1. Introduction

Qin Tianbao and Zhou Chen

1.1 OVERVIEW

‘The domain of environmental law and policy extends to any place where the earth is modified by human action.’¹ China is not, of course, an exception. In line with the global trend of improving the environment by legal tools, China plays an important role and its efforts have aroused great concern not only from developing countries, who are considered major players in the current game, but also in the broader international community.

From the geographic perspective, China is an integral part of the earth environment and bio-circle. It is self-evident that on the issue of environment protection, no one country can completely account for itself. In the very recent past, for instance, there was widespread recognition that rapid economic growth and progressive urbanization accompanied by escalating GHG emissions, excessive energy consumption and local environmental degradation dominate many developing countries.² Because China is the largest developing country in the world it is difficult for it to escape from the tensions of modernization and environment issues that face these countries.

Like many southern countries, China is confronted with a fundamental challenge in pursuing continuous economic development while avoiding the accompanying environmental degradation.³ In the past few years, GDP growth has been at the expense of an excessive extraction of natural resources, driving China to an historical turning point. To supply the

¹ See Alan Miller, James Leape, Christopher Schroeder and Robert Percival, *Environmental Regulations Law, Science and Policy*, Aspen Publishers, 2006, p. 3.

² See Fei Teng and Alun Gu, ‘Climate change: National and local policy opportunities in China, climate change modeling and policy’, 74 *Nota di Lavoro*, 2007, p. 2, available at <http://www.feem.it/Feem/Pub/Publications/WPapers/default.htm>.

³ See Chris Deal, ‘Climate change, technology transfer: Opportunities in the developing world’, *ASME WISE Intern*, 2007, p. 2.

world with products, most of the environmentally toxic enterprises are established in China, heavily polluting local environments.⁴ China is now suffering from serious air pollution, water problems and soil contamination. The failure to protect the environment not only threatens public health, but also incurs significant social and economic costs. By way of an example conventional air pollution has become so serious in China, that it kills possibly 400,000 to 750,000 people per year and accounts for about 5.78 per cent of Chinese GDP.⁵ Recently China's capital city Beijing was reported as suffering the worst air pollution in recent memory: smoggy haze.⁶

Nevertheless, China's own distinctive features affect its attitude towards environmental issues. It has the world's largest population, has harsh natural conditions, a relatively small area of cultivated land, few water resources and heavy pollution.⁷ The need for self-sufficiency has exerted enormous pressures on the ecosystem. In addition, specific environmental settings vary from region to region, particularly between south-east and north-west.⁸ All of these factors, to a greater or lesser extent, affect the progress of addressing these biological problems in any terms including those of law. From the viewpoint of history, China, like many other ancient civilizations, reveals considerable understanding of the need for ecological balance, rooted in the efforts of people centuries ago to survive and prosper in agrarian and pastoral societies.⁹ As advanced by the ancient philosopher Dong Zhongshu, this set of beliefs, called Tian Ren Gan Ying (the interaction of heaven and man), pinpoints the correlation and interaction between natural environment and human activities.¹⁰ According to him, extreme weather and other dislocations in

⁴ See Jiajun Wen, 'Climate change and China: Technology, market and beyond', report for Focus on the Global South, occasional paper, 2009, p. 15.

⁵ 'Costs of pollution in China', World Bank and State Environmental Protection Administration PRC, 2007, pp. xvii.

⁶ See Frank Langfitt, 'China's air pollution: Is the government willing to act?', 24 May 2013, available at <http://www.wbur.org/npr/186246634/Chinas-air-pollution-is-the-government-willing-to-act>.

⁷ Haiyan Wang, 'An introduction to environmental law and policy', *Environmental Policy and Law*, 34:4–5, 2004 p. 193.

⁸ This depends on many factors such as latitude, precipitation, wind patterns, coastal conditions and economic activities in particular districts.

⁹ The earliest ecological wisdom has been reflected in the *I Ching: Book Of Changes*. It aims to provide for the government's ownership of natural resources to ensure feudal society order.

¹⁰ See Jonathan B. Wiener, 'Climate change policy and policy change in China', 55 *UCLA Law Review* 2008, pp. 1819–22.

the natural order were considered portents of misgovernment. In the meanwhile, it is commonly known that the Chinese legal tradition is based on the philosophy of Confucius, which contrasts radically with the western system of 'legalism'. Confucianism, the system of human governance with an emphasis on moral education and social harmony, has been dominant in China for a very long time.¹¹ Yet, the rise of an industrial and urbanized society in recent times has challenged this approach. Law proves for sound environmental management and governance, particularly when it comes to modern environmental problems. Legal tools have thus attained greater importance gradually and have become a considerable factor in the political, economic and social transformation of the country.

1.1.1 History of Chinese Modern Environmental Law

Environmental problems are not novel. Instead, they are, in particular those that heavily influence human beings' survival and development, the byproduct of modernization.¹² Recently, the Chinese leadership has become aware of local environmental situations, which indicate that China has suffered, and is suffering, great damage from its environmental problems, but, at the same time, it could gain greater net benefits from a good environment policy.¹³ In 1983 Chinese policy-makers promulgated environmental protection as a basic national policy.¹⁴ The five principles of Chinese environmental law have been set out as a guide for the domestic environmental legislations, including: (i) sustainable development; (ii) prevention first; (iii) rational development; (iv) the beneficiary bears the development burden; and (v) public participation. In fact, the progress of modern environmental legislation in China has undergone three important periods.

¹¹ See Derek Bosworth and Deli Yang, 'Intellectual property law, technology flow and licensing opportunities in the People's Republic of China', *International Business Review* 9, 2000, p. 455. Governments operate in a cultural/social context that emphasizes hierarchy, order, knowledge (and adhering) to one's place in the scheme of things.

