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RESEARCH ARTICLE

Do Hybrid Legal Systems Matter in Foreign Legal-Aid Programmes? Some Philosophical Aspects of Legal Aid in Uzbekistan as Provided by the Donor States

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Abstract

Since the fall of socialism in Eastern Europe, the former Soviet Union, and some states of Southeast Asia, the international financial institutions and individual donor states have initiated wide-scale legal-aid programmes to assist these states in their transition from socialism to a market economy. Whereas the aid from financial institutions vis-à-vis recipient states is often agreed upon specific conditionalities, the donor states design their foreign legal aid according to individual preferences, although sometimes with references to universal goals. Currently, various donor states provide legal aid to Uzbekistan. Given the fact that Uzbekistan is the former Soviet Republic that still bears multiple traces of a socialist legal system and additionally integrates indigenous informal law, this research provides an analysis of how different donor states base their legal-aid activities on entirely different philosophies and levels of gravity, and how receptive the hybrid structure of Uzbekistan's law is towards such aid.

Keywords: legal aid; legal assistance; and co-operation; transplantation; rule of law; Uzbekistan

1. Introduction

Attempts to transplant advanced laws and institutions as implemented in the republics of the former Soviet Union since the demise of socialism by various foreign actors have generally been chasing the aim to modernize and develop legal systems in these states. After 1991, elites and intellectuals in Uzbekistan considered legal transplants as inspiration for legal reforms. As an example, the first wave of interest in transforming the legal system in Uzbekistan was initiated in the mid-1990s by the US agencies, which emphasized transplanting its democracy doctrine and advertising American law. Later, Germany started a legal-aid programme[1] that introduced the Western concept of human rights and *Rechtsstaat*. Germany's activities were later integrated into the EU's legal-aid framework. After 2000, Japan launched its legal-technical assistance programme to Uzbekistan.

Germany (EU) and the US legal- and political-aid programmes have been assisting almost all former Soviet republics in their post-socialist transition. In this regard, the Baltic states have demonstrated a relatively successful case of benefitting from such programmes in terms of transforming into sustainable democracies and rule-of-law states. In contrast, the rest of the former Soviet republics, including the Central Asian states

[1] The expression "legal aid" is being used in the present research with a wider meaning and embraces foreign legal transplantation, assistance, co-operation, and other forms of foreign or international legal support. Similarly, the term "programme" has a broad meaning that includes various legal projects, activities, or agendas.

(hereinafter, CA), could not fully benefit from aid programmes and demonstrate a smooth transition to liberal democracy and rule-of-law states. Uzbekistan is one example in which efforts of Western donors to reform the legal sector according to Western legal ideas often came up with theoretical and practical difficulties.

From a comparative perspective, Asian democracy and constitutionalism are relatively recent, although rapidly developing, phenomena. The classic definition of Western democracy and constitutionalism draws from the 1776 Virginia Bill of Rights, the 1788 US Constitution, and, most importantly, the 1789 French Human Rights declaration, in particular, the protection of an individual's rights and separation of powers. In Asia, most states view these concepts in a negative context within their perception of democracy, fairness, and legality. While Western ideas—as a consequence of civic revolutions against the authority of monarchs—accentuates the ideas of democracy and liberalism, the peoples' resistance movements in Asia targeted mainly their liberation from colonialism. Often, such liberation movements supported socialist ideas. Such a dichotomy has added contents that are different in the context of Western thought to the meanings of the Asian state formation and democracy.

Many foreign advisers directly involved in legal aid in Uzbekistan know their donor law well. On the other hand, they often have little knowledge that the present dualist nature of Uzbekistan's law includes the formal structure of statutory law originating from the Soviet legal system and unwritten, informal law based on traditions and customs associated with secular Islamic culture. In practice, this dualism led to significant changes in culture, society, politics, economy, and law. Therefore, ineffective approaches to such a hybrid system of law in Uzbekistan eventually make it increasingly challenging to transplant foreign legal concepts directly and introduce such alien concepts as democracy, the rule of law, or *Rechtsstaat*.

The present paper asserts that the post-socialist legal system of Uzbekistan demonstrates an example of a hybrid mixture of legal traditions that challenged the whole process of borrowing foreign laws or concepts. To discern the various understandings of legal aid and its effect in Uzbekistan, this study analyzes specifics of the domestic legal system and legal foreign-aid discourses in several sections. First, it briefly examines the evolution of legal-aid theory and its unpreparedness to address transformation processes in the former socialist transition economies. Second, it explains the specifics of the current hybrid legal system of Uzbekistan, which represents a product that emerged in the evolutionary context of Russian colonialism, Sovietization, and post-Soviet democratization. Third, this paper examines practices and discourses of legal aid provided by the US, Germany (EU), and Japan. In the wake of independence, apart from the mentioned states, such international actors as the UN, OSCE, various international financial institutions such as the World Bank, International Monetary Fund, Asian Development Bank, and numerous nongovernmental organizations (NGOs) similarly launched their aid programmes to promote legal reforms and state construction in Uzbekistan.[2] However, three named states, unlike other international actors, have been offering distinctive and consecutive legal aid with unique design and philosophy. Furthermore, the US, Germany (EU), and Japan enjoy considerable influence in the "legal-aid market" of Uzbekistan, being its largest sponsors and, simultaneously, serving as models of economic and political development for the local political-elite groups. Finally, this paper explores the attitudes and challenges that foreign legal-aid programmes experience within a hybrid structure of law in Uzbekistan. This research argues that sophisticated structures of legal systems in some socialist states presented a sort of novelty in legal-assistance studies and, therefore, necessitate new creative approaches in positioning a legal-aid infrastructure.

[2] Noguchi (2000), p. 7; Obando (2000), p. 47; Gruss (2000), p. 63.

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2. The post-1980 dilemmas in legal-aid approaches

As socialism collapsed in the East-European hemisphere and the former Soviet Union at the end of the 1980s, the former socialist states began to experiment to various degrees with a dual process of democratization and marketization. The rapid and aggressive globalization of the market economy and the mere fact of the non-viability of the command-type economy urged a gradual promotion of structural economic changes and demanded comprehensive legal reforms. Apart from the East-European and former Soviet states like Uzbekistan, selected (post)-socialist jurisdictions in the Asian region, namely Vietnam, Laos, Cambodia, Myanmar, and Mongolia, also faced similar challenges in reorganizing their socialist systems and the reception of foreign law. In the academic literature, scholars[3] often tend to refer to these countries as transition economies or states in transition.[4]

Developed countries and transnational agencies, including the World Bank and International Monetary Fund—acting as foreign donors—were directly involved with their supporting activities in the area of reforms in transition economies to assist a smooth shift from socialism to capitalism. Notably, similar activities, known as international legal-assistance or aid programmes, had stirred up the interest of legal scholars and practitioners back in the 1950s to 1960s and, by then, led to the elaboration of the Law and Development movement.[5] In particular, during the Cold-War era that continued from the 1950s to the 1980s, a limited number of legal practitioners from the US and Europe helped their recipients in Latin American, African, and some Southeast Asian states in drafting Constitutions and statutes, as well as offering aid programmes in the areas of legal education and professional legal training.[6] A considerable portion of this legal aid accentuated more on the economic role of law and the importance of law in reforming the shape of the economy and less on the rule of law.[7] Often, assistance followed the method of legal borrowing or direct transplantation from more advanced systems without real concern for local needs and specific national contexts. Indeed, some projects of legal transplantation of that period, particularly in 1965–74, referred to as an "inaugural moment of US legal development cooperation,"[8] paved the way for a monopoly of the worldwide legal-transplantation phenomenon.

