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An analysis of sustainable development treaty adoption as domestic laws in chinese jurisdiction

Uma análise da adoção do Tratado de Desenvolvimento Sustentável como legislação interna na jurisdição chinesa

Renata Thiebaut

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Uma análise da adoção do Tratado de Desenvolvimento Sustentável como legislação interna na jurisdição chinesa

Renata Thiebaut**

Abstract

This paper delves into the singular landscape of Treaty Adoption as Domestic Laws in the Chinese Jurisdiction. It examines potential challenges, mainly related to the law-making process, enforcement and eventual conflict of laws principles in environmental protection and sustainable development-related legislation. The research methodology encompasses qualitative and deductive approaches, explicitly focusing on sustainability and international law within China's jurisdiction. This methodology involves analyzing the processes of adopting Agenda 21 and the Paris Agreement, as well as the implementation of the Renewable Energy Law. These analyses are necessary to understand the impediments hindering China's progress toward achieving carbon neutrality by 2026. In response to these challenges, this study proposes two recommendations. These recommendations advocate for comprehensive legal reforms that aim to align domestic laws with international commitments and present the establishment of a centralized regulatory body with provincial-based sub-organs to ensure legal enforcement, conducive to oversight of renewable energy initiatives within China's continually evolving legal framework.

Keywords: China; environmental law; renewable energy; transnational law; conflict of laws.

Resumo

Este artigo adentra no processo de Adoção de Tratados como Leis Domésticas na Jurisdição Chinesa. Ele examina desafios potenciais, principalmente relacionados ao processo de elaboração de leis, à sua aplicação e aos eventuais princípios de conflito de leis na legislação de proteção ambiental e desenvolvimento sustentável. A metodologia de pesquisa engloba abordagens qualitativas e dedutivas, com foco explícito em sustentabilidade e direito internacional dentro da jurisdição chinesa. Essa metodologia envolve a análise dos processos de adoção da Agenda 21 e do Acordo de Paris, bem como a implementação da Lei de Energia Renovável. Essas análises são necessárias para compreender os obstáculos que dificultam o progresso da China

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em direção à neutralidade de carbono até 2026. Em resposta a esses desafios, este estudo propõe duas recomendações. Essas recomendações defendem reformas legais abrangentes que visam alinhar as leis domésticas com compromissos internacionais e apresentam o estabelecimento de um órgão regulador centralizado com subórgãos baseados em províncias para garantir a aplicação legal, propícia à supervisão das iniciativas de energia renovável dentro do quadro legal em constante evolução na China.

Palavras-chave: China; direito ambiental; energia renovável; direito transnacional; conflito de leis.

1 Introduction

In order to comprehend China's Treaty Adoption as Domestic Laws and the eventual challenges related to the implementation of environmental protection and sustainable development-related legislation to achieve carbon neutrality, this study will empirically explore the theories that establish the relationship between international law and national law within the Chinese jurisdiction. The analyses of Agenda 21 and Paris Agreement adoption-process, along with the establishment and efficacy of the Renewable Energy Law, will constitute essential elements of this investigation, a topic of significant yet scarce scholarly.

The adoption of international documents on sustainable development is inherent in the principle of mutual agreed commitments to achieve stipulated sustainable goals through the definition of domestic biding legal framework supportive to these commitments. However, the domestic law system become an obstacle to international cooperation through overlapping, contradiction, and different legal understandings, being a pertinent topic in the international norm adoption process scholarly.

On one hand, international treaties normally do not stipulate how the State shall implement its provisions internally, the other hand, the legal system of each State provides what is the hierarchical level of international norm: equivalent to ordinary law, constitutional law, or any other internal norms[1].

The tangible element between international and domestic laws becomes visible when international norms become part of domestic legislations, but divergences between doctrines help to explain how different jurisdictions approach international law, the relationship and prevalence of international and domestic norms. The importance to specify the hierarchy of rules rests on the necessity to resolve controversies caused by the possible conflict between international and domestic norms.

Theories of the relationship between international law and national law have systematic variations as following:

1.1 Monism

Monism supports that the international norm does not need to be translated into the domestic juridical system. The adoption process is done by immediate incorporation, the so-called self-execution, and ratification is enough for the acceptance of the legal terms. In some jurisdictions, Human Rights laws, such as the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) automatically become part of national law upon the State's ratification[2]. This automatic adoption indicates that both international and norms are in the same juridical system, with a two-folded understanding of hierarchy of laws based on the jurisprudences of Hegel and Kelsen.

Monism with primacy in domestic law has its roots in Hegelianism, which supports the State's absolute sovereignty. The State shall not be subject to any other legal system against its own will, having as consequence losing validity and effectiveness expected of a normative instrument. The Constitution above all is hierarchical superior or international norms.

From Kelsen's monist perspective, international law is the form of customary law or peremptory norms, a general practice that is thus accepted and adopted by the States. International law is hierarchical superior to domestic laws, since "one can conceive of international

[1] KÖHN, E. A norma internacional no ordenamento jurídico brasileiro. *Boletim Jurídico*, v. 752, 2011. Available at: http://www.boletimjuridico.com.br/doutrina/texto.asp?id=2185. Access on: 10 Feb. 2023.

