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# The Perspective of China Upon the Global Pact for the Environment

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**Abstract:** Under the background of the inadequacy of global environmental governance, the enhancement of people's awareness on environmental protection and the necessity of integration on international environmental law, the *Global Pact for the Environment* put forward the concept of "environmental rights" and "environmental justice for the civil society", allowing to establish a unified legally binding mechanism on the international environmental legislation and supervision. The *Global Pact for the Environment* is consistent with the construction of Green Silk Road. It is particularly urgent and significant for China to carefully analyze and consider the opportunities and challenges presented by the Convention and properly address them.

**Keywords:** Global Pact for the Environment; China; Chinese Perspective

Under the background of the development of Green Silk Road in China, the emergence of the draft of the *Global Pact for the Environment* hereinafter referred to as the "**Convention**") provides opportunities and challenges for China to participate actively in global environmental governance. Consequently, the answers that how to respond and whether to join it or not are worthy of research and consideration from Chinese perspective.

## 1 The Global Pact for the Environment and Its Development

### 1.1 The Background of the Convention

The inadequacy of global environmental governance, the enhancement of people's awareness on environmental protection and the necessity of integration on international environmental law together constitute the background of the Convention. At the United Nations Environment Conference at Stockholm in 1972, the idea that "We Have Only One Planet" attracted global attention. 45 years later, however, all environmental indicators have indicated the alarm. Numerous extreme weather events, whether droughts, tornadoes, floods or fires, or air, land and marine pollution, have led to a rising global population mortality rate and the unprecedented loss of biodiversity on earth.

Bearing this in mind, the Convention was proposed in the wake of the *Paris Climate Agreement*, which was presented at COP 21 in Paris on climate change. In 2015, for the sake of effectively implementation of *2030 Agenda for Sustainable Development* and the *Paris Climate Agreement* globally, the French legal community established an international committee and a worldwide network of experts about 80 legal scholars from nearly 40 countries and regions around the world and drafted the Convention. After several rounds of consultations, the Convention (draft) was formed and submitted to an internal meeting of the group for discussion and adoption, aiming to become a legally binding treaty worldwide. It is about to consolidate the framework of global environmental governance by establishing fundamental principles of environment protection, protect the planet and fill in the gaps in international environmental

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law. Being concerned with climate change, biodiversity and pollution, the Convention envisages the protection on a global scale and aims to work as the first international treaty focusing on all the environment protection issues rather than the existing treaties or conventions. Each country and citizen shall take urgent action to reaffirm the need to ensure that ecosystems are resilient and provide sustainable services while natural resources are being developed or utilized, thereby preserving the biodiversity, advancing well-being of the entire humankind and promoting the eradication of poverty.

### **1.1.1 The Necessity of Integration**

The international environmental problems have occurred in the 1960s and 1980s. The global environmental governance has evolved from specific objectives including ozone depletion, marine pollution, and trans-boundary movement of hazardous wastes to the collective action and cooperation of the whole international community in protecting biodiversity and addressing climate change. A large number of international environmental treaties such as the *United National Declaration on Human and Environment* (hereinafter referred to as the "Stockholm Declaration" in 1972, the *Vienna Convention for the Protection of the Ozone Layer* and the *Montreal Protocol*, the *Convention on Biological Diversity*, the *United Nations Framework Convention on Climate Change* ("UNFCCC") and its *Kyoto Protocol*, have played an important role in the construction of legal system and framework for the international environmental governance. However, with the increasing number of international environmental treaties, the proliferation of the aforesaid treaties and conventions has objectively resulted in problems such as system weakness, insufficient synergy and fragmentation of rules. It is clear that the current international environmental legal framework system has reached a stage where integration is needed, as well as a "comprehensive hard law" to systematize decentralized regulations and consolidate the framework of global environmental governance by establishing the basic principles and improving the fragmentation and non-binding nature of current international environmental laws.

### **1.1.2 Double Failure of Environmental Governance**

The double failure of existing international environmental governance in formulation and implementation is also one of the driving factors introducing the Convention.

#### **1.1.2.1 Inefficiency in the Legislative Actions**

The failure of the Copenhagen Summit showed that the inertia and even paralysis of the negotiations had impeded progress in international environmental laws. At the same time, the principle of national sovereignty, the national interest and the power game between various countries actually hinder the adoption of existing conventions with a global perspective.

#### **1.1.2.2 Implementation of Standards is Different**

Even if a treaty is concluded, the corresponding control and sanctions regimes are null if their effectiveness is invalidated, and the monitoring bodies and compliance committees are quasi-legal bodies under the aforementioned conventions with weak power. Moreover, only states, not citizens, can bring matters before these compliance committees, which also reflects the lack of clarity of the subject and procedures for the implementation, and the lack of a key role for citizens in global environmental governance.

