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China and Global Environmental Governance

Coordination, Distribution and Compliance

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I INTRODUCTION

Foreign relations law defines the foreign relations power of subjects of international law.[1] It encompasses the domestic law of each nation that governs how that nation interacts with the rest of the world.[2] In China, there is no field of foreign relations law recognised as such. Rather, the questions animating foreign relations law are deeply entrenched in fragmented provisions among hundreds of different legal texts. Given this fragmentation, this chapter focuses on the negotiation, conclusion, approval and implementation of international environmental treaties and agreements. In 1972, the opening of the Stockholm Environmental Conference marked the beginning of international environmental law and global environmental cooperation. As a part of international law, the functioning of international environmental law largely depends on the willingness and national capacities of states. Since many environmental problems have consequences that reach beyond national jurisdictions, domestic environmental laws and policies will impact other states and global environmental governance. The focus of this chapter is on law and practice concerning Chinese foreign relations law on global environmental governance. It will look into how China has been constructing its foreign relations law relating to environmental governance both nationally

* The views expressed are my own and do not necessarily reflect the positions of my university or any of its components. Unless otherwise indicated, translations of Chinese law provisions are not official.

[1] Thomas Giegerich, 'Foreign Relations Law', *Max Planck Encyclopedia of International Law* (January 2011).

[2] Curtis A. Bradley, 'What Is Foreign Relations Law?', in Curtis A. Bradley (ed.), *The Oxford Handbook of Comparative Foreign Relations Law* (New York: Oxford University Press, 2019), p. 1.

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and globally and will propose that Chinese foreign relations environmental law and policy be conceived as a basic structure of foreign relations law.

The next part of this chapter will demonstrate the current status of Chinese foreign relations law and how Chinese international law scholarship perceives it (Section II). It will be highlighted that a comprehensive field of Chinese foreign relations law is so far only a product of scholars' efforts. The third part of the chapter will address why Chinese law does not include a general foreign relations statute (Section III). I maintain that traditional doubts, caution and silence from the law constitute three main factors. Yet, since 1972, the relationship between environmental governance in China and its global counterpart has turned out to be rather dynamic. This dynamic relationship has been developed and reinforced by 'Chinese environmental diplomacy', which helps to explain its role in Chinese 'foreign relations environmental law and policy' (Section IV). As Campbell McLachlan wrote, the 'distribution of foreign relations power between the organs of government' is one of the functions of foreign relations law.[3] Therefore, in the fifth part of the chapter, I will explore how powers of Chinese public authorities have been allocated with regard to the negotiation, conclusion, approval and implementation of international environmental treaties and global environmental institutions (Section V). I propose that Chinese administrative organs have developed a coordinated approach to 'external environmental relations'. In part six, I will discuss the legal status of environmental treaties in China, their place in Chinese law and mechanisms of implementation (Section VI). The conclusion will briefly summarise the main findings on the encounters between global environmental law and governance and Chinese 'external environmental relations' (Section VII).

II DEBATES ON CHINESE FOREIGN RELATIONS LAW

The history of foreign relations law as a field of study in China is relatively short. A Chinese international law scholar, Professor Liu Renshan of Zhongnan University of Economics and Law, pinpointed that Chinese foreign relations law is an important part of the Chinese legal system. He proposed that 'foreign relations law' entails an interconnected and composite legal system comprised of laws, regulations and other normative legal documents dealing with external relations.[4] According to his account, this field of

[3] Campbell McLachlan, 'Five Conceptions of the Function of Foreign Relations Law', in Curtis A. Bradley (ed.), *The Oxford Handbook of Comparative Foreign Relations Law* (New York: Oxford University Press, 2019), p. 25.

[4] Liu Renshan (刘仁山), ZHONG GUO DUI WAI GUAN XI FA SHI ZHONG GUO FA LV TI XI DE ZHONG YAO ZU CHENG BU FEN (中国对外关系法是中国法律体系的重要

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the law fulfils two specific functions: first, it defines the allocation of powers in foreign affairs, such as which public organs have the right to declare war, deploy peacekeeping forces, send envoys or negotiate and approve international treaties. Second, it governs how international law becomes a part of Chinese law. With regard to these two functions, he listed three categories of sources in Chinese law, the constitution, special laws[5] and provisions[6] concerning foreign relations. Furthermore, he emphasised that Chinese international lawyers should explore relationships between international law and Chinese domestic law. In May 2016, a conference on 'Chinese Foreign Relations law: A New Agenda' stressed the importance of international legal research and practice, especially on matters affecting China and the Chinese people. From then on, a few Chinese scholars have devoted themselves to the topic. Based on his previous research, Liu Renshan extended his proposals on current drawbacks of China's foreign relations law – namely lack of systematicity, illogical legislative gaps and lack of applicability – and made suggestions how to organise it in a more systematic manner.[7] On the basis of his analysis of Chinese courts' contributions to international law,[8] Cai Congyan, Professor of International Law at Xiamen University School of Law, emphasised the

组成部分) [Chinese Foreign Relations Law is one of important part of Chinese Legal System] (2009) *Law and Social Development* 151–53 at 151.

5 In general, there are ten basic laws in the Chinese legal system, which are 'Constitution', 'Administrative Law', 'Social Law', 'Economic Law', 'Civil Law', 'Criminal Law', 'Commercial Law', 'Environmental law', 'Litigation and non-litigation procedure Law' and 'Military Law'. In China, a 'special law' is a single law regulating a specialised legal issue. For example, in order to specify the legislative power and procedure of 'the National People's Congress and the Standing Committee of the National People's Congress' stipulated in the 'Constitution of the People's Republic of China', the National People's Congress promulgated 'Law on Legislation of the People's Republic of China'. The law on legislation is one of the 'special laws'. For readers who may be interested, see Lin Li, *The Chinese Road of the Rule of Law* (Beijing: China Social Sciences Press & Springer Nature Singapore, 2018), pp. 80–4.

6 'Provisions' in this chapter refers to specified articles resolving foreign relations or foreign-related legal issues. An example for a special provision is Article 9 of the ZHONG HUA REN MIN GONG HE GUO XING FA 2017 XIU ZHENG (中华人民共和国刑法2017修正) [Criminal Law of the People's Republic of China (2017 Amendment)] (promulgated by the National People's Congress, 4 Dec. 2017, effective on 4 Dec. 2017). It provides that Chinese Criminal Law is applicable to universal crimes under international treaties.