From 1990 onwards, experts assumed that Western efforts to steer legal and political developments worldwide could promote adequate development and modernization within the upcoming democracies in Eastern Europe, the former Soviet Union, and some states in Asia. The questions appearing in this modernization process touched upon the choice of applicable models of legal aid to give effect to the transition from socialist to market economies. The Law-and-Development movement, however, did not offer concrete answers.[9]

First, donors, as well as recipients, found it problematic to prioritize between market–institutional promotion and democracy–human rights promotion. This question has

[3] Refer for example to Gevorkyan (2018); Myant & Drahokoupil (2010); Lindsey (2007); Murrell (2001).

[4] Such a notion presupposes a transition from one order to another or, simply speaking, a transition from a socialist to a capitalist state. However, this notion is far broader as, for example, states like Vietnam and Laos still remain socialist, with some principles like democratic centralism and socialist-party-rule empowerment. On the other hand, these states initiated a gradual shift from a planned to a market economy and democratization at the end of the 1980s.

[5] Tamanaha (1995), pp. 472–4; Trubek (2005), pp. 1–17.

[6] Merryman (1977), pp. 457–8.

[7] Trubek, *supra* note 5, p. 2.

[8] Taylor (2013), p. 235.

[9] Friedman (1969), pp. 29–44; Seidman (1972), pp. 311–p42; although there is some clear evidence of the theory-building process with regard to Law and Development, there are also theories about the collapse of the Law-and-Development paradigm in the 1970s in light of the critics of ethnocentric neo-evolutionist thinking. See Wiarda (1981), pp. 163–97.

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indeed become one of the central dilemmas. On the one hand, the idea of establishing from scratch the free-market concept, elaborating privatization policies, and opening the economy for foreign investments in former socialist command economies sounded more assertive. On the other hand, some donors stressed the importance of exporting democracy and internationally recognized principles of human rights protection as substantial conditions for the transition from authoritarianism to a democratic state. Later, this discussion was joined by the question of how legal reform for the rule-of-law promotion could facilitate economic and democratic growth.[10] Such a debate came as a logical consequence of renaming or extracting from the Law-and-Development domain the rule-of-law labels and standard claims supported by some Western donors that a highly developed rule-of-law system is an indispensable element for economic growth.[11]

Second, pioneer legal-assistance programmes in transition countries, delivered by some Western donors, initially aimed at the direct transplantation of legal institutions and concepts into a recipient state's system. In line with previous experience, such an approach was considered simple, straightforward, and achievable at a lesser price. However, in the case of transition from socialism to capitalism and, in addition, taking into account complex societal factors in transitional countries, there was neither experience nor clues for the Western donors as to whether such methods would adequately respond to the needs of the recipient states. Furthermore, there was a growing understanding among various international stakeholders that new-century donor-driven reform should transform from mere transplantation of laws into a highly complex and sophisticated process.[12] Hence, once foreign donors started providing legal aid to the former socialist states, they came up with multiple problems that remained new and unknown compared with similar projects that took place in the states of Latin America in the previous 1950s to 1960s. Such issues, which foreign partners often associated with peculiar local legal characteristics and the level of local society's legal culture, posed a considerable burden on the proposed implementation and final goals of legal aid, especially those that involved the direct transplantation of laws.

3. The pluralist structure of Uzbekistan's law

A brief look at the legal history of Uzbekistan shows that, within the previous century, it evolved in a variable mode. Before the Russian tsarist invasion in the 1860s, the legal system was based explicitly on Islamic (sharia) law. Subsequently, under the Russian tsarist administration and up until the 1917 October Revolution, the legal system had a dualist nature based on an extensive practice of Islamic law and the fragmented experience of imported Russian civil-law tradition.[13] Such a co-existence of the civil-law tradition with Islamic law was predetermined by multiple factors, including territorial and demographic features.[14] Between 1924 and 1991, Uzbekistan comprised one of the 15 Soviet-Union republics and had a legal system modelled on socialism. In 1991, the collapse of the Soviet Union catapulted Uzbekistan towards independence. Since then, this nation-state has been attempting to build a Western model of market economy and establish the *Rechtsstaat*. The latter is more oriented towards the nature of the state and has its roots in the written Constitutions.[15] Historically, *Rechtsstaat* was seen as a counterforce to the

[10] Matsuo (2012), p. 7.
[11] Taylor, *supra* note 8, p. 242.
[12] Trubek, *supra* note 5, p. 14.
[13] Ichihashi (2005), pp. 41–4.
[14] Saidov (1995), p. 122.
[15] Wennerstrom (2007), p. 73. This is opposed to the rule of law that is believed to have appeared in non-written Constitutions or in legal precedents.

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absolutist state power in which the executive branch had unlimited authority. Hence it presupposed strong judicial and legislative branches as necessary conditions for well-balanced power and smooth legal and market reforms.[16] This echoes the concept of Law and Development, which was based on a theory that law is crucial to economic development because it contributed the essential ground for a market system and expressed a notion that certain Western legal concepts, including *Rechtsstaat* or the rule of law, could best facilitate the functioning of the market.[17]

This section argues that, as a result of sophisticated historical circumstances, Uzbekistan's statutory law, the judicial system that has been created to manage this law, and its legal professional consciousness are heavily influenced by Soviet socialist law and the legal systems of other post-Soviet republics, such as Russian, Kazakh law, or even some legal features of the Baltic states. However, associating contemporary Uzbek law as a typical creature of the Soviet socialist legal system does not adequately reveal its true nature. While the 1920–91 socialist era formally dismantled and abolished Islamic (sharia) law, it did not completely erase it. Indeed, some of the deep-rooted Islamic social practices in the form of *Urf* and *Adat*[18] transformed into an indigenous, non-legally binding informal system, and continued to exist in Uzbekistan even beyond the post-Soviet periods.[19] Hence, such informal law has demonstrated an extraordinary ability to regenerate itself, to embrace changes and yet to maintain continuity.

