

# Legal Completion in Global Climate Governance

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## ABSTRACT

Global warming brings extreme climate, triggers forest fire and water resources scarcity and more natural disaster, threatens the survival and development of human and other global organisms seriously, and causes each country to realize the importance of climate governance to improve the cooperation of climate governance. Focusing on several issues in global climate governance as well as international treaties of current climate change in China as research object of climate change legislation, proposing international treaties with optimizing climate governance, establishing regulatory law enforcement system in climate change as an approach to complete global climate governance and providing Chinese plan of global climate governance from the perspective of Chinese domestic climate change legislation is going to be raising.

**Keywords:** Climate Change, Climate Governance, Climate Change Law, International Treaty Law, Supervision, Law Enforcement in Climate Change.

## 1. INTRODUCTION

Under the current circumstance of raising the global issue, climate crisis as one of the great essential problems is attracting attention from the whole world. On the level of law response, the main foundation for international law is International Covenant on Environment and Development and Paris Agreement. For Chinese law is the Emergency response Law of the People's Republic of China. However, there are still many problems that cannot perfectly deal with all the climate issues at present. In climate change and the de-globalization, the combination of human activities and natural disasters will cause more destructive social, environmental issues for public health crisis and financial damages. Thus, climate change concentrates on improving global climate governance, and climate changes contributing to Chinese legislation will be discussed.

## 2. CURRENT CLIMATE CHANGE ISSUE

The frequently happened forest fire and water shortage brought both financial loss and health insecurity

to human society. Clean water scarcity induces the spread of waterborne diseases, increases social inequality, and traps countries in economic troughs. African countries are the major suffers from water scarcity. For instance, an average African woman needs to walk approximately six hours to access clean drinkable water and carry them to their households. The time they spend on finding clean water takes over the opportunity to gain education and working, which makes social inequality even severe. Due to lack of proper water sanitation regulation, water-borne diseases such as diarrhea spread quickly, and it is now one major killer of children's health. These factors, combined with low yields on crops due to water scarcity, slow down the growth of a country's economy and trap people in poverty continuously. If water scarcity is the product of extensive carbon emissions, a forest fire is the one that plays behind the scenes. Forest fire hurts biodiversity by burning down an enormous number of trees and wiping off the habitats of animals, such that it imposes a threat on human society indirectly. Some forest fires happen on a large scale, which results in fatalities and damage to property. For instance, the forest fire in Australia in 2019 costs \$103 billion in property damage

and economic losses. The carbon emissions from forest fires also contribute a big "effort" toward global warming.

Societies are taking measures to combat these two obstacles brought by climate change. From the perspective of social administration, countries are taking action by educating campaigning citizens, increasing investments and subsidies, conducting conferences and negotiations, and making laws and enforcement. In modern society, the Paris Agreement [1] and Kyoto Protocol [2] have laid a great foundation for international cooperation in the global war with climate change. Other international regulations like the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses [3] are adopted to further regulate international uses of resources, achieve sustainable development, and provide a basis for negotiations across borders regarding distribution and sharing of resources. In addition to the international laws, domestic laws were also launched. For example, in terms of prevention, mitigation, or adaptation towards climate change, China has adopted laws like the Water Law of the People's Republic of China [4], The Forest Law of the People's Republic of China, Energy Conservation Law, and so forth. On the other hand, countries realize that organizations and agencies should be established to achieve highly effective cooperation. Take organizations or agencies aiming for rational development of earth resources as examples, International Union for Conservation of Nature (IUCN), Worldwide Fund for Nature or World Wildlife Fund (WWF), UN Environment Program (UNEP), Global Environment Facility (GEF), Greenpeace International are currently devoting efforts to improve and maintain global environment. If these agencies are brought together as facing the risk of climate change, the current situation will surely be elevated to a more desirable level for international cooperation.

So, the current system to deal with climate change is lack of relevant laws, regulations, and related mechanisms result in the global climate change cannot be supported by favorable international cooperation at the international level. Current domestic laws cannot be well integrated with international issues to solve disasters caused by major climate change. The best way to settle it once and for all fundamentally is to build a timely response mechanism to address climate change. It brings back to the institutional level. Relevant laws should play a role in combating climate change as climate change concerns the survival of a community of shared future for mankind, the organizational structure of the UN, the cooperation platform of the global society. Their response to climate change mechanism should be improved. Consequently, International organization law is on the stage. Without a doubt, with the new changes in the organizational structure of the United Nations, laws related to the environment and climate change in China

also need to be improved. To make sure of integrating domestic law with international law and taking responsibility in cooperating with the world to address climate change.