### **1.1.3 The Necessity of Balance between Civil Society and State Power**

Environmental protection should be a matter of concern to all citizens. In the sector of human rights protection, regarded as one of the founders of the *Universal Declaration of Human Rights*, René Cassin, has stated, the people are already regarded as subjects of international law, and the questions they raised in 1950 can be reiterated: "how can individuals, as subjects of law, acquire the universal rights they enjoy and comply with their obligations?" If their fundamental rights or freedoms are violated, can legal rules

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be invoked for guarantee or sanction?" The right to a sound environment is customary in human rights and is currently established mainly through international laws, such as the *Rio Declaration* in 1992, the case law of the European Court of Human Rights and even the constitutions of many countries. Therefore, individuals have a direct interest in countries that comply with international environmental laws. The aforesaid right must be enjoyed in conjunction with the guarantee that individuals shall be able to invoke it in court.

It is necessary to specify the status of civil society under international laws, which means organizations or individuals of civil society should be granted rights and guarantees at every stage of the international environmental governance. It shall be encouraged to ensure the participation of non-State actors in the drafting process of international environment laws and provide judicial measures for non-State actors to resort to compliance mechanisms.

If it is adopted by the General Assembly, the Convention (Draft) would be the third universal convention, following the *International Covenant on Economic, Social and Cultural Rights* ("ICESCR") in 1996 and the *International Covenant on Civil and Political Rights*, laying the foundation for the establishment of the right to the environment as a third basic human right.

## **1.2 Purpose and Main Content of the Convention**

### **1.2.1 The Purpose of the Convention**

The objective of the Convention is to fill gaps in international environmental laws and promote a global legal framework that more focuses on the protection of environment and natural resources. The Convention will be a multilateral treaty, with a legally binding framework, being dedicated to guide global environmental governance in written form. The *2030 Agenda for Sustainable Development*, adopted by the United Nations General Assembly in 2015, is the new framework for global development, with 17 sustainable development goals and 169 specific objectives covering economic, social and environmental areas. The Convention Draft could be seen as a concrete action to implement the above goals in the context of sustainable development. On the other hand, it could be seen as a continuation of the good political landscape of global environmental governance brought about by the *Paris Climate Agreement* adopted on 12 December 2015.

The Convention emphasizes the priority of respecting the sustainable development and the integrity of the whole earth's ecosystems, and emphasizing generation equality on the condition of satisfying modern generation's needs without compromising the future generation's needs. The principle of sustainable development has four specific requirements: (1) fairness among generations; (2) inter-generation equality; (3) sustainable use; and (4) the integration of environment and development. Fairness among generations requires that the development of present generation should not be at the expense of future generations. Inter-generation equality requires the equal rights of all persons within the present generation, irrespective of their nationality, race, gender, level of economic development and cultural differences, to the use of natural resources and the enjoyment of a clean and sound environment. Sustainable use refers to the sustainable use of natural resources while maintaining their renewable and sustainable capacity. The integration of environment and development requires that the demand of environment protection should be taken into account in the formulation of economic and other development plans, and that the need for development should be fully taken into account in the pursuit of the goal of environment protection.

The Convention emphasizes the key role of female in sustainable development and the need to promote gender equality and female's independent human dignity. The Convention recognizes the vital role of non-State persons in environmental protection, including civil society, economic entities, cities, regions and other national institutions, etc. It calls for respect, promotion and full consideration of the

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human rights and the obligations of states on the human right to health in the face of local populations, local communities, migrants, children, the disabled and vulnerable groups under their jurisdiction. The Convention requires all states to engage in international cooperation to the maximum extent possible, on the basis of their common but differentiated responsibilities and respective capabilities and in the light of their national circumstances.

### **1.2.2 Main Contents of the Convention**

The text of the Convention (Draft), issued in France on 24 June 2017, consists of a preamble and 20 principles, supplemented by six final provisions, including: the right to an ecologically sound environment, the obligation to protect the environment, integration and sustainable development, intergenerational equity, the principle of prevention, the principle of prudence, environmental damage, polluter pays, information access, public participation, environmental justice access, education and training, research and innovation, the role of non-State actors and local entities, the effectiveness of environmental norms, resilience, environmental-related armed conflicts and the diversity of national circumstances etc. Articles 1 and 2 therein on the environmental rights and obligations are the cornerstone provisions of the Convention.

The Convention (Draft) is not a copy of the principles of environmental governance under the existing international laws, and some of these provisions clearly reflect innovation and collaborative governance, such as the clause on “Resilience” of Article 16, which requires Parties to take the necessary measures to protect and restore the diversity of ecosystems and human communities to withstand environmental disruptions and degradation and to recover and adapt. The clause on “Non-regression” of Article 17 requires the domestic institutions of the Parties and the states shall not to ratify or adopt activities and standards that would reduce the overall level of environmental protection in existing legal safeguards, which is essentially equivalent to the ratchet mechanism [1] in agreements such as the *Trans-Pacific Partnership Agreement* (“TPP”), the *Trade in Service Agreement* (“TISA”) and the *Paris Climate Agreement* [2].