This indigenous or informal legal system came into existence as a creation of social groups and, thus, relied on customary, unwritten norms. Based on social relationships, this traditional, informal law is different from formal statutory law because it is not created and enforced by a central authority, and thus has no adequate means for legal enforceability. While it is a commonly accepted fact that the central authority creates, interprets, and enforces statutory law, utilizing its specific institutions, there are no similar elements in informal law. What makes this informal law so striking is that, even though there is no central institution to create, interpret, and enforce it, it still occupies a significant role in people's social behaviour and relations in Uzbekistan.[20] Such a dualist legal structure also presupposes room for what is called social capital.[21] As an example, Uzbek *mahalla*—a traditional neighbourhood community that evolved informally during various historical periods, after the socialist era, in 1992—was granted a constitutional status.[22] Currently, *mahalla*, with high levels of social capital, perform various tasks ranging from social control over the implementation of public policies and security to welfare and dispute resolution in civil and family matters.[23] Whereas some of its functions are reflected in formal statutes and codes, others rely explicitly on informal rules.[24]

Thus, the present dualist nature of Uzbek law includes the formal structure of statutory civil-law tradition that bears many nuances from the socialist legal system and, simultaneously, unwritten, informal law based on traditions and customs inherited from the secular Islamic culture.[25] Notably, both systems, formal and informal, demonstrate particular

[16] Doklad (2011), p. 5.

[17] Trubek (1972), p. 6.

[18] (Auth) Custom, or social norm.

[19] For example, one bright example in which some sporadic Islamic practices are witnessed include marriage rules and family affairs, whereas fundamental Islamic-law concepts such as sharia, *Fikh*, and dispute-resolution instruments such as *Kazi* (a judge in an Islamic court) no longer exist in Uzbekistan. See Tokhtakhodzhaeva (2008), pp. 9–10.

[20] For more details, see Marboe (2012).

[21] Similarly, see Putnam, Leonardi, & Nanetti (1994).

[22] Constitution of Uzbekistan (1992), Art. 105.

[23] Urinboyev (2011), pp. 44–5.

[24] Ismatov & Alimdjanov (2018), p. 6.

[25] Geiss (2001), pp. 114–25.

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positive signs of adaptability to each other and co-existence. In fact, after the collapse of the Soviet Union and the ensuing cultural boom, normative legal tendency even demonstrated clear signs of the stable transformation of informal law into statutory law.[26] Policy-makers assert that this legal structure contributes to the maintenance of a secular state and social stability in one of the Muslim regions of the former Soviet Union.

In 2016, Uzbekistan experienced a transition of political power. Under the new leadership, the state adopted the 2017–21 Action Strategy Program, which targets five priority development areas.[27] One of the priority areas directly touches upon the rule-of-law reforms, including in judicial and legislative sectors. Another area covers economic reforms. Such a move signals the new authorities' intentions to create a positive political and economic image, and open up the country for very-much-needed foreign investment. In light of such ambitions within Uzbekistan and external expectations, the role of successful legal transplants from foreign jurisdictions and their possible adaptability to modern realities of Uzbekistan has re-emerged.

Simultaneously, several recent constitutional and statutory amendments made under the new leadership have demonstrated that formal and informal legal systems will continue to co-exist harmonically. As an example, parliamentarians have recently strengthened further the statute of *mahalla* by nominating more public functions and power to these institutions. Prioritization of informal institutions is also seen in other legal areas, including social assistance and pension law. In this regard, there is a notion that legal transplantation usually has little sense of the local culture, specifically in the former Soviet-Union republics.[28] Hence there is concern about whether a local pluralist legal structure that often embraces cultural elements can facilitate the current new leadership's far-reaching goals that include legal borrowing. As the law is intricately intertwined with culture and has deep-rooted spiritual ties with local people, there appears a notion that transplanted law must comport with the cultural context in which it is located. The next sections will shed more light on that.

4. Structures and philosophies of foreign legal aid

4.1. The US direct transport of democracy and the rule of law

The first wave of interest in transforming legal culture and institutions in Uzbekistan was initiated in the first half of the 1990s by the US-funded legal-aid programme, which primarily emphasized directly exporting its democracy and rule-of-law values. In 1992, the US, apart from its bilateral treaty with newly independent Uzbekistan, additionally formalized its democracy and market-liberalization assistance to this nation-state by concluding the so-called FREEDOM Support Act.[29] The US actively managed its aid projects in Uzbekistan between 1992 and 2006 via the United States Agency for International Development (hereinafter, USAID), which, in turn, contracted and funded agencies such as Freedom House, the International Research and Education Board (IREX), and the American Bar Association (ABA).[30]

The US-funded portfolio included aid in the areas of elections and political processes, an independent judiciary, clinical legal education, civil society, governance, and free-market reforms.[31] These projects mainly targeted establishing American democratic values via advocacy networks, local human rights groups, and emerging civil society, and, thus,

[26] See Ismatov & Alimdjanov, *supra* note 24, p. 7; Sievers (2002), p. 103.
[27] Strategy.gov (2017).
[28] Nichols (1997), pp. 1236–45.
[29] FREEDOM Support Act (1992), s. 2532–102.
[30] Omelicheva (2015), p. 36.
[31] Finkel, Perez-Linan, & Seligson (2007), p. 406.

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aimed at expanding activities "to implement new laws designed to strengthen public participation."[32] The US's international legal-aid activities also left room for local market players and private agents, such as law firms or, in particular, non-for-profits to play an essential role in spreading the knowledge of the US legal system.[33]

The eventual goal of the USAID legal programme was to promote the status and prestige of the American-law model as "universally applicable standards for true democracy and real justice."[34] Notably, with the imminent collapse of socialist law, it was thought that geographic and cultural limits that have traditionally been used to classify national legal systems into legal families no longer made sense. As the prestige of the American common-law model has increased in the post-Soviet space, including in Uzbekistan in the first years of the formal demise of the socialist law, there appeared, at some time, a widely accepted belief that the US-based elements of democracy and direct transplantation of legal pillars of market economies that seemed familiar to all legal systems would enable a smooth and less harmful transition.[35] This approach coincided with the philosophy of the legal aid of the US, which aimed at imposing the US law and democracy-promotion frame universally.[36] In this regard, one of the leading legal-aid interests of the US in Uzbekistan as well as in the whole post-Soviet space was to promote its democratic values and fragments of the legal system as successful means to replace the grey area that appeared as a result of the demise of socialist laws. Such intentions obviously presupposed that the direct transplantation of laws might be the most optimal method of legal replacement that would be suitable even for the civil-law countries and achievable at a lesser price.

When it comes to actual legal borrowing in the context of the US-led aid programmes in Uzbekistan, the fundamental issue, which could not be seen at the initial stage, but which revealed itself later, touched upon the top-down way in which the US tried to impose advanced laws on the recipient state. Notably, American advisers who often were practical experts and, sometimes, academics of a particular field of US law demonstrated a willingness to pass on their practical and theoretical expertise, usually in the form of donor-backed legal statutes to their colleagues in the recipient state. It is worth mentioning at least three critical points here.