### **3. CAUSING REASONS OF CLIMATE ISSUES AT LEGAL PERSPECTIVES**

Nowadays, there are various and comprehensive components for climate change issues, the level of natural environments such as global warming, the level of histories such as the Dujiangyan Irrigation System, and level of political such as a diplomatic game. The global climate crisis is unable to be thoroughly solved due to the lack of a sound legal system, so the perspectives of law and system will be concentrated on.

#### ***3.1. Broad Content and Weak Regulating Power of International Convention***

Initially, since the international convention has wide content and weak regulating power, the influence for saving water resources system and preventing and mitigating wildfire are usually ineffective, which can be reflected by the aims from international conventions. Take the Paris Agreement, Kyoto Protocol, and The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) as three examples. Paris Agreement is a "legally binding international treaty on climate change" that countries need to control the greenhouse gas emission as soon as possible to achieve a climate-neutral world with limiting global warming to "well below 2, perfectly below 1.5 degree Celsius" by mid-century. Combining with "agreed individual target", Kyoto Protocol is to practice the United Nations Framework Convention on Climate Change by undertaking "industrialized countries and economies in transition to limit and reduce greenhouse gases (GHG) emissions". Last but not least, The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) aim to "ensure the sustainable use of transboundary water resources by facilitating cooperation."

Besides, international conventions belong to the field of "soft law", refers to the most resolutions and declarations from the United Nations Assembly and action plans. It has the weaker binding force of natural law and more on the effectiveness on the implementation stage, less executive compulsion contrasting to the concept of "hard law" on the enactment stage [5]. Thus, the international conventions are lack implementation from specific organizations or departments. The above discussing Conventions or Agreements are three perfect examples of soft law drawn up by international organizations that each country joins voluntarily. Compulsion at this time for the sovereign state is weak.

Thus, although including water resources scarcity and wildfire in the conventions and agreements, there are no solutions for global climate change issues to play the role like hard law, with less effect on the level of enactment.

### ***3.2. Small number and weak executive power of specialized agency***

Although the environmental issue has caught the UN's attention in recent decades and the UN has started to tackle climate change, the power of the agencies that are made for tackling the environmental issue is still insufficient. Taking United Nations Environment Programme (UNEP) as an example [6], it is a program established to coordinate with the United Nations system in response to climate issues. Its functions include providing data support and researching findings to help countries combat climate issues and meet the 17 sustainable goals. UNEP made an international agreement among countries that are binding to the international law [7], such as Montreal Protocol and Kyoto Protocol. Still, the effectiveness of the agreements depends on how urgent the environmental issues are from the local governments' view. Since states have their sovereignties, with the concern of opportunity costs and limited financial resources, the goals that are embedded in agreements cannot be materialized quickly.

There is no stated action that the UN can take to punish countries that did not achieve the goals. Countries are voluntarily making contributions to resolving climate change, but they can also abandon taking action. Some countries lack motivation to tackle environmental issues because it may conflict with their other interests in economic prosperity. The concept of allowing states to have intact sovereignty means that the UN cannot force countries to meet the goals but can only urge them to do so. Thus, the UN and its fellow agencies' position does not have the power to carry out an actual implementation but totally to the local government's willingness to do so. Although UNEP is now the largest international program on environmental issues, it can only provide a general implementation plan for the world but not each country specifically. In general, the number of environmental issue-specific agencies is insufficient to guarantee combating climate change.

### ***3.3. Weakness of Current China's Legal System***

China has been affected much more severely by the adverse environmental consequences brought by climate change than other countries.

"Second National Assessment Report on Climate Change" was collaboratively approved by China National Climate Center Research Institute, Ministry of Science and Technology, China Meteorological Administration, and Chinese Academy of Sciences. According to the report, in the near 30 years, it is estimated that the sea

levels of China's coastal areas will continuously rise along with climate change.

Besides, significant differences exist between regions caused by an 80-130 millimeter rise in global sea levels from 2009 to 2030. Additionally, the 2.5 degrees Celsius rise in global temperature would potentially lower Chinese food production by a maximum of 20%. What's worse, the risk of schistosomiasis transmission in sensitive areas would be raised to a great extent. Making sure a full exploitation of domestic laws and keeping it abreast of international laws is crucial for China, which is the major country for agricultural and industrial developments and is highly responsible for international governance of climate change, to participate in global cooperation of regulating global climate change. Nowadays, Article 9 of the "General Principles of the Civil Law of the People's Republic of China" is of great importance. It emphasizes that citizens should only engage in civil activities and the principle of saving resources and protecting the ecological environment, which is highly conducive to help to alleviate the current problems of shortage of resources and pollution of the environment.