Moreover, in addition to the emergence of innovative principles, some of them have a practical significance than previous ones, and the emphasis or focus is slightly different. Article 10 on “Public Participation” encourages the public participating in environmental decision-making, which proposes that all the public have the right to involve at the appropriate stage in the formulation of decisions, measures, plans, program, activities, policies and standards of government departments that have the potential to have a significant impact on the environment. The “Principles of Information Disclosure” in Article 9 empower the public the disclosure right to environmental information, which states that every person, without being required to state an interest, has a right of access to environmental information held by public authorities.

### **1.3 Status of the Convention**

On June 24th, 2017, an internal meeting on the drafting of the Convention was held at the University of Sorbonne in Paris. The meeting was chaired by Laurent Fabians, the president of the French Constitutional Council and president of the Paris Climate Change Conference in 2015, where he formally submitted the draft to French President — Mr. Emmanuel Macron. As an achievement, the Convention (Draft) was formed and publicly issued, with the active promotion of President Macron, which attracted wide attention from the international community and governments. On September 19th, 2017, France hosted the summit on the Convention during the 72nd Ministerial Conference of the United Nations General Assembly, and President Macron formally submitted the Convention (Draft) to the United Nations.

On May 11th, 2018, the United Nations General Assembly voted to establish a framework for the Convention rather than vote for the text. Meanwhile, the UN formally initiated the process for assessing and

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considering the feasibility of the Convention. In December 2018, the Secretary-General of the UN issued a report entitled “*Gaps in International Environmental Law and Environmental-Related Instruments: Towards a World Environmental Convention*”, emphasizing that international environmental law and its effectiveness can be achieved through the development of an international instrument that brings together all the principles of environmental law in a comprehensive and uniform manner, which can better promote multi-party and coordinated governance, increase environmental predictability and provide legal safeguards.

From 20th to 22th May 2019, the third meeting of the Open-ended Working Group on the *Global Pact for the Environment* was held in Nairobi, Kenya. At that meeting, the Convention (Draft) had suffered a serious setback with a disappointing result. It was clear that many countries had shied away from the co-chairs’ original proposal, and on the occasion of the fiftieth anniversary of the Stockholm Conference, they ultimately chose to issue a simple political declaration in 2022.

## **2. International Law Issues under the Convention**

### **2. 1 The right to a healthy ecological environment and the obligation to conserve the environment**

#### **2.1.1 The Right to Environment**

The proposal of the Right to Environment [3] in the Convention (Draft) can be deemed as another great innovation in the field of human rights as one of the basic rights of all the citizens of the earth. At the same time, the Convention (Draft) establishes both the right to a healthy ecological environment and the obligation to protect the environment. While proposing the “Right to Environment”, the Convention also states that “any state or international body, legal or natural person, has an obligation to protect the environment”. [4] To this end, all the public shall contribute to the conservation, protection and restoration of the earth’s ecosystem, that is, “any country or international body, natural or legal person, whether public or private, has an obligation to conserve the environment.” This proposal closely links the right of citizens to enjoy a healthy ecological environment with the obligation to protect the environment, and makes it clear that all citizens are the subject of enjoying the right to a healthy ecological environment, but also the subject of fulfilling the obligation of environmental protection. From a new perspective, it explains the relationship between enjoying a healthy ecological environment and protecting the environment, which requires citizens to strengthen their own rights as well as environmental rights, but also requires the active implementation of environmental protection obligations.

The “Right to Environment” includes both the rights of present generation and the rights of future generations implied under the principle of inter-generation equity [5], covering both the substantial environmental rights [6], such as the right of citizens to a good ecological environment, and the right of procedural environment, such as public participation, the right of access to information [7], access to justice, etc. The Convention also emphasizes the various obligations of parties in environmental governance, including domestic obligations such as the provision of environmental information, the right to public participation in environmental affairs, education training in environmental matters and research innovation, and international obligations such as cooperation in the implementation of treaties in the spirit of good faith and global cooperation, adopting flexible measures under international obligations to protect the environment related to armed conflict. Entity obligations include measures to ensure maximum implementation of the “polluter pay” principle and procedural obligations on ensuring effective and affordable access to environmental administration and justice.

#### **2.1.2 The right of civil society to participate in environmental decision-making**

Firstly, the need for civil society to participate in international environmental policy is the mandate of the UN Environment Program. Previously, only states and international organizations had the capacity

to fulfill their obligations under international treaties. Obviously, non-State actors actually play an increasingly important role in environmental negotiations. During the Rio Conference in 1992, more than 20,000 representatives of non-governmental organizations attended, as twice the number of government representatives.

