PREFA CE

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This book is a tangible result of the conference ‘Law-making in the People’s Republic of China’, which was held in Leiden, the Netherlands, from 26 to 28 October 1998. The conference, in turn, was one of the results of the work carried out by the Van Vollenhoven Institute for Law and Administration in Non-Western Countries of the Faculty of Law of the Universiteit Leiden, in the framework of its Leiden-Beijing Legal Transformation Project. In this introduction, preceding the written versions of the contributions to the conference, we would like to introduce, if only very briefly: (1) the Van Vollenhoven Institute, as part of the Faculty of Law of the Universiteit Leiden; (2) the Leiden-Beijing Legal Transformation Project; (3) the overall theme and contents of the conference held in October 1998; and (4) the present book.

The Van Vollenhoven Institute is an independent academic institution, forming part of the Faculty of Law of the Universiteit Leiden. Its principal task is to conduct research and teaching in the vast area of law and administration in non-Western countries. At the same time, the Institute is the guardian of a unique collection of written materials on law and administration in a number of non-Western countries. Finally, the Institute's staff members are increasingly active as academic consultants to Dutch and foreign government agencies as well as private entities engaged in the development of law and administration outside the Netherlands.

It goes without saying that the sheer number of non-Western countries in itself calls for drastic choices in the academic program of the Van Vollenhoven Institute. These choices not only limit the number of countries to be studied, but also reduce the areas of law and administration which the Institute may claim to cover. A third and equally important area of choice relates to the methodology which the Institute has adopted for its research and teaching. Of course this is not the place to elaborate on any of these choices. Yet the Leiden-Beijing Legal Transformation Project, whose description follows, is fairly representative of the way in which the Institute from time to time decides to include in its academic program (1) a particular country, (2) the areas of law and administration to be studied, and (3) the methodology to be applied.

The Leiden-Beijing Legal Transformation Project is the result of cooperation between the Van Vollenhoven Institute and the Dutch Ministry of Education, Culture and Science. In the course of 1994, the Ministry under the then acting Minister, J.J.M. Ritzen, decided to launch its Economy, Management and Law Program, aimed at the stimulation of academic cooperation between Dutch and Chinese scholars working in the fields covered by the Program. The Ministry invited the first author of this Introduction, Jan Michiel Otto, to submit a proposal to carry out the Law component of
the Program. Otto immediately approached the second author, Maurice V. Polak, to see whether a joint proposal would be feasible.

The two of us quickly realized that the Ministry’s invitation was a unique chance for the Van Vollenhoven Institute to incorporate in its program a country whose development of law and administration is very important and interesting from an academic as well as a practical point of view. In fact, the Ministry’s Program was going to enable the Institute, as well as the Faculty of Law of the Universiteit Leiden, to try to restore, as best they could, the tradition of Leiden as a center for the study of Chinese law. Such a tradition had existed until the beginning of the 1970s and had been shaped by such authorities as Prof. dr. M.H. van der Valk, Dr. M.J. Meijer, and Dr. A.F.P. Hulswé. No doubt this tradition, and the presence within the Universiteit Leiden of the Sinological Institute within the Faculty of Arts, convinced the Ministry that it should sponsor the Van Vollenhoven Institute’s proposal for what we, the project’s initiators and directors, soon started to call the Leiden-Beijing Legal Transformation Project. Very generously, the Ministry decided to sponsor this Project not only for a first explorative year (1995), but also for a full period of four years (1996–2000).

From the very outset, the Project has embraced two components. The first is the teaching of Dutch and European law in the PRC — a task primarily carried out by members of the Faculty of Law of the Universiteit Leiden, teaching to an audience of Chinese lawyers selected by our two Chinese counterparts, the Institute of Law of the Chinese Academy of Social Sciences and the Faculty of Law of Renmin University. The second component is the study of Chinese law in the Netherlands, a task mainly entrusted to our project staff, Yuwen Li and Jianfu Chen, who conduct research of written materials in Leiden and Melbourne respectively, in combination with field research in the PRC. This second component also includes the teaching of Chinese law in Leiden and the organization of international conferences, such as the one leading to the present book.

Given that there was a period of nearly 25 years during which the expertise in Chinese law had virtually disappeared in Leiden, the research into Chinese law necessarily started by selecting and subsequently exploring a number of legal fields, such as environmental law, tax law, bankruptcy law, administrative law, criminal law, civil and commercial law, and dispute settlement law. Some of these areas were chosen because of the Van Vollenhoven Institute’s existing expertise in similar areas in other non-Western countries, while other fields were selected because they corresponded with the courses on Dutch and European law to be held in the PRC. One common element in this explorative research was the methodology adopted, i.e., the Institute’s choice to combine a thorough study of so-called positive law (legislation, case law, and legal literature) with an analysis of the actual effects of this positive law in society. This explorative research not only laid the foundations for the teaching of Chinese law in Leiden, but also cleared the way for more in-depth research in particular fields of law.

When discussing the area or areas for more profound research, we soon decided that the focus should be on a theme which would be relevant for a large group of academics and scholars interested in current legal developments in the PRC. Ideally,
such a theme would cut across legal sub-disciplines and combine the study of positive law with an analysis of the effects of law in society. And finally, the theme was to be suitable for a three-day conference at which experts from the PRC and from other countries would share their knowledge with each other. Rather than pretending to master such a theme all by itself, the Van Vollenhoven Institute was thus to act as the co-ordinator and initiator of a debate among leading experts, and to add this accumulated knowledge to the existing expertise.