¹² Li Qijia, 'The development of Chinese Second Generation's environmental law', 24 April 2010, available at <http://yangzx.fyfz.cn/b/606199>.

¹³ See Wiener, note 10 above, p. 1813.

¹⁴ See Wang Jin, *Environmental Law*, Beijing University Press, 2011, p. 45.

1.1.1.1 The general evolution

Establishing period The first period, starting from 1949 (when the People's Republic of China had just been established) to the 1960s is regarded as the 'establishing period'. The new political, economic and legal order had to be set up immediately.

Pioneering period From 1966 to 1977, China had experienced the 'Cultural Revolution' and social chaos nationwide, there was, therefore, hardly any significant progress made in environmental legislation. This second period is the so-called 'pioneering period'. China's environmental law evolved only slowly during these periods, because of the 'Great Leap Forward' policy that aimed to revitalize the economy and environmental protection was, therefore, simply not on that agenda.¹⁵ 'Only few environmental interests can be located, such as in the regulation on mineral resources and factory safety, including provisions on water pollution prevention and waste disposal.'¹⁶ Despite this, it should be borne in mind the severe floods and droughts that took place at the end of the 1960s. China had then signed the 1972 United Nations Stockholm Declaration on the Human Environment, and issued a decision on environmental protection and improvement.¹⁷

Surging period The third period is in essence the real development of modern environmental law, which began in 1978 and continues to the present day. In this time phase, China's environmental law is characterized as systematization that will ultimately develop into an independent sector.¹⁸ Straight after the attendance at the Stockholm Conference on

¹⁵ The 'Great Leap Forward' policy was an economic and social campaign by the Communist Party of China (CPC) from 1958 to 1961. The campaign was led by Mao Zedong and aimed to rapidly transform the country from an agrarian economy into a communist society through rapid industrialization and collectivization.

¹⁶ See Stefanie Beyer, 'Environmental law and policy in the People's Republic of China', *Chinese Journal of International Law*, 5:1, 2006, p. 191.

¹⁷ This decision constituted the impetus for the environmental legislation in the subsequent era of China's policy of openness and economic reform adopted by Deng Xiaoping in 1978.

¹⁸ In 1979 the National People's Conference (NPC) issued *PRC Environmental Protection Law (for Trial Implementation)*, where three industrial pollution control programs were established: (i) environmental impact assessment; (ii) effluent and emission discharge fees; and (iii) the 'treble simultaneity'. It was

Human Environment,¹⁹ China essentially set itself on the road to environmental legislation. As a milestone, in 1978, the *PRC Constitution* (1978), in its article 26, mandates environmental protection as a specific constitutional component and one of the important responsibilities of the state.²⁰ Rapid growth over the following three decades fostered the formation of a detailed environmental legal system. Among them, the enactment of *PRC Environmental Protection Law* (1989), is viewed as the most remarkable exercise in local lawmaking.²¹ With the guidance of both *PRC Constitution* (1982) and *PRC Environmental Protection Law* (1989), in a relatively short period, China has built quite an extensive set of pollution prevention and control legislation.²² However, the formal legislation has hardly been translated into effective controls. Pressing environmental problems still exist. In fact, environmental degradation is an increasingly serious issue. Two major reasons account for this: (1) at the very beginning, China constructed its environmental laws by trying to transfer the western solution, for instance, directly transplanting the western laws into existence, without fully taking consideration of indigenous legal, political and social situations;²³ (2) the local economic

a landmark of Chinese environmental protection and a sign that environmental law in China had become an independent law sector.

¹⁹ The United Nations Conference on the Human Environment, met in Stockholm 5–16 June 1972, to consider the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. More information of Stockholm Conference on Human Environment is available at <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=97&articleid=1503>.

²⁰ PRC Constitution, art. 26: '[t]he state protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public nuisance'.

²¹ From the first 'Environmental Protection Law (for Trial Implementation)' enacted in 1979, there have been over 30 years in Chinese legislative construction on environment issues.

²² For instance, Marine Environmental Protection Law (1982), Water Pollution Prevention and Control Law (1984), Air Pollution Prevention and Control Law (1987), Grassland Law (1985) and Water Law (1988) etc.

²³ The Air Pollution Prevention and Control Law (1995), Solid Waste Pollution Prevention and Control Law (1995), Water Pollution Prevention and Control Law (1996), Noise Pollution Prevention and Control Law (1997), Regulation on Nature Reserves (1994), Coal Law (1996), Flood Control Law (1997), Energy Saving Law (1997), Damage from Earthquake Prevention and Control Law (1997), Forest Law (Revised in 1998) and Land Management Law (1998), Marine Environmental Protection Law (Revised in 1999), Air Pollution Prevention and Control Law (Revised in 2000), Safe Production Law (2002),

development under the ‘Reform and Open’ policy deepens in this time phase.²⁴ Especially during the second half of the 1990s, economic growth remained the priority, and a great number of environmental damages crises were emerging. The country did not only confront environmental problems, such as soil erosion, deforestation and desertification typically associated with a developing and overpopulated agricultural society, but also those of an industrialized country having to deal with a welter of pollution and resource exhaustion. In this period, many environmental laws, regulations and rules were revised and updated in order to strengthen the effectiveness of compliance.²⁵ In addition, it is worthwhile mentioning that central government authority was slightly decentralized and regional authorities enacted significant environmental legislation.²⁶ Only recently, China has been confronted with emerging environmental problems, ranging from energy exhaustion to climate mitigation and adaptation.²⁷ These constitute additional pressures for local legislative construction, challenging top legislatures at large. In general, great achievements have been made on environmental legislation, for instance, institutional arrangements and environmental liability have been strengthened. In 2011, the new round amendment to the *PRC Environmental Protection Law (1989)* (EPL) was incorporated into the current legislative plan.