First, while providing legal aid, the US advisers who were experts in their domestic law and its practice shaped their offers not necessarily according to the actual needs of the recipient side, which means that factual local conditions and necessities from the side of the recipients were barely discussed. Second, not all dispatched experts could always know the exact needs of the recipient state, as there was a lack of knowledge among them on the complex legal structure of the recipient state. The US common-law attorneys and scholars who had no experience in researching socialist laws and were oblivious to the strong influence of traditional laws within Uzbekistan's society found it challenging to grasp the sophisticated nature of the legal system in Uzbekistan. Third, the language problem was another barrier that prevented the donor and recipient sides from communicating efficiently without linguistic, cultural, or professional issues. While English remained a communication tool in some Asian countries, in the CA region, the older generation of lawyers and policy-makers never mastered this language. On the other hand, the inability of foreign experts to differentiate specific legal concepts in Russian often produced mixed results in their final translation products.[37] All of this made communication between local

[32] USAID (2019).
[33] Vernon (2009), p. 10.
[34] Omelicheva, *supra* note 30, p. 40.
[35] Ajani (1995), pp. 95–6.
[36] Omelicheva, *supra* note 30, pp. 39–40.
[37] Newton (2003), pp. 172–3.

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experts and legal advisers from the US highly complicated, particularly in the context of the unclear perception of the rule of law, democracy, or individual human rights.

Comparative literature on the direct American export of democracy and laws, whether on an institutional or indirect basis, tends to express deep scepticism about its effectiveness.[38] One critic on direct democracy promotion might touch upon the USAID's mentality in placing a greater emphasis on democracy rather than political stability, notwithstanding the apparent fact of the growing political- and social-destabilization concerns in the CA region.[39] Another matter touches upon difficulties in transplanting advanced laws into the completely unknown hybrid legal system and legal mentality of Uzbekistan. However, some scholars assert that drawing such a conclusion in the case of some post-Soviet republics might be too premature in a broader sense of democratization theories, at least when it comes to the transplantation of democratic values.[40]

The US's universalist framework, not only in the post-Soviet republics, but also elsewhere, "was based on an idealized view that the American legal system worked well, and thus, could and needed to be spread to the rest of the developing world."[41] Some local policy-makers and foreign experts directly involved in the so-called US missions of legal aid abroad initially considered that it would promote a tremendous legal and social transformation in Uzbekistan. In particular, there was a growing expectation between the donor and the recipient of successful outcomes of transplanting the principles of judicial independence, accountability of law-enforcement agencies, individuals' procedural rights, and free, fair, regular, and competitive elections.[42]

Such attitudes, however, underestimated the effect of interactions with local historical and cultural conditionalities. As mentioned above, historically, Uzbekistan, apart from undergoing a religious statehood, was both colonized and formed a part of the socialist camp. Such a unique evolution eventually posed a specific influence in terms of reproducing a local society with a predominantly collectivist mindset and a hybrid legal system that relied on indigenous norms, and shared similarities with the socialist concept of a strong state, or state centrism. In the 1990s, this young nation-state opened up for the US legal aid that promoted a philosophy of individualist concepts of democracy, human rights, and initiatives on the direct transplantation of American laws. Notwithstanding the initial optimism inspired by the 1991 independence that democracy-promotion and legal-transplantation aid would significantly contribute to the transition process, it has produced mixed results at best.[43]

Although similar approaches in democracy assistance to former socialist Eastern European states resulted in positive achievements, the USAID's democracy and legal-transplantation programme in CA, particularly in Uzbekistan, had modest results. In some instances, scholars believe that US-led aid resulted in a regressive impact by "destabilizing regimes and creating fragile, dependent, and underrepresented political opposition."[44] In most cases, the ineffectiveness was often discussed in relation to culture and society. However, blaming the society and culture solely, without emphasizing the foreign donor's methods and approaches, would be both unfair and inadequate. One example to support this claim would be the top-down way of the initial US legal aid in which the donor-backed solutions were often presented to the local officials and legal experts, and did not necessarily consider local and post-socialist specifics.

[38] Lowenthal (1991); Diamond (1992), pp. 25–46.
[39] See also Burnell (1997); Sogge (2002).
[40] Finkel, Perez-Linan, & Seligson, *supra* note 31, p. 407.
[41] Kroncke (2016), p. 53.
[42] USAID (2005).
[43] Omelicheva, *supra* note 30, p. 1.
[44] Bunce & Wolchik (2011), p. 22.

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On the other hand, as qualitative and quantitative studies demonstrate, foreign laws were not always rejected in CA. In some instances, for example, when such laws targeted the narrow economic sector, their acceptance achieved the results that the drafters were initially expecting.[45] As an example, laws in the field of investment, insolvency, or those regulating pension payments were transplanted and rooted in CA legal systems.[46] This partly can support Watson's "practical utility" idea that "it is easier for the lawmaker to borrow a law than to create it."[47] However, there often was a further risk of disfunction, as recipient states were naturally unable to use previously unfamiliar legal principles in legal proceedings, textual interpretations, and litigation. Therefore, areas that involved aid in developing non-for-profits and education demonstrate better results.

For example, in the domain of legal education, in 2000, the American Bar Association, Central and East European Law Initiative (ABA CEELI), under the USAID's umbrella, provided direct guidance and sponsorship for establishing the first Environmental Law Clinic in the University of World Economy and Diplomacy. The activities of the clinic focused on improving the theoretical and practical skills of future lawyers and promoting public legal advocacy in Uzbekistan.[48] Investigation of legal education in Uzbekistan has revealed that, by 2018, clinical legal education in Uzbekistan had challenged traditional legal learning and actively promoted public advocacy among law students.[49] Nevertheless, while American democratic values and ideas of struggling authoritarianism posed an inspiration for some scholars and practitioners, others were left disappointed with the realities of the US legal system as a representation of the "neo-colonial legal imperialism" aimed at the direct export of individual American values.[50]

In 2005, Uzbekistan's government restricted the USAID's democracy, rule of law, and human rights activities by expelling almost all of its contracting parties such as Freedom House, IREX, and many other associated institutions. This move came as a result of the so-called May 2005 Andijan unrest, which had resulted in numerous human casualties. The following Western critics orchestrated by the US and Uzbekistan's refusal to allow foreign investigators into the region had sparked international sanctions and isolation. Emerged tensions with the US deteriorated further after Uzbekistan issued the removal order of US troops from Uzbekistan's Karshi-Khanabad airbase.

From 2005, for more than ten years, most of the US legal-aid projects in the domain of democracy and the rule of law were terminated and publicly criticized in Uzbekistan. Only in 2016, following the transition of presidential power in Uzbekistan, were there signs of rehabilitation and the gradual reactivation of the USAID programme. Currently, the USAID is implementing the Judicial Reform in Uzbekistan Project (JRUP). This project is collaborated with NGOs in the areas of the rule of law and civil society via assisting with legal analysis, legislative drafting, and advising on gender equality.[51] Co-operation in the domain of legal education does not seem very extensive at the moment. In 2016, the Tashkent State University of Law signed a memorandum with Boston College Law School that stipulates the academic writing and law-teaching-skills development of local law lecturers.[52] Also, the JRUP initiative has restored co-operation in the domain of clinical legal education.[53] The most notable achievement, however, is, that by 2019, the USAID had

[45] Nichols, *supra* note 28, p. 1267.
[46] Reference to the experience of Kazakhstan in Newton *supra* note 37, pp. 161–7.
[47] Watson (1985), p. 335.
[48] Thomas (2001), p. 4.
[49] Ismatov (2019), p. 110.
[50] Prado (2018), p. 202.
[51] Tetratech.com (2019).
[52] Ismatov, *supra* note 49, p. 70.
[53] US Hastings Law (2019).