7 He proposed three arguments in his article: (a) taking 'Foreign Relations Law' as one essential part in Chinese legal system by legislation; (b) clarifying territorial application of international treaties and customs; (c) upholding roles of international law in cultivating new lawyers. See Liu Renshan(刘仁山), ZUO WEI YI FA ZHI GUO ZHI FA DE ZHONG GUO DUI WAI GUAN XI FA (作为依法治国之法的中国对外关系法) [Chinese Foreign Relations Law as a law ruling the country] (2016) 3 *Studies in Law and Business* 131–42.

8 Cai Congyan, 'International Law in Chinese Courts during the Rise of China' (2016) 110 *American Journal of International Law* 269 at 269–88.

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importance of Chinese foreign relations law, mapped its current structure[9] and sketched the functions of Chinese domestic courts in the interpretation and implementation of international law.[10] Overall, current voices in Chinese scholarship focus primarily on the 'significance, status and proposed structure' of Chinese foreign relations law. The current work of these scholars is mostly constructive and extrapolated from theoretical considerations. There is no statute on foreign relations law in the current Chinese legal system. However, that does not mean that foreign relations law does not exist or does not have practical relevance. To the contrary, the questions animating foreign relations law are deeply entrenched in fragmented provisions among hundreds of different legal texts.

Recently, China has proposed a programme on rule of law in foreign relations, which may lead to the official establishment of foreign relations law as a field of law in the near future. On 31 October 2019, the Central Committee of the Communist Party of China adopted fifteen major decisions on 'Adhering to and Improving the Socialist System with Chinese Characteristics and Promoting the Modernization of the State Governance System and Capabilities'.[11] Among these, the thirteenth decision focused on 'independent foreign policy of peace and promotion of the building of one community of human destiny', advocating five objectives on foreign relations and law, which are 'establishment of foreign-related institutional mechanisms', 'coordination of foreign exchanges on part of the People's Congress, the central government, the Central Committee of the Communist Party, the military, local governments, and people's organizations', 'strengthening the Party's overall planning and coordination of all Party external work', 'strengthening the rule of law in foreign relations' and 'establishment of a legal system for work related to foreign states'. The thirteenth decision symbolises that the Chinese government is pursuing a systematic construction

[9] Cai Congyan, 'Symposium on Comparative Foreign Relations Law: Chinese Foreign Relations Law' (2017) 111 *American Journal of International Law Unbound* 336–40.

[10] Cai Congyan (蔡从燕), ZHONG GUO QUE QI DUI WAI GUAN XI FA YU FA YUAN DE GONG NENG ZAI ZAO (中国崛起、对外关系法与法院的功能再造) [Rise of China, Foreign Relations Law and the Re-construction of Functions of Courts] (2018) 71 *Wuhan University Journal* 130–43.

[11] The Central Committee of the Communist Party, 'Decisions on Adhering to and Improving the Socialist System with Chinese Characteristics and Promoting the Modernization of the State Governance System and Capabilities' (Chinese Version), available at www.xinhuanet.com//mrdx/2019–11/06/c_138532143.htm, accessed 30 September 2020. The Central Committee of the Communist Party is the core authority branch in China. According to the 'Constitution of the Chinese Communist Party', the Party exercises overall leadship over all areas of endeavor in every part of the country including developing the rule of law.

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of 'foreign relations law'. For the Chinese government, the next step is how to shape its structure and define its scope of application. We will need to assess in the future the impact of this ambition of the government.

III THE 'UNDERDEVELOPED' FOREIGN RELATIONS LAW IN CHINA

Two factors contribute to explaining why foreign relations law is so far underdeveloped in China: China's traditional perspectives on international law (subsection A) and the silence of Chinese law (subsection B).

A *Traditional Perspectives on International Law: Doubt and Caution*

China's traditional perspectives on international law depend on the historical experience of certain diplomatic practices.[12] Some authors have characterised the Chinese modern period (from 1840 to 1949) to be 'semi-colonial and semi-feudal'.[13] During this period, the first acquaintance with international law is the treaty of Nanking (1842),[14] the first unequal treaty in Chinese diplomatic history influencing Chinese attitudes towards international law.

After 110 years of fighting against aggressors, the government of the People's Republic of China, established in 1949, perceived international law as a Western instrument against socialism. Until 1966, China adopted a strategy of 'Start All Over Again', which means that the new Chinese government would stay away from the Western legal system. During the Cultural Revolution (1966 to 1976), China's diplomacy was still in progress, for example, to retrieve legal rights in the UN and participate in the Stockholm environmental conference, even if international legal research had been ceased. From 1949 to 1978, before the 'Reform and Opening-up Policy' was adopted, two characteristics were constitutive for China's approach towards international law: first, a suspicion towards traditional international law that primarily protected developed states to the detriment of most undeveloped nations and, second, respect for the principles of 'sovereignty', 'territorial integrity', 'independence', 'equality' and 'mutual respect'. After the

[12] For the history of Chinese international law, see Xue Hanqin, *Chinese Contemporary Perspectives on International Law: History, Culture and International Law* (Leiden, Boston: Martinus Nijhoff Publishers, 2012), pp. 13–67; Cai Congyan, *The Rise of China and International Law: Taking Chinese Exceptionalism seriously* (New York: Oxford University Press, 2019), pp. 41–99.

[13] Duan Jielong (ed.), *International Law in China: Cases and Practices* (Beijing: Law Press China, 2011), p. 164. For a history of the 'Semi-Feudal and Semi-Colonial' in China, see e.g. Immanuel C. Y. Hsü, *The Rise of Modern China* (New York: Oxford University Press, 2000), pp. 168–613.

[14] Cai, *The Rise of China and International Law*, p. 52.

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adoption and implementation of the 'Reform and Opening-up Policy' in 1978, China revived international law research and teaching and promoted interactions between international law and diplomacy. From 1979 on, China became a participant of and contributor to the international legal order, for example, it joined over 300 multilateral treaties and 130 international organisations.[15] With the expansion of its opening-up policy, China became aware of the role of international law in protecting national interests. In its foreign relations, China successfully requested the Alabama Court of the United States of America to dismiss the case of the *Huguang Railway Bonds*[16] on the grounds of absolute jurisdictional immunity and non-payment of odious debts by appointing its legal counsel to make an appearance on behalf of China in 1984.[17] Another example, the *Guanghua Dormitory* (or *Khoka-ryo* student dormitory) case (1987–2007)[18] portrays China's recognition and succession practices in international law.

In 2014, the Chinese government adopted a strategy of a 'socialist rule of law'.[19] The strategy emphasised that 'China will vigorously participate in the formulation of international norms, promote the handling of foreign-related economic and social affairs according to the law, strengthen its discourse power and influence in international legal affairs, ... safeguard the proper interests of its citizens and legal persons abroad, and foreign citizens and legal persons in China'.[20] It can be taken from this that China is serious about shaping a new international law order based on their understanding of the principles of 'sovereignty' and 'cooperation'.[21] While the idea of a 'socialist rule of law' as

[15] Wang Zonglai and Hu Bin, 'China's Reform and Opening-up and International Law' (2010) 9 *Chinese Journal of International Law* 193–203 at 194.