[2] UNITED NATIONAL ENABLE. Secretariat for the Convention on the Rights of Persons with Disabilities (SCRPD). *International norms and standards relating to disability*: part I. National Frameworks. 2003. Available at: http://www.un.org/esa/socdev/enable/comp101.htm#1.4. Access on: 18 May 2023.

law together with the state legal systems as a unified system of norms in exactly the same way as one is accustomed to regarding the state legal system as a unity." The monist theory denies State sovereignty since there is supremacy of international over domestic law[3].

France is an example of a monist State. The article 55 of the 1958 French Constitution brings that "Les traités ou accords régulièrement ratifiés ou approuvés ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve, pour chaque accord ou traité, de son application par l'autre partie." (Treaties or agreements duly ratified or approved shall, upon publication, have greater superiority than that of laws, subject, for each agreement or treaty, to its application by the other party.)

Monist States require that ratification must be approved by the Parliament, especially in cases where the treaty modifies internal provisions. The process of incorporation of an international norm is not necessary but is also possible. The 1969 Vienna Convention adopts the monist theory, in its "Article 27. Internal Law and Observance of Treaties: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.[4]" The article refers to the obligation of the State to perform a treaty, which is in force, regardless of if a domestic norm is contrary. It is clear, therefore, that the international norm prevails in case of a conflict of law. Within international treaty law, monism is an ideal form of incorporation due to the automaticity characteristics that avoid conflict of laws.

1.2 Dualism

Contrary to the monists, the dualist school brings about an antagonism to both laws. International law and domestic law are independent of each other. Independency in the sense that both laws have different origins, act in different spheres, and have different objectives[5].

Their relationship is established through the common will of contractual States to accommodate and incorporate international laws *verbi gratia* into the domestic juridical system. During the ligation process involving transnational matters, for instance, the domestic Courts will give direct effect to international law[6].

Incorporation is usually done through parliamentary or legislative procedure, or given effect by national courts, where international law is translated and implemented into the national legal system[7]. This legislative process involves analysis of existing internal laws in order to avoid overlapping and conflict of laws, however, the relationship between both remains inexistent if there is ratification without incorporation. The treaty is not part of the national system, not being applicable or enforceable.

The main argument of the dualists is to support the relative independence between international and domestic law is the State's sovereignty, being State the solely responsible for the creation and interpretation of laws for their own individuals.

The United Kingdom adopts a dualist approach, since international law is only valid after it is accepted as a domestic law through parliamentary procedure, with "[…] post-ratification incorporation by legislation by a treaty […]" otherwise "[T]he unincorporated treaty has no legal effect in English Law "[8].

[3] AHL, Björn. Chinese law and international treaties. *Hong Kong Law Journal*, v. 39, n. 735, 2009. Available at: http://www.cesl.edu.cn/upload/201101136092167.pdf. Access on: 13 Jan. 2023.

[4] UNITED NATIONS. *Vienna Convention on the law of treaties*. 1969. Available at: https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf. Access on: 22 May 2023.

[5] XUE, Hanqin; JIN, Qian. International treaties in the chinese domestic legal system. *Chinese Journal of International Law*, v. 8, n. 2, p. 299-322, 2009. DOI: 10.1093/chinesejil/jmp007. Access on: 27 Nov. 2014.

[6] SHELTON, D.; KISS, A. *Judicial handbook on environmental law*. United Nations Environmental Programme, 2005.

[7] ROSE, G. L. National and global environmental laws: dichotomy and interlinkages as examined through the implementation of multilateral environmental agreements. *In*: PREPARATORY MEETING OF THE WORLD CONGRESS ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY, 1., 2011. *Proceedings* [...]. [*S. l.: s. n.*], 2011. Available at: http://www.unep.org/delc/Portals/24151/NationalandGlobalEnvironmentalLaws.pdf. Access on: 22 May 2023.

UNITED NATIONAL ENABLE. Secretariat for the Convention on the Rights of Persons with Disabilities (SCRPD). *International norms and standards relating to disability*: part I. National Frameworks. 2003. Available at: http://www.un.org/esa/socdev/enable/comp101.htm#1.4. Access on: 18 May 2023.

[8] UNITED NATIONAL ENABLE. Secretariat for the Convention on the Rights of Persons with Disabilities (SCRPD). *International norms and standards relating to disability*: part I. National Frameworks. 2003. Available at: http://www.un.org/esa/socdev/enable/comp101.htm#1.4. Access on: 18 May 2023.

1.3 Dialectical model

Despite monism and dualism being the prevailing doctrines in the West, the Dialect model, introduced by the Soviet legal system, remains relevant and is still in practice in China.

Strongly influenced by Marxists thoughts, it is neither monist nor dualist, despite of having elements in common with the West dualism, since it assumes the separation of both norms and the need of internalization. The difference is the fact that the dialectical model understands that international and domestic laws are distinct yet complementary legal systems. The process of adoption of an international treaty must be in conformity with domestic laws which may result in a certain level of flexibility granted to State organs[9].