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supported the development of the first gender law in Uzbekistan. This law's further operation in a society with deeply rooted gender stereotypes is still a topic for future discussions.

4.2. The EU and the specific role of Germany in creating solutions to local needs

Compared to that of the US, the EU's approach towards Uzbekistan in the area of legal aid, up until the second half of the 1990s, remained as a "silent-observer" state. The EU's passive engagement with CA legal-aid discourse is explained by this donor's greater preoccupation with Baltic and Eastern European states. Although, since 1991, EU–CA co-operation had been established within the frames of Technical Aid to the Commonwealth of Independent States (TACIS), it targeted only economic support within the context of narrow and vague technical assistance.[54] In 1996, when the EU and Uzbekistan signed the Partnership and Cooperation Agreement, there were established broader and more detailed approaches in co-operation, including in the areas of legislative reforms, democracy, and human rights.[55]

Unlike the US, the EU is an actor composed of multiple Member States and, hence, presents a somewhat decentralized design of legal aid to the CA. Such a framework naturally creates a dichotomy, as some Member States assert that, in the domain of foreign assistance, Western concepts of democracy, human rights, and the rule of law should be given priority. In contrast, others may insist on higher interest in energy and resources areas. Some scholars suggest that the EU's approach towards aiding the CA region is a result of policy orchestrated by one or several states.[56]

Until 2007, notwithstanding the EU's generous investments, its democratization and human rights projects in Uzbekistan remained apathetic and invisible.[57] After the EU reconsidered its strategic aid approaches to the whole CA region in 2007 under Germany's chairmanship and recent amendments in 2019, the domains of *Rechtsstaat*, judicial reforms, democracy, and human rights retained higher priority and funding.[58] In this regard, the present paper will focus on Germany's approaches to Uzbekistan as one of the main EU actors in designing the prevailing philosophy of legal aid.

In general, German involvement in legal aid with formerly socialist states was not a spontaneous move, but started with the collapse of socialist regimes in the Eastern European states, which were its immediate neighbours and potential members for accessing the EU. For example, extensive legal reforms of the constitutional judiciary and civil litigation in Eastern European states such as Hungary, Poland, and Romania aimed at creating legal systems that were identical with or at least similar to those of developed market economies and democracies in Western Europe. In this regard, many aid recipients considered Germany to be a successful example among Western European civil-law states and thus made it their natural donor. Academic debates on the specific division amongst donors representing common-law states, on the one hand, and civil-law states, on the other, also offered insights for recipients as to their preferred choice of the most optimal legal models, philosophies, and contents.[59]

Thus, by the time the German legal-aid programme reached Uzbekistan, Germany already had a well-established legal-assistance infrastructure through its prior relatively rich experience in carrying out legal-aid programmes in the former socialist states of

[54] Urdze (2011), pp. 22–32.
[55] Partnership & Cooperation Agreement (1999).
[56] Omelicheva, *supra* note 30, p. 49.
[57] Hoffmann (2010), p. 94.
[58] Council of the European Union (2007); European Commission (2019).
[59] Kuepper (2011), p. 6.

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Eastern Europe. Moreover, Germany had very rich expertise in transforming socialist legal systems amid the fall of the Berlin Wall and following the unification of West and East Germany. Germany also had well-functioning research institutions, such as *Östrecht*, which focused on legal systems of Eastern Europe and involved academics with comprehensive knowledge about specific recipient states, including relevant languages.[60] However, as many German legal advisers deplored a certain aggressiveness from their US counterparts, they had obviously considered that it would be more reasonable to "wait and see" and later formulate individual approaches in their legal co-operation with Uzbekistan.

Similarly to the US, Germany involved its practitioners of law and academics specializing in particular fields of German law in its various legal-aid projects. However, unlike the US, Germany, as a donor, started referring to the specific needs and wishes of the recipient country. Furthermore, it started implementing complex methodological and scientific standards in its legal-aid projects vis-à-vis all CA states. In particular, the German side would offer legal advice on matters that were of theoretical and practical interest to the recipient state. It was considered that aid would work in the following mode: "whenever the recipient state was interested in any legal model that was functioning well in Germany, this donor state would dispatch a German advisor who had specific knowledge on it."[61] Alongside those transplantation efforts of statutes, the donor side had stipulated some room for considering the local needs of the recipient side. Such an approach has been integrated into the EU's enlargement processes in Europe for the last 50 years and created a sort of "ingredients" for democratic stability, the rule of law, and economic prosperity.[62]

Such a genuine "know-how" philosophy that successfully underpinned integration in Eastern Europe made Germany's and later, overall, the EU's legal aid different from the US's foreign legal aid. It was then applied in the CA republics with an encouragement "to make use of it."[63] However, while German legal experts usually had excellent expertise in German or former socialist laws, they had limited or no knowledge of the Uzbek legal system, which involved some traditional characteristics. Consequently, they experienced multiple challenges in offering a comprehensive analysis of the legal fields that required reforms and in elaborating proper aims, instruments, and coherence of the overall legal structure. During this initial stage of aid, donor agencies faced difficulties in adequately adapting their advice and counselling to the actual needs and legal deficiencies of the recipient state.

Kuepper asserts that "cooperation with sustainable results requires the analysis of the recipient's needs as defined primarily by the recipient state itself and to develop solutions tailored at the recipient's special situation."[64] By referring to the present experience of the German legal-aid programme in Uzbekistan, one can observe the recent emergence of such specific general trends. In particular, German donor agencies, such as GIZ and IRZ, share the philosophy that is now prevalent among other donor states—namely that international legal-aid programmes aimed at the mere transplantation of advanced laws into the recipient state do not always result in successful outcomes.

In 2012, GIZ and JICA[65] formed a joint working group that initiated a draft project on Administrative Procedures Law (APL). Followed by the state programme, which prioritized reforms in the domain of administrative procedures and process, this group first initiated research on international practice and analysis of the previous draft APL that was rejected by the Upper Chamber of the Parliament of Uzbekistan in 2009. In 2013, the authorities of

[60] Institut für Ostrecht München (2020).
[61] Kuepper, *supra* note 59, p. 6.
[62] Patten (2004).
[63] *Ibid*.
[64] Kuepper, *supra* note 59, p. 6.
[65] The next section on Japan provides more details on JICA.