[16] *Russel Jackson, et al.* v. *The People's Republic of China*, 550 F. Supp. 869 (U.S. District Court, N. D. Ala. 1982).

[17] For general description on the process of the case, see Xue, *Chinese Contemporary Perspectives on International Law*, p. 87 (footnote 180 included).

[18] The entire case has not been officially reported yet. As for factual and legal analysis, see Shen Jianming, 'Revisiting the Disability of the Non-Recognized in the Courts of the Non-Recognizing States and Beyond: The Departure of the in re Guanghua Liao Courts from the Rules' (1990) 5 *Florida International Law Journal* 401–70. For a general account of the procedural history of the case, see Xue, *Chinese Contemporary Perspectives on International Law*, p. 51 (footnote 84 included).

[19] Rogier Creemers and Jeremy Daum, 'CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the law Forward', available at https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/, accessed 30 September 2020.

[20] See above, note 19.

[21] Anne Peters, 'After Trump: China and Russia move from norm-takers to shapers of the international legal order', available at www.ejiltalk.org/after-trump-china-and-russia-move-from-norm-takers-to-shapers-of-the-international-legal-order/, accessed 30 September 2020.

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such cannot tell us how China will attain these objectives through specific actions, it forms the background also for the growing scholarly interest in a Chinese foreign relations law.

B *The Silence of Chinese Law on Foreign Relations*

As far as international law is concerned, China's Constitution only specifies which organs have the authority to conclude and approve a treaty.[22] The 'Law on the Procedure of the Conclusion of Treaties', adopted by the Standing Committee of the National People's Congress in 1990, enumerates three categories of treaties that shall be concluded by three corresponding public authorities[23] but does not stipulate the status of treaties in the Chinese legal system. There is also no systematic law concerning how an approved treaty will be implemented in the Chinese legal order. The Civil Procedure Law provides that international treaties shall prevail unless China has formulated reservations.[24] But the logic of 'primacy' cannot be applied to other areas of the law. In WTO law and the law of sea, China adopts the mode of 'transformation', which means that specific domestic laws ensure compliance with approved treaties. Consequently, fragmentation and unpredictability characterise the current status of international treaty application in China. As Professor Cai has pointed out, fragmentation and unpredictability also imply

[22] ZHONG HUA REN MIN GONG HE GUO XIAN FA 2018 XIU ZHENG (中华人民共和国宪法2018年修正) [Constitution of the People's Republic of China (2018 Amendment)] (promulgated by the National People's Congress, 11 Mar. 2018, effective on 11 Mar. 2018). Article 89 (8) provides that the State Council governs foreign affairs and concludes treaties and protocols with foreign countries. Article 67 (15) entails that the Standing Committee of the National People's Congress decides on the ratification or abrogation of treaties and important agreements concluded with foreign states.

[23] ZHONG HUA REN MIN GONG HE GUO DI JIE TIAO YUE CHENG XU FA (中华人民共和国缔结条约程序法) [Law of the People's Republic of China on the Procedure of the Conclusion of Treaties 1990] (promulgated by the Standing Committee of the National People's Congress, Dec. 28, 1990, effective on Dec. 28, 1990). Article 6–8 identify three categories of treaties signed in the name of: (i) the People's Republic of China; (ii) the Central People's Government; (iii) a Governmental Sub-division or Department. The 1990 Law is '*lex specialis*' to the 'Constitution of the People's Republic of China (2018 Amendment)' on the conclusion of treaties.

[24] ZHONG HUA REN MIN GONG HE GUO MIN SHI SU SONG FA 2017 XIU ZHENG (中华人民共和国民事诉讼法2017年修正) [The Civil Procedure Law of the People's Republic of China (2017 Amendment)] (promulgated by the Standing Committee of the National People's Congress, 27 Jun. 2017, effective on 1 Jul. 2017). Article 260 provides that '[w]here there is any discrepancy between an international treaty concluded or acceded by the People's Republic of China and this law, the provisions of the international treaty shall prevail, except clauses to which the People's Republic of China has formulated reservations'.

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flexibility,[25] and the purpose of this flexible attitude and approach is to progressively find adequate solutions.

IV CHINESE FOREIGN RELATIONS ENVIRONMENTAL LAW AND POLICY

While Foreign Relations Law in general is still underdeveloped in China, it can be said that Chinese foreign relations environmental law and policy conforms to a basic structure of foreign relations law. Before discussing the allocation of China's public powers in global environmental governance and the legal status of environmental treaties in China as key topics of foreign relations law in Sections V and VI of this chapter, I will sketch the encounters of international and domestic environmental law and governance that have resulted from Chinese environmental diplomacy since the 1970s (subsection A) and have led to congruent basic legal principles of Chinese and international environmental law (subsection B).

A *Chinese Environmental Diplomacy*

Chinese environmental diplomacy has contributed to international and national environmental law. Chinese environmental diplomacy began in 1972,[26] which also marks the beginnings of international environmental law. In 1972, the Chinese government sent delegations to participate in the Stockholm Conference. It was also the first time that China participated in a multilateral conference for the protection of the environment. Unfortunately, the issues in this conference were not deeply discussed in China because of the 'Cultural Revolution'. This 'revolution' plunged the legal system and social order into chaos. However, it did not stop the progress of Chinese diplomacy, for example, the Government of the People's Republic of China was recognized as 'the only legitimate representatives of China to the United Nations' in 1971.[27] The reason why China still participated in the Stockholm Conference was that China expected the conference to open valuable opportunities for interacting with the Western world without

[25] Cai, 'International Law in Chinese Courts during the Rise of China', 273.

[26] Zhang Haibin (张海滨), LUN ZHONG GUO HUAN JING WAI JIAO DE SHI JIAN JI QI ZUO YONG (论中国环境外交的实践及其作用) [The Practice and Function of China's environmental diplomacy] (1998) 3 *International Politics* 38–44 at 38.

[27] 'Restoration of the lawful rights of the People's Republic of China in the United Nations', UN Doc. A/RES/2758(XXVI).