However, the law lags behind practice and procedural safeguards are needed to strengthen the position of civil society in the development of international environmental law and play the important role of non-State actors such as scientists, non-governmental organizations, companies and associations in environmental governance. Article 14 of the Convention states: "the Parties shall take the necessary measures to encourage the implementation of this Pact by non-State actors and subnational entities, including civil society, economic actors, cities and regions taking into account their vital role in the protection of the environment", which emphasizes the role of non-State actors and state institutions, and non-governmental organizations in international environmental governance. It should be placed within the legal framework of innovation, synergy and expansion and play a long-term role.

Secondly, it is also the intention of the Convention to promote the transparency of certification standards for non-governmental organizations in environmental negotiations. By providing a unique accreditation procedure for environmental non-governmental organizations, the accredited non-governmental organizations will be entitled to a presumptive representation status in environmental related negotiations, who could be challenged by the host state of such non-governmental organization subject to the review by the secretariat of the competent conference on the environment. The reasons for the refusal of accreditation must be made public to ensure that the process of selecting non-governmental organizations is completely transparent.

## **2.2 The Right to Environmental Judicial Protection**

"The right to environmental judicial protection" [8] under the Convention allow civil society access to environmental justice, which is guaranteed and achieved through practical compliance and sanctions mechanisms. The non-judicial compliance procedures of the Convention (Draft) are intended to empower civil society more than just to impose sanctions.

### **2.2.1 Effectiveness of Improving Multilateral Compliance Mechanism**

The flexible non-judicial compliance mechanism in the Convention (Draft) would ensure the application of the Convention, which would establish an independent committee of experts to regulate its implementation and provide that all the parties would be required to report to the committee on their progress in the implementation of the Convention within a time limit (up to four years). Moreover, experience has shown that states do not fully have the resources or expertise required to meet their obligations, and that they may not comply with the provisions of environmental agreements consciously. A universal approach should therefore be adopted to help states fulfil their obligations, rather than simply observing their non-compliance and imposing sanctions.

Secondly, it is necessary to allow civil society to comply with *the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* in 1998. In order to be effective, the committee shall be open to the whole civil society, in particular non-governmental organizations. This proposal is an extension of negotiations to strengthen the participation of civil society in the upstream phase (i.e. the drafting phase of the Convention).

Finally, the financial and technical capacity of the committee was strengthened and its coordinated operations are encouraged to enhance efficiency and achieve connectivity across the committee's various departments. It is reiterated that the procedure was established to ensure flexibility rather than to serve as traditional dispute resolution mechanisms, which would facilitate the acceptance of the above-mentioned compliance mechanisms. In particular, the development of financial and technical assistance measures

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would be essential, especially for less developed countries.

### **2.2.2 Protection of Individual Litigation Rights**

Some international courts are already dealing with environmental-related disputes, although no specialized environmental courts have been established. However, these dispute settlement mechanisms remain optional, i.e. States may choose not to recognize the jurisdiction of the Court, in particular the jurisdiction of the International Court of Justice ICJ. In addition, a growing number of initiatives support the establishment of specialized international environmental tribunals, in addition to the jurisdiction of existing courts, open a new path to global environmental governance through specialized judicial bodies to address disputes and contradictions in the field of environment and guarantee the right of non-State actors to further access to judicial remedies.

## **2.3 Integration and Harmonization of International Environmental Legislation and Supervision Mechanism**

### **2.3.1 An Integrated Written Environmental Convention**

The aim of the Convention, initiated by the Government of France, is to integrate and harmonize existing environmental protection conventions and regulatory institutions by providing “a comprehensive and universal convention on global environmental governance” through the Convention. There are several international treaties worldwide covering more or less directly with environmental issues, but still under a circumstance of proliferation and even division among existing treaties.

Since the 1980s, international environmental treaties have tended to take the form of “framework conventions”. The Convention (Draft) consists mainly of the principled provisions that have basically formed a consensus, so as to avoid the failure of the treaty to be concluded due to excessive differences. As for the more specific content of rights and obligations, it could be left to the future with a protocol or annex. However, the Convention (Draft) differs from traditional framework laws in that, since multilateral environmental treaties in specific areas such as climate, oceans and biodiversity have been basically in place. The Convention is in fact taking the path of constructing a unified framework law from the “bottom-up” and then “top-down” [9].