More problems in Chinese domestic legislation are currently exposed, while these problems could be separated into theoretical and practical aspects. From the perspective of theoretical issues, a lack of connection between Domestic Administrative Organization Law and International Organization Law would lead to huge conflicts. Also, the organization of the Central People's Government of the People's Republic of China, the Ministry of Natural Resources, the Ministry of Emergency Management, and the Ministry of Ecology and Environment has the responsibilities to function to help with climate change under the command from the State Council. Usually, the climate change issues should be handled and managed by a specific single agency because of the low efficiency of several agencies' measurements. Such a mechanism explains why Chinese domestic laws possess relatively low consistency or relation with the United Nations organizations, due to the missing of permanent agencies and weak connection to the Ministry of Foreign Affairs. Under these circumstances, conflicts and disagreements occur when international protocols are expected to be transformed into domestic legislation and reach consensus with different countries, not to mention the missing of enforcements when it comes to implementing laws.

## **4. CONSTRUCTION AND IMPROVEMENT OF CLIMATE-CHANGE LEGAL SYSTEMS**

The legal system issues that trigger global climate crisis are focused on the levels of international treaty law, international organization law, and the intersection of domestic law with international law. From the

perspectives of promoting law enforcement strength and ensuring law enforcement effectiveness, three aspects of suggestions can be given.

#### ***4.1. Optimization International Treaties in Global Climate Governance***

From the perspective of international treaty law, the current global climate change legislation system exists the flaw that without effective enforcement. So, for the urgent international issue, the system is deficient in threatening effect that peremptory norms employ, lacking valid guarantee to signatory countries that join in global climate change. Based on the nature of consistent terms in soft law from the Paris Agreement and similar international conventions, solving the global climate crisis on the implementation level is unsatisfactory. Adding compulsory treaties in the global climate change legal system, urging each country to practically improve subjective will in international cooperation, and establishing and completing global climate change legal system for countries as main legal parts are achievable solutions.

Firstly, international laws are built on the basic consensus of esteem sovereignty. A united central authority organization is non-existent in global governance, which is an inevitable issue for legal governance of compulsory regulation and weakens the influence from soft law characteristics globally climate change. Formulating global climate change regulations with compulsory binding force cannot put countries as the main part. Still, it can contribute to the completion of compulsory regulation by transforming treaty law and domestic law. To be more specific, based on Paris Agreement, China-U.S. Joint Statement on Climate Change, EU-China Joint Statement on Climate Change and other international treaties, both sides enhance exact actions and promise on climate change transforming to the content connects with domestic law, thereby promoting the international treaties content into the track of domestic legislation. In this way, under the framework of domestic law, the actions with compulsory enforcement can achieve and implement with compulsory national protection. Furthermore, international treaties ensure enough discussion for transforming international treaties content under the mechanism for bilateral or multilateral signatory countries, reaching the implementation of enforcement law to govern global climate change.

Besides, the issue that soft law characteristic of ineffectively fulfil conventions can be solved. Based on global international climate treaty and further promoted bilateral and regional multilateral signing, bringing into play the power in regional multilateral cooperation [8], thereby avoids failure like climate talks in Copenhagen. Due to each country's common political, economic, or geographic environment, regional climate treaty

signatory conventions are more likely to be promoted and reached an agreement as a close community. In this case, cohesive regional strength improves the successful fulfilment.

Moreover, improving the withdrawal mechanism for climate treaties effectively promotes the conventions' fulfilment. For limitation on the right to withdraw from international treaties and the extent on limitation has been regulated systematically and practically in the Vienna Convention on the Law of Treaties 1969 (VCLT). Still, during the fulfilment of international treaties, the examples of abusing the treaty withdraw mechanism are not rare. For climate change treaties, some countries frequently quit because of plenty of disagreement, the damage for domestic economy and social development, and the uncertainty of scheduled goal implement, which treat the treaties as child play. Reevaluating the withdrawal mechanism for climate treaty, limiting motivation for each country randomly quit, or attaching conditions such as "withdraw notification can only be sent due to situation changing and emergency circumstances" improve the will to fulfil treaties between countries.

#### ***4.2. Establishing Sound Supervision and Law Enforcement System in Global Climate Governance***

Under the framework of international law, which seeks to conserve energy and reduce carbon emissions globally, countries are expected to be the main body for regulating global climate change. First and foremost, it's crucial to promote cooperation between countries and international organizations with higher efficiency.