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damaging core national interests.[28] The first Prime Minister of the People's Republic of China, Zhou Enlai (周恩来), asked delegations to positively express ideas, policies and understanding and promote independence, economy and solidarity with 'third-world' countries.[29]

Stockholm turned out to offer an opportunity for pushing forward domestic environmental protection in China. Learning from global environmental problems at the conference, the delegations reported to Prime Minister Zhou that China also experienced serious environmental degradations. In 1973, the State Council opened the first conference on national environmental protection in Beijing, which put environmental protection on the national agenda. In its aftermath, China adopted a series of laws and regulations. China's Constitution (1978) firstly provided that China protects the environment and natural resources, prevents and eliminates pollution and other public hazards.[30] The most remarkable evidence is that the Standing Committee of the National People's Congress adopted the first comprehensive environmental protection law in 1979.[31]

Chinese environmental diplomacy was not limited to be a learner. From the 1990s onwards, China became active in promoting its understanding of international cooperation. At the 1992 Rio Conference, China and other developing countries insisted that the notion of 'Common but differentiated Responsibilities' be one of the guiding legal principles in global environmental governance.[32] China proposed that industrialised countries should take leading responsibilities for tackling global environmental problems not only for their historical contributions but also for their comparative higher capabilities. At last, the Rio legal instruments reflect this proposal.[33] The principle of

[28] Lv Jie (吕杰), ZHONG GUO HUAN JING WAI JIAO YU GUO NEI HUAN JING BAO HU (中国环境外交与国内环境保护) [China's Environmental Diplomacy and Domestic Environmental Protection] (2003) 13 *China Population, Resources and Environment* 11–15.

[29] Wang Zhijia (王之佳), *ZHONG GUO HUAN JING WAI JIAO (*中国环境外交*)* [*China's environmental diplomacy*] (Beijing: China Environment Press, 1999), p. 107.

[30] Article 11, ZHONG HUA REN MIN GONG HE GUO XIAN FA 1978 (中华人民共和国宪法 (1978)) [Constitution of the People's Republic of China (1978)] (promulgated by the National People's Congress, 5 Mar. 1978, effective on 20 Sep. 1978, invalidated on 4 Dec. 1982).

[31] ZHONG HUA REN MING GONG HE GUO HUAN JING BAO HU FA SHI XING (中华人民共和国环境保护法试行) [Environmental Protection Law of the People's Republic of China (For Trial Implementation)] (promulgated by the Standing Committee of the National People's Congress, 26 Dec. 1989, effective on 26 Dec. 1989).

[32] 'Statement by H.E. Mr. Li Peng, Prime Minister of the People's Republic of China', in 'Report of the United Nations Conference on Environment and Development: Statements Made by Heads of State or Government at the Summit Segment of the Conference', UN Doc. A/CONF.151/26/Rev.1 (vol. III), p. 36.

[33] Principle 7 of the 'Rio de Janeiro Charter/Declaration on Environment and Development', UN Doc. A/CONF.151/26.

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'Common but differentiated Responsibilities' has been one of guiding principles in Chinese environmental diplomacy.[34]

B *Congruent Basic Legal Principles of Chinese and International Environmental Law*

To better understand Chinese foreign relations environmental law and policy, it is necessary to take into account those Chinese environmental legal principles which overlap with international environmental law. This exercise helps to identify connections and understand official attitudes towards Chinese foreign relations law on environmental governance. Articles 4 and 5 of the Chinese 'Environmental Protection Law (2014 Revision)' manifestly stipulate four basic legal principles.

The first principle is the 'coordination of economic and social development with environmental protection'.[35] Before the 2014 revision, Chinese environmental protection was coordinated with economic and social development.[36] In other words, the purpose of environmental protection is to fully realise economic development. After the revision, environmental protection shall be equal to economic development. The principle of coordination, in essence, is consistent with the principle of sustainable development in international law.[37]

The second principle is 'prevention first'. Generally, the principle holds that any pollution and risk of pollution should be prevented or controlled before they

[34] Wang, *China Environmental Diplomacy*, p. 205. For the latest state practice, please see 'Statement by China on Behalf of BASIC at the Opening Plenary of COP25', available at www4.unfccc.int/sites/SubmissionsStaging/Documents/201912111926–STATEMENT%20BY%20CHINA%20ON%20BEHALF%20OF%20BASIC%20AT%20THE%20OPENING%20PLENARY%20OF%20COP25.pdf, accessed 30 September 2020.

[35] ZHONG HUA REN MIN GONG HE GUO HUAN JING BAO HU FA 2014 XIU DING (中华人民共和国环境保护法2014修订) [Environmental Protection Law of the People's Republic of China (2014 Revision)] (promulgated by the Standing Committee of the National People's Congress, 24 Apr. 2014, effective on 1 Jan. 2015). Article 4 provides that 'protecting the environment is a fundamental national policy of the state. The state shall adopt economic and technological policies and measures conducive to economically and cyclically utilizing resources, protecting and improving the environment and enhancing the harmony between mankind and nature to coordinate economic and social development with environmental protection'.

[36] Article 4 of the 'Environmental Protection Law of the People's Republic of China (1989)': 'The plans for environmental protection formulated by the state must be incorporated into the national economic and social development plans; the state shall adopt economic and technological policies and measures favourable to environmental protection so as to coordinate the work of environmental protection with economic construction and social development'.

[37] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 177. See Jin Ruilin (金瑞林) and Shu Min (舒旻), HUAN JING FA DE JI BEN YUAN ZE (环境法的基本原则) [Basic Principles in Environmental Law] in Jin Ruilin (ed.), *Environmental Law* (Beijing: Peking University Press, 2016), p. 35.

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are created. In international environmental law, prevention as a principle only underscores the obligation of states to prevent environmental damage within and beyond their own jurisdiction. Article 5 of the Chinese Environmental Protection Law provides that environmental protection should be focused on prevention. Both public and private entities and individuals should take responsibilities for preventing risks and damages. The three techniques usually applied under the principle in China – environmental impact assessment, environmental standards and environmental monitoring – are consistent with international environmental practices.

The third principle, 'public participation', as enshrined in Principle 10 of the Rio Declaration, has been transformed into Chinese environmental law. It is applied in public information, environmental management and impact assessment, class action etc. In 2015, the Ministry of Environmental Protection issued an order on 'Measures for Public Participation in Environmental Protection', which portrays special communication channels (letters, faxes, email, '12369' tip-off hotline, public hearings, notification and financial support) to facilitate the participation of non-state actors in environmental decisions.

'Polluter pays', the fourth principle, evolved from the Organisation for Economic Co-operation and Development (OECD) and highlights the 'internalization' of environmental costs and the assumption of the 'burden' by environmental polluters and beneficiaries.[38] Based on the OECD Recommendations[39] and the Rio Declaration,[40] Chinese environmental law broadens its contents by incorporating an environmental tax law,[41] rules on the insurance for environmental liability[42] and a compensation mechanism for ecological protection.[43]

38 Principle 16 of Rio de Janeiro Charter/Declaration on Environment and Development.

39 OECD 'Recommendation on Guiding Principles concerning International Economic Aspects on Environmental Policies' (26 May 1972) OECD Doc C (1972) 128, (1972) 12 Acts of the Organisation 225; OECD 'Recommendation on the Implementation of the Polluter-Pays Principle' (14 Nov. 1974) OECD Doc C (74) 14 Acts of the Organisation 535; OECD 'Recommendation on the Application of the Polluter-Pays Principle to Accidental Pollution' (25 Jul. 1989) OECD Doc C (89) 88, 28 ILM 1320.