### **2.3.2 General Text with Legal Binding Effectiveness**

There are a number of environmental declarations and charters at the international level, such as the 1972 *Stockholm Declaration*, the 1982 *World Charter for Nature* and the 1992 *Rio Declaration*, but they are difficult to be directly invoked by the tribunal and thus difficult to constitute a valid guarantee of legal rights. A legally binding text must be adopted as a universal environmental charter. As the cornerstone of international environmental law, the Convention (Draft) analyses changes and implementation of existing principles in specific areas, in accordance with environmental agreements in all sectors, and generates legal effects through the establishment of substantive and procedural rights, from which all courts can be inspired. The Convention (Draft) will also become another legally binding global climate agreement, following the *Paris Climate Agreement* and the *Kyoto Protocol*.

## **3. China's View on the Convention**

After the French government issued the Convention (Draft), it aroused wide concern in the fields of politics and academia within China. Governments and intergovernmental international organizations outside France were more cautious about the Convention (Draft) and generally positive about the initiative to develop a world convention on the environment, but had not commented on the text itself.

On September 19th, 2017, Chinese Foreign Minister-Mr. WANG Yi once made a speech at UN headquarters in New York during UN Summit on the Convention and expressed the viewpoint of China on the Convention. WANG Yi said that China was willing to actively participate in the process of global

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environmental governance and promote the formation of a multilateral system of fair, reasonable and win-win cooperation in international environmental governance. The promotion of the international cooperation on environmental governance should focus on the process of formulating the Convention, the interests of all parties in an integrated manner and achievement of four “persistence”: ‘Firstly, we should insist on discussing environmental issues under the framework of sustainable development to achieve the coordination and unity of environmental protection and economic and social development; Secondly, we should adhere to the principle of ‘common but differentiated responsibilities’ and help developing countries steadily improve their environmental governance and sustainable development capacity; Thirdly, we should adhere to the principle of national sovereignty over environmental resources which is a prerequisite for cooperation in the field of the international environment and a right conferred on states by the *Charter of the UN* and the principles of general international law; and lastly, the full participation of developing countries should be upheld. While developing countries face the task of developing their economies and improving people’s livelihood, they have the realistic need to strengthen environmental protection and governance, and they should become indispensable and important participants in international environmental governance.’ [10] From above all, it is concluded that China is in line with the promotion of the Convention, subject to certain principles such as common but differentiated responsibilities, national sovereignty over environmental resources, and the full participation of developing countries. The aim of the Convention is also in line with the Green Silk Road Initiative proposed by China, which stresses on the protection of environment during the development of economy and social life along the Belt and Road Areas.

### **3.1 Green Silk Road and the Convention**

In 2013, President Xi of China proposed a cooperative initiative to build the New Silk Road Economic Belt and the 21st Century Maritime Silk Road (hereinafter referred to as “BRI”). In recent years, the construction of the BRI has been on the right track. Ecological environment protection is an important part of the construction of the BRI. In a speech to the legislative department of Uzbekistan Supreme Council, President Xi Jinping said, “We should focus on deepening cooperation in environmental protection, implementing the concept of green development, strengthening the protection of the ecological environment, and working together to build a ‘Green Silk Road’.” The *Vision and Action for the Joint Construction of the Silk Road Economic Belt and the 21st Century Maritime Silk Road* issued by China also mentions to “strengthen the infrastructure and operational management of green and low-carbon construction, taking full account of the impact of climate change in the construction”, and “highlight the concept of ecological civilization in investment and trade, strengthen cooperation on ecological environment, biodiversity and climate change, and build a green Silk Road.” China has also issued the *Guidance on Promoting the Construction of the Green “Belt and Road”*, the *“Belt and Road” Ecological Environment Protection Cooperation Plan*, etc., to promote the implementation of the BRI green responsibility and green standards.

The concept of “Working Together to Build the Silk Road Economic Belt and the 21st Century Maritime Silk Road” proposed in the BRI construction is consistent with the purpose of the Convention, both of which emphasize the principles of sustainable development and the principles of international cooperation. The BRI provides an opportunity at the economic level to construct a more inclusive global green value chain, and there is a convergence with the Convention in terms of the rule of law in the field of international environment law. The participating countries in the BRI development are at different levels of the world economic development and therefore need to start with mutual understanding and gradual consensus, such as the “rule of law” as stipulated in the Convention, which establishes multi-layered environmental standards. In addition, global green value chain can be constructed through flexible and diverse approaches such as development assistance and trade treaties, while aligning with international sustainability standards.

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### 3.2 China's Environmental Public Interest Litigation (EPIL) and the Convention

For the first time, in 2012, the Standing Committee of the National People's Congress ("NPC") revised the *Civil Procedure Law* and set up a public interest litigation (hereinafter referred to as "PIL") system. It allows organizations "prescribed by the law to bring a suit on environmental pollution and other acts that undermine the public interest."