Establishing pluralistic platforms and governing bodies is the first step towards a sophisticated global climate change regulating and monitoring system. Except for countries, international organizations like IPCC、UNEP、UNEP、WMO、UNHCR under the UN framework, multinational corporations, and international carbon trading markets should also be proactively participating in the global climate change regulations. Additionally, countries need to authorize each other appropriately to make the global climate change platform one with strong regulating and monitoring power under the international collaboration and the basis of co-governance.

When it comes to implementation, under the UN's framework, it's possible to implement effective administration and supervision integrating global climate change detection data through sanctions on the subjects of duty. They didn't complete the object or cause severe and adverse consequences to global climate change. Only if the new international committee or permanent members like UNSC, new agencies like IPCC or

UNFCCC are established, and the support of democratic system or vetoes.

On the other hand, from the perspective of establishing the law enforcement system of global climate change governance, it's essential not only to avoid hegemonism being bred by regulating power but to make law enforcement methods widely recognized and acknowledged by all countries. International enforcement and sanctions may be a feasible way to establish the law enforcement system of global climate change governance.

In international law, multinational regulation could easily violate the sovereignty of other countries, leading to international conflicts and disputes. Therefore, the global climate change regulating system should take preventions to deal with such a situation. As mentioned before, with global climate change regulating and monitoring platforms, various sanctions and enforcements would be exploited under the monitoring system to ensure the subjects who violate the law take international responsibilities. Specifically, with the main collaborative use of diplomatic regulation and supplementary use of economic sanctions, the force of public opinion could be utilized to execute the law towards damage to climate change and conflicts across borders. To elaborate, in terms of diplomatic regulations, the supervisory committee could be authorized to demote diplomatic, reduce the number of embassies and consulates, and, on serious occasions, expel diplomatic ambassadors when necessary. Economic sanctions are supplementary because the adverse consequences of it would likely expand, leading to disputes in other issues. However, it's still possible to adopt technical blockades, reduce bilateral trade, and increase tariffs on the target subjects who commit illegal acts. Despite this, such economic sanctions should be treated as a supplementary measure in the short term as the administration and governance of global climate change relies on the whole economy.

#### ***4.3. Plan of China for Global Climate Change***

China, as the largest developing country, plays a very plausible role in tackling climate change issues. China should contribute its power to climate change to show the responsibility and its willingness about global issues as a large country. When the Paris Agreement was signed, China set a goal domestically to make its own dedication. To accomplish this, the best way is to embed the goal into domestic law and establish the Climate Change Act.

According to the current climate change legal framework that China has, the focus on climate change is scattered over different sectors. Legal frameworks such as The Environmental Protection Law of the People's Republic of China, the Renewable Energy Law of the People's Republic of China, the Circular Economy

Promotion Law of the People's Republic of China, the Forest Law of the People's Republic of Climate Change Response Act are still in the draft stage. Accompanying the publication of China's Policies and Actions to Address Climate Change 2017 Annual Report, the systematically built Climate Change Act has gained support from the national government. However, from the internal perspective, completing the Climate Change Act could start from adjusting the existing legal framework and experience from actual legal practice. Building upon the experience from legal practices, the Climate Change Act should learn from the latest verdict and keep the act updated to time [9]. China's current disputes about climate change are still mainly about criminal cases, which are determined by Chinese Public interest litigation and inspection functions of the procuratorate and environmental protection functions of government departments. The Climate Change Act can begin from administrative litigation. While the Procuratorate executes its power on monitoring the environment, greenhouse gas emissions, and the use of clean energy, it can also provide constructive suggestions to the government. Since the Climate Change Act is connected with international conventions and international legislation, it requires each sector to collaborate. [10] Additionally, targeted legislation is necessary for the process of completing the law to solve the problem that China has, such as environmental protection legislation is still at a low level and the scope of regulation is limited. Meanwhile, The "Electricity Law", the "Coal Law", and the "Air Pollution Prevention and Control Law" that were implemented in the 1990s include provisions that involve climate change but are covered by later legislation that should be carved out and updated in the Climate Change Act [11]. Furthermore, the law should be related to the International Treaty but still keep it realistic according to China's current situation. [12] Also, it should debranch the International Treaty and set energy conservation as its goal to promote the combination of the legal framework and its transition to a low carbon economy.

## **5. CONCLUSION**

The influence caused by climate change is a real problem for global human beings. The perfection and development for global climate governance can build a favorable climate governance environment, promote concentrate effort on cooperation, and thus decrease disastrous influences by global climate change. As the second-largest economy globally, the legislative completion in China is available to implement the commitment of energy conservation, and therefore play a key role as the model and the lead of participating international climate change governance. Optimizing climate governance international treaties in global climate governance, establishing a supervision law enforcement system, and providing Chinese plans in

global climate governance are essential to achieve sustainable development and meet the challenges from global climate change.

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