40 Jin and Shu, 'Basic Principles in Environmental law', p. 45.

41 ZHONG HUA REN MIN GONG HE GUO HUAN JING BAO HU SHUI FA 2018 XIU ZHENG (中华人民共和国环境保护税法2018修正) [Environmental Protection Tax Law of the People's Republic of China (2018 Revision)] (promulgated by the Standing Committee of the National People's Congress, 26 Oct. 2018, effective on 26 Oct. 2018).

42 Article 6 of ZHONG HUA REN MIN GONG HE GUO HAI YANG HUAN JING BAO HU FA 2017 XIU ZHENG (中华人民共和国海洋环境保护法2017修正) [Marine Environmental Protection Law of the People's Republic of China (Amendment 2017)] (promulgated by the Standing Committee of the National People's Congress, 4 Nov. 2017, effective on 5 Nov. 2017).

43 GUO WU YUAN BAN GONG TING GUAN YU JIAN QUAN SHENG TAI BAO HU BU CHANG JI ZHI DE YI JIAN (国务院办公厅关于健全生态保护补偿机制的意见)

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The above four principles are stipulated in both international and Chinese environmental law. The normative congruence on the level of principles has been recognised in the Chinese official position on national and international environmental governance in general.[44]

V THE ALLOCATION OF CHINA'S PUBLIC POWERS IN GLOBAL ENVIRONMENTAL GOVERNANCE

The allocation of powers to negotiate, conclude and approve treaties and agreements is one of the core issues in foreign relations law. Due to fragmentations and complexities in international environmental law, and silences in Chinese constitutional law, Chinese departmental regulations provide for different functions for the respective public authorities in individual treaty regimes.[45] This section will analyse the allocation of China's public powers in global environmental governance. In 2018, China has completed the 'State Council Institutional Reform Plan'.[46] After the reform, the power to negotiate all multilateral environmental treaties was transferred to the Ministry of Ecology and Environment. However, the competence of the Ministry is not exclusive. I will first set out the administrative actors involved in China's 'external environmental relations' (subsection A) before I turn to the allocation of powers in the conclusion and approval of environmental treaties and agreements (subsection B) and in international cooperation with global environmental institutions (subsection C).

A *Administrative Organs Involved in 'External Environmental Relations'*

More than one Chinese administrative organ is taking action in global environmental governance, such as negotiations, conclusion and approval of international environmental treaties and international cooperation. These collective and coordinated actions of administrative organs are based on their allocated powers.

[Opinions of the General Office of the State Council on Improving the Compensation Mechanism for Ecological Protection] (promulgated 28 Apr. 2016, effective on 28 Apr. 2016).

44 See n. 32 above; Liu Nengye, 'China's Position on International Environmental Issues', in Qin Tianbao (ed.), *Research Handbook on Chinese Environmental Law* (Cheltenham: Edward Elgar Publishing, 2015), pp. 368–94; Wang, *China Environmental Diplomacy*, pp. 201–5.

45 Before 2018, the National Development and Reform Commission took the leadership in climate change negotiations.

46 NPC Observer, 'A Guide to 2018 State Council Institutional Reforms (Further Updated)', available at https://npcobserver.com/2018/03/14/a-guide-to-2018-state-council-institutional-reforms/, accessed 30 September 2020.

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In general, it is the State Council that conducts Chinese foreign affairs including the negotiation and conclusion of international treaties.[47] In practice, the Ministry of Foreign Affairs has been empowered to negotiate international environmental treaties on behalf of the People's Republic of China and the Chinese government. To achieve division of powers and goal congruence, China has devised a scheme of 'external coordination' in multilateral environmental agreements negotiations. In other words, there is not one single public organ that is empowered to negotiate global environmental treaties or agreements.

At present, there are over ten administrative departments involved in the process of external coordination, which consists of three steps. First, the Ministry of Foreign Affairs plays a role as the 'Window Unit'. The Ministry of Foreign Affairs traces and notifies the everyday development of all issues. Secondly, the Ministry of Foreign Affairs will contact public authorities and assign specific issues to them on the basis of relevance and expertise. For example, matters involving green technologies or forestry will be assigned to the Ministry of Science and Technology and the Ministry of Agriculture and Rural Affairs respectively. The authorities entrusted with the exercise of these assigned powers will set up specialised study groups to propose ideas and draft documents on their own. After respective investigations, all these groups will gather together to exchange ideas, draft, revise and finalise position papers for international negotiations. However, this coordination does not work well all the time. Due to the multifaced nature and complexity of environmental issues, different public organs might propose conflicting environmental policies and goals affecting the process of 'external coordination' in environmental diplomacy.[48]

B *Allocation of Powers on Conclusion and Approval of International Treaties and Agreements*

Article 89 of China's Constitution provides for the functions and powers exercised by the State Council. Item 8 of this article clearly empowers the Council to conduct foreign affairs and conclude treaties and agreements with foreign states, which is also provided in Article 3 of the 'Law of the People's Republic of China on the Procedure of the Conclusion of Treaties'.

47 Article 89(9) of China's Constitution (2018 Amendment).

48 Li Jinhui (李金惠), Jia Shaohua (贾少华) and Tan Quanyin (谭全银) (eds.), *HUAN JING WAI JIAO JI CHU YU SHI JIAN (环境外交：基础与实践)* [*Environmental Diplomacy: Basis and Practice*] (Beijing: China Environmental Press, 2018), p. 119.