1.1.1.2 The newly revised EPL

On 24 April 2014, the Beijing Government approved changes to the state’s EPL for the first time in 25 years. This lately revised law will

Environmental Impact Assessment Law (2002), and Radioactive Pollution Prevention Law (2003), etc.

²⁴ This policy was initiated by Deng Xiaoping in the late 1970s. It emphasized speedy development by raising efficiency, relaxing the cumbersome planning and bureaucratic controls that had hobbled performance, and making the system more responsive to popular demands.

²⁵ For instance, Water Pollution Prevention and Control Law, Marine Environmental Protection Law, Air Pollution Prevention and Control Law and Mineral Resources Law, etc.

²⁶ Wang Canfa, ‘Chinese environmental law enforcement: Current deficiencies and suggested reforms’, *Vermont Journal of Environmental Law*, 8, 2006, p. 194.

²⁷ See Jolene Lin, ‘Climate governance in China: Using the “Iron Hand”’, in Benjamin J. Richardson (ed.), *Local Climate Change Law: Environmental Regulation in Cities and Other Localities*, Edward Elgar Publishing, 2012, pp. 1–3.

come into force on January 1, 2015 and apply to almost every article of the current law in due course.

Background and process The progressive amendment was launched three years ago when China was suffering perennially severe pollution on a national scale, in particular in respect of water and air pollution. ‘Since *PRC Environmental Protection Law* was passed in 1989, the country has become the world’s second-largest economy and its biggest carbon emitter; decades of breakneck economic growth have left many of its rivers decimated and its cities perennially shrouded in smog.’²⁸ Taking smog as an example, Beijing and the surrounding regions often compound the particulates, known as a very unhealthy PM 2.5, these cities are also home to a large number of coal-burning power plants and industries including steel and cement that also burn coal.²⁹ Water pollution is another vital threat: rivers, a long list of both familiar and unfamiliar names, dried up at a worrying rate. The water environment is a source of utility, animal habitat and the ecologic sub-system, the security of which has gradually come to be regarded as crucial and taken into Chinese policy and law agenda: preventing the degradation of rural country water environment has become top of the list of priorities.

As a matter of fact, water and air pollution manifest the effects of the last 30 years industrialization in China. Of all potential pollutions, water and air pollution tend to trigger public crises, arousing great concern both at international and national levels. Right at the beginning of 2014, Lanzhou, a heavily industrialized city of 3.6 million people in the north-western province of Gansu, warned that potable water had been found to contain dangerous levels of benzene: a cancer-inducing chemical.³⁰ It was not only the panic among residents that undermined

²⁸ See Jonathan Kaiman, ‘China strengthens environmental laws’, Chinese Legal Database, 25 April 2014, available at <http://www.theguardian.com/environment/2014/apr/25/china-strengthens-environmental-laws-polluting-factories>.

²⁹ In Beijing, the situation is a little different: apart from the traditional industrial pollutants, car exhaust emissions significantly increase year-by-year, the situation was made worse by a local cold winter and the geographically mountainous environment.

³⁰ According to the local authorities, benzene in tap water was 20 times above national safety levels (10 micrograms). Initial investigation showed that the high levels of benzene were caused by industrial contamination at one of the two culverts that transfer raw water from a sedimentation plant to the water treatment plant. The water supply company, Lanzhou Veolia Water Co, is majority-owned by the city government and was working to redirect to its water treatment plant water which usually went to a power plant. After the accident

government accountability, but also great concern was expressed on how to implement pollution control laws in a more integrated manner. The comprehensive EPL thus calls for the synergy objectives such as the supplying of city water, pollution treatments and government motors. Over the past years, domestic public health and environment accidents have emerged, which urge, directly or indirectly, the legislatures to seriously review, re-evaluate and improve the existing EPL. In the meanwhile, Chinese environmental legislation is often produced in an attempt to meet international trends.³¹

The new amendment to EPL is essential. Despite the official start in 2011, the preparations were being made as early as the middle of the 1990s. From the 1995–2012 National People's Congresses (the Chinese highest legislative agency), 78 themes forwarded by 2,474 Representatives which are particularly concerned with revising the 1989 EPL.³² The proposed themes reflect the appeals covering various social fields such as enterprises, NGOs and academics, with representatives from districts including Taiwan and Hainan.³³ The demonstrable amendment progress proves formidable; tensions can be seen where local and central authorities meet and where sectional interests intertwine (i.e., natural resources and environment protection organs). Wherever there are conflicts, there is likely to be a compromise. The divergence on the extent and scope of revision therefore remains throughout the drafting and reviewing process. The legislative agency for instance insisted on slight adjustments, while the voices from the grass roots and academics insisted on big changes that are likely to touch some core problems, such as the right to environment, state liability and penalties for polluters.³⁴ After the four reviews, the long-awaited expected EPL was eventually approved at the

happened, officials warned citizens not to drink tap water for the next 24 hours. For more information, available at http://www.huffingtonpost.com/2014/04/11/lanzhou-water-benzene_n_5131728.html.

³¹ See Wang Jin, *The Theoretical Basis of Chinese Environmental Law*, People Court Press, 2006, p. 27.

³² 'Analysis on the newly revised environmental protection law', *Legal Education*, 28 April 2014, available at <http://www.chinalawedu.com/web/21611/wa2014042809084585824759.shtml>.

³³ Ibid.

³⁴ During this process, scholars like Cai Shouqiu, Wang Canfa and Wang Shuyi presented their disagreement for the 'limited amendment', the principal tone set by the drafting agency. It was agreed that that too many compromises under the limited amendment would result in a meaningless and obsolete legal document. See Jiang Wenzhang, 'Principles to amendment is unfixed yet, the new EPL will be postponed', *Economic Observing*, 27 April 2012.

11th Meeting of the Standing Committee of the Seventh National People's Congress on December 26, 1989, promulgated by Order No 22 of the President of the People's Republic of China on December 26, 1989, and effective on the date of promulgation.

