

- Generally non-confrontational organizations. Unlike many western environmental groups, Chinese NGOs do not stage protests against the government or industry. In fact, many Chinese environmental NGOs have built up cooperative relations with governmental agencies and institutes. Some groups even use the government’s familiar “mass campaign style” techniques to promote their environmental message.

- Slowly expanding areas of activities. While “green” NGOs, student groups, volunteer, and virtual groups tend to undertake activities in relatively “safe” areas (e.g., public education on wildlife, personal consumption patterns, littering, surveys of endangered species, studies of energy efficiency), some groups, especially those with a professional base, are exploring innovative activities. For example:

(1) One lawyer created a group to provide legal assistance for pollution victims.

(2) One group made up of environmental professionals took surveys of environmental problems in their city and used local news media to promote their results.

(3) One group founded by environmental scientists in southern China brought together and worked with international NGOs and local governments to create and manage a nature reserve.

- Utilizing a broad range of partnerships to build capacity and effectiveness. Because Chinese environmental NGOs are generally small groups, many have found that expanding their range of partners not only brings in financial resources, but also new skills and knowledge. Chinese NGOs have increasingly partnered with government research centers and GONGOs, international environmental NGOs, and multilateral organizations. In some areas international NGOs have helped bring Chinese “green” groups and local governments together for projects. While the activities of many Chinese environmental NGOs do serve to help the central government enforce and implement environmental laws by promoting environmental education and monitoring local governments, a handful of Chinese NGOs are carrying out more technical pilot projects, usually with international NGOs or multilateral organizations (e.g., Environmental Defense works with one Chinese group on an SO₂ emissions trading project; NRDC works with various Chinese NGOs, local governments, and research institutes on energy-efficiency projects, WWF works with local governments and community groups on a wide-range of conservation activities).

- Growing use of the Internet. Some of the newest “green” groups in China are virtual organizations staffed by volunteers and their success offers useful models for other types of NGOs. One “green” group was able to mobilize more than 7,000 people to get online to “campaign” for nationwide battery recycling in China. Other groups have circulated petitions to help save wetlands and protect endangered species. As “green” NGOs increase their capacity in developing Web sites, they will improve their outreach and membership abilities.

(3) ENVIRONMENTAL JOURNALISTS

The abundant crop of environmental stories in China has not come about spontaneously. In the early 1990s, the National People’s Congress launched a massive publicity campaign to raise environmental consciousness and set up a central command post to rally Chinese reporters to write stories on the environment. In the first 8 years after launching the campaign, some 13,000 reporters from all news media organizations produced an astounding 104,000 pieces of work, according to a study by the International Media Studies at Tsinghua University.

Environmental reporters say they enjoy more freedom in pursuing their stories than other beat reporters, for the support they have from Beijing enables them to obtain cooperation from local authorities in doing their investigative work.

To illustrate the results of the freedom, in newspapers environmental reporting has been increasing steadily since the early 1990s, even though it is not a formal beat at most papers. One Chinese NGO tracked the yearly number of environmental articles in major national and local newspapers in China from 1994–1999. Between 1997 and 1999, the number of articles on environment doubled in number (76 papers produced 22,066 articles in 1997 while 75 produced 47,273 in 1999). The percentage of in-depth reporting (e.g., investigations, features, editorials) among these articles averaged about 20 percent.

In the past, China’s two State environmental newspapers (China Environment News and China Green Times) have been published for a government readership. As these two papers have become financially independent from their agencies they are trying to market their newspapers to the general public. To sell papers they aim to publish more insightful environmental education and investigative pieces and move beyond reporting government slogans about successful environmental policies.

Many Chinese TV stations have regular environmental educational programs and a growing number of radio programs feature environmental hotline call-in shows and exposés of local government pollution violations. While reporting on the ecological strains brought by industrialization along the Yangtze River, a Chinese national public radio reporter described how cruise ships threw plastic food containers into the waterway turning the 5,500-kilometer river into a giant public sewer. Within days of the broadcast, local officials were galvanized to action in the face of public outcry and the littering stopped. The result was a slightly cleaner river.

