Editorial

Introduction

We have great pleasure in welcoming you to Volume One of the *Chinese Journal of Environmental Law*. As the first journal of environmental law to be published from China, we launch into a new spring, a time of hope, with a youthful spirit and the freshness of cherry blossoms.

We are aware that the initiation of a new journal focusing on environmental law raises a number of challenges and issues. Given the wide range of publications that already exist in this area, we need to ask ourselves the critical question: what added value does CJEL represent?

Unique Perspectives

In answering this question, we should say at the outset that we are conscious of the heavy responsibility that falls upon us. We wish to encourage cutting-edge scholarship that provides insights based on high-quality legal research. We seek to identify the key challenges of using law as a means of achieving environmental conservation and protection, with the aim of making significant contributions to the improvement of environmental legal systems on a national, regional and international basis. We hope thereby to bring some unique perspectives to the analysis of environmental law both in Asia and around the world.

CJEL's geographic coverage is unlimited and its scope is intended to be broad. However, our attention is particularly focused on furthering the thinking of how to design and apply environmental law specifically in developing countries. We believe that a forum through which to develop such perspectives is much needed because developing countries face the greatest challenges, and their people suffer more than those in the developed world. The catalogue of environmental issues is familiar; they include the effects of climate change; loss of biodiversity; deforestation; soil degradation and contamination; fresh-water, marine and coastal pollution. In addition, air pollution in major cities poses short and long-term dangers to human health. The rate of population growth in some developing countries remains unsustainably high. Combined

with industrialization and urbanization, these factors create growing pressures on local, regional and global environmental systems. Innovations are required in order to enhance environmental legislation and its enforcement, as well as environmental management as a whole. Lessons must be drawn and positive examples will be required to inspire other jurisdictions—not only from the global North to the global South, but also vice versa, as well as laterally. The better the insights we can generate of how environmental law is developed and applied, the more easily the economic and political strategies can be targeted, and the better appropriate institutional arrangements can be generated.

On this note, CJEL welcomes the wide variety of methodological approaches that permeate contemporary environmental law scholarship. Comparative research is clearly important. We accept that common concepts that are now keystones of environmental law may be differently interpreted and applied in Asia compared with jurisdictions in other regions. This may be due to different cultural and political backgrounds, as well varying levels of socio-economic development and political will. Thus, when comparing distinctly different systems, consideration of cultural perspectives can usefully complement legal analysis. Socio-legal and other transdisciplinary research approaches, such as economic and political analysis, are also required.

An emphasis on procedural issues is similarly necessary. Access to information, the right to participate in decision-making, access the courts, and the right to appropriate remedies are now widely accepted in various regions. In some Asian countries, including in China, these procedural rights are beginning to be codified. While we have the pan-European Aarhus Convention¹ and its emerging case law, similar regional agreements could certainly be contemplated elsewhere, including in Asia. A corollary to such developments is a consideration of the need for specialist environmental tribunals at national and sub-national levels. In the Asian region, we see a proliferation of such bodies, such as the National Green Tribunal in India, and the establishment of environmental divisions in courts at all levels in China.² These developments must be tracked and analysed on an ongoing basis.

1 ECE Convention on the Right to Information, Participation in Decision-making and Access to Justice in Environmental Matters 1998.

2 Over 1200 such bodies now operate worldwide in 44 countries, with a number of others contemplating them; see George PRING and Catherine PRING, *Environmental Courts and Tribunals: A Guide for Policy Makers*, United Nations Environment Programme 2016, iv; see <http://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf?sequence=1>.

Contributing to the Advancement of Environmental Law and Legal Scholarship

We are initiating this Journal aware of the complexity of building effective environmental legal systems and of the need to ensure that scholarly research exploring new frontiers be made available to a wider audience. Key challenges in the development of environmental law include the generation of new principles, about which there is a burgeoning literature.³ To this end, we note that the IUCN World Commission on Environmental Law has finalised a Declaration on the Environmental Rule of Law. The Declaration builds on principles that have been generated in the past 40 years, beginning with the Stockholm Declaration on the Human Environment, through to the Rio Declaration of 1992 and subsequent instruments.⁴ We record also that a Draft International Covenant on the Right of Human Beings to the Environment⁵ has emerged, and is intended to be complementary to the 1996 Human Rights Covenants.⁶ In addition, in early 2017, the French Club de Juristes initiated consultations on a Global Pact for the Environment. These 'soft' law documents have been stimulated in part by the important work of the United Nations Special Rapporteur on human rights and the environment⁷ and various other legal analysts.⁸ CJEL will encourage authors to critically analyse such developments and to investigate how new principles and concepts are being implemented at national, regional and international levels.

3 Standard examples of academic analysis of principles of environmental law include Nicolas de SADELEER, *Environmental Principles: From Political Slogans to Legal Rules*, Oxford 2002; Phillippe SANDS and Jaqueline PEEL, *Principles of International Environmental Law*, 3rd Edn Cambridge 2012. The latest contribution is by Eloise SCOTFORD *Environmental Principles and the Evolution of Environmental Law*, Hart, 2017.