Main contents, difficulties and open problems The revised law is deemed 'the strictest law' aimed at safeguarding the Chinese currently degrading the natural environment and continuous sound development.³⁵ There are three changes in this revision. Above all, stricter obligations are imposed on enterprises to prevent and control pollution. According to the 1989 EPL, enterprises should undergo environmental impact assessments before commencing construction projects; the new law also expands the scope of projects and clarifies the legal consequences of non-compliance.³⁶ On this basis, it further compels enterprises to establish environmental protection responsibility systems that specify the responsibilities of persons-in-charge. Any enterprises that fail to eliminate pollution in due course may be ordered to suspend or shut down its operations. And, punishments are tougher for environmental offences with the introduction of a daily penalty system. In addition to this, more specific requirements are introduced with regard to pollution-discharge licenses, emergency-response plans and environmental-information disclosure (which will be discussed in more detail later). Secondly, in the public policy, government is meant to support the development of the environment industry and encourage enterprises to take environmental-protection measures. It is important that, for the first time, the law has established clear requirements for ecological protection with the simple emphasis in official rhetoric: 'The new law says that economic and social development should be coordinated with environmental protection, and it encourages studies on the impact environmental quality has on public health, urging prevention and control of pollution-related diseases.'³⁷ Under the basic policy of ecological protection, greater authority and flexibility is given in the event of implementation: for instance in closing-down and detaining the illegally polluting devices. Thirdly, China is becoming closer to the rest of the world by setting out public interest litigation. The theoretical basis behind public interest litigation is the

³⁵ 'China enacts the strictest environmental protection law', *Xinhua News*, 24 April 2014, available at http://news.xinhuanet.com/legal/2014-04/24/c_1110399677.htm.

³⁶ Environmental Protection Law(1989), art. 13.

³⁷ NPC Standing Committee chairman Zhang Dejiang said. See Kaiman, note 28 above.

right to the environment which, in China, is the latest emerging field that has yet to achieve a great improvement. To realize the right to environment on a down-to-earth ground, the revised law expands the scope of plaintiffs on the basis of current civil litigation procedures, which provides a legal channel for citizens and community groups to participate in environmental protection. A social organization is allowed to appeal to the court for acts that pollute the environment, damage the ecology, and harm public interest if it meets the conditions of several requirements.³⁸ According to the preliminary estimates, nearly 300 social organizations in China meet these requirements.

These changes reflect the government's will in the establishment of the Ecologic Civilization; it also means great challenges, particularly as far as implementation and enforcement are concerned. The term 'ecological protection', for instance, highlights a full-dimensional protection of the ecologic system and a holistic approach is thus needed to provide a better protection for air-ground, sea-land. The revised EPL in its overall structure, however, weighs pollution control more than ecologic protection as it transitionally is. The imbalance is likely to be corrected with upcoming single laws especially relevant to natural resources protection, as well as to the better understanding of the term 'environment'. Another example refers to enforcement measures: the environmental protection agency, which has the principal supervision and management of protecting the environment in China, is conferred with executive powers by the new law. Similar provisions appear in the *PRC Water Pollution Prevention and Control Law (2008)*, but result in a very limited influence.³⁹ It is therefore reasonable to question the effectiveness of enforcement measures taken by environmental protection agency. In the new context, the agency may be subject to administrative liability and/or public litigation,⁴⁰ due in reality to inadequate capability or willingness. As for public

³⁸ The 2014 Environmental Protection Law, art. 58. For example, the social organization must be registered in the civil administrative department of the local government, and the organization must have specifically engaged in public environment protection activities over five consecutive years without any violations.

³⁹ See Chang Jiwen, 'Highlights, difficulties and disappointments of the revised EPL', *China Environment*, 5, 2014.

⁴⁰ It is easier to solve the difficulties of carrying out enforcement measures among the small-and-middle enterprises, such as detaining, removing their polluting devices or even shutting them down, however, when it comes to some large, state-owned enterprises, environmental protection agency have to confront many obstacles to take the due measures because of the lack of countervailing powers.

interest litigation, many more details need to be formulated afterwards in the aspects of court procedures, burden of proof and the distribution of compensation. To solve this, the specialized rules for implementation or judicial interpretation will be promulgated in accordance with the 2014 EPL. It can be also seen that the amendment adopts a gradual approach to fulfill the principle-environmental democracy, by excluding the status of individuals in lawsuits.

In the spite of improvements, some key issues remain untouched in the new amendment to EPL. As aforementioned, the law has not confirmed and declared the rights to environment. However, at the international level, both the theory and practice about the rights to environment have been well developed. China on the one hand introduces certain basic rights such as the right to know, public participation and organizational rights to litigation, but, on the other hand, refuses to write the terms of the right to the environment in the final version of draft EPL. Nevertheless, as an individual and collective right, the right to environment is assumed to be foregone in the name of less tangible, spiritual values, enforcing substantive and procedural environmental rights, and even conflict resolution. With the clarification and development of environmental right, the space for bottom-up public supervision, particularly through the use of law and the courts, is and will be continuously widened.⁴¹

Moreover, the new law fails to frame the current governance system in which there is no clear division between a uniform and a sectional environment supervision and management. Namely, the intertwined interests among sectors fail to be coordinated in an effective manner. However, it is impossible for one amendment to adopt all sorts of opinions, handle every new phenomenon and to solve each single remaining problem. As a periodical important step, the 2014 EPL has made constructive achievements and will be discussed in this *Handbook* as needed.

1.1.2 The Evolution of Chinese Institutional Construction

In China, the progress of institutional construction concerning environment protection is not completed over night. Instead, it has experienced a prolonged, arduous time period. We can very briefly recall this progress from the viewpoints of legislature, administration and judiciary.

