



中国法治论坛

CHINA FORUM ON THE RULE OF LAW

T 社会团体的 THE LEGAL ASPECTS OF SOCIAL ORGANIZATIONS | 法律问题

吴玉章 主编

Edited by Wu Yuzhang



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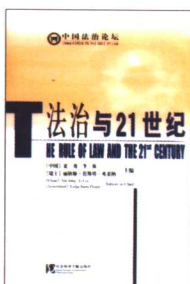
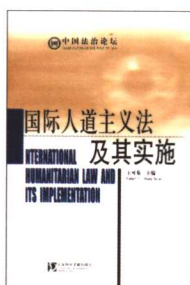
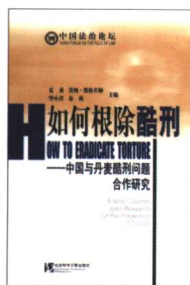
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总 序

故宫北侧，景山东麓，一座静谧的院落。蕴藉当年新文化运动的历史辉煌与典雅的土地上，流淌着中国法律理论的潺潺清泉，燃烧着法治思想的不息火焰。多年来，尤其是1978年中国改革开放以来，一代代法律学者在这里辛勤劳作，各领风骚，用他们的心血和智慧，谱写了许多可以载入史册的不朽篇章。

为了记载和激扬法治学问，推动法治，继往开来，中国社会科学院法学研究所设立“中国法治论坛”系列丛书。一方面，重新出版最近20余年来有重要文献价值的论文集，如始于20世纪70年代末的关于人治与法治、法律面前人人平等、起草新宪法以及法律阶级性等问题的专项讨论，90年代初以来关于人权、市场经济法律体系、依法治国、司法改革、WTO与中国法、环境保护、反酷刑、死刑存废等问题的专项讨论；另一方面，陆续编辑出版今后有足够学术含量和价值、比较成熟的国际国内相关研究项目和会议的论文集。

法律乃人类秩序规则。法治乃当世共通理念。“中国法治论

坛”不限于讨论中国的法律问题，也并非由中国社会科学院的学者独自担当。我们期望，这个论坛能够成为海内外学者、专家和广大读者、听众共同拥有的一个阐释法意、砥砺学问的场所，一片芳草茵茵、百花盛开的园地。

“中国法治论坛”编辑委员会

主 任 夏 勇

2003 年 6 月 6 日

Preface to China Forum on the Rule of Law

To the north of the Forbidden City and east of Jingshan Hill lays a peaceful courtyard. It is the seat of the Institute of Law of Chinese Academy of Social Sciences, the most prestigious national institute in China devoted to legal research and legal education. On this small piece of land, rich in historical splendor and elegance of the New Culture Movement of 1919, flows an inexhaustible spring of Chinese legal theory and rages an inextinguishable flame of the ideal of the rule of law. Since several decades ago, especially since the “reform and opening up” in 1978, generations of Chinese legal scholars have been working diligently on this small piece of land and, with their wisdom and painstaking efforts, composed many immortal masterpieces of law that will go down in history.

China Forum on the Rule of Law is a series of books published by the Institute of Law with a view to carrying on the past and opening a new way for the future in the research of the rule of law and promoting the development of the rule of law in China. In this series, we will, on the one hand, republish papers published in China in the past 20 years which are of great historical significance, such as those relating to the discussions since late 1970s on the rule of man and the rule of law, the equality of everyone before the law, the drafting of the new

Constitution, and the class nature of the law and those relating to debates since early 1990s on human rights, the legal system under the market economy, ruling the country in accordance with the law, judicial reform, WTO and China, environmental protection, eradication of torture, and abolition of the death penalty. On the other hand, we will edit and publish papers from future research projects and academic seminars, both in China and abroad, which are relatively mature and of sufficiently high academic value.

The law is the norms of order for all mankind and the rule of law a universal ideal of all peoples in the contemporary world. China Forum on the Rule of Law is not limited to the discussion of the legal issues in China, nor will it be monopolized by scholars of the Institute of Law. We sincerely hope that it will be able to provide an opportunity for scholars, experts, as well as readers to freely express their ideas and exchange their views on legal issues, a forum for a hundred schools of thoughts to contend, and a garden for a hundred flowers to bloom.

