

Rule of Law in China: Progress in Paper or in Reality?

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Abstract

Since 1991, China has officially published 61 white papers on human rights situation to express its achieved progress and potential commitment to Chinese society and the international community. Either on general undertakings or particular issues of human rights, such papers aim to defend its persistent policy and position against external bodies' criticisms on its human rights observance. This article will examine the possible distinct between China's human rights promise in paper and its relevant situation in reality, mainly based on the rule-of-law sample of February 2008. It will be suggested that even if China has fully implemented its human rights obligations, the limited understanding of them as showed in the white papers may largely hinder its human rights progress at a substantive level. The sharp contrast between China's promise and practice still exist as usual on its long march towards the rule of law.

Promise or Progress in White Papers

To better understand the major difference between China's promise and practice concerned, we need to know some basic [1] information about the official promise or potential progress on human rights in its white papers.

Common Contents

As the similarity of all white papers, China increasingly attaches importance to human rights causes with the gradual abolition of ideological labels. In contents, the human rights concept formally enshrined in the papers has confirmed China's official position on human rights issues to promote the rule of law at the national level [2]. This requires its governments or the Chinese Communist Party (CCP) respecting and protecting human rights [3]. More vitally, China should properly implement the principle of human rights in order to fully put its 'lifeless paper promises' into practice [4].

In general, white papers mainly focus on economic, social and cultural rights, international exchanges and cooperation, as well as judicial guarantee for human rights, particularly on China's recent achievements in promoting the rule of law. Among them, the 2008 sample was introduced as 'an important milestone' in building a government under the rule of law in China to better promote human rights and justice. It also emphasized that China had formulated its laws to safeguard groups of persons' human rights, and improved law enforcement and administration of justice to guarantee citizens' rights by a series of reform measures. This constitutes primary aspects that the Government pays attention to on its road towards the rule of law and human rights. But different from previous white papers, remained problems in human rights practice were mentioned in the sample. As in any of others, 'all-round progress in China's human rights undertakings' [5] expressly expounded upon its legislation in paper cannot deny serious violations of human rights in some aspects. It is the poor situation that resulted in many external bodies' censure on 'China's long march towards rule of law' [6] and even 'whitewash' [7] of human rights breaches in the papers.

The common contents in such papers have indicated the degree to which China understands international human rights law. As generally accepted, it is each State's international duty to promote and protect human rights at the national or international level according to the purposes or principles expressed in the Charter of the United Nations (UN Charter). Apart from that common sense, China frequently stressed to observe 'international human rights instruments in light of the country's actual conditions' [8]. Both the UN Charter and other international human rights instruments tend to constitute the general legal sources for the relevant international obligations that China thinks what it should take by the current international human rights law.

Concerning economic, social and cultural rights, a balance between them and civil and political rights is needed in each country's developing road towards the rule of law and human rights. China has signed or ratified a series of major international treaties on the above two categories of human rights, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together with inclusion of both types of rights in the common contents, China clearly maintains that importance should be given to both of civil and political rights, and economic, social and cultural rights in good balance. Although the current balance of them in China is not necessarily good enough, China has taken a positive attitude towards the importance of a balanced development for both categories of human rights. Given this, Chinese governmental white papers cannot be totally deemed as the use of whitewash [9] strategies, even if China tried to explain away its poor situation in the one type of rights through stressing the other.

Regarding international exchanges or cooperation, China advocates for removing political influences on international human rights issues and rejecting different standards used to confront other countries in the name of protecting human rights. This aims to increase each country's capacity of promoting its human rights towards the rule of law and to improve the environment for running the technical cooperation projects of human rights. In fact, China has strongly opposed the phenomena of 'double standards' for decades, e.g., a country using strict standards to criticize other countries' human

rights situation and lenient ones to agitate for its own human rights progress. This opposition first resulted from the fact that some States 'often use human rights as an excuse for strong arm politics and to interfere in China's domestic affairs' [10]. China argued against their excuse to maintain depoliticizing human rights issues to the international community through international human rights mechanisms.

Moreover, opposing 'double standards' served as a tool for reducing confrontation with western countries to promote diverse forms of international human rights cooperation, even if such standards may misunderstand relevant international ones. For example, the USA censured China's human rights situation in 2004, an election year, when Bush tried to solve the USA's trade deficit with China under domestic pressure then. It was obviously different from the situation of 2002 or 2003 when the USA needed China's help and support on various bilateral or multilateral issues. Differently, European countries 'generally have favoured constructive dialogues with China', [11] though some European countries occasionally opposed China for their own country's interests before the United Nations. Britain condemned China's human rights abuses in the last year, which was regarded as similar phenomena for political or other purposes in the name of human rights by the Chinese official media. China argued against American and certain European countries' oscillation position based on 'double standards', also because this cannot promote substantive progress on handling any international matters, but hinder cooperation on human rights projects. Under the standards, any critical resolutions tabled by western countries against China undoubtedly contain subjective or biased assessments of its human rights matters [12].