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Uzbekistan created a roadmap with a single preferred statute that would regulate both administrative procedures and process. Such a decision was later changed in favour of adopting two separate statutes.[66] The 2015 renewed working group undertook their activities by considering a recipient's preferences carefully and resumed their work according to such needs. These efforts led further to the establishment of the administrative courts in 2017 in addition to the creation and successful adoption of the APL and the Administrative Litigation Law in January 2018.[67]

Co-operation between Germany (EU) and Uzbekistan in the field of legal education is mainly conducted via offering scholarships and research grants for local law students and researchers. One example is the European Community Action Scheme for the Mobility of University Students (ERASMUS) programme, which offers opportunities for academic exchange. Apart from that, select German universities and research institutions, such as the German University of Administrative Science (Speyer) or German Research Institution for Public Administration, have concluded co-operation agreements with local law universities.[68] Such agreements do not stipulate a specific enrolment for students from Uzbekistan, but rather offer research and short-term education for Uzbekistan's academics. In some cases, students from Uzbekistan can secure admission to graduate programmes in Germany by applying to German foundations, such as the German Academic Exchange Service (DAAD).

German assistance programmes also target regional goals.[69] In other words, by providing legal support to Uzbekistan and promoting stable legal development, the EU legal-assistance programme aims at the harmonization of the political and legal situation in CA and Afghanistan.[70] Hence, the involvement of experts and advisers from Germany or other EU states who know their law well leads to multiple preferences for obvious German solutions in projects sponsored by Germany (EU) or conducted by the participation of German (EU) experts. Such export of German (EU) law into recipient countries, including Uzbekistan, is considered a politically desirable goal for Germany.[71]

4.3. *Japanese legal-technical assistance and co-operation based on partnership and self-help efforts*

Japan is a relatively recent donor–player in the international legal-aid market. In 1992, Japan adopted the Official Development Assistance Charter (hereinafter, ODA) as the primary roadmap for structuring its multilayered and multi-sectoral foreign aid. Before the adoption of the ODA Charter, Japanese international development aid mainly pursued a narrow national economic interest and focused on infrastructure-development projects.[72] Some scholars also refer to the pre-ODA Japanese foreign aid as the export of the US geostrategic and ideologically based objectives during the Cold-War era.[73] The ODA also makes a separate additional notion that Japanese foreign aid in Asia is delivered, *inter alia*, in parallel with postwar compensation efforts.[74]

After the end of the Cold War and the following post-socialist transition in Asia, Japan established the ODA's philosophy in the way in which its foreign aid would "support the self-help efforts of developing countries ... through fair distribution of resources, good

[66] Pudelka (2015), pp. 66–7.
[67] Ministry of Justice of Japan (2018).
[68] Ismatov, *supra* note 49, p. 69.
[69] Council of the European Union, *supra* note 58.
[70] European Commission, *supra* note 58, p. 1.
[71] Kuepper, *supra* note 59, p. 52.
[72] Kuong (2018), pp. 271–4.
[73] Morrison (2005), p. 25.
[74] MOFA (2014), p. 2.

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governance … [and] developing a wide range of human resources and socioeconomic infrastructure."[75] Under the slogan of "marketization assistance," a knowledge-based element integrated into the ODA, some Japanese experts assisted select Association of Southeast Asian Nations (hereinafter, ASEAN) jurisdictions in their transition reforms by offering fragmentary advisory services.[76] Such activities, although not yet considered as purely legal-assistance projects, laid the foundation for the promotion of Japanese legal aid in ASEAN and, later, in Eastern and Central Asia.

In general, the Japanese ODA demonstrates several main periods—initially, when Japan, as a donor state, had no clear objectives and measurable outcomes, and additionally had a blurred attitude towards the rule of law and democratization.[77] Another period was associated with the revision of the ODA in 2003 that paved the way for a more focus-oriented and well-elaborated philosophy of legal-technical assistance.[78] Notably, in between, sophisticated institutional deliberations took place within Japan, namely whether technical assistance should involve only civil-commercial fields and legal education or should not have a limited scope. Another issue touched upon the controversial incorporation of the Western ideas of the rule of law, human rights, and democracy within legal-technical assistance. As traditionally strong Japanese bureaucracy was reluctant to enter or follow the so-called Western-democracy club and promote the areas mentioned above, it took some time to integrate such elements into the ODA.[79] The most recent 2015 revisions renamed the ODA as the Development Cooperation Charter, thus demonstrating Japan's switch in its aid philosophy from mere assistance to co-operation. Another feature is the inclusion of the "national interest" clause into the ODA. Although the pre-2015 ODA involved rhetoric of common global goals, the present language leaves broader room for Japan to interpret which of these goals and values fit better Japanese national interests in its equal contractual relationship with recipient states.[80] On the other hand, such rhetoric involving a term "national" is highly sensitive and, therefore, may pave the way for individual critical interpretations from other jurisdictions.

The pioneer Japanese legal-technical-assistance programme as an official part of the ODA was initiated in the early 1990s by responding to Vietnam's request for advise and technical support in amending the Civil Code. In particular, Morishima Akio, a professor at the Graduate School of International Development of Nagoya University, by organizing several individual missions to Vietnam, consulted and assisted the Vietnamese government with his technical comments on the draft of the 1995 Civil Code.[81] Later, similar legal-assistance programmes were launched in Cambodia, Laos, and Mongolia at these recipients' requests.[82] Hence, one may notice that the first wave of Japanese official aid targeted civil- and commercial-law areas in economically essential regions for Japan, including in Indonesia, Myanmar, and also China. After 2000, Japan launched its legal-technical-assistance programme in Uzbekistan, intending to provide the necessary information and resource training in the process of transition from socialism to a market-oriented economy.

Kuong asserts that Japanese engagement in legal-aid programmes in Asia appeared as a result of several logical factors:

[75] ODA Charter (1992 with 2003 and 2015 Revisions).

[76] See Ishikawa & Hara (1999).

[77] Taylor, *supra* note 8, p. 243.

[78] Kuong, *supra* note 72, p. 276. The author also mentions the 2015 revisions and renaming of the ODA Charter as the Development Cooperation Charter, which reflects the rhetoric shift from assistance to co-operation.

[79] *Ibid.*, pp. 275–6.

[80] *Ibid.*, p. 281.

[81] Morishima (2000), pp. 16–21.

[82] Aikyo (2005), p. 77.

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> First, requests for such assistance came from high-level officials of the potential recipient countries, specifically asking for Japan's assistance in the field of legislative drafting. Second, in line with the adoption of the 1992 ODA Charter, leading jurists in Japan started to lobby strongly for Japan's commitment to legal assistance abroad. Third, eager to promote the East Asian development model and being bound by the past habit of linking ODA strictly to economic development and national interests, the Japanese official aid community saw another way to offer knowledge-based support for the development of an Asian country in transition.[83]

Presently, Japanese legal-aid concepts go somewhat beyond the areas of civil and commercial laws. The ODA targets international assistance in the domains of peaceful global free-market reforms, liberty, democracy, and good governance.[84] Specific pillars of this ODA focus on the areas of public accountability, human rights, and the rule of law. The concept of good governance that had been stated in the 1992 Charter were further qualified in 2003 and 2015 by, *inter alia*, initiating legal-assistance/co-operation programmes for the development of recipient states.