To clarify and establish a framework for civil EPIL in the amended EPL, on January 6th, 2015, China's Supreme People's Court ("SPC") released the *Judicial Interpretation on Environmental Civil Public Interest Litigation* (hereinafter referred to as the "Civil EPIL Interpretation"). The SPC formulated its interpretation according to the 2012 revised *Civil Procedure Law*, the *Tort Law*, and the 2014 revised *Environmental Protection Law*. For example, it specifies the qualified plaintiffs, court of jurisdiction, and trial procedure in civil EPIL. In addition, in July 2015, the Standing Committee of the NPC authorized the Supreme People's Procuratorate to launch a pilot program for public interest litigation for ecological and resource protection.

In June 2017, the Standing Committee of the National People's Congress amended the *Civil Procedure Law* and the *Administrative Procedure Law* to formally establish the system of EPIL. The system of EPIL has realized a great transformation from "damage to human beings" to "damage to the environment", responded to the realistic demand of ecological civilization construction and green development, provided a legal basis [11] for the protection of ecological environment by judicial power, and strongly promoted the process of judicial participation in environmental governance. It has become an important part of our country's environmental system of rule of law, which is also in line with the principle on "Access to Environmental Judicial Protection" of the Convention.

At present, China's EPIL has provided general legal rules for the application of EPIL and environmental private interest litigation, unified the standards of adjudication of environmental tort related cases, committed to resolving the judicial practice of attribution principles on environmental pollution liability and the constitution of tort liability, provided the guidance for the courts to properly hear cases of environmental tort liability. Similar to the Convention's innovative proposal to increase the status of non-State actors, namely civil society organizations such as non-governmental organizations at the level of international environmental governance, China supports lawsuits brought by non-governmental organizations, and the number of non-governmental organizations which could file environmental public interest litigation has increased to 22 organizations by September 2018 in China, including the China Biodiversity Conservation and Green Development Foundation, All-China Environment Federation, China Environmental Protection Foundation (CEPF) and other social organizations. At the same time, China has been clarifying the criteria of the qualification for non-governmental organizations that can file an environmental public interest lawsuit. The SPC has issued the *Judicial Interpretation of EPIL*, which details the criteria of the qualification of non-governmental organizations with the power to initiate EPIL as stipulated in the *Environmental Protection Law*. The SPC further clarified the examination standard of the *Judicial Interpretation of EPIL* by means of the guidance cases through reviewing PIL series of environmental pollution cases in the Tengri Desert.

Although the *Environmental Protection Law*, the *Civil Procedure Law* and the *Administrative Procedure Law* have solved the issue of litigation rights in EPIL, however, there is always a lack of legal basis for the substantive rights for claims in EPIL. Nevertheless, the EPIL system under the current *Tort Law* has always been limited by the general theory of tort liability, and the environmental rights under the Convention has, from a new perspective, given the parties of the lawsuit the corresponding rights and obligations to explain the relationship between the rights of enjoying a healthy ecological environment and the obligations of protecting the environment, and require every citizen to enhance the awareness of environmental rights.

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### 3.3 Opportunities and Challenges of China under the Convention

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China's diplomacy in the field of international environment has gained active momentum, especially under the guidance of advanced concepts such as the construction of ecological civilization and the "Green Belt and Road".

### **3.3.1 Opportunities for China Acceding to the Convention**

Accession to the Convention may present the following opportunities for the environmental governance process in China:

#### **3.3.1.1 Strengthening the Leadership and Power of Discourse in Global Environmental Governance**

In recent years, the United States, Russia and other countries are affected by economic downturn and political instability. The current global governance system led by western countries are obviously difficult to adapt to the new situation of global governance. At the same time, as the world's largest developing country and the world's second largest economy, China supports the Convention (Draft), but stresses that the development process must be jointly promoted by all the members and the working group must be guided by the principle of multilateralism and taking into account the interests of all parties. The working group shall guide the developing countries to improve their environmental systems and ensure the guidance work would be an integral part of global environmental governance.

The international community's trust and expectation of China is growing as China actively supports for participation in the global environmental governance process, upholds the concept of innovation, coordination, greenness, openness and sharing of development, actively advocates a green, low-carbon, circular and sustainable way of production and lifestyle, and vigorously promotes the construction of ecological civilization. There is no doubt that China has become one of the most important leaders in the field of global environmental governance in the world. Therefore, China's active accession to and support for the Convention will help to build more consensus with other countries, especially developing countries, and will further strengthen their support for multilateralism. It can give China full play to its exemplary leading role as a responsible power by actively supporting the Convention, improve international moral advantages, enhance the power of discourse, and serve the overall diplomatic strategy [12].