Changing Promise

Before 2008, governmental white papers only promised protection on China's human rights in a positive or principled way, without mentioning human rights abuses in the negative aspect. But since then, all of such papers have included human rights breaches to be prevented or reduced in practice as an important part of them in contents. A combination of positive and negative aspects can help strengthen its human rights promise through counter measures to better protect them from violation.

Diverse perspectives jointly gave an account of several major human rights problems that influence the rule of law in China to a large degree. For instance, the current legal framework with Chinese characteristics calls for a series of improvements to be partly or totally made, in an attempt to mend existing flaws in the Chinese net to prevent or reduce human rights breaches in any form. Compared with the situation at the legislative level, the actual implementation of human rights laws and regulations has been encountered with more difficulties as the weakest link of defending human rights and justice practice in China. As clearly pointed out in such papers, the relevant laws failed to be properly observed or effectively enforced under the influence of local and departmental protectionism or with other obstacles. Some governmental functionaries are found to take bribes and bend the law, abusing "their authority to override the law," or substituting their words for the law, and not all of such human rights violators can be "brought to justice" in many regions. There is a need for China to change its poor human rights situation for the better enforcement of the law. Apart from enhancing the rule-of-law concept among the public, the promise shifted from principles to measures is most necessary, particularly that essential for improving the flawed

human rights system. The needed reform measures are expected to help make the current Chinese system workable, effective and efficient in practice.

Another major change on human rights promise has been demonstrated from the State rhetoric in white papers. Different from that in early ones, China emphasized the need to "build a Government under the rule of law" by diverse means including learning from foreign legal systems in 2008, rather than defending socialist unique systems against foreign ones. Meanwhile, China stressed its differences from other countries to better develop the "legislation and legal systems with Chinese characteristics" based on its economic, political, cultural and social requirements [13]. This officially allowed for China to learn much from overseas experience in legislation for the protection of human rights in the first white paper [14]. For instance, developments in consulting foreign experience in legislation contributed to many new charges as prescribed in its criminal laws. They mainly include the crimes of financially aiding terrorist activities, money laundering, manipulating trading prices of futures and securities, and impairing credit card administration. Introducing foreign experience to China has constituted an essential part of Chinese road towards the rule of law. Even with political campaigns in recent years, the authorities have continued combining foreign and national essences to improve the justice system in practice.

Progress and Problems in the Reality

Potential progress: in paper or in reality?

The 2008 rule-of-law white paper, China's Efforts and Achievements in Promoting the Rule of Law, was published by the State Council Information Office as the first official one on this issue. It reviewed China's achievements on the road to the rule of law in recent decades and expounded the official position in a comprehensive way. With essential points inside the paper, its publication was expected to contribute to its rule of law, human rights progress and dialogues with the international community.

The 2008 paper allows worldwide people to see human rights progress on China's rule of law. Major achievements were stated as establishing the rule-of-law 'as a fundamental principle', the 'Constitution-centered socialist legal system with Chinese characteristics' in shape, human rights 'under reliable legal protection', improving the CPC's 'governance capability', the 'environment for the rule of law', administration 'by law and fair administration of justice' and 'supervision over the use of power' [15]. The primary features are as follows: First, China enhances transparency and public participation in law-making processes by diverse means, e.g., hearing public opinions before authorities proposing legal bills, or publishing the bills of laws, regulations and rules in the mass media. Second, it has established a complete set of legal systems based on the current Constitution, by means of enacting or improving a number of laws and regulations to further protect human rights in China. Third, the popularization of legal knowledge has been combined with the CCP's governance according to law, in order to help civil servants and the public develop the better understanding of the rule-of-law concept and consciously act by law. Fourth, democratic centralism is increasingly practiced with more regulations on the supervision over law enforcement so as to promote open management of legal affairs and soliciting public opinions on policy decisions in legislation or enforcement.

The paper also allows people to see China's transition towards a sound and modern judicial system under the rule of law. A series of judicial reforms has been strengthened in an attempt to optimize justice institutions' structure or functions and safeguard social justice. For instance, new progress on the systems of public trial, collegiate panels, assessors, defense, agent ad litem, challenge, mediation, judicial relief and death penalty review has been made to improve the justice system in China. The difficulties of filing lawsuits and enforcing court judgments as rights reliefs are partially relieved or removed in practice by strengthening judicial relief and reforming legal aid. The efficiency of judicial work is also raised in many aspects through further reform measures, e.g., reforming the personnel's management system or working funds' availability. Together with tightening necessary restraint and supervision of main justice institutions' work, some of prominent problems on their abuse of judicial powers are well solved to further promote increasing judicial fairness in China's justice practice. All of above-mentioned reform measures send a positive signal for its new breakthroughs in advancing the rule of law at the national and even international levels, essential to realizing all human rights and fundamental freedoms.