In general environmental journalists can report local environmental problems and criticize local government authorities, but they tend to avoid targeting national-level agencies and policies. All reporters in the Chinese news media practice self-censorship. However, sometimes environmental journalists put their sensitive stories into

internal newspaper and government reports and these reports can help educate local officials and change policies. For example, one journalist in Shanghai wrote an editorial about the possible water and environmental problems from planned golf courses outside of the city. This article led municipal officials to halt the plans for the golf courses and undertake an environmental impact assessment.

An intriguing cross-fertilization is taking place between “green” NGOs and journalists—some environmental journalists take their interest beyond work and have been active in either creating or helping “green” NGOs in China. In some major cities journalists have created networks or salons to help each other improve in their environmental reporting.

(4) IN THE SHORT TERM, FURTHER GROWTH IN “GREEN” CIVIL SOCIETY IN CHINA IS MORE DEPENDENT ON IMPROVING THE ORGANIZATIONAL CAPACITY OF NGOS THAN AN INCREASE IN POLITICAL SPACE

It is not easy to create and operate an NGO of any kind in China, for such the NGO concept is relatively new and registration requirements are challenging. Despite the registration woes, there exists a fair amount of leeway for “green” activists to undertake environmental projects and activities. However, the effectiveness of NGOs to do “green” work is often limited by lack of funds and organizational capacity. Three core challenges to environmental and other types of NGOs in China are:

(1) Onerous registration requirements

The current regulations for social organizations make it challenging to register an NGO because they contain vague registration requirements and are rather ambiguous about the scope of permissible activity. These regulations require all applicants secure the sponsorship of a government agency (a.k.a. the “mother-in-law” requirement). Those NGOs that do apply are not always allowed to operate in areas that have government departments or GONGOs doing similar work. Moreover, NGOs cannot set up branch organizations in other parts of the country. This latter rule does not yet represent a major hindrance for “green” groups in China, for they tend to be small and focused on doing activities locally.

(2) Funding challenges

While a majority of Chinese “green” NGOs in urban areas have gotten funding from international foundations and NGOs, foreign governments, and multilateral organizations, raising sufficient funds for activities and salaries is a problem that plagues most groups. This reliance on international sources of funding stems in part because there is not a philanthropic community in China. Because the concept of membership fees is still quite foreign in China many groups depend on volunteers to help them do their work.

One potentially bright sign for future funding is that the Chinese government is currently revising rules for permitting tax-free donations to NGOs.

(3) Capacity Challenges

- Many “green” NGOs are creations of one motivated individual who defines the organization. These groups are still very new, but it is unclear if some of these groups could function if the founder left.

- Most groups lack knowledge of managing a nonprofit organization or the experience in setting up membership systems.

- While most “green” NGO staff are enthusiastic and committed, they often lack the skills needed to do technical environmental work and write grant proposals to fund the organization. The struggle for financial resources dominates much of the energy of these groups and even creates competition among “green” civil society groups.

- Hard to keep NGO staff because of low or lack of salary, so institutional memory easily lost.

- Because most groups are new and struggling to sustain their activities, networking with other groups has not always been a priority, which means they miss opportunities to learn from other NGOs. Perhaps because the NGO movement has not yet reached critical mass, we are not yet seeing a lot of networking across sectors (e.g., environmental working with health or children’s groups, which substantively could become a mutually beneficial type of partnership and strengthen the capacity of both organizations).

POSITIVE STEPS

Most environmental NGOs are now aware of their need to build internal capacity and are seeking training to help themselves in this area. While some international organizations (such as the Canadian Civil Society Program, the Dutch government,

and PACT China) have stepped in to create workshops and some training for all kinds of Chinese NGOs, much more could be done to help strengthen the capacity of “green” and other civil society groups, so they could be more effective in their work.

In summary, many Chinese environmentalists know how to operate within politically acceptable boundaries, however, because of internal capacity and funding problems I believe a lot of groups are not yet fully utilizing the space they have to make significant impacts on protecting the environment. It will take time for them to strengthen their internal organizational capacity and develop technical skills to become more effective. With time I am also confident that this sector will be given more freedom of operations, because most groups are doing activities that help the government pursue their own environmental goals.

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