

# The Rule of Law Promoted by the EU and Its Relevance to China

Zeng Lingliang  
Dean & Professor, UM  
Jean Monnet Chair & Changjiang Chair Professor,  
WHU

## Outline

- I. Introduction
- II. Evolution of the Rule of Law in the EU
- III. The Rule of Law in the EU Policy Documents towards China
- IV. Channels of the EU to Promote the Rule of Law in China
- V. Conclusion

## I. Introduction

- Essences of the rule of law
- Existence of laws with constitution as the core in a society
- Existence of legal order with equality and justice as the core in a society
- Existence of independent judicial system to safeguard rights of all in a society
- From a domestic conception to an international conception
- Domestic conception: originality and long history
- International conception: quite recent in the UN
- UN definition of the rule of law: at national and international levels
- Features of the EU rule of law
- A weighted conception since the 1992 Maastricht Treaty
- Two dimensions: internal and external
- Growing importance of the rule of law in EU-China relations

## II. Evolution of the Rule of Law in the EU

- No explicit provision of the rule of law in EU Treaties before 1990s
- 1992 Maastricht Treaty: first mentioned the rule of law, human rights and good governance as one of the objectives of the CFSP and the EC development Cooperation policy
- ◆ Background: end of Cold War and universal victory of Western model of democracy, freedom and governance
- 1997 Amsterdam Treaty:
  - first inserted the rule of law as one of the principles upon which the EU was founded and common to all MSs
  - Explicitly required a candidate MS to respect for the rule of law

- 2004 Treaty on Constitution: the rule of law as the value of the EU and general principle of the EU external relations

### ■ 2007 Lisbon Treaty:

- the rule of law as one of values upon which the EU is founded. Other values are dignity of human beings, freedom, democracy, equality, human rights and rights of minorities
- As one of principles of EU external relations policy (CFSP, CCP, develop aid and cooperation), others are democracy, human rights and basic freedom, human dignity, equality, unity, UN Charter and principles of international law

- ECJ's role: *Les Verts v European Parliament*, Case 294/83

### ➢ Basic facts:

### ➢ Legal issue:

- whether the decision of the EP could be challenged before the ECJ in the private annulment proceedings
- ECJ's rulings: Art 173 EEC is interpreted not to exclude the complaint against the measure of the EP which produces legal effect towards third parties
- ECJ reasoning: The EC is based on the rule of law because neither its MSs or its institutions could avoid the judicial review of the issue, that is, whether the measures adopted by them are in conformity with the basic constitutional charter, namely the Treaty

- Five dimensions of the rule of law in the third country assessed by the EU
- (1) Freedom and political rights of citizens, including death penalty, torture, freedom of expression and media, freedom of religion, freedom of association and gathering, etc.
- (2) Judicial system, including independent and effective operation, etc.
- (3) Institutional and administrative capacity, including constitution, election, public administration, policy-making process, legal government and parliaments, etc.
- (4) Anti-corruption, including measures as well as effect
- (5) Military control by citizens

### III. The Rule of Law in EU Policy Documents towards China

- EU-China relations: part of EU external relations; the rule of law in EU external relations seems to be reflected in EU-China relations
- Three periods of EU Policy Documents towards China (by Snyder)
  - Period of exploration and construction (1994-2003)
  - Period of deepening and maturing (2003-2006)
  - Period of managing partnership and competition (2006--- )

- The rule of law reflected in all three periods:
- 1994 "Towards a New Asian Strategy" by the Com.:
  - ✓ one of the objectives: contribution to democratic development, rule of law and respect for human rights
- 1995 "A Long-Term EU Policy Goal" by the Com.:
  - ✓ to seek for solution of human rights issues through actions in three levels:
    - (1) Enhance China's development towards civil society based on the rule of law
    - (2) Continue to raise issues of human rights systematically and regularly in its dialogues with China
    - (3) Urge the dialogues on human rights between international society and China through multilateral channels, such as the UN
  - ◆ Give practice support to China's reform of public management based on the establishment of a civil society and the rule of law

- 1998 "Building a Comprehensive Partnership with China by the Com:
- ✓ Support China to become an open society based on the rule of law and respect for human rights as one of the objectives in establishing this this new type of EU-China partnership

- 2001 "EU Strategy towards China: Implementation of the 1998 communication and Future Steps for a More Effective EU Policy" by the Com:
- ✓ Suggestions to support China's improvement of human rights and the rule of Law:
  - (1) More focus on the result orientation of the EU-China dialogues on human rights
  - (2) Support some reform projects in progress together with China
  - (3) Implement assistance programmes related to human rights, so as to support the rule of law and legal reform, economic, social and cultural rights and civil and political rights as well as democracy
  - (4) Plan and develop new EU aid areas, such as prevention of torture