Hidden problems in paper and in reality

Behind the 2008 white paper, there are still many hidden problems about misunderstandings of human rights between China and the international community. Although no State can perfectly meet all of international human rights standards to achieve the ideal in reality, the paper showing China's realization of human rights in a progressive process needs to be improved, at least in the following primary aspects:

Concerning the understanding of "double standards" in the USA's self-evaluation and criticisms against other countries, the potential mistake of its political purposes in human rights dialogues cannot justify the validity of any poor human rights records. It is also true that the various human rights views of diverse countries including China and the USA largely derive from 'the political, economic and cultural differences of each country, as China has consistently called for [16]. The diversity of influential factors cannot naturally justify the legality or validity of any countries' human rights problems in the context of international human rights law, either. Given that mutual censure and confrontation on human rights issues often ignores the above differences, it is important for China and the USA as top two largest economies to promote the relevant international cooperation between them and with others. Both of them really need to increase more mutual understanding of and better respect for the variance in diverse aspects, and enhance beneficial international human rights cooperation in any forms. The fact that one country publishes the other's human rights records, as China and the USA have regularly done, does not necessarily constitute the phenomenon of "double standards". Only if its criticisms against the other are based on international human rights standards, such offensive publications and criticisms cannot lead to interference with relevant State's sovereign under the UN Charter [17]. Thus, China's misunderstandings on this point needs to be corrected, both in paper and in reality.

Regarding the strong contradiction between practical enforcement and reform measures, official statements often ignore the distinction between them and even take a range of reform proposals in paper as implementation effects in reality under rule of law. For instance, they simply regard "strengthening...legislation work" as the sufficient condition for improving "the quality of legislation" to sooner form "a more comprehensive socialist legal system with Chinese

characteristics" in the 2008 paper. Similarly, it states that "strengthening the implementation of the Constitution and the law" sufficiently results in safeguarding people's "legitimate rights and interests and social justice", or "the uniformity, dignity and authority of the socialist legal system". Without considering potential difficulties and obstacles in practice, the inference in such white papers is undoubtedly not logic or reliable at all. In order to mend the flaws, there is an urgent need to sharply distinct the practical enforcement from the relevant reform measures, together with specifying the details of actual effects on the implementation of new reforms in later white papers concerned.

Actually, the persistent tensions between human rights and power abuses still remain at the core of ongoing human rights reforms. This would further lead general statements on the actual implementation in paper to largely deviate from the poor implementation in reality. For example, administrative detention technically against Chinese law and human rights continues to be frequently used in practice. After abolition of the re-education through labour, police officers retain the power to detain those commercial sex workers for up to two years when they have to do hard labour without judicial oversight over or court judgements on their labour. This strict system is called that of "Custody and Education" in China's justice system. Also, many of other problems are still present in its justice practice, such as corruption or privileged classes. Given that its unsteady and imbalanced development in its long march towards the rule of law, constant efforts are needed to make all of human rights progress contribute to modernizing government administration under the rule-of-law concept. Hence, more human rights abuses should be illustrated in white papers to keep a good balance of progress and problems on human rights issues in order to faithfully reflect the comprehensive situation of its human rights under the rule of law.

Limited Significance of White Papers

Even so, the rule of law "signifies that a political civilization has developed to a certain historic stage," as the 2008 white paper officially stated. In this sense, the white paper about China's rule of law means the level of its political and legal civilization to a certain degree. Thus, publishing this white paper would be of great significance to China's progress in many aspects.

One of major aspect is about the special year when to publish the white paper on the rule of law. The year of 2008 has seen the 30th Anniversary of China's reform and opening up, the 20th Anniversary of China's signing of the ICCPR, and the 2nd Anniversary of its election as a member of the UN Human Rights Council. Also, it is well known that the 2008 Olympic Games was held in Beijing, which will attract more attention from the international community on Chinese issues including human rights breaches and slow progress on the rule of law. Hence, the publication of this white paper in 2008 is of special significance in reviewing the development of, and opening up prospects for, China's road towards rule of law.

Moreover, it is the first white paper on the rule of law that has been generally established as a fundamental principle in China. In white papers published by the Government, it is the first to clarify the combination of a scientific outlook on development and China's rule of law, and to comprehensively sum up the tremendous achievements in promoting it in recent three decades. The paper also points out the developing tendency and direction of China's road to the rule of law in the near future.

Although its title only relates to efforts and achievements in promoting the rule of law, the white paper explicitly illustrates some problems that China's legal construction is still facing. This is different from other white papers which take all-round human rights progress as the only perspective, and seems to show the change of official language and attitudes, instead of literal skills. The objective analysis from both positive and negative sides appears to express China's adequate courage to really criticize its own shortcomings to the public and its positive attitudes towards legal reforms and human rights progress. The new approach further allows worldwide people to witness that China is exploring how to build a new form of government under the rule of law. By means of well balancing the top-down and bottom-up, China would create an entirely new system to better protect human rights, and to lay solid foundations for China's rule of law, political and legal civilization.

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