The doctrine does not specify the possibility of conflict of laws, but one may suggest the primacy of the domestic law due to Marx ideas over Communism and the *proletariat* Revolution:

> Chinese scholars reject both the monistic and dualistic views that are typically used to describe the relationship between international law and municipal law. The monist theory with primacy of international law is criticised as denying state sovereignty and as reflecting an imperialist policy to control the world through world law. The dualist theory is regarded as overemphasising the formal antagonistic aspect of international law and municipal law[10].

For China, State sovereignty is the guiding principle of its foreign relations: the State has supreme and absolute authority over applicable legislations.

The Chinese international law, *suis generis*, is still largely influenced by Soviet Union: the contemporary dialectical model found in China is determined by the complex division of labor between the legislative, executive and judiciary. Nowadays, the doctrines are still in use, perhaps with different characteristics as brought by the pure theories.

2 Transnational Legal Process

Although both monistic and dualistic theories have their positive aspects, most States have a largely dualistic Constitution, since an automatic adoption of international treaties may offend their sovereignty[11].

Transnationalism as a theory has emerged from the globalization phenomenon since the idea of cross-border regulatory system may not suffice in a statistic international law environment. Since 1950s, the term has been applied to several fields in social sciences, economics and law, and its scholarship gained space accordingly. Since mentioned by Philip Jessup in 1956 in a speech addressed at the American Yale University, transnational law emerged as a doctrine, vastly applied in different fields of law, such as immigration and criminal procedure law[12].

The adoption of an international norm into the domestic legal system is done through interaction, interpretation and internalization, which Harold Hongju Koh describes as transnational legal process:

> One or more transnational actors provokes an interaction (or series of interactions) with another, which forces an interpretation or enunciation of the global norm applicable to the situation. By so doing, the moving party seeks not simply to coerce the other party, but to internalize the new interpretation of the international norm into the other party's internal normative system. The aim is to "bind" that other party to obey the interpretation as part of its internal value set. Such a transnational legal process is normative, dynamic, and constitutive. The transaction generates a legal rule which will guide future transnational interactions between the parties; future transactions will further internalize those norms; and eventually, repeated participation in the process will help to reconstitute the interests and even the identities of the participants in the process[13].

Transnational legal process represents a mechanism through which an international law is internalized into different domestic legal systems by executive and le-

[9] AHL, Björn. Chinese law and international treaties. *Hong Kong Law Journal*, v. 39, n. 735, 2009. Available at: http://www.cesl.edu.cn/upload/201101136092167.pdf. Access on: 13 Jan. 2023.

[10] AHL, Björn. Chinese law and international treaties. *Hong Kong Law Journal*, v. 39, n. 735, 2009. Available at: http://www.cesl.edu.cn/upload/201101136092167.pdf. Access on: 13 Jan. 2023.

[11] KÖHN, E. A Norma internacional no ordenamento jurídico brasileiro. *Boletim Jurídico*, v. 752, 2011. Available at: http://www.boletimjuridico.com.br/doutrina/texto.asp?id=2185. Access on: 10 Feb. 2023.

[12] KOH, Harold Hongju. Transnational legal process. *Nebraska Law Review,* v. 181, 1996. Available at: http://digitalcommons.law.yale.edu/fss_papers/2096. Access on: 15 Jan. 2023.

[13] KOH, Harold Hongju. Transnational legal process. *Nebraska Law Review,* v. 181, 1996. Available at: http://digitalcommons.law.yale.edu/fss_papers/2096. Access on: 15 Jan. 2023.

gislative action, or by judicial interpretation, increasing compliance and obedience of international law norms by the States[14].

Despite adopting a dualist approach, this premise does not support the traditional idea of dualism described above, with the separation and independence of international and domestic law, rather with certain elements of interdependence and influence.

Transnationalism differs from international law in three elements: it is non-traditional in terms of form; non-static in terms of actors; dynamic in terms of content; and normative in terms of behavior[15]. Unlike international law, there is no traditional segregation between international and domestic, public and private laws, as they are as interconnected. International law, as previously explained, influences domestic laws after the internalization process is implemented; while public law may also deal with elements of private law and vice versa that, for instance, are applicable to mixed ownership corporations. In transnational law, the actors can be either States, non-state actors and individuals, while the international law usually considers States, international organizations and non-governmental organizations as actors with international legal personality, excluding individuals, public and private corporations[16]. Another difference is that transnational law is dynamic since it is in constant change resultant of globalization challenges and new society's needs.

Transnational law sources, like the traditional international law, are composed by customary practices, jurisprudences, norms, and patterns of behavioral regulation, which transcends and crosses borders, being a hybrid form of international and domestic law.

Koh's analogy of transnational law with the internet "dot.com" concept, which explains that the law can "downloaded" and "uploaded", is an interesting method for analysis and comprehension. First, international law shall be downloaded to domestic law. It is a process of internalization of the law, and common process for international laws to be valid within the borders of the State. Second, the law is uploaded and then downloaded.

A domestic law that is adopted by an international law, such as the Human Rights and the International Covenant on Civil and Political Rights, can be drafted considering the States' own recommendations, reservations and optional protocols adherence. Once it becomes an international norm, it is adopted and internalized into their legal systems[17]. Third, the law is borrowed and "horizontally" implemented from one nation to another, which is the case of several colonies that adopted norms originated from their colonizers[18].