Xia Yong
Editorial Committee
China Forum on the Rule of Law
6 June 2003

前 言

本书是“中国社会团体的法律问题”课题的一个研究成果。

大约2年之前，中国社会科学院法学研究所所长夏勇教授与荷兰王国驻华大使贺飞列先生签订了合作研究“中国社会团体的法律问题”的协议。从那之后，先是在法学研究所内，后又逐渐扩大到法学研究所外，志趣相同的学人就开始组织起来，在深入思考公民结社权利的同时，也在全国若干城市和乡村开始了广泛的社会调查活动。我们不仅思考了中国传统社会中结社的存在和相关管理模式、目前的管理模式、国际相关经验和发展趋势等方面，我们还提出了自己针对目前我国结社自由现状的改革意见。通过对我国社会团体法律问题的研究，我们希望能够借此而更深入地了解人权，而且呼吁尽早实现“小政府，大社会”的改革局面。虽然，最初设立本课题的愿望，即直接促进我国社团法等法律的出台，看来还没有完全达到。但是，我们不仅起草了学者版的《中华人民共和国民间组织促进法》，而且，还以自己的研究结论为未来的立法提供了必要的理论准备和参考模式。

由于《中国社会团体的法律问题》课题组诸位同仁的努力，《社会团体的法律问题》一书终于出版了。作为编者，我还是有“临深履薄”的感觉。一方面，本书的任何缺陷，本人难辞其咎；另一方面，社会各界会如何评价它，我心里也实在没有把握。当然，对于结社现象而言，它的存在恐怕与本书的出版不会有什么必然联系，但是，结社现象的发展规律，它的法律环境如何完善，却与人们的认识有某种必然的联系。可以说，认识得越深刻，讲出的道理越明白，社会团体发展的环境就会越好。我们希望自己的研究能够有效地改善我国结社自由的法律环境。另外，为了完成好在国内若干省市的城市和乡村的社会调查，课题组成员还设计和发放了问卷调查表。在调查和访谈中获得的大量数据，将在经过专业统计的分析后，适时向学界和社会公布。

在结束研究课题的时候，我们首先感谢法学研究所的夏勇所长，感谢荷兰王国驻华大使贺飞列先生（Dr. Philip de Heer）。他们的创意，他们的关注

和亲自光临国际研讨会，以及他们对于延长合作项目的大力支持，对于课题顺利发展都是特别重要的。同时，我们也感谢荷兰王国驻华使馆的商务参赞保尔先生，感谢使馆的会计施奈德先生，特别感谢荷兰使馆的一等秘书皮尔尼女士 (Mrs. Christine Pirenne)，她的及时帮助对于研究课题的顺利展开非常重要。还有荷兰驻华大使馆后来的一等秘书伯格先生、使馆的翻译田宏小姐，也为中荷双方的沟通做出了贡献。本书的完成也得到了荷兰乌特勒支大学人权研究所李玉文博士的支持，她在提供重要观念、国外研究文献和组织外国专家来北京出席国际会议方面，发挥了不可替代的作用。当然，我们也感谢那些经李玉文博士联系，并来北京出席“中国社会团体的法律问题”的外国专家们。他们是荷兰海牙上诉法院的斯迪勒法官 (Mr. A. L. G. A. Stille)、荷兰阿姆斯特丹自由大学的教授普奥 (Prof. Tymen J. van der Ploeg)、荷兰社会与文化计划办公室的教授戴克 (Prof. Paul Dekker)、英国伦敦经济学院教授费里斯 (Prof. Richard Fries)、全法基金会主席沙宏先生 (Mr. Francis Charhon) 和德国马塞纳塔研究所主任斯塔舒维茨先生 (Mr. Rupert Graf Strachwitz)。