- 2003 "A Maturing Partnership – shared Interests and Challenges in EU-China Relations
- ✓ Reaffirmed support China towards an open society based on the rule of law
- ✓ Recognized the progress in legislation, regulation of economic and trade activities, election at village level, establishment of civil society an NGOs, etc
- ✓ Pointed out defects, such as disparity between human rights in China and international standards, non-approval of UN Convention on Civil and Political Rights, education-through-labor of prisoners, implementation of death penalty in large scale, inadequate protection of freedom of religion, etc

- ✓ New actions to promote the rule of law in China:
  - (1) continue and upgrade the EU dialogues and cooperation on human rights with China
  - (2) Enhance and develop new cooperation projects related to human rights and good governance
  - (3) Support construction of civil society in China

➤ 2006 "EU-China: Closer Partnership, Growing Responsibilities

reaffirmed: continue the support for internal economic and political reforms in China, a strong and stable China with a full respect for human rights and fundamental freedom, protection of minorities and safeguards of the rule of law

#### IV. Main EU Channels to Promote the Rule of Law in China

- The rule of law in EU-China Summit
  - Held annually, started in 1998, with outcome of joint statements
  - So far 12 summits held and the most recent one on 30 November 2009
  - Human rights and the rule of law deems to be an essential agenda
  - E.g. the Second Summit Statement: the EU expressed its concern on China's transformation towards a more open and transparent society based on the rule of law and internationally recognized standards of human rights

➤ Joint Statement of the 12<sup>th</sup> EU-China Summit, 30 Nov. 2009

*Para 8: The two sides emphasized their commitment to the promotion and protection of human rights, the rule of law, and the strengthening of dialogue and cooperation in the field of human rights on the basis of equality and mutual respect... The EU welcomed China's commitment to ratifying the International Covenant on Civil and Political Rights (ICCPR) as soon as possible. Both sides confirmed their commitment to cooperate with UN human rights mechanisms*

- The rule of law in EU-China dialogues
  - Started in 1985 with the EC-China Joint Committee on Trade and Economic cooperation under the EC-China Agreement on Trade and Economic Cooperation
  - Began in 1996 with regular dialogues on human rights: twice a year
  - 2001 EU "Guidelines on Human Rights Dialogues": One of the basic principles is to ensure issues of human rights, democracy and the rule of law to be included in discussion with third countries and country strategic documents
  - ◆ EU's regular and institutionalized bilateral dialogues on human rights is only conducted in EU-China relations because the existing 1985 EU-China agreement does not contain "human right clause"

• The rule of law in EU-China development Cooperation Projects

- 33 projects from mid 1980 to early 2007,
- Projects in early time mainly concerned the infrastructure and rural development, recently focus shifted to the rule of law and good governance issues in China

➤ List of completed projects related to rule of law and human rights:

- (1) EU-China Higher Education Programme (1997-2001)
- (2) EU-China Legal and Judicial Cooperation Programme (2000-2005)
- (3) China Human Rights Microprojects Programme (2003-2006)
- (4) China-Europe Public Administration Programme (2003-2007)
- (5) EU-China European Studies Centres Programme (2004-2008)
- (6) EU-China Intellectual Property Rights Cooperation Programmes (2000-2005)
- (7) EU-China Training Programme on Village Governance (2001-2006)
- (8) Framework Programme for EU Support to China's Accession to WTO (2001-2006)

➤ List of projects in progress:

- (1) China-EU Information Society Project (2005-2009)
- (2) EU-China Social Security Reform Cooperation Programme (2006-2010)
- (3) EU-China managers Exchange and Training Programme 92006-2010)
- (4) Governance for Equitable Development (2007-2112)
- (5) Europe-China School of Law ( agreement signed in Jan 2007, established in Oct. 2008)
- (6) EU-China IPR Cooperation Programme (follow-up project in accordance with EU financial aid plan 2005-2006)
- (7) EU-China Project on the Protection of Intellectual Property (agreement signed in Jan.2007)
- (8) Europe-China Business Management Training Project (agreement signed in Jan 2007)

## V. Conclusion

- The rule of law as the foundation of the EU in its establishment and operation, as well as one of its basic principles and core values
- The first explicit provision of the rule of law in EU Treaties was in the area of EU CFSP and development cooperation
- The rule of law together with human rights, democracy and good governance has increasingly become important in EU-China relations since 1990s, mainly reflected in EU Policy documents towards China, EU-China Summits, EU-China dialogues and EU-China development projects

- It is expected that the future EU-China PCA deems to contain the special clause on human rights, democracy and rule of law
- I am in the opinion that China should agree with the inclusion of this clause because : (1)it becomes a usual clause in the EU CPA with third countries; (2) it becomes the important agenda and action of the UN in recent years; (3) it will, on the whole, positively raise the level of the rule of law and protection of human rights in China and the world as well

**Thank you !**