Environmental protection norms are an intriguing example. Originally, international norms would bring specificity to a certain topic on areas over air or water pollution, forests and wildlife protection, hazardous waste, among many other themes, like The Vienna Convention for the Protection of the Ozone Layer or even the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel. Then, in other following treaties, some topics started to be approached together.

Our Common Future and Rio Declaration contain principles and guidelines to reach the sustainable development goals in their scope. It is a common practice that international environmental laws have their legal texts aligned with the Our Common Future as well as guide the *signataires* on how to adjust and internalize environmental principles.

Sustainable development has become a legal value within their legal system, where the members shall accomplish through new strategies and governmental planning. Notwithstanding, sustainable development became an applausive linkage between international and domestic laws, with renewable energy being the main

[14] RAUSTIALA, K.; SLAUGHTER, A. M. International law, international relations and compliance. *In:* CARLNAES, W.; RISSE, T.; SIMMONS, B. (ed.). *The handbook of international relations*. [*S. l.*]: Sage Publications, 2002. p. 538-559. Available at: http://www2.law.ucla.edu/raustiala/publications/International%20Law,%20International%20Relations%20and%20Compliance.pdf. Access on: 15 Jan. 2023.

[15] KOH, Harold Hongju. Transnational legal process. *Nebraska Law Review,* v. 181, 1996. Available at: http://digitalcommons.law.yale.edu/fss_papers/2096. Access on: 15 Jan. 2023.

[16] REZEK, F. *Direito internacional*: curso elementar. São Paulo: Editora Saraiva, 2010.

[17] RAUSTIALA, K.; SLAUGHTER, A. M. International law, international relations and compliance. *In:* CARLNAES, W.; RISSE, T.; SIMMONS, B. (ed.). *The handbook of international relations*. [*S. l.*]: Sage Publications, 2002. p. 538-559. Available at: http://www2.law.ucla.edu/raustiala/publications/International%20Law,%20International%20Relations%20and%20Compliance.pdf. Access on: 15 Jan. 2023.

[18] KOH, Harold Hongju. Why transnational law matters. *Penn State International Law Review*, v. 745, 2006. Available at: http://digitalcommons.law.yale.edu/fss_papers/1793. Access on: 13 Feb. 2023.

tool achieve it. International commitment with sustainability has been crucial to tighten the relations among and between States.

In order to compile and harmonize with international documents, existing laws were amended, and new laws needed to be enacted. It is in this scenario that the interaction between sustainable development and renewable energy became evident, and for the purpose of this dissertation, renewable energy is explained in the context of sustainable development as a hierarchy of goals and constraints within international law[19].

The concept of normativity is related to the process of interaction and internalization. International law influences national identities and interest once it is internalized in the domestic legal systems, in a very natural way. When an "international rule penetrates into a domestic legal system, thus becoming part of that nation's internal value set," since the parties alter their behavior, relationships and expectations not with the international laws but with the commitment and relationship with one another[20].

These identities and interests are endogenous to and arise from the interaction when interpretations and cultural values are shared between actors. Koh, however, failed to raise the possibility of conflict of laws, most specifically between international and domestic laws when the advent of internalization. Certain jurisdictions may adopt of the principles *lex superior derogat legi inferiori* (a law higher in the hierarchy repeals the lower one), *lex posterior derogat legi priori* (a later law repeals a prior one) or *lex specialis derogat legi generali* (a special law repeals a general law) as main remedies. France (FC. Art. 55), Greece (FC. Art. 28, 1), Peru (FC. Art. 101), for instance, adopt that any international treaty prevails over domestic laws[21].

Conventionally, "[M]odern environmental laws have increasingly reflected the inter-relatedness of the environment by creating rights and duties that are general in nature [...]" they may conflict with the with more specific laws, thus a general and special law that discuss over the same subject, should be harmonized[22].

In the Chinese jurisdiction, conflict of laws allows different approaches and interpretations. The first approach is the prevalence of international law over domestic law. The Civil Procedure Law, Article 189 brings that

> [I]f an international treaty concluded or acceded to by the People's Republic of China contains provisions that differ from provisions of this Law, the provisions of the international treaty shall apply, except for those on which China has made reservations.

Hanqin Xue and Quian Jin defends, however, that

> it cannot be concluded in sweeping terms that international law prevails over domestic law under the Chinese legal system, because the prevailing force of treaties in domestic law is not derived from any legal provision of the Constitution or a national law of general application but is confined to those international obligations explicitly undertaken by China.[23]

In this respect, this provision is only valid of matters related to the Civil Procedure Law.

The second approach is similar to *lex specialis derogat legi generali:* a special treaty or a special rule in a treaty prevails over a related domestic law, like the Kyoto Protocol or Paris Agreement[24] with the implementation provisions and mechanism of compliance.

The most unique legal characteristic of Chinese law is that there is no universal approach to solve conflicts of laws: its resolution depends on the subject of law, being in Civil Procedure Law or other areas of law. Interpretation, the second step of Koh's transnational legal process, is considered as an instrument to avoid unconstitutionality of the international treaty. The international treaty shall only be adopted after the analysis done by the Judiciary to ensure that there is no conflict

[19] THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC). *IPCC special report on renewable energy sources and climate change mitigation*. Cambridge University Press, 2011.