#### **3.3.1.2 Promoting the Modernization and Internationalization of Chinese Environmental Governance**

Once the Convention (Draft) becomes a binding legal document, it will lay the foundation for international environmental laws and be legally binding on state parties. Then the Convention will provide external references for China's overall domestic environmental governance system, and help further promotion on the concepts, subjects, objectives, systems, mechanisms, regulations, policies, standards, supervision, domestic and foreign co-ordination of the new international environmental law system. It will also promote the improvement of environmental management systems, enhance the level of modernization and internationalization, and establish a scientific and rational, unified and efficient environmental governance system that matches China's goal of improving ecological environment quality and international advanced requirements.

#### **3.3.1.3 Identify Priority Areas for Ecological and Environmental Protection and Pollution Prevention**

If China accedes to the Convention and actively carries out sharing and exchanges on relevant global ecological environment policies, technologies and practices, China can better identify the specific priority areas and directions for ecological and environmental protection in China, and fight for pollution prevention and control. On the other hand, China can also spread its practices of pollution prevention and ecological civilization construction to other parts of the world, so as to involving more participants, contributors and leading roles in the joint construction of global ecological civilization.

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### **3.3.2 Challenges for China Acceding to the Convention**

Accession to the Convention can provide China with some opportunities, but on the other hand, it also means increased restraints, obligations and challenges in environmental governance.

#### **3.3.2.1 Difficulty and Pressure on Environmental Negotiations among States**

Under the initiative of the Convention, many countries may act on the basis of their own interest, e.g. EU countries may be more committed to acting as leaders and promoters of the Convention, while other countries such as the United States and Russia may have a negative attitude towards it. The developing countries are mostly powerless and underweighted. Although the objective of the Convention is to address or fill the current gap of international environmental legislations, the fragmentation of the environmental positions of different countries is evident, and the Convention can not completely resolve the issue of decentralized claims currently. In addition to the lack of world economic growth and high energy consumption and carbon emissions in the rapid development process of China, the international community is very concerned about environmental pollution and carbon emissions in China, which may suggest for China to assume more responsibilities and fulfill more obligations in global environmental issues and carbon emission reduction. To be honest, the fragmentation of international environmental interest groups has increased the difficulty of consensus-building, and once environmental issues are connected with the international politics, the pressure of follow-up negotiations will be further increased.

#### **3.3.2.2 Limited Ecological Environmental Management**

As the international community defines environmental issues in a wide range of areas, including pollution prevention and control, climate change, marine pollution, human health, natural disasters and even gender equality, Article 3 of the Convention specifically provides “policy formulation and sustainable development” to emphasize climate disorder response, marine conservation and biodiversity conservation and other related content. In 2018, the institutional reform plan of State Council of China ushered in a “big environmental protection” modal that connects ecological protection and pollution control, and the Ministry of Ecological Environment of China has solved the problem of cross-repetition of the function of ecological environment protection in China, and unified supervision and management of climate change and marine environmental protection.

On the other hand, the newly incorporated functions need to be adapted to global environmental concerns in a timely and effective manner, and the relevant management mechanisms still need to be comprehensively improved. In the area of marine environmental protection, for example, the international community and the UN Environment Programme have repeatedly stressed the harm of plastic pollution to the marine ecological environment, calling for a reduction in the use of plastic products. The UN Environment Programme has designated the theme of World Environment Day 2018 as “Beat Plastic Pollution”. Although China began to implement the “plastic restriction order” as early as 2008 and the usage of plastic bags has shown a downward trend, it is still difficult to prohibit and stop the usage of plastic bags in China due to Chinese people’s unchanged usage habits, as well as takeaway, express and other new business development in China. The production and use of plastic bags still lack of relevant effective supervision and management.

#### **3.3.2.3 More Pressure of Ecological Environment Construction**

As a strong supporter and practitioner of global sustainable development, China adheres to the path of sustainable development with its own characteristics. Under the transformation and optimization of the economic structure, although China has made many efforts in the protection of ecological environment, pollution prevention and control, the introduction and implementation of the major action plans for the environmental protection of air, water and soil which have laid a good foundation for pollution prevention, the ecological environment construction of China is also in the critical period and its foundation for high-

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quality development is still weak.

### **3.3.3 Suggestions for China whether to Accede to the Convention**

Considering the above opportunities and challenges which have been affected by the Convention on the development of China's environmental governance and protection, the following countermeasures may be considered in the light of the current international situation and China's actual circumstances.

#### **3.3.3.1 Further Strengthening Environmental Diplomacy Position**

China should optimize the global partnership on environmental governance, strengthen South-South cooperation in ecological and environmental protection, and promote the substantive development of the international green alliance for the BRI. It is necessary to adhere to and emphasize the principle of "common but differentiated responsibilities", and call for other developing countries in the international community to take full account of the different stages of development and the real demand of countries, and to distribute state responsibilities for global environmental governance in an equitable and equitable manner. On the other hand, the developed countries are urged to actively implement the provisions of Article 20 of the Convention on "Diversity of National Conditions", carry out knowledge-sharing and technical support at the international level, remove technical barriers and explore with developing countries for a successful paradigm of the coordinated development of the ecological environment, economy and society. China should promote the interaction between developed and developing countries in science and policy, and achieve the complementation of comparative advantages.