These considerations, combined with the above-mentioned explorative research, led us to the overall theme for the conference held in October 1998, i.e., ‘Law-making in the People’s Republic of China’. We believe that this theme contains all the necessary elements. Law-making constitutes one of the fundamental functions of any society and touches upon such important issues as the *trias politica* and the relationship between politics and law as well as between policy and law. Law-making is also interesting for lawyers, as well as for sociologists and political scientists, because it is concerned with the question of whether rules on law-making are abided by in the actual process of law-making, and with the question of whether law-making serves legal certainty, as it is supposed to do. Law-making is also interesting in that it contains elements of ideology and legal culture. Moreover, law-making is the result of the work of a multitude of institutions and actors, ranging from the national legislature to the local level, and from professional ‘law-drafters’ to the general public. Finally, law-making occurs in all legal fields, be it administrative law, contract law or criminal law. Moreover, all these issues and areas are, or at least seem to be, in a state of flux in the PRC.

The way to the conference was paved by sending to each invited expert a memorandum containing the structure of the conference and the core questions to be discussed, as far as possible, in each contribution. These helped to structure the conference and to stimulate a high level of discussion and exchange of ideas. The conference’s structure and the core questions are reflected in this book.

The conference was structured by dividing its overall theme into three parts. The first part deals with general issues related to law-making. After an introduction to the subject-matter by Jan Michiel Otto and Yuwen Li, which raises the core questions, Part I contains papers on the historical perspective of law-making (Jianfu Chen), on ideology and law-making (Harro von Senger), and on a comparison between the PRC’s legal framework and the frameworks of other legal systems (Albert H.Y. Chen). The next and most extensive section, in Part II, concerns the various ‘Institutions and Actors’ involved in law-making in the PRC. Here the reader will find analyses of the National People’s Congress (Perry Keller), the State Council (Shishi Li), departmental rule-making (Chaoyang Jiang), local law-making (Sun Chao), law-making in autonomous regions (Wenzheng Shi and Xiaolin Bu), public participation (Jingwen Zhu), and the proposed Law on law-making by academics (Buyun Li). This second part is followed by three ‘Case Studies’ in Part III, in which important areas of legal development are analyzed from a law-making point of view. The selected areas are administrative law (Jean-Pierre Cabestan), contract law (Pitman B. Potter), and criminal law (Feng Ye).
Finally, the last chapter (Jan Michiel Otto) attempts to draw some general conclusions on the basis of the preceding chapters.

The core questions which were put to each of these authors are summarized in the first contribution by Otto and Li and may be repeated here: (1) who are the legislators and what are the products of the legislative process in China; (2) how does a law come into being; (3) what meaning should we ascribe to these legislative products from the perspective of legal certainty; (4) can we recognize a Chinese approach to or style of law-making; (5) what technical legislative problems have Chinese jurists identified and what sort of solutions to them are being considered?

The conference itself was set up as a continuous three-day plenary working session, attended by most of the above-mentioned authors as well as a limited number of invited participants from the Netherlands and elsewhere. This format greatly facilitated frank and open discussion of some of the PRC’s most complicated legal and political issues, i.e., the way in which this state actually does, and ideally should, go about making laws for its subjects. We are extremely grateful to all the authors and participants for their contributions to this discussion. We trust that they will understand that we have decided not to include a summary of the discussion in this book. Reading the book they will undoubtedly see that many of their remarks, questions and opinions have been taken up by their fellow authors in the final versions of their papers.

Finally, a few words about the present book. At the close of the conference we asked each author to submit a revised version of his paper and set the deadline for this by 1 February 1999. Aiming at a higher goal than the mere publication of sixteen separate papers, we saw it as our fascinating, but also difficult, task to turn these individual contributions into one comprehensive, coherent and integrated book. This we tried to achieve, first of all, by editing the contributions, inter alia as to language, style, terminology and cross-references. Jianfu Chen and Yuwen Li provided invaluable support in this respect. To further enhance the quality of this book, we have written both this preface and the concluding chapter, and the editors have added such tools as the English-Chinese glossaries of relevant terminology, a list of abbreviations, bibliography, subject-matter index, and the translation of the newly enacted Law of the PRC on Law-making as well as comments on it.

Obviously, many people have participated in and given support to the organization of the conference and the editing of the book. We would particularly like to acknowledge the following persons and organizations for their enthusiastic participation, assistance, and support: Carola Klamer and Mona Saija for their administrative support, Wim Muller and Gabi Duigu for their initial language and style editing, Suiwa Ke for her translation of the Law on Law-making (15 March 2000) at short notice, Paul Janse for his skilful work in the production of a camera-ready version of the book, the Law Institute of CASS and Renmin University for their collaboration in the project, and the Dutch Ministry of Education, Culture and Science for its financial support.

It took us longer than we had expected to produce a book which we felt to be worthy of the contributions submitted by the various authors. In some cases, the current state of affairs may have changed to some extent since the authors submitted the final
version of their contributions in August 1999. Nevertheless, we believe that the overall theme of this book is of such a wide and all-encompassing scope that the questions which this book attempts to address are, and will remain, real and important problems with regard to law-making in the PRC for many years to come.