[20] SIMMONS, B. A.; STEINBERG, R. H. *International law and international relations*. Cambridge University Press, 2006.

[21] MAZZUOLI, V. O. A opção do Judiciário brasileiro em face dos conflitos entre Tratados Internacionais e Leis Internas. *Revista CEJ*, v. 14, p. 112-120, 2001. Available at: http://www.dhnet.org.br/direitos/sip/textos/a_pdf/mazzuoli_judiciario_leis_nac_intern.pdf. Access on: 13 Feb. 2023.

[22] MAGRATH, C. *Does environmental law work?* how to evaluate the effectiveness of an environmental legal system. [*S. l.*]: Lambert Academic Publishing, 2010.

[23] XUE, Hanqin; JIN, Qian. International treaties in the chinese domestic legal system. *Chinese Journal of International Law*, v. 8, n. 2, p. 299-322, 2009. DOI: 10.1093/chinesejil/jmp007. Access on: 27 Nov. 2014.

[24] MALJEAN-DUBOIS, Sandrine. Direito internacional e litígio climático. *Revista de Direito Internacional*, Brasília, v. 19, n. 1, 2022. Available at: https://www.publicacoesacademicas.uniceub.br/rdi/article/view/8450/pdf. Access on: 8 Oct. 2023.

with equivalent domestic law, thus creating case precedents in domestic legal system[25]. Also, the Judiciary can make changes in the domestic laws, through rules alteration and changes in the legal claims[26].

By way of illustration, multilateral environmental treaties' obligation to promote public participation shall be referred as guidance by a judge in interpreting legislation that concerns public environmental objections to a proposed industrial development.

As Gregory Rose explains:

> There is a widespread practice among judiciaries worldwide of utilising customary international law as a tool simply to guide the interpretation of domestic laws, so as to minimise or avoid National and Global Environmental Laws conflict between the international and domestic laws. Consequently, environment-related principles in customary international law can be readily accepted in domestic tribunals as legitimate guidance for the interpretation of statutes and regulations, if universal practice and whether it is considered to be legally binding can be discerned[27].

Sustainable development has also presented characteristics of interstitial norms. As a meta-principle, it works as a mean for interpretation

> […] acting upon other legal rules and principles – a legal concept exercising a kind of interstitial normativity, pushing and pulling the boundaries of true primary norms when they threaten to overlap or conflict with each other. Lowe's interstitial norms operate as modifying norms which 'do not seek to regulate the conduct of legal persons directly' but rather establish the relationship between primary norms[28].

The metal-principal clarifies the subject of discussion through details where the norm is still non-existent.

The Judiciary shall analyze treaties when interpreting domestic laws at any level in order to avoid ambiguity and conflict of laws through the interpretative enforcement mechanism[29]. Several international environmental documents are based on information-sharing and voluntary compliance, which facilitate this mechanism[30].

This statement shall be valid for general documents that bring principles and guidelines concerning environmental protection. Provisions related to sustainable development shall also object of interpretative enforcement, since it is a relatively new principle taken from international treaties and implemented domestically. But international documents that are already subject of controversy, like the Kyoto Protocol, might not be applicable in this case. In order words, depending on the nature of the document, and how specific or general it is, the interpretative enforcement may or may not be valid.

While monists and dualists converge concerning the dual spheres of law, international or domestic, the traditional and static characteristics of international law debate have become obsolete. Contemporary topics such as sustainable development require a dynamic approach that allows other forms of legal interpretation and enforcement.

The academic research field of transnationalism overlooks the challenges and barriers to implementing international climate change agreements, such as the Kyoto Protocol and the Paris Agreement. These challenges may include insufficient legal coordination to implement directives and legislations that are in line with the international documents. Therefore, future research should also focus on identifying practical solutions to overcome these barriers and promote effective implementation of these international agreements yet avoiding possible conflict of laws.

Also, the need for more comprehensive analysis of the cultural and social factors that influence the adop-

[25] ROSE, G. L. National and global environmental laws: dichotomy and interlinkages as examined through the implementation of multilateral environmental agreements. *In*: PREPARATORY MEETING OF THE WORLD CONGRESS ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY, 1., 2011. *Proceedings* [...]. [*S. l.: s. n.*], 2011. Available at: http://www.unep.org/delc/Portals/24151/NationalandGlobalEnvironmentalLaws.pdf. Access on: 22 May 2023.

[26] SIMMONS, B. A.; STEINBERG, R. H. *International law and international relations*. Cambridge University Press, 2006.

[27] ROSE, G. L. National and global environmental laws: dichotomy and interlinkages as examined through the implementation of multilateral environmental agreements. *In*: PREPARATORY MEETING OF THE WORLD CONGRESS ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY, 1., 2011. *Proceedings* [...]. [*S. l.: s. n.*], 2011. Available at: http://www.unep.org/delc/Portals/24151/NationalandGlobalEnvironmentalLaws.pdf. Access on: 22 May 2023.

[28] BARRAL, Valérie. Sustainable development in international law: nature and operation of an evolutive legal norm. *European Journal of International Law*, v. 23, n. 2, p. 377-400, 2012. DOI: 10.1093/ejil/chs016.