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Questions of approval are more complex. According to the Constitution, two public authorities shall be involved, the Standing Committee of the National People's Congress[49] and the President of the People's Republic of China.[50] Article 3 of the Law on the Procedure of the Conclusion of Treaties stipulates that the Standing Committee of the National People's Congress is competent to approve treaties and important agreements, while the President shall approve treaties and important agreements in pursuance of the decisions of the Standing Committee of the National People's Congress. The authority of approval of the President of the People's Republic of China is derived from the Standing Committee of the National People's Congress. In practice, none of China's international treaties and agreements has been approved by the President. It is noteworthy that the Standing Committee of the National People's Congress only approves 'treaties and important agreements'.[51]

1 Approval of Certain Treaties by the Standing Committee of the National People's Congress

The 'Law of the People's Republic of China on the Procedure of the Conclusion of Treaties', literally understood, fully empowers the Standing Committee of the National People's Congress to approve all international treaties. Article 7 enlists the 'treaties and important agreements' that shall be approved by the Standing Committee of the People's Congress:

(1) treaties of friendship and cooperation, treaties of peace and other treaties of a political nature;
(2) treaties and agreements concerning territory and delimitation of boundary lines;
(3) treaties and agreements relating to judicial assistance and extradition;
(4) treaties and agreements which contain stipulations inconsistent with the laws of the People's Republic of China;

[49] See n. 23 above.
[50] See n. 23 above.
[51] In Chinese law, treaty (TIAO YUE, 条约) and agreement (XIE DING, 协定) have different meanings. Strictly speaking, a treaty is a written agreement between states and relates to matters of general concern. An agreement, written or unwritten, usually prescribes in detail the line of conduct which will be followed between states or between states and foreign legal persons with regard to specific issues. Also see George Grafton Wilson, *Handbook of International Law* (St. Paul: West Publishing Co., 1910), pp. 191–4. In international law, the two terms can be used interchangeably, however, agreement is more general. See Robert Kolb, *The Law of Treaties: An Introduction* (Cheltenham: Edward Elgar Publishing, 2016), p. 24.

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(5) treaties and agreements which are subject to ratification as agreed by the contracting parties;
(6) other treaties and agreements subject to ratification.

The following remarks will focus on environmental treaty practice with respect to Article 7 paragraphs 4 to 6.

Firstly, according to Article 7 paragraph 4 of the 'Law of the People's Republic of China on the Procedure of the Conclusion of Treaties', if provision(s) in an international environmental treaty or agreement depart from existing national law, the Standing Committee has exercised the power of approval over the instrument, for example, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes (approved in 1991),[52] the 1992 United Nations Framework Convention on Climate Change (approved in 1992)[53] and the 1992 Convention on Biological Diversity (approved in 1992).[54]

Secondly, Article 7 paragraph 5 provides that the Standing Committee shall approve an international treaty or agreement that shall clearly be subject to ratification as agreed by the contracting parties. For example, the Committee approved the Convention for the Protection of the World Cultural and Natural Heritage[55] in 1988.[56] The most recent case is the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques,[57] which was approved in 2005.

In practice, the Standing Committee has exercised its power according to Article 7 paragraph 6, the so-called 'miscellaneous clause'. The Committee is competent if a new agreement or protocol substitutes an old one that was subject to approval or actually approved by the Committee. For example, in 2006, the 1996 Protocol to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter[58] was approved based on the notion of 'succession of treaty'[59] because the 1972 Convention was also

[52] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 22 March 1989, in force 5 May 1992, 1673 UNTS 57.

[53] United Nations Framework Convention on Climate Change, New York, 9 May 1992, in force 21 March 1994, 1771 UNTS 107.

[54] Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, in force 29 December 1993, 1760 UNTS 79.

[55] UNESCO Convention for the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, in force 17 December 1975, (1972) 11 ILM 1358.

[56] Article 31 (1) of the UNESCO Convention.

[57] Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, New York, 10 December 1976, in force 5 October 1978, 1108 UNTS 151.

[58] Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, 7 November 1996, in force 24 March 2006, (1997) 36 ILM 1.

[59] Article 23 of the 1996 Protocol to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter stipulated that 'the protocol will supersede the

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subject to approval by the Standing Committee. Two further recent examples are the 2013 Minamata Convention on Mercury[60] and the 2015 Paris Agreement,[61] which were approved by the Committee in 2016. Although both treaties were neither subject to the national constitutional procedure nor successors of earlier treaties, the Committee still approved them because of their significant implications to environment and human health.[62]

2 Approval of Other Agreements by the State Council

Article 7 of the 'Law of the People's Republic of China on the Procedure of the Conclusion of Treaties' defines the realm of agreements that shall be approved by the Standing Committee. Those agreements that do not fall under one of the six items of Article 7 may be subject to approval by the State Council. For example, the State Council approved the 2000 Cartagena Protocol on Biosafety to the Convention on Biological Diversity[63] in 2005. The question is when does the State Council exercise its power. No statute specifies those circumstances that empower the State Council.

It is unclear how allocated powers function in international environmental agreements that do not fall under Article 7 of the Law of the People's Republic of China on the Procedure of the Conclusion of Treaties. The Standing Committee virtually approved several environmental agreements affecting human health or environment that do not fall under Article 7 without further legislation. As for the State Council, no statute supports its power of approval even if the power has been practically exercised. I would prefer to identify these practices as 'unpredictable' consequences caused by 'legal *lacuna*'. To achieve predictability, Chinese law should further clarify how to allocate the two public authorities to exercise powers on approval on the grounds of existing practices.

Convention as between Contracting Parties to this Protocol which are also Parties to the Convention'.

60 Minamata Convention on Mercury, Kumamoto, 10 October 2013, in force 16 August 2017, available at www.mercuryconvention.org/ (last accessed: 30 September 2020).

61 Paris Agreement to the United Nations Framework Convention on Climate Change, Paris, 12 December 2015, in force 4 November 2016, Doc. FCCC/CP/2015/10/Add.1.

62 Yi Li (易立), LUN QUAN GUO REN DA CHANG WEI HUI JUE DING PI ZHUN HE JIA RU HUAN JING BAO HU LEI TIAO YUE DE QUAN LI (论全国人大常委会决定批准和加入环境保护类条约的权力) [The Powers of Conclusion and Acceptance of International Environmental Agreements of the Standing Committee of the National People's Congress] (2017) 39 *Journal of China Three Gorges University (Humanities & Social Sciences)* 67–73 at 70.

63 Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 29 January 2000, in force 11 September 2003, 2226 UNTS 208.

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C *Allocation of Powers in International Cooperation with Global Environmental Institutions*

Apart from concluding international environmental treaties or agreements, China has been also active in cooperating with global environmental institutions. Among these, two institutions, the 'Global Environmental Facility' and the 'South-South Cooperation Fund' reflect how Chinese public powers interact in international environmental cooperation, as shown in Table 15.1 below.