⁴¹ Despite no comprehensive statistics on environment-related claims, court reports indicate that the number of claims relating to air, water and land pollution is increasing.

1.1.2.1 Overview – Three branches

Legislative branch At the central level, the highest body of the State is the NPC, which has the authority to enact all basic laws like environmental protection laws and to supervise their implementation in reality. Due to the limited conferences held by the NPC (once a year), most legislative activity is conducted by its Standing Committee who has the competence to pass laws except basic laws, and to interpret those basic laws. In China, the chief executive organ – the State Council – is authorized to enact administrative regulations pursuant to national and constitutional law. So far, a considerable number of administrative regulations as well as departmental regulations have been developed by the State Council administrative department of environmental protection individually or jointly with other relevant ministries, commissions and departments.

At the local level, provinces, autonomous regions and municipalities have local legislative powers, by which they allocate mandatory environment targets into the city and county level and for industrial sectors and major businesses in a consistent manner.⁴² Considering the scope of this handbook, we will mainly focus on those statutory efforts made on a central scale and highlight those regional legislations of particular importance.

ADMINISTRATIVE AGENCY The administrative structure of China is the so-called centralistic system, as declared by the *PRC Constitution*.⁴³ Environmental governance is predominantly arranged in a five-tier hierarchical structure: central government, provincial, prefectural, county and township. The Beijing Government is at the top of this structure, issuing vertical directives to its branches throughout the country. As will be fully discussed in Chapter 2,⁴⁴ this top-down deployment has been instrumental in galvanizing local government action on environmental protection and pollution control, which historically have not been a priority.

In 1972, The State Council established a project-based institution: the Water Conservation Working Group became responsible as the first water pollution control project. On this basis, two years later a specialized

⁴² The environment targets set by government at the top are obligatory. Sub-national governmental agencies are only authorized to establish local standards where no national standard exists, while more stringent standards should be established.

⁴³ PRC Constitution, art. 3.

⁴⁴ Chapter 2, Brief introduction to Chinese legal system.

institution: the Environment Protection Working Group was set up under the authority of the State Council. In the following ten years, the State Council's Environment Protection Working Group took charge of conducting, implementing and coordinating environment protection activities nationwide. In 1981, together with the State Family Planning Commission, it issued the Rules on Management of Construction Project and thus applied environment impact assessment (EIA) and the 'Three Simultaneous' system into approval for relevant projects.⁴⁵ Then, there was an apparent change: during the Sixth-Five Plan, China first integrated environment protection into the nation's social-economic development. The State Council's Environment Protection Working Group was therefore merged with several other organs such as the State Urban Construction Administration and State Construction Engineering Administration, ultimately resulting in the Ministry of Urban and Rural Construction and Environmental Protection. Along with the fact that environment protection was promulgated as a basic national policy, China had set up Environment Protection Agency (EPA) which is, in its very nature, subsidiary to the State Council. To enhance environmental legislations and implementation, the NPC then established the Environment and National Resource Protection Commission for coordinating all legislative activities in a comprehensive, systematic manner. By the end of the 1990s, China had conducted a reformation of the State Council, and simultaneously upgraded EPA into the State Environment Protection Administration (SEPA) in order to restrict and counter against the overheating of economic growth. From then on, China entered a revival era of environmental legislation and implementation. In 2008, the central government made a crucial decision to promote the SEPA into the Ministry of Environment Protection (MOEP). Instead of the subsidiary organ to the State Council, the MOEP in itself is a integral part of the State Council, which means the government duty of environment protection has been strengthened in planning, policy-making, implementing, coordinating and problem-solving. Nowadays, the MOEP plays the most significant role in environmental governance and implementation.

JUDICIAL COURT A judiciary aiming at dispute settlement is a powerful guarantee for environmental justice. In China, a four-level court system is

⁴⁵ 'Three Simultaneous' is the extension of the EIA. It is a term of art in Chinese environmental law. It means that for all new projects and for the modification or expansion of existing projects, the facilities to prevent pollution and other public hazards and other environmental protection facilities must be designed, developed and put to use simultaneously with the principal project.

in existence, including Basic Courts, Intermediate Courts, Provincial High Courts, and the Supreme People's Court. This system is vertical, led by the Supreme People's Court that itself is vested with the power to decide concrete cases and also with extensive interpretative powers. Below the national level, it consists of local people's courts and of courts having exclusive jurisdiction over cases involving disputes over maritime, forest, railway and military issues.⁴⁶ In general, they follow the principle of two instances of trials for final adjudication. As is commonly known, China belongs to civil law system in which cases play a marginal role. As a basic principle, no courts, except the Supreme People's Court, are authorized to interpret laws and are confined to the implementation process.⁴⁷ All these local courts are subject to, and supervised by the Supreme People's Court. The specific application of laws conducted in the judicial proceedings of the Supreme People's Court has binding force on all courts.

Court proceedings are perceived as a last resort. However, green litigation in China is a difficult business. As far as environmental law is concerned, it may authorize enforcement not only against private polluters, but also against the government agency responsible for administering the environmental laws.⁴⁸ Environmental cases thus involve civil, criminal and administration litigation. For a long time, most of environmental litigation traditionally fell under the jurisdiction of the civil court in China.⁴⁹ But in 2007, the situation was fundamentally changed when the first environmental law division was established in Guiyang municipal intermediate people's court of Guizhou Province.⁵⁰ At the time of writing, more than 90 environmental courts have been established on a national scale and 11 of them have been in operation long enough for

⁴⁶ The Supreme People's Court in Beijing supervises the administration of justice by all subordinate 'local' and 'special' people's courts. These Courts of Special Jurisdiction comprise the Military Court of China (military), Railway Transport Court of China (railroad transportation) and Maritime Court of China (water transportation), and the Forest Court of China (established in forest areas particularly).