[29] HATHAWAY, Oona A.; MCELROY, Sarah; SOLOW, Sabel A. International law at home: enforcing treaties in U.S. Courts. *Faculty Scholarship Series*, v. 3851, 2012. Available at: http://digitalcommons.law.yale.edu/fss_papers/3851. Access on: 13 Jan. 2023.

[30] SIMMONS, B. A.; STEINBERG, R. H. *International law and international relations*. Cambridge University Press, 2006.

tion and implementation of international environmental laws is not researched within transnationalism. China has unique legal characteristics, with cultural, social, economic factors based on strong socialism ideologies that influences environmental governance. It is hence paramount to understand these factors to effectively promote sustainable development. Therefore, future research should also evaluate the role of culture, values, and social norms in shaping environmental policy and governance.

Finally, International law's constraints rely on its aspect of being an international rule over a case-by-case basis involving one or more States and possible conflicts with domestic laws due to its verticalization nature are eminent[31]. The content of each international agreement is related to one specific topic to States or organizations, which limits the scope of international law.

3 Understanding the Chinese legal system

Despite having a Civil Law system, Chinese law presents unique characteristics with combination of traditional customs and practices with Soviet and German influence. As the modern Chinese legal system had to quickly adapt since 1978, laws failed to provide detailed specifications over the treaty receipt, often relying on common practice. The Chinese government has an ongoing project regarding legal reform, which allows amendments of existing laws. The Renewable Energy Law was amended in 2009, to be consistent with international commitments China have been engaged with.

In the Chinese jurisdiction, international treaties shall be concluded following the provisions of the 1990 Law of the People's Republic of China on the Procedure of the Conclusion of Treaties, hereinafter, "The Treaty Procedure Law". The Law is applicable to both bilateral or multilateral treaties and agreements, as well as similar instruments concluded between the People's Republic of China and foreign States. The procedures for acceding to multilateral treaties and agreements follow a procedure that involves different organs, as specified by the Law of the People's Republic of China on the Procedure of the Conclusion of Treaties, Article 11.

Interesting fact is the unbalanced importance given to each governmental body. At the international level, the Chinese Head of State, or his representative shall be responsible for the negotiation and ratification process.

According to the PRC Constitution,

> Article 81 The President of the People's Republic of China, on behalf of the People's Republic of China, engages in activities involving State affairs and receives foreign diplomatic representatives and, in pursuance of the decisions of the Standing Committee of the National People's Congress, appoints or recalls plenipotentiary representatives abroad, and ratifies or abrogates treaties and important agreements concluded with foreign states[32].

The Law of the People's Republic of China on the Procedure of the Conclusion of Treaties adds that: "The President of the People's Republic of China, in accordance with decisions of the Standing Committee of the National People's Congress, ratifies and abrogates treaties and important agreements concluded with foreign States."

The president is not entitled to ratify any international document without the sanction from the NPCSC, but it is his role the act of ratifying or abrogating international documents. The Ministry of Foreign Affairs is responsible for the administration of the treaty process as well as coordination with the international organs concerning the status of the process. After the approval, the Ministry of Foreign Affairs shall exam, make necessary recommendations and submit it to the State Council.

Internally, the State Council shall review and submit it to the Standing Committee of the National People's Congress, which shall decide on accession, ratification or abrogation of the treaty. The crucial decision to finally ratify or not the treaty is done by the NPCSC.

[31] WILETS, James D. A unified theory of international law, the state, and the individual: transnational legal harmonization in the context of economic and legal globalization. *Journal of International Law,* v. 31, n. 3, p. 753-772, 2014. Available at: http://scholarship.law.upenn.edu/jil/vol31/iss3/3. Access on: 28 June 2023.

[32] EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN THE FEDERAL REPUBLIC OF NIGERIA. *Constitution of the People's Republic of China*. Full text after amendment on March 14, 2004. Available at: http://ng.china-embassy.gov.cn/eng/jrzg/constitution/#:~:text=Article%2081%20The%20President%20of,People%27s%20Congress%2C%20appoints%20or%20recalls. Access on: 28 June 2023.

There is also the possibility to amend the treaty, if permitted in the text. The State Council shall draft major modifications, if necessary, and publishes the treaty on the bulletin of the NPCSC. Mainly "[T]he State Council exercises the following functions and powers: to conduct foreign affairs and conclude treaties and agreements with foreign States[33]."

The NPCSC and the State Council have different roles in the process. There are few disparities in the treaty making process in the Chinese jurisdiction depending on the nature of the treaty, for instance, the related Head of Ministry of State Council concludes less important treaties and international agreements[34].

As a general rule, the NPCSC has *de facto* power to legislate, having an active role within the Chinese legal system, being responsible to interpret and modify laws, like the article 67 provides "[T]he Standing Committee of the National People's Congress exercises the following functions and powers: to decide on the ratification or abrogation of treaties and important agreements concluded with foreign states[35]." In the treaty making process, the NPCSC is the constitutional authority to advise and provide legal authorization over the ratification or abrogation of the international document[36].