4 The Declaration can be found at <http://web.unep.org/environmentalgovernance/erl/iucn-world-declaration-environmental-rule-law>, accessed 27 April 2017.

5 Accessed 28 February 2017 https://cidce.org/wp-content/uploads/2016/08/Draft-of-the-International-Covenant-on-the-Human-Right-to-the-Environment_15.II_.2017_EN.pdf.

6 International Covenant on Economic, Social and Cultural Rights 1966; International Covenant on Civil and Political Rights 1966.

7 Special Rapporteur on human rights and the environment, <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx> accessed 24 February 2017.

8 For example, see David R. BOYD, *The Environmental Rights Revolution*, UBC Press, 2012; James R. MAY and Erin DALY, *Global Environmental Constitutionalism*, Cambridge University Press, 2015.

Challenging Traditional Paradigms

As editors, we understand that law is not fixed in stone, and that there are many different ways of conceptualising it. CJEL welcomes a mix of authors with different backgrounds who are willing to challenge traditional paradigms and ways of thinking. The Journal strives to convey the voice of under-represented authors, whether by reason of geographical origin, race, culture, language, gender, or age. These objectives reinforce our aim to develop a forum for alternative perspectives and to shed more light on environmental issues that impact marginalized communities. We also encourage a focus on human livelihood, physical and mental health and quality of life affected by environmental damage and the loss of biodiversity, healthy ecosystems and areas for recreation. Many people, particularly in less economically developed countries, have very limited means to defend themselves or to take action in the courts, and their views are not always heard in international negotiations. The increasing emphasis in some jurisdictions on public interest litigation must continue to be analysed and supported.

We also recognise the importance of scholars working with other legal actors—such as judges, legal practitioners, prosecutors and legislative drafters—to illuminate less obvious but highly significant aspects of environmental law-making and enforcement.

To these ends, we have included outstanding women and men from many of the world's regions, from diverse backgrounds and interests to work with us on the CJEL International Advisory Board and the Editorial Board, to share their scholarship and varied insights, and to draw on their different cultural backgrounds to ensure that scholarly research exploring new frontiers is made available to a wider audience, including to those outside the academic and professional legal realm.

Key challenges confronting environmental law scholarship have been identified by various analysts. Fisher et al, for example, argue that 'environmental law scholarship can only come of age when scholars face the methodological challenges of environmental law research head on'.⁹ They set out four issues which give rise to those challenges: the speed and scale of legal/regulatory change, the interdisciplinary nature of the subject, the heavy reliance in environmental law on a diverse range of governance arrangements, and the multi-jurisdictional nature of the subject.

9 Elizabeth FISHER, Bettina LANGE, Eloise SCOTFORD, and Cinnamon CARLARNE, 'Maturity and Methodology: Starting a Debate about Environmental Law Scholarship', *Journal of Environmental Law*, 2009, Vol. 21, p. 213–250, at 214.

In the European context, Peeters has identified challenges for the development of this field, such as seeking coherence in this complex area, taking into account the need for integration in the face of fragmentation; establishing adequate regulatory approaches; and issues of compliance and enforcement.¹⁰

CJEL will also keep pace with environmental law-related developments such as the implementation of the United Nations 2015 Sustainable Development Goals. While such developments are of relevance to all jurisdictions, they are particularly pertinent at this time to China, whose government has adopted the concept of 'ecological civilization' in its environmental legislation.¹¹ Other issues include the legal aspects of corporate social responsibility of both multinational and national corporations, sustainability certification for exploitation of natural resources, trade-related environmental issues, and the impact of new technologies, including nanotechnologies and genetically modified organisms.

We will also follow endeavours to reform environmental law and policy around the world. For example, the Australian Panel of Experts in Environmental Law has carried out intensive work over the past two years on the 'next generation' of environmental law for the country. The Panel has taken a broad-ranging and critical approach in analysing environmental law norms and principles as well as promoting the idea of general duties towards the environment as an inherent component of environmental law, including a duty of environmental care and a duty to restore or rehabilitate damaged ecosystems.¹² But the development of environmental law is not a straight path to progress, as we are reminded by the first steps in power of the new administration in the United States with respect to the dismantling of various environmental protections in early 2017.

We also wish to provide a forum for better understanding the movement of environmental norms and ideas across borders. Environmental law is a dynamic and fast-moving field and legal norms are being transplanted, transported, cut-and-pasted, or shared in ways that environmental law scholars are challenged to capture. This area of research often relies on a 'case study' or 'lessons

10 Marjan PEETERS, 'Twenty Years of EU Environmental Legislation after Maastricht: The Increasing Role of the EU as a Global Green Standard-Setter', in Maartje DE VISSER and Anne Pieter VAN DER MEI, *The Treaty on European Union 1993–2013*, Intersentia, 2013.