1 Cooperation with the 'Global Environmental Facility'

Allocation of powers is also an issue with regard to the operation of the Global Environmental Facility (GEF), which is advocated by China.[64] As a founding member, contributing and recipient country, China has carried out a productive cooperation with the GEF since May 1994.[65] Until the end of 2019, China has been granted 1,855.84 million US dollars funding from the GEF for 213 projects concerning, inter alia, climate change, land degradation and biodiversity.[66] Without financial assistance from global contributions, it would be difficult to upgrade Chinese environmental governance. The Chinese government announced that it will prepare to implement all plans supported by the GEF. The GEF can be the major financial resource to realise national environmental protection with bilateral cooperation.[67]

In practice, the Ministry of Finance plays the role of a 'Focal Point' in the GEF. Due to its financial nature, all plans and activities should be in accordance with considerations of the national macro-economy, which is instructed by the National Development and Reform Commission (国家发展与改革委员会). To achieve efficient collaboration, the Ministry of Finance and the Ministry of Ecology and Environment jointly established the 'Secretary Office of China-GEF' in 2002.[68] The Office identifies, reviews, monitors and assesses all programmes proposed by the Ministry of Finance. If a proposed

[64] The 'Global Environmental Facility' is the largest and a permanent financial mechanism to assist developing countries to implement programmes regarding international environmental protection. *See* Rudolf Dolzer, 'Global Environmental Facility (GEF)', *Max Planck Encyclopedia of International Law* (2010).

[65] China is one of thirty-six donor countries to the GEF Trust Fund. However, no data shows the specific donation amounts until submission.

[66] See the website of the 'GEF', available at www.thegef.org/country/china, accessed 30 September 2020.

[67] Lin Gan, 'Global Environmental Policy in Social Contexts: The Case of China' (1992) 5 *Knowledge and Policy* 30–50 at 34.

[68] See the website of 'GEF and China', available at www.gefchina.org.cn/gefyzg/xmgk/201603/t20160316_24277.html, accessed 30 September 2020.

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programme is accepted by the Secretary Office, the Ministry of Finance will notify GEF. GEF finally decides whether the programme would be approved.

2 Launching and Building the 'South-South' Cooperation Fund

China is not only receiving assistance, but also contributing to environmental financing. In 2015, Chinese President Xi Jinping launched the proposition to set up a 'South-South' Cooperation Fund at the United Nations Development Summit. In his speech, he proposed that China would contribute two billion dollars to support developing countries to implement the '2030 Sustainable Development Goals'. To effectively implement the fund, the Ministry of Commerce promulgated the 'Consultative Draft on Application and Administration of the South-South Cooperation Fund' in 2016.[69] According to this draft, the Ministry of Commerce will administer the approval, management and supervision of funding programmes. If a foreign entity intends to receive assistance, it shall submit application files to its corresponding commercial organ or representative office in China. The Commercial Representative Offices affiliated to Chinese embassies and consulates abroad will assist the Ministry to manage and supervise the programme when the international application is approved.

VI THE LEGAL STATUS OF INTERNATIONAL ENVIRONMENTAL TREATIES IN CHINA

By the end of 2019, China is a state party to ninety-nine multilateral, seventy regional and bilateral environmental treaties, agreements and protocols, which almost cover all environmental areas. With the increasing number of international environmental agreements particularly two questions arise, which are another core issue of foreign relations law: the place of international environmental agreements in the Chinese legal system (subsection A) and how international treaty provisions become part of Chinese law (subsection B). This section of the chapter will address these two issues in the light of the applicable Chinese law, with a focus on international environmental law.

[69] In China, before a new legislative instrument is introduced, the administrating organ will promulgate it online and ask for public participation. The 'Consultative Draft on Application and Administration of the South-South Cooperation Fund' was promulgated on 9 September 2016, and open to public participation from 9 October 2016. The draft has not been transformed into law until submission. An English translation is not available. The Chinese text can be found at the website of the 'Department of Treaty and Law of the Ministry of Commerce of the People's Republic of China', http://tfs.mofcom.gov.cn/article/as/201609/20160901387579.shtml, accessed 30 September 2020.

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TABLE 15.1 *Allocated Functions of China's Public Authorities in International Environmental Issues*[70]

Name of Public Authority	General Allocated Functions
Ministry of Foreign Affairs	Convening of negotiations on international conventions
Ministry of Ecology and Environment	Negotiation of Multilateral Environmental Agreements
Ministry of Science and Technology	Administration and Implementation of ecological scientific technologies
Ministry of Agriculture and Rural Affairs	Sustainable development in rural and agricultural matters
Ministry of Finance	Collecting and allocating international finance
Ministry of Transport	Building and promoting digital and low-carbon transportations
Ministry of Water Resources	Hydropower stations constructions
Ministry of Housing and Urban-Rural Development	Energy efficient housing
Ministry of Commerce	Attracting environmental-related international trade and investment funds
China Meteorological Administration	International climate sciences cooperation

A *The Place of Environmental Agreements in Chinese Law*

An approved international treaty occupies an uncertain place under Chinese law. Under constitutional law, the hierarchy in the system of Chinese environmental law follows the hierarchy of public authorities:[71] comprehensive environmental law and standards adopted by the Standing Committee of the National People's Congress; environmental regulations and standards adopted by the State Council; departmental regulations adopted by Central Ministries and Commissions.[72] Very few Chinese scholars contend that the legal nature of approved treaties or agreements depends on the hierarchy of public authorities. According to this view, for instance, an international environmental treaty can be equal to environmental law when it was approved by the

[70] The content of the table is compiled by the author. For more detailed information, see n. 48 above.

[71] For 'the legislative structure and hierarchy of public authorities of the People's Republic of China', see Chen Jianfu, *Chinese Law: Context and Transformation* (Leiden: Brill Nijhoff, 2016), pp. 229–78; Perry Keller, 'Sources of Order in Chinese Law' (1994) 42 *The American Journal of Comparative Law* 711–59 at 728.

[72] See Jin Ruilin and Shu Min, 'Basic Principles in Environmental law', pp. 49–56.

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Standing Committee.[73] I am very sceptical about this proposition. The standard of 'hierarchy' shall be strictly limited in the context of Chinese lawmaking. It is implausible that the status of treaties or agreements could be arbitrarily determined by the hierarchy of the approving authority without any basis in a statute.

B *Methods of Implementation*

China has been always upholding that it will conform to international law irrespective of whether this contradicted its national law and policy. Yet, current Chinese law does not provide a specific approach to implement international legal obligations. In accordance with existing practice, some legal scholars contend that there are three ways for international treaty provisions to become part of China's domestic law: transformation through legislation (subsection 1), execution by administrative measures (subsection 2) and direct application of international treaties (subsection 3).[74] These observations are confirmed by the practice of Chinese environmental law.

1 Transformation through Legislation

The process of transformation generally takes place in two alternative ways. A first option is the enactment of special legislation. Generally, it is the State Council that promulgates departmental regulations. For example, in order to implement the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal,[75] the Regulations on the Safety Management of Hazardous Chemicals[76] were adopted in 2013. The second approach is the incorporation of treaty obligations into existing laws by amendment or revision.