The Ministry of Foreign Affairs and the president has a minor role, while the State Council and the NPCSC participate actively to conclude the treaty. The transnational legal process is applied differently in China. First because the process of internalization of a treaty is done through different layers and organs, until it can be incorporated in the society; and second, the adhesion to an international treaty is influenced by the realm of sovereignty, as Sonya Sceats and Shaun Breslin states,

> Chinese commentators agree that the 'sovereignty--bound' (is the) approach to international relations and international law […] From the fall of the Qing dynasty in 1911 onwards, China's leaders invoked the principles of state sovereignty and sovereign equality as a protection against further foreign incursions[37].

The theory is, however, still suitable for China since there is a direct influence of identity in both ways.

China signed and ratified treaties about discrimination, apartheid, refugees and genocide[38], but it has shown reluctant to adopt international laws that go against its legislation or common practice, such as political, religion, press freedom, death penalty, among others.

China has signed, but not ratified the International Covenant on Civil and Political Rights, which guarantees essential rights ranging from freedom of expression and political participation with regular and free elections; and not signed nor ratified the Optional and the Second Optional Protocol to the International Covenant on Civil and Political Rights, for the abolition of the death penalty.

The reservations are, therefore, a mechanism that reflect Beijing's concern with sovereignty and non-interference in China's internal affairs. The approach regarding Human Rights treaties, reinforced criticisms, and accusations over China's political, press freedom and other Human Rights infringements. Concerning China's societal identity, traditional ideologies still influence the adoption of international treaties.

The Chinese Constitutional law is still influenced by the concept of collective state leadership, with powers distributed between the office of General Secretary of the Communist Party and shared with the Politburo Standing Committee. This diluted power between the constitutional position of the president as the highest

[33] CHINA. The National People's Congress of the People's Republic of China. *Law of the People's Republic of China on the Procedure of the Conclusion of Treaties*. Available at: http://www.npc.gov.cn/english-npc/Law/2007-12/12/content_1383893.htm. Access on: 19 Mar. 2023.

[34] AHL, Björn. Chinese law and international treaties. *Hong Kong Law Journal*, v. 39, n. 735, 2009. Available at: http://www.cesl.edu.cn/upload/201101136092167.pdf. Access on: 13 Jan. 2023.

[35] CHINA. The National People's Congress of the People's Republic of China. *Law of the People's Republic of China on the Procedure of the Conclusion of Treaties*. Available at: http://www.npc.gov.cn/english-npc/Law/2007-12/12/content_1383893.htm. Access on: 19 Mar. 2023.

[36] AHL, Björn. Chinese law and international treaties. *Hong Kong Law Journal*, v. 39, n. 735, 2009. Available at: http://www.cesl.edu.cn/upload/201101136092167.pdf. Access on: 13 Jan. 2023.

[37] SCEAT, Sonya; BRESLIN, Shaun. *China and the international human rights system*. Chatham House (The Royal Institute of International Affairs), 2012. Available at: https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf. Access on: 13 Jan. 2023.

[38] SCEAT, Sonya; BRESLIN, Shaun. *China and the international human rights system*. Chatham House (The Royal Institute of International Affairs), 2012. Available at: https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf. Access on: 13 Jan. 2023.

representative of the State in the international affairs results in symbolic role of the president in the foreign affairs[39].

"The Treaty Procedure Law", does not provide the treaty adoption and transformation into the Chinese legal system. The publication brings a legal binding element to the treaty, but to have national applicability, three more steps are required: a) the adoption of the norms by the legislature, b) issuing of the judicial interpretation by the Supreme People's Court, c) harmonization of laws[40]. Treaty-making, as well as constitutional and legal interpretation, are responsibility of legislative organs, not the judiciary. While China rejects the traditional monism doctrine, the dialectal doctrine allows the process of internalization within the legal system.

In 1994, The State Council, for instance, issued a directive calling on government institutions at all levels related to environmental protection and other similar fields, to consider China's Agenda 21 as national strategic guideline integrated with the Five-Year Plan (1996-2000). The draft of the Chinese Agenda 21 started in 1992 right after the Earth Summit. A series of revision and amendment of existing environmental law at national and local levels were therefore needed.

> In addition, the state Council has issued Provisional Regulations for Prevention and Clean up of Water Pollution along the Huihe River Valley, the first regional environmental law of its kind in China. So far, China has promulgated six laws on environmental protection, nine laws on management of natural resources, more than 30 sets of administrative regulations on environmental protection and resource management, and more than 30 other laws and regulations pertaining to sustainable development. Furthermore, the government has published 364 national standards for environmental protection and 600 local regulations on environmental preservation and resource management[41].

China's effort to broader the environmental legislation framework was propelled by the ratification of the Stockholm Declaration on the Human Environment, and gained strengthen to with the Rio 1992 Summit, *vis-à-vis* the growing need to protect the environment amid reliance on coal production.