Multiple Japanese public ministries and agencies obtain funding from the ODA budget speculated for legal and technical assistance. The Japanese International Cooperation Agency (hereinafter, JICA) is the central international co-operation agency under the umbrella of the Japanese Foreign Ministry that formally undertakes a part in most of the technical-legal co-operation projects. There is also full or sporadic participation from other players, including the Ministry of Justice of Japan—mainly its International Cooperation Department (hereinafter, ICD), the Japanese Bar Association, and select Japanese universities, such as the Nagoya University Centre for Asian Legal Exchange (hereinafter, CALE) and the Graduate School of Law, which take a leading role in specific activities related to international legal assistance that was recently transformed into co-operation.[85]

Similar to those of other transition states in Asia, the initial Japanese legal-technical-assistance programme in Uzbekistan focused on civil- and commercial-law areas, and legal education. In particular, the civil-law deficit remained a challenge in most Asian states that adopted the Soviet legal model, which allowed only state-run enterprises.[86] In such states, most of the legal notions related to private or corporate entities were non-existent and, thus, alien. For example, soon after Uzbekistan adopted the Law on Bankruptcy in 1994, practitioners found out that the law fell short of responding to the needs of the emerging marketization and had an apparent failure in administering legal relations between private parties.[87] In order to address the issue, JICA, followed by assistance from the ICD, began its legal-assistance project in Uzbekistan. Offering Japanese expertise in this area started with setting up a consultation group composed of Japanese and local jurists. Such a format, which included active discussions and opinion exchange on proposed legal amendments, presupposed an equal-partnership approach and a rejection of the one-way transplantation of advanced Japanese laws.[88] Notably, such an approach to technical-legal assistance is visible in the rest of its programmes across Asia.[89] Such an approach came as a relative novelty within the legal-aid market in Uzbekistan and sparked broad governmental interest.

[83] Kuong, *supra* note 72, p. 277.
[84] MOFA (1998).
[85] Nichibenren (2017); Center for Asian Legal Exchange (2020).
[86] Raff (2015), p. 26.
[87] Ministry of Justice of Japan, *supra* note 67.
[88] *Ibid*.
[89] Kagawa & Kaneko (2007), pp. 92–3.

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As interactions between local and Japanese experts went on, it became evident that harmonized implementation of the Law on Bankruptcy would further necessitate statutory interpretation in the form of official commentary. Therefore, as its next logical step, JICA assisted the expert group in the organization of regular discussion rounds between scholars and practitioners from the ICD and local specialists from the Supreme Economic Court of Uzbekistan (hereinafter, SEC). While Japanese specialists consulted local colleagues on specific matters of the proposed commentary, the decision-making authority, or merely what should be incorporated and what should not, was left solely to the part of the recipient side—the SEC of Uzbekistan. Thus, the Japanese side was involved in the actual process of drafting the law and commentary by extending mainly advisory-based assistance. Such an aid framework relied on the philosophy of the so-called self-help-efforts approach. According to that, the recipient, acting as a partner in legal-technical co-operation, plays the primary role in deciding to what extent and how foreign law elements should be integrated into the legal structure. The whole process of drafting the commentary took about three years and it was finally adopted in 2003.[90]

Likewise, JICA's legal-technical-assistance/co-operation projects also promoted the conceptualization and amendment of the Civil Code and enactment of a Commercial Code of Uzbekistan in 2002. Support for legal and judicial development additionally included a Commentary on Law on Mortgage, establishing legal databases, legal translations, and the development of a practical guide on administrative procedures for administrative officials and entrepreneurs. The mentioned projects took several years of round-table collaborative discussion before the advisers from Japan were relatively satisfied that their local counterpart had adequately conceptualized the drafting specifics and legal provisions that the codes and commentary should contain. Later, the ICD's assistance was terminated for a certain period until it resumed with the completion of the APL following the transfer of political power in Uzbekistan.[91]

Since 2000, within the context of legal assistance for Uzbekistan, Nagoya University has started accepting its first students from Uzbekistan into the graduate comparative-law programmes conducted in English. These programmes were designed in such a way as to enable students to develop flexible perspectives that would allow them to understand and compare diverse societies and law. Select students secure their enrolment by obtaining funding from the Japanese Ministry of Education, Culture, Sports, Science and Technology (MEXT) or a Japanese Grant Aid for Human Resources Development (JDS). Private actors also offer educational grants.

Also, in 2005, Nagoya University launched the Research and Education Center for Japanese Law (hereinafter, CJL) at Tashkent State University of Law. It is a unique programme aimed at training undergraduate-level students to obtain knowledge of Japanese law in the Japanese language. Upon graduating with a bachelor's degree, the best students enter graduate-level law programmes in the Japanese language at Nagoya University and other Japanese universities. The primary objective of the CJL is to prepare real experts in Japanese law who fully understand Japanese society, culture, and language. Such an approach includes a long-term plan to build a cohort of young specialists fluent in Japanese and able to use Japanese legal material. Presently, Nagoya University is the only entity in Japan to conduct these activities.[92]

Hence, the primary intention of the legal-education programme is not to export Japanese law and theory to Uzbekistan as compared to traditional Western legal-transplantation concepts, but to develop skills in students and practitioners from Uzbekistan to understand its own law from a comparative perspective with Japanese

[90] JICA (2008).

[91] See previous section on German involvement with the same project.

[92] Ismatov, *supra* note 49, p. 69.

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law. In other words, it is not expected that graduates will automatically apply Japanese law into practice in Uzbekistan. The primary expectation is to inform students about the Japanese way of developing its legal system and provide them with skills to adjust foreign laws or reform their own laws in light of the local necessities of their own culture and society.

The above-mentioned Japanese programmes, which integrate culturalist and cosmopolitan approaches, have been demonstrating a certain level of viability in Uzbekistan. Both attempts to develop from scratch the essential concepts in the sphere of private law and ongoing legal-education programmes that have been conducted for several decades have so far resulted in a certain level of stability and mutual understanding between the parties. Although it is still hard to assert that a flexible approach with a cultural background is key to the assistance or co-operation goals, nevertheless, in some fields, it appears to be more suitable than others.