[73] See e.g. Jiang Hong (江虹), GUO JI FA YU GUO NEI FA GUAN XI DE SI KAO (国际法与国内法关系的思考) [Reflections on Relationships between International Law and Domestic Law] (2014) 3 *Journal of Liaoning Administration College* 43–5; Wu Hui (吴慧), GUO JI TIAO YUE ZAI WO GUO GUO NEI FA SHANG DE DI WEI JI YU GUO NEI FA CHONG TU DE YU FANG HE JIE JUE (国际条约在我国国内法上的地位及与国内法冲突的预防和解决) [Status of International Treaties in the Chinese Law System and How to Prevent and Manage Conflicts] (2000) 2 *Journal of the University of International Relations* 23–8.

[74] Xue Hanqin and Jin Qian, 'International Treaties in the Chinese Domestic Legal System' (2009) 8 *Chinese Journal of International Law* 299322; Charles R. McElwee, *Environmental Law in China: Managing Risk and Ensuring Compliance* (New York: Oxford University Press, 2010), pp. 689.

[75] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 22 March 1989, in force 5 May 1992, 1673 UNTS 57.

[76] WEI XIAN HUA XUE PING AN QUAN GUAN LI TIAO LI 2013 XIU DING (危险化学品安全管理条约2013修订) [Regulations on the Safety Management of Hazardous Chemicals (2013 Revision)] (promulgated and amended by the State Council of the People's Republic of China, 7 Dec. 2013, effective on 7 Dec. 2013).

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The typical example is that the State Council adopted the 2018 Amendment of the Regulation on the Administration of Ozone Depleting Substances[77] to fulfil legal obligations under the Vienna Convention for the Protection of the Ozone Layer[78] and the Montreal Protocol on Substances that Deplete the Ozone Layer.[79]

2 Execution by Administrative Measures

Sometimes, administrative measures may be adopted to address harsh environmental problems, since it is time-consuming to transform international legal obligations into statute. Hence, administrative organs or offices may be authorised to promulgate regulatory documents.[80] The most recent case is the Chinese government's 'no' to foreign garbage, which is a matter governed by the Basel Convention. In 2017, under the approval of the State Council, the General Office of the State Council issued a 'Notice on the Issuance of the Implementation Plan for Prohibiting the Entry of Foreign Garbage and on the Advancement of the Reform of the Solid Waste Import Administrative System'.

3 Direct Application

Chinese environmental laws provide for general objectives, obligations and accountabilities. Normally, supplementary provisions address how an international environmental treaty will be dealt with when it is not in conformity

[77] XIAO HAO CHOU YANG CENG WU ZHI GUAN LI TIAO LI 2018 XIU ZHENG (消耗臭氧层物质管理条例2018修正) [Regulations on the Administration of Ozone Depleting Substances] (promulgated and amended by the State Council of the People's Republic of China, 19 Mar. 2018, effective on 19 Mar. 2018).

[78] Vienna Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985, in force 22 September 1988, 1513 UNTS 293.

[79] Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987, in force 1 January 1989, 1522 UNTS 3.

[80] To implement the 'Clean Development Mechanism' in the Kyoto Protocol, two administrative measures were issued. QING JIE FA ZHAN JI ZHI XIANG MU YUN XING GUAN LI BAN FA 2011 XIU DING (清洁发展机制项目运行管理办法2011修订) [Measures for the Operation and Management of Clean Development (2011 Revision)] (promulgated by the National Development and Reform Commission, Ministry of Science and Technology, Ministry of Foreign Affairs and Ministry of Finance, 3 Aug. 2011, effective on 3 Aug. 2011); ZHONG GUO QING JIE FA ZHAN JI ZHI JI JIN GUAN LI BAN FA 2017 XIU ZHENG (中国清洁发展机制基金管理办法2017修正) [Measures for the Administration of the Clean Development Mechanism Fund (2017 Amendment)] (promulgated by the Ministry of Finance, National Development and Reform Commission, Ministry of Foreign Affairs, Ministry of Science and Technology, Ministry of Environment and Ecology (formerly referred to as 'Ministry of Environmental Protection'), Ministry of Agriculture and Rural Affairs (formerly referred to as 'Ministry of Agriculture') and China Meteorological Administration, 29 Dec. 2017, effective on 1 Jan. 2018).

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with national laws. Out of twenty-seven national laws only two explicitly define the status of international environmental treaties in case of conflicts.[81]

Article 96 of the Marine Environmental Protection Law (2017 Amendment) states that:

> Where an international treaty regarding marine environment protection concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this Law, the provisions of the international treaty shall apply; however, the provisions about which the People's Republic of China has reservations shall be excepted.[82]

This provision reflects that international environmental treaty law prevails over national law in the field of marine protection. It also proves that direct applicability of environmental treaties has been presupposed in Chinese environmental law, although very few environmental laws directly pinpoint the approach. Since most provisions in environmental treaties are vague, national law normally is not in conflict with treaty provisions but concretises them for special circumstances.

VII CONCLUSION

China does not have a systematic law and practice concerning foreign relations. Its two characteristics of fragmentation and unpredictability can be explained by historical doubts and cautions towards international law, a western-dominated discourse and system of international law, and silence on the part of China's Constitution. Chinese environmental diplomacy helps to further comprehend Chinese foreign relations environmental law and policy. While there is no field of foreign relations law recognised as such in China, Chinese foreign relations environmental law and policy conforms to a basic structure of foreign relations law. China devised and operated distributed authorities through external coordination in international environmental treaty negotiations. According to the law and administrative regulations, the Standing Committee and the State Council are empowered to ratify or conclude international environmental treaties or agreements under special

[81] Another example: Article 90 of ZHONG HUA REN MIN GONG HE GUO GU TI FEI WU WU RAN HUAN JING FANG ZHI FA 2016 XIU ZHENG (中国人民共和国固体废物污染环境防治法2017修正) [Law of the People's Republic of China on the Prevention and Control of Environmental Pollution Caused by Solid Wasters (2016 Revision)] (promulgated by the Standing Committee of the National People's Congress, 7 Nov. 2016, effective on 7 Nov. 2016).

[82] See n. 42 above.

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conditions. A ratified treaty becomes part of the Chinese legal system. To achieve compliance, Chinese legislative authorities may adopt transformation, executional measures or direct application.

The overall picture painted in this chapter hence points to a nuanced answer to the question of the existence of a Chinese foreign relations law: it does not exist as a separate field, but there are many components of Chinese domestic law which fulfil typical functions of a foreign relations law. In particular, they help to construct bridges and establish boundaries between public international law and the Chinese legal framework. Further research on the prevalence of similar conditions of the Chinese legal framework for other fields of international cooperation would be a welcome addition to the global scholarship on foreign relations law as well as public international law.

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