11 Environment Protection Act 2014, People's Republic of China, Article 1. The innovative concept of ecological civilization can be equated in various respects to the idea of ecological, economic and social cultural sustainability that form the pillars of sustainable development.

12 The Australian Panel of Experts on Environmental Law, accessed 27 April 2017 <http://apeel.org.au/papers/>.

learned' framework that can miss the important transnational dimensions of the movement of legal norms across time and space which could lead to the development of a coherent 'global environmental law' consisting of common principles and procedures across jurisdictions.¹³

CJEL thus aims to bring together domestic law scholars, regional specialists, transnational law scholars, comparativists, and public and private international lawyers to continually illuminate the dynamism and mobility of environmental law.

Regular Features

In addition to research articles, review essays and book reviews, there will be a regular feature in CJEL that focuses on the most important developments in environmental law and policy. These will likely include discussions concerning the emergence of more specialist environmental courts and tribunals, innovative environmental procedural rules, significant environmental jurisprudence and new legislative initiatives. Reports that evaluate how effectively existing laws and regulatory programs are working in various jurisdictions will also be encouraged.

This first issue of CJEL contains three substantive articles. The first article, by Paul Barresi, entitled 'The Role of Law and the Rule of Law in China's Quest to Build an Ecological Civilization' maintains that the legislative framework concerning environmental law drafted since 1979 reflects Western concepts and styles of legislative drafting which 'have been plagued by both compliance and enforcement problems.' His analysis includes insightful comparisons of Chinese and US environmental law. He argues that cultural factors are largely to blame for the problems identified and that the Western-style features of China's environmental laws are largely dependent for 'their effectiveness on the cultural dimensions of a strong rule of law which are in tension with essential elements of China's ancient legal tradition'. He submits that Chinese environmental laws 'would be more effective allies in its quest to build an ecological civilization if they were aligned more closely with that tradition'.

In the second article, 'Vertical Environmental Management: A Panacea to Environmental Enforcement Gap in China?', Ma Yun examines the recently

13 See for example Tseming YANG and Robert PERCIVAL, 'The Emergence of Global Environmental Law', *Ecology Law Quarterly* 2009, Vol. 36:615; see also Global Environmental Law Blog Archive, <http://www.globalenvironmentallaw.com/> accessed 27 April 2017.

introduced concept of vertical environmental management, a reform that is contemplated to fill environmental law enforcement gaps by helping to insulate environmental protection agencies from the intervention of local governments, thus bringing to an end local protectionism generated by the traditional 'dual leadership' model prevalent in China. The article identifies how vertical management changes the institutional structure of environmental management. It explains the reasons for initiating such a reform and analyses whether it can be as serviceable as intended. She argues that although vertical management reform may curb local protectionism to a degree, the approach of 'soft' and 'fragmented' centralization in the proposed reform may decrease its anticipated effectiveness by concentrating local malfeasance at the provincial level and thus harming the integrity of environmental management at that level.

The third article, by Alexander Zahar, 'A Bottom-Up Compliance Mechanism for the Paris Agreement,' posits that there is a risk that a compliance mechanism set up within the new climate change regime will be duplicative and dysfunctional. He argues that the separate compliance body envisaged by the Paris Agreement has no obvious way of improving on the diffuse 'compliance mechanism' currently operating under the UN Framework Convention on Climate Change. He suggests that keeping state parties to their obligations can instead be achieved through the elaboration of the already well-developed reporting-and-review processes under the Climate Change Convention.

Conclusion

There are now a considerable number of environmental law journals and reviews published around the world in a variety of languages. We would wish to engender a spirit of cooperation between the editorial teams of each of the journals; for instance in terms of blind-reviewing submissions, suggesting reviewers, and sending on submissions which, although of good quality, may not fit into a particular journal. We would also encourage global and national environmental law bodies and university environmental law centres to work with us to submit regular reports of their work, along with submissions from researchers around the world who have an interest in the approaches outlined above.

This inaugural editorial of the *Chinese Journal of Environmental Law* draws upon the input of members of our International Advisory Board and Editorial Board. We are grateful for their support and encouragement. We also wish to acknowledge the financial and academic support of Wuhan University, the Law

School and the Research Institute of Environmental Law (RIEL), of which we are privileged to be members. We also thank our editorial team, Benoit Mayer (Managing Editor), Dai Liping and Colin Mackie (Associate Editors) and Liu Jing (Book Review Editor) for their dedication and hard work. Finally, on behalf of RIEL and Wuhan University, we pay tribute to Brill, with whom we are jointly publishing CJEL. In particular we thank Marie Sheldon, John Bennett, Maria Baluch and the editorial and production team at Brill for their commitment to this exciting new environmental law publishing project.

We look forward to a long and fruitful relationship with our authors, readers and supporters.

QIN Tianbao and Ben BOER

Editors-in-chief