⁴⁷ Apart from the Supreme People's Court: its judicial interpretations are legally binding, which is equal to legislation.

⁴⁸ See Jonathan R. Nash, *Environmental Law and Policy*, Aspen Publisher, 2010, p. 28.

⁴⁹ This is because the traditional practice in the Chinese court system is to direct cases to separate civil, criminal or administrative divisions.

⁵⁰ The State Council's 'Decision on the Implementation of Scientific Development and Strengthening of Environmental Protection' specifically mentioned the 'promotion of environmental public interest litigation', 2005.

preliminary analysis of their experiences to be possible: two in Guizhou Province, one in Jiangsu Province, and eight in Yunnan Province.⁵¹ While the traditional practice in the Chinese court system is to direct cases to separate civil, criminal or administrative divisions, these environmental courts have adopted new rules that allow them to accept and process *all* environmental cases in the aspects of standing, jurisdiction, and remedies, among other things.⁵²

There is hardly any tradition of settling regulatory issues through courts and most polluters do not even acknowledge that violating environmental laws and regulations is a legal offence.⁵³

In sum, it can be found that the Chinese environment protection under the current institutional construction is complicated, fragmented and sometimes disordered. Some institutions were established temporarily in the absence of a long-term plan. However, there is a general tendency that environment protection becomes more and more important in the China's central governance and legal construction. By virtue of the regime, the combination of legislative and executive powers, three branches are assumed to cooperate more closely and consistently in order to achieve a uniform environmental objective.

1.1.2.2 The combination of legislative and executive powers

Describing the Chinese current institutional system is not social ideology, but because of the necessity of capturing the big picture in which environmental laws are generated, developed and carried out. 'The Combination of Legislative and Executive Powers' provides the necessary

⁵¹ Environmental courts have also been established since mid-2009 in Zhangzhou, Fujian Province, available at http://www.enlaw.org/bmgl/wrfz/201005/t20100525_21984.htm; in Tuorong, Fujian Province available at <http://www.ndzrw.cn/sygl/dtxx/201003/117213.htm>; in Nanjing, Fujian Province available at http://www.enlaw.org/bmgl/wrfz/201006/t20100606_22023.htm; in Liupanshui, Guizhou Province available at http://www.legaldaily.com.cn/zfb/content/2010-03/04/content_2072929.htm?node=20609; and in Qingdao, Shandong Province available at http://www.enlaw.org/bmgl/wrfz/201004/t20100414_21747.htm.

⁵² See Alex L. Wang and Jie Gao, 'Environmental courts and public interest litigation in China', *Court Innovation*, 3:1, 2010, p. 39.

⁵³ The principal mediating organs are the local environmental protection bureaus and the pollution monitoring stations, although most conflicts continue to be resolved through less formal mediation mechanisms in which the precise determination of rights and liabilities is less important than achieving a solution acceptable to all parties within a context structured by law, social custom, and economic reality.

political atmosphere and regime basis for Chinese environmental protection. Compared with the western ‘Separation of Three Powers’,⁵⁴ the Chinese regime – the combination of legislative and executive powers – was deeply embedded in traditional culture (highly centralized), recent history (revolution), and political claims of ‘people are master’. Under this regime, the Congress as an elected representation agency has full powers, by which the state integrates law/decision-making into implementation/enforcement in a highly consistent term. The distinctive characteristics of this regime are: (1) the relational identity of Congress and administrative agency; (2) the unidirectional function of powers; (3) the highest status of representation agency.⁵⁵

When it comes to environment protection legislation and practices, the typical regime ‘Combination of legislative and executive powers’ has a huge influence and the start and fast development of relevant legislation undoubtedly benefitted from this highly uniform system of power. The modern generation of environmental laws in China has been largely promoted by governments, in contrast to the environmental laws of most of its counterpart countries, in which civil society and democracy play an equally important role.⁵⁶ The absence of grass roots requests governments and their representation agency actively addressing environment problems that were, in fact, not very urgent because of poor industry in that special period.⁵⁷ Since then, governments have played a leading role in the environmental law making. In the meantime, China’s sustainable development and environmental protection is deployed top-down. By virtue of the combination of legislative and executive powers, the obstacles to implementing and enforcing environmental laws both at central and local level could be reduced. Taking the legal branch as an example, China has a system of civil law in which cases play a marginal role. As a basic principle, Chinese courts are not authorized to interpret

⁵⁴ ‘The separation of powers’ often imprecisely used interchangeably with the balance of powers principle, is a model for the governance of a state (or who controls the state). The model was first developed in ancient Greece. Under this model, the state is divided into branches, each with separate and independent powers and areas of responsibility so that the powers of one branch are not in conflict with the powers associated with the other branches. The typical division of branches is into a legislature, an executive, and a judiciary. Nowadays, this high degree of separation of powers is found worldwide, including Chinese Hong Kong.

⁵⁵ Chapter 2. Brief introduction to Chinese legal system.

⁵⁶ Li Qijia, ‘The speech on the inter-generation development of Chinese environmental law’, *Shanghai University of Finance and Economics*, 2009.

⁵⁷ *Ibid.*

laws and are confined to the implementation process. Because of the limited role of the courts, one successful experience cannot be directly applied to another case: this leads to much inconsistent enforcement in practice. At the regional level, governments particularly have a considerable influence on the People's Court. 'It is not unusual for one court to fail to cooperate in the enforcement of the judgments made by higher and similar level courts. Few rules and guidelines are in place to manage the inconsistencies and conflicts that occur.'⁵⁸

1.1.3 Striking Chinese Characters

There are several fundamental characters about the legal system of which we must be aware before we embark on our analysis of Chinese environmental law.