Notwithstanding the fact of similar traces between legal aid of the US, Germany, and Japan, for instance, in such areas as the rule-of-law and democracy promotion, there is still a considerable difference regarding the philosophical aspects of legal aid. The Japanese legal-technical assistance, specifically that which emerged after 2003, demonstrates an independent and individual legal-assistance version that was, in 2015, redefined as co-operation, although with specific nationalist shifts. One of the distinguishing characteristics of Japanese legal-technical assistance/co-operation in Asia, including in Uzbekistan, is its strong emphasis on the recipient's autonomy in selecting and requesting the form of assistance. Similarly, the specific clause on Japan's assisting in self-help efforts of the recipient party reveals the nature of the aid, as well as its philosophy that is filled with different contents.[93] Inaba mentions that the modern legal-technical-assistance philosophy in which Japan places a high value on the freedom of the recipient state to fashion its national legal identity autonomously echoes a similar experience that Japan had to undergo during its Meiji legal modernization when the country was exposed to foreign legal systems but implemented a development strategy out of its own culture, societal factors, and national characteristics.[94]

Hence, the Japanese legal and technical assistance/co-operation model, which is premised on partnership and points to the cultural dimension, rather than top-down transplantation, has its historical explanation rooted back in the post-Meiji development of Japan's legal system when it borrowed laws from several Western donors. Japan adopted such Western legal concepts by adjusting them to its own specific culture and society. This historical background is the partial explanation for the fact of respect for the recipient's autonomy or partnership in legal-technical assistance and co-operation. Maintaining good political ties with Asian neighbours and non-interference with domestic affairs is another unique feature of Japan's dialogue-based legal assistance, which also has some historical roots related to the fears of being accused of imperialist ambitions. Therefore, Japan's trajectory of legal-technical co-operation varies and it supported the self-help principle in its promotion of democracy and the rule of law, echoing its own experience in incorporating foreign law and even elaborating on the peculiar concept of the rule of law.

There is also a certain level of debate about the economic and non-economic interests of legal aid from Japan. For example, the first wave of Japanese aid programmes had revealed Japan's particular intention to offer its assistance in select Asian states, which could be viewed as additional markets. Such a trajectory questioned Japan's true intentions and ambitions towards promoting the rule of law. While the standard American rule-of-law philosophy claims that highly developed legal systems are indispensable elements in economic growth, Japan's scholars may question such an assertion by pointing

[93] ODA Charter, *supra* note 75.
[94] Inaba (2008), p. 6.

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to their state's somewhat different developmental scenario. Perhaps existing Japanese practices of legal assistance/co-operation vis-à-vis Uzbekistan may demonstrate that co-operation might be productive if a donor adopts an open-minded approach that leaves room for the recipient's cultural specifics, especially so since there are no historical memories and no apparent economic benefits for Japan as compared to its past and present role in Southeast Asia.[95]

5. Conclusion

Whereas all aid programmes might technically differ, there is a certain degree of similarity among the US and partly German approaches that presupposes a direct introduction of advanced concepts to the legal system of Uzbekistan or offering purely donor-designed solutions to the local legal challenges. The programmes initiated by these donors, especially the initial ones, had widely embraced universalist ideas and rarely integrated open-minded, comparativist, and cosmopolitan approaches. Partly, such methods had reasonable justifications. When donors had initially referred to the actual condition of Uzbekistan's legal system, they came up with structural dilemmas that included a complete absence of specific legal concepts and legal nihilism caused by a lack of public trust in the performance of statutory laws. This condition fuelled the already growing self-evaluation of the US and German or West European law as a successful recipe for initial legal development in the newly independent former Soviet republics, including Uzbekistan. Therefore, the first wave of donor-driven activities was guided by a universalist rather than culturalist agenda.

Simultaneously, positioning the US and German philosophies of legal aid in the same typological group is erroneous. Although, initially, similar approaches prevailed in Germany, this donor state analyzed some failures of the US-influenced legal-export tendencies, including those that had occurred in the so-called crisis of the Law and Development period, and thus slightly improved its engagement according to the local needs. Namely, the German programme, while widely propagating German laws, still paid specific attention to the local needs and tried to shape their legal-aid projects in a sophisticated way—namely one of considering the recipient's preferences, but offering German solutions.[96] This demonstrates that German and subsequently other EU legal-aid project managers, following their revision of previous outcomes, concluded that the universalist model does not always result in desirable changes and that local interests, including local legal and social circumstances, also matter. Another remarkable feature of the German projects within the EU structure is that they implied a principle of keeping a certain distance between practitioners from one side and academics from another, which left room for critical feedback from the latter group.

However, ideas, values, and practices promoted by the US and, partly, EU legal-aid projects still lack adequate cultural compatibility and credibility with Uzbekistan's government and society whose culturally conscious understanding of state and laws have been long governing the state. In one respect, the Soviet system conformed with Uzbekistan's informal law and culture, which predominantly place a greater emphasis on community and pre-existing relationships. Soviet law had analogical elements. In contrast, in the highly individualist US or EU systems mentioned, values play a miserable role, as they make commercial transactions between two systems troublesome.[97] Hence, Western donors are more interested in promoting their legal solutions to transition states like

[95] Shimomura & Nakagawa (1999), p. 64.
[96] See Kuepper, *supra* note 59.
[97] For example, refer to Landa (1994).

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Uzbekistan, whose legal systems contain elements that potentially may result in complex disputes.

Japanese legal-technical assistance/co-operation is fundamentally different. Although it sporadically shares the rule-of-law principle, it puts a specific emphasis on the mutual understanding of society, distinctive culture, and history. Regarding human rights and democracy, there is an apparent discrepancy between donor states' conceptualization and attitudes vis-à-vis recipient states. While the US and European approaches demonstrate some aggressiveness towards the unconditional implementation of universal values, some consider the Japanese attitude to be soft and flexible. As an example, some scholars say that Japanese legal-technical assistance might be convenient to engage with legal reforms in authoritarian states such as, for example, Myanmar, as the donor state does not have genuine, overarching concerns with human rights norms.[98] In this regard, scholars point to Japan's low international profile on democracy and human rights assistance.[99]

Some German practitioners also assert that, while some Japanese legal-assistance projects imitate German concepts, they do not always result in a positive tangible outcome. As an example, Japan backed the APL containing clear traces of German statutes, yet, even after several years of promulgation, this statute still does not appear in the judicial practice of local courts.[100] Though such an assertion may have some reasonable grounds, the actual problem includes not only the donor's responsibility. Still, it is also a direct cause of structural maladministration of local judicial institutions.

One may notice that different donor states base their legal-aid projects, including within human rights, democracy, and the rule-of-law pillars in Uzbekistan, on different philosophies and measures of gravity. Various donors design and shape their legal aid according to their own national goals and experience. In such conditions, the official position of Uzbekistan's government sometimes demonstrates unclear tendencies and inconsistency, as it often conflicts with the conceptualizations of legal aid and its objectives. The practice, while not being fully appraised, shows that legal transplants do not necessarily serve as an inspiration for legal reforms. Furthermore, the legal context, especially a hybrid one, as in the case of Uzbekistan, really matters, as it may or may not endorse a desirable change following the way that some donors suggest. In other words, aiding within the context of the hybrid legal structure is a highly delicate matter with no unique formula for foreign donors. One positive observation about Uzbekistan in this regard is that this transition state demonstrates clear signs of partial receptiveness towards specific aid projects that integrate culturalist and cosmopolitan approaches.

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[98] See Taylor, *supra* note 8.

[99] See Ichihara (2017).

[100] This information is based on Author's interview with the head of the GIZ Mission in Tashkent, Mr Jeorg Pudelka, dated 15 January 2020.

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