同时，我们也感谢中华人民共和国民政部的陈金罗老司长，以及我们访问和深入交谈过的各位民政部门的领导，他们对于我们完成研究课题和完成调查方面都提供了重要的帮助。感谢国务院法制办的朱卫国处长、中华人民共和国劳动部的江谟辉处长，感谢北京市人大的负责同志，他们派出工作人员参加了课题组召开的座谈会。清华大学公共管理学院的副院长王名教授和他领导的研究小组、北京大学的袁瑞军教授和诸位研究人员，中国政法大学的王灿发教授、王建芹老师都以不同方式参与了本课题的工作。我们借此机会向他们表示感谢！国内一些社会团体，例如中国民间组织促进会的黄浩明副会长、NPO 信息中心的商玉生主任、“自然之友”杨东平先生、张继莲女士、北京“慧灵”的孟维娜女士、工合国际的柯马凯先生、郭丽娜女士、乐施会的王云仙女士、天津挽救“自闭症”儿童协会、四川若尔盖地区“治水志愿者协会”的饶永先生、吉林通榆“沙地治理区”的万平先生、北京顺义“大芦荡义务管理处”的张伟先生等，都曾经程度不同地参与过我们的研究和调查，他们的参与对我们完成课题帮助很大。

法学研究所的老所长王家福教授、刘海年教授大力支持这一研究课题。法学研究所副所长陈甦教授、副所长陈泽宪教授都以不同的方式帮助我们顺利完成本课题的研究。我们也非常感谢中国社会科学院外事局的李薇副局长和陈黎副处长。法学研究所科研处副处长蒋小红博士作为项目的外事负责人，对于中荷双方的沟通和合作贡献巨大。本书的英文部分由法学研究所的

副译审毕小青先生负责，相信他的翻译会帮助英语读者更好地了解本书所讨论的内容。在法学研究所内，2年来先后参加本课题研究的人员多达10多位，他们的诚实、独立思考和勤奋应该得到高度评价。本书的出版得到了法学研究所所长助理冯军教授的大力帮助。

另外，本书的出版得到了社会科学文献出版社的宋月华主任等的帮助，我们也表示深深的谢意。

吴玉章

2004年10月

Preface

This book is the result of the Research Project on “Legal Aspect of Social Organizations in China”.

About two years ago, an agreement on cooperation in research on “Legal Aspect of Social Organizations in China” was signed by Professor Xia Yong, Director of the Institute of Law of Chinese Academy of Social Sciences (CASS Law Institute) and Dr. Philip de Heer, the Dutch Ambassador to China. Since then, like-minded scholars, at first from the CASS Law Institute and later also from various other research institutions, began to organize themselves to carry out in – depth research on citizen’s freedom of association as well as extensive social investigation in some urban and rural areas in China. During the past two years, we have not only reflected upon the existence of the phenomenon of association and its regulatory modes in traditional and contemporary Chinese society, the relevant experiences in other countries, and its trend of future development, but also put forward reform proposals based on the current situation of the freedom of association in China. We hope that, through the research on the legal aspect of social organizations in China, we will be able to get a better understanding of the relevant human rights issues and contribute to the early realization of the reform goal of “small government, big society”. Although the original objective of this project, namely to help the government to adopt a law on social organizations, has not been fully realized, we have not only drafted a scholar’s version The Law of the People’s Republic of China on the Promotion of NGOs, but also, through the conclusions of our research, provided the necessary theoretical basis and alternative models for the future adoption of such a law.

Although, with the concerted efforts of all the members of the Research Group on the Legal Aspect of Social Organizations, the book on Legal Issues of

Social Organizations in China has now finally been published, as the editor of the book, I still feel as nervous as if trading on thin ice because, firstly, I will be held accountable for any defects in this book and, secondly, I am not sure how the readers will react to this book. Although there is no necessary relationship between the phenomenon of association and the publication of this book, a certain link does exist between the law of development of the phenomenon of association and the improvement of its legal environment on the one hand, and people's understanding of this phenomenon on the other. Therefore, better understanding and clearer elucidation of this phenomenon will certainly create better environment for the development of social organizations. We hope that our research will be able to contribute to the improvement of the legal environment of freedom of association in China. In order to better carry out the social investigation under the project, the members of the Research Group have also designed a questionnaire, which was distributed in the urban and rural areas of several provinces and municipalities directly under the Central Government. The large amount of data acquired through investigations and interviews will, after statistical analysis, be released to the academic circle as well as to the general public at appropriate time.