Despite its youthful framework, the Chinese environmental law system is rather broad and vague and thus appears boundless. Most environmental laws have been in existence for quite a long time, and while the general and broad system of environmental law in China remains complex, its understanding is further confounded by periodic statutory amendment, ongoing changes to existing regulations, and the continuing introduction of new ones. In principle, its current system of environmental laws consists of: (1) legislation addressing comprehensive environmental protection; (2) specialized legislation for pollution prevention, natural resource protection and conservation and; (3) the ratification of international conventions and treaties concerning environmental protection.⁵⁹ A comprehensive list of environmental legislation is to be found in the Legal Table at the beginning of this *Handbook*.

It is noticeable that Chinese environment law is in particular policy-oriented. Instruments including plans, strategies, and directives, are frequently used to set national goals for environmental protections related to aspects, to be discussed later, like natural environment conservation,

⁵⁸ See Derek Bosworth and Deli Yang, 'Intellectual property law, technology flow and licensing opportunities in the People's Republic of China,' *International Business Review* 9, 2000, p. 474. The local governments' heavy influence on the courts is not limited to financial matters; in addition to the fact that court operating expenses are funded by local district authorities, local citizens also join the judge as 'people's assessors' in hearings, and local party officials generally have a significant impact on the jurisprudence and career advancement.

⁵⁹ In a broad sense, this system also includes the expansion of environmental protection into other areas of legislations like litigation laws, trade laws, administrative laws.

pollution control and prevention, and resource saving. Concurrently policy arrangements are centred on Hu Jintao's official doctrines of 'Harmonious Society' and the 'Scientific Development Concepts'.⁶⁰ The latest Xi-Li administration just forwarded the new strategies of 'Five In One Pattern' and 'Establishment of Beautiful China'.⁶¹ To achieve these, governments have continued to roll out five-year plans and in recent years a start has been made on integrating environmental goals in these plans.

Compliance weakness is a continuing bottleneck.⁶² Although recently China has been actively developing its environmental law system and has made massive achievements, relevant adherence is far from being effective and efficient. Legislative objectives remain unachieved for the ecosystem is deteriorating as a whole, even with localized areas of improvements. Most recently, the Chinese Government has identified inadequate enforcement as one of the key factors in the deteriorating environmental situation. The 11th and 12th Five-Year Plans strategically emphasized the need to strengthen environmental enforcement and compliance assurance.⁶³ As a consequent phenomenon, the ineffectiveness has been affected by a wide coverage of elements including regulatory, administrative and practical ones. In this regard, this *Handbook* will review the current environmental regulations in a comprehensive manner so that statutory coherence as well as conflicts tend to be examined as expected.

On a related point, public participation is but limitedly played although increasing step by step. Unlike the Western world and Japan, where modern environmental law has emerged,⁶⁴ the role of the grassroots has

⁶⁰ The 'Harmonious Society' and 'Scientific Development Concept' serve as guidelines indicating a shift from 'promoting all-out economic growth to solving worsening social tensions'. See Xing Zhigang, "Plan unveiled to build harmonious society", *China Daily*, 12 October 2006, p. 1, available at <http://www.ChinaDaily.com.cn/China/2006-10/12/>.

⁶¹ In the Eighteen Report, it aims to promote the strategic adjustment of economic structure, promote the integration of urban and rural development, ecological civilization mentioned as a new height. More information is available at <http://www.gov.cn/18da/>.

⁶² Part IV: Compliance and Enforcement.

⁶³ China.org.cn, Green strategy, available at http://english.gov.cn/2006-02/08/content_182528.htm.

⁶⁴ See Li Qijia, 'The second generation of modern environmental law', Academic Report In Shanghai University of Finance And Economics, 2009. According to Li, local citizens, in the Western world and Japan, are key participators to conducting modern environmental protection activities and

been historically ignored in China, particularly in policy-making and implementation and, in general, public participation appears weak.⁶⁵ Many citizens in China suffer from environmental problems relating to water, air and solid waste pollution. They are often unaware of their environmental rights or lack knowledge about how to defend them. Nevertheless, this situation has been reversed slightly. The frequency and seriousness of pollutions accidents recently have violated the normal life of people, arousing their awareness of their environmental rights. Appeals on environmental issues are increasing. As far as the relevant statistics are concerned, in 2007, National Environmental Disputes complaints and petition letters surpassed 70 million and reached 80 million by 2009.⁶⁶ The growing environmental awareness as well as the ability to challenge environmental rights essentially promotes the recent development of environment law, due to the fact that they aim to improve the access to environmental justice. Indeed, 'public participation requires a balance between economic interests and environmental protection'.⁶⁷

China's efforts to protect environment and regulatory establishment are embedded in the international society's actions. As well recognized, China plays a proactive role in environmental diplomacy. Driven by a perception of itself as a 'responsible big country', China is now the party of a wide range of Multinational Environmental Agreements (MEAs) which cover nearly all important domains such as marine protection, climate change, biodiversity and trans-boundary movements of hazardous wastes, etc. The progress of framing those MEAs into the domestic legal system in part enhances the quality of local legislations. As a matter of fact, the several advances of environmental legislations and/or amendments happened as a result of China's accession to international environment conferences. Likewise, Chinese endeavours in environment protection and relevant legal construction will certainly contribute to the global efforts of improving the earth stewardship.

related legislations. To a large extent, they drive this process by spontaneous behaviours as well as the cooperation of authorized governments.

⁶⁵ See Wang Canfa, note 26 above, p. 172. Public participation can improve local administrative and legal transparency in implementation. For instance, it can promote the multidirectional flow of information in disclosure and encourage transparent communication with external actors.

⁶⁶ China Environment Forum, Event on Environmental Public Interest Law, 29 November 2012, available at <http://www.wilsoncenter.org/article/event-environmental-public-interest-law-china>.

⁶⁷ Wang, above note 65, p. 172.