#### **3.3.3.2 Strengthening Cooperation in Scientific and Technological Innovation of Ecological and Environmental Protection and Actively Participating into the Construction of Global Environmental Governance**

The Convention provides a good opportunity for China to participate in the reconstruction of the global environmental governance system, and China, as the world's largest developing country, must actively participate in the construction of international environmental law, the rules of the global governance and promote compliance cooperation under environmental conventions. China should promote the implementation of multilateral environmental agreements in the BRI construction, build compliance cooperation mechanisms, and promote compliance technology exchanges and South-South cooperation. At the same time, China should, on basis of its economic and social development and implementation capacity, adhere to the principle of "not retreating", scientifically setting up the goal of national independent contribution, actively cooperating with the compliance supervision, promoting scientific and technological innovation cooperation in ecological and environmental field, actively conducting research on the environmental protection technology, and promoting transformation of scientific and technological achievements and the application.

#### **3.3.3.3 Strengthening Environmental Governance and Adaptive Capacity of China towards the Convention**

The Convention, which may, in the future, serve as a permanent basic text of international environmental law, may be implemented through the critical period of China's transformation into high-quality development. China must tap its inherent potential, vigorously promote the construction of ecological civilization, actively implement the work objectives set by the National Conference on ecological environment protection, give full play to the regional advantages of its various provinces, regions and cities, and prepare local BRI ecological and environmental cooperation and implementation plans. China should encourage all regions to actively participate in multi-bilateral environmental cooperation, promote the establishment of international partnerships at the provincial and municipal levels, actively innovate cooperation models, promote the formation of up-down linkage, government-enterprise co-ordination, think tank, improve the internal adaptability to the Convention.

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In conclusion, as the Convention is still at its preliminary stage, there may be some uncertainties. However, the establishment of the “right to the environment” and the relevant other provisions have attracted the wide attention of international communities. The process of the development of the Convention should be followed continuously. Meanwhile, follow-up analysis and research should be carried out in parallel with the development of the Convention, risks should be identified, relevant policy systems or action plans should be established, and the challenges of decentralization of the positions of international environmental interest groups should be actively addressed. At last, China shall rationally observe and reflect on the future of the Convention which may become an universal charter of global environmental governance.

## References

[1] The ratchet mechanism consists mainly of the “standstill clause” and the “ratchet clause”, mainly to ensure that liberalization and protection levels will not retreat.

[2] Du Qun, Guo Lei: “*International Integration Trend of Laws on Global Environment Governance-Observation on the Global Pact for the Environment (Draft)*”, Newspaper of Shanghai University, September 2018, No. 5 Volume 35th.

[3] Article 1 Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment

[4] Article 2 Every State or international institution, every person, natural or legal, public or private, has the duty to take care of the environment. To this end, everyone contributes at their own levels to the conservation, protection and restoration of the integrity of the Earth’s ecosystem

[5] Article 4 Intergenerational Equity Intergenerational equity shall guide decisions that may have an impact on the environment; Present generations shall ensure that their decisions and actions do not compromise the ability of future generations to meet their own needs.

[6] Article 10 Public participation Every person has the right to participate, at an appropriate stage and while options are still open, to the preparation of decisions, measures, plans, programmes, activities, policies and normative instruments of public authorities that may have a significant effect on the environment.

[7] Article 9 Access to information Every person, without being required to state an interest, has a right of access to environmental information held by public authorities; Public authorities shall, within the framework of their national legislations, collect and make available to the public relevant environmental information

[8] Article 11 (Access to environmental justice) of the Convention.

[9] China Biodiversity Conservation and Green Development Foundation (CBCGDF) : “The Comparative Study of Environmental Laws of China and France, Considering the Global Trend of Social Governance Modal of “Bottom-up”, [EB/OL]. HTTP: //WWW. CBC. org/news Show/4937/3972. HTML, Last visit date on July 5th, 2019.

[10] Ministry of Foreign Affairs of China: “*Minister Wang Yi attended the summit of the Global Pact for the Environment*”, September 20, 2017, <https://www.fmprc.gov.cn/web/tpxw/t1494802.shtml>, last visit date on July 15th, 2019.

[11] Jiang Bixin: “*The Practical Development and Perfection of Rules on Environmental Public Interest Litigation in China*”, the Law Application, Volume 1 2019.

[12] Zhao Zijun, Yuhai: *The Impact Analysis and Counter Measures on the Global Pact for the Environment*, Environment Development (ISSN1007-0370), Volume 5 of 2018.