At the research project comes to an end, we would like to express our sincere thanks to Professor Xia Yong and Ambassador Philip de Heer for their initiation of this project, their close attention throughout the project, their participation of international seminars, and their support in the extension of the project; to Commercial counselor Mr. Paul Menkveld, Accountant Mr. Rene Smulders and, especially, First Secretary Mrs. Christine Pirenne of the Royal Dutch Embassy for their support which has played a crucial role in the successful implementation of this project; to new First Secretary Mr. Job van den Berg and Ms. Tian Hong of the Royal Dutch Embassy who have contributed to the good communication between the Dutch and Chinese partners of this cooperation project; to Dr. Yuwen Li of the Netherlands Institute of Human Rights, Utrecht University, for providing important ideas, foreign research materials and for organizing foreign experts to participate in the International Seminar on Legal Aspect of Social Organizations held in Beijing; and, of course, also to those foreign experts for their participation in the Seminar. They include: Judge A. L. G. A. Stille, Vice President of Hague Appeal, Professor Tymen J. van der

Ploeg from Amsterdam Free University, and Professor Paul Dekker from Social and Culture Plan Office in Netherlands, Professor Richard Fries from the London School of Economics, Mr. Francis Charhon, Managing Director of the Foundation de France, and Mr. Rupert Graf Strachwitz, Director of Maecenata Institute, Berlin.

Meanwhile I would also like to take this opportunity to thank Mr. Chen Jinluo and every official of Ministry of Civil Affairs with whom we met and talked with, they also have provided important support in our research and investigation; and Mr. Zhu weiguo, office of Legal System, the State Council, Mr. Jiang Mohui of Ministry of Labor, the leaders of the People's Congress of Beijing Municipality who have participated in various seminars organized under the project; to Professor Wang Ming, Vice Chairman of the College of Public Administration of Qinghua University and the Research Team under his leadership, Professor Yuan Ruijun of Beijing University and her colleagues, Professors Wang Canfa and Wang Jianqin of China University of Politics and Law, who have participated in the project in various ways. We would also like to thank people from various social organizations in China who have contributed to the implementation of the project through participation in various research and investigation activities. They include: Mr. Huang Haoming, Vice Chairman of China Society for the Promotion of NGOs; Mr. Shang Yusheng, Director of NPO Information Center, Mr. Yang Dongping and Ms. Zhang Jilian from Friends of Nature, Ms. Meng Weina from Beijing Huilin association, Mr. Ke Makai and Ms. Guo Lina from the International Committee for the Promotion of Chinese Industrial Cooperatives, Ms. Wang Yunxian from Chinese Project of Oxfam, members of Tianjin Society for Helping Autistic Children, Mr. Rao Yong from Volunteers for the Control of Flood in Ruogai Area in Sichuan Province, Mr. Wan Ping from the Association for the Control of Sand in Tongyu Area of Jilin Province, Mr. Zhang Wei from Volunteers for the Preservation of Great Reed Marshes in Shunyi County of Beijing Municipality.

Our sincere thanks also goes to Professors Wang Jiafu and Liu Hainian, the two former directors of the CASS Law Institute and Professors Chen Su and Chen Zexian, the two current deputy directors of the CASS Law Institute, who have given us great support in the implementation of the project, Dr. Li Wei, Vice Director of Bureau of Foreign Affairs of CASS, and Ms. Chen Li, Dr. Jiang

Xiaohong, the Deputy Head of the Research Administration Department of the CASS Law Institute, who have been responsible for the foreign affairs work of the project, Associate Prof. Bi Xiaoqing, editor of Global Law Review who have helped to translate some part of this book into English, Professor Feng Jun, the Assistant Director of the CASS Law Institute, who have given us great assistance in the publication of this book, and, last but not least, all the members of the Research Group, who have shown great honesty, independence, and diligence in their research work during the past two years.

Finally I would like to express our deep appreciation to Ms. Song Yuehua, Mr. Bian Songge and Mr. Zhong Yilan of Social Sciences Documentation Publishing House for their excellent editorial work.

Wu Yuzhang
2004.10.

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