1.2 WHAT IS MEANT BY THE ‘HANDBOOK’?

Defining the term ‘handbook’ presents certain difficulties. However, as a starting point, we can tackle it by distinguishing what is not a handbook.⁶⁸ At the moment, there are several academic works on Chinese environmental law, but no such efforts aim at an overarching framework of Chinese environmental law. In this term, it could be concluded that the handbook is a combination of theories with practices of Chinese environmental law, and with a focus on the introduction and necessary comment on relevant laws and regulations and their latest developments.

The *Chinese Environmental Law Handbook* is intended to serve the needs of environmental academics and practitioners by providing comprehensive guidance on the complex array of Chinese main land environmental laws and implementing regulations that environment professionals from both domestic and international must know, or master for the purposes such as research, consulting, compliance and learning. Moreover, the *Handbook* aims also to strike a balance between practical preoccupations and critical or theoretical reflection.

1.3 SCOPE AND STRUCTURE OF THIS HANDBOOK

1.3.1 Scope

As aforementioned, the *Handbook* is designed as a whole to provide readers with both a ‘bigger picture’ of Chinese environmental law and a more in-depth understanding of its preoccupations. The normative statutes enacted at a central level are thus a major focus of this book rather than regional legislations, unless the latter prove to be of particular importance and completely necessary to explain certain problems. Also considering the scope of this *Handbook*, we are rather cautious to identify, assess and incorporate personal opinions in the process of analysis. The book benefits from the expertise of a significant number of authors.

1.3.2 Structure

In total, the book has been structured into 19 distinct chapters, each of which essentially corresponds to a particular domain of environment protection like general issues, pollution control, natural conservation,

⁶⁸ See James F. Berry and Mark S. Dennison, *The Environmental Law and Compliance Handbook*, McGraw-Hill, 2000, pp. 5–9.

liability and international environmental issues. This form of organization should enable readers to easily locate the laws and regulations governing a particular issue.

Chapter 1 – Introduction, as a starting point, this section describes the context of China's environmental policies and laws. Discussion is mostly on the historical evolution and institutional structure. Several essential characters are then presented in order to offer readers more common sense and better understanding. In addition to this, Chapter 1 also serves to explain the purpose and scope of this book by exploring what constitutes a 'handbook', the general structure of the entire book and specific rationale behind it.

Chapter 2 presents a brief introduction to the Chinese current legal system, which provides a general picture of both the statutory and institutional arrangements in concurrent China. This Part is theoretically important for the *Handbook*, since it sculpts a basic setting in which Chinese environmental laws are generated, developed, exercised and implemented.

Starting from Chapter 3, the subsequent chapters focus on specific domains of Chinese environment protection activities: pollution control and prevention, natural resources conservation and climate mitigation and adaptation. Above all, Chapters 3, 4, 5, 6 and 7 deal with pollution control laws, consisting of five chapters which explain laws promulgated to control the adverse impacts of certain types of human activities (i.e., industrial and municipal) on the environment. Certain pressing issues are comprehensively and constructively discussed in this chapter, for instance air pollution, soil pollution, water unitization and ocean pollution.

Besides, traditional pollutions such as solid waste, toxic and harmful substance, on which legislations are also described herein. A host of critical regulatory instruments for instance environmental standards, Discharge Permit System (DPS), 'Three Synchronizations' ('3S') and Environmental Impact Assessment (EIA) are to be surveyed accordingly. This part is a center of domestic environmental laws.

Chapter 8 is a full discussion of Chinese legislative efforts at addressing climate change. China was reported to surpass the US and became the largest emitter in the world. Its domestic endeavors to reduce GHG emissions have certainly drawn great attention worldwide. Chapter 8 examines the latest climate and energy policies and legislation in a systematic manner. Several vital initiatives launched at the moment are also mentioned in the chapter in order to provide full information on the relevant implementation and enforcement.

The following chapters address various environmental elements conservation with the aim of enhancing their ecological functions. There are in

total six chapters (Chapters 9 to 14), each of which essentially corresponds to a particular type of environmental medium (i.e., land, fresh water, forest, minerals and biodiversity) or specialized area presently highlighted (i.e., protected area). A great emphasis is placed on the ecological function of environment elements in these chapters. Taking ocean as an example, Chapter 3 discusses the heated marine pollution sources and relevant measures in China, while Chapter 10 highlights the marine ecological conservation as well as marine living resources, in particular in key sea areas.

Chapter 15 is entitled Environmental liability. With a normative survey, it is time to focus on a real world scenario: compliance and implementation. The key to comply with and implement environmental laws is environmental liability. Over the last 30 years, a relatively mature environmental liability system has been established in China during its long march towards the 'rule of law'. In this chapter, three main forms of environmental liabilities – civil liabilities, administrative liabilities and criminal liabilities – are discussed in substantial detail.

Using Chapter 15 as a base, Chapter 16 further explores the dispute settlement mechanism arising from environmental rights and obligations current in China. Both litigious methods and alternative disputes resolutions (ADRs) are examined comprehensively in this chapter, which also reviews the substantive and procedural provisions relating to civil actions and administrative actions prescribed by the laws, regulations and governmental documents. In particular, it places the discussion on Chinese continuous attempts to create environmental courts as well as the potential problems concerned.

Chapters 17 and 18 shed light on the international perspective and rounds out the coverage of the *Handbook* with a discussion of international environment law and China's position. To date it is no doubt that China has an important role to play in environmental geopolitics, and MEAs continuously constitute an important source of the Chinese legal basis of environmental protection. In this regard, Chapter 17 looks at the broad and general policies in the environment-related foreign affairs like principles, strategies, plans and standpoint and attitude, while Chapter 18 focuses more on legal issues such as MEAs and their domestic integration.

The final chapter, Chapter 19 concludes the book by generalizing some fundamental points in China's environmental laws. Based on this, there are certain positional tendencies to be traced in this demonstrative progress which we are particularly pleased to share.