Even with the signature and ratification of the global Agenda 21, which was indeed adopted by the legislature, China prepared for its own Agenda 21, that captured their social and economic situations. This is a more complete implementation of an international document, which translates the necessity to implement sustainable development directives *de facto* and *de jure*. The Rio Declaration is a broad guideline, while the local Agenda 21 brings specific strategies to be adopted by the laws, and in the Chinese case, stipulated targets to be reached, with a bolder approach that includes judiciary documents. China was the first developing State to adopt the Rio Declaration, which resulted in the commitment of the legislative and judiciary organs to enact new laws and amend existing ones[42]. There is here a two-level approach to the Agenda 21, an interesting demonstration of a non-binding (voluntarily implemented action plan) and binding by domestic laws. In other words, China transformed the voluntary international commitments of the Agenda 21 into legally binding obligations under its domestic laws, demonstrating its proactive approach to ensure that the sustainable development goals outlined in the Agenda 21, enforceable through its legal system.

4 Conflict of Laws

The current legal apparatus is divided into Constitution, laws, administrative regulations, local regulations, ministerial and local ordinances, and judicial interpretations[43]. They are vertically set with certain level of independence and hierarchical values, however since they verse about different legal issues and have different of legal value, the checks and balances system is not applicable[44].

[39] AHL, Björn. Chinese law and international treaties. *Hong Kong Law Journal*, v. 39, n. 735, 2009. Available at: http://www.cesl.edu.cn/upload/201101136092167.pdf. Access on: 13 Jan. 2023.

[40] AHL, Björn. Chinese law and international treaties. *Hong Kong Law Journal*, v. 39, n. 735, 2009. Available at: http://www.cesl.edu.cn/upload/201101136092167.pdf. Access on: 13 Jan. 2023.

[41] UNITED NATIONS SUSTAINABLE DEVELOPMENT KNOWLEDGE PLATFORM. *Natural resource aspects of sustainable development in China*. 1997. Available at: http://www.un.org/esa/agenda21/natlinfo/countr/china/natur.htm. Access on: 20 May 2023.

[42] ZHANG, Junjie. Delivering environmentally sustainable economic growth: the case of China. *Asia Society*, 2012. Available at: http://asiasociety.org/files/pdf/Delivering_Environmentally_Sustainable_Economic_Growth_Case_China.pdf. Access on: 29 May 2023.

[43] XUE, Hanqin; JIN, Qian. International treaties in the chinese domestic legal system. *Chinese Journal of International Law*, v. 8, n. 2, p. 299-322, 2009. DOI: 10.1093/chinesejil/jmp007. Access on: 27 Nov. 2014.

[44] CHINA INTERNET INFORMATION CENTER. *China's cur-*

The hierarchy of norms has fundamental importance to international law, since it enables to understand the treaty adoption process including the treaty value within the domestic legal system and the prevalence of which norm (international or domestic) in case of conflict. In China, however, each regulation is promulgated by different organs, within a very a complex system. Also, the process of adoption of a treaty and its equivalence in the Chinese legal system is not as clear, resulting in diverse discussions within international law scholarly.

According to the Law of Legislation of China from 2000, the 1982 PRC Constitution (amended in 2004) is the Supreme Law, and no other legislation shall violate the principles or provisions set forth by the Constitution. The Constitution besides being the guidance of the Chinese society, reinforces the one-party socialist republic political system as well as the socialism tradition with Chinese characteristics (the combination of socialist principles with market-oriented economic policies and a one-party political system led by the Communist Party of China, CPC).

Followed by the Constitution, there are national laws, which are legislations passed by the National People's Congress, the highest organ of state power, and its Standing Committee signed by the chairman upon being published. The Renewable Energy Law, for instance, was adopted at the 14th Meeting the Standing Committee of the Tenth National People's Congress on February 28, 2005; Amended according to the Decision of the 12th Meeting of the Standing Committee of the 11th National People's Congress on December 26, 2009. The laws passed by National People's Congress and the Standing Committee have national coverage and is only hierarchical inferior of the Constitution. In parallel, there are also Autonomous Regulation and Separate regulation, passed by the People's Congresses of Autonomous Region, applicable to Tibet, Xingjiang, Inner Mongolia, Guangxi and Ningxia; and Law of Special Administrative Region, passed by Legislative Organ of Special Administrative Region, applicable to Hong Kong, Macau.

Administrative Regulations are passed by the State Council and signed by the Prime Minister upon being published. Usually, they regulate matters regarding economy, politics, education, science, culture, for instance, however many environmental-related regulations were issued as administrative regulations, such as Implementation Rules for the People's Republic of China on Prevention and Control of Water Pollution Law, from the State Council, No. 284, promulgated in 1989 and revised in 2000), and the Regulations on the Administration and Use of Pollution Discharge Fee from the State Council, No. 369, promulgated in 2003. In general, these types of regulations are detailed directions and requirements for carrying out legislations and enforcing them.

Local Regulations are legislations passed by the Local People's Congress at the provincial or municipal level and shall only be applied within the administrative territory of that province or municipality. Most of environmental regulations in China are done locally. Ordinances are divided into ministerial and local. The ministerial ordinance or decree refers to the rules made by the ministries under the State Council such as Ministry of Commerce to dictate the affairs of the ministry, while local Ordinance refers to the rules made by the local provincial or municipal governments.

Judicial interpretations are issued by the Supreme People's Court, but they are not recognized as a source of law by the Legislation Law. These judicial interpretations carry substantial weight in legal practice: judicial interpretation stands independent without subjecting themselves to any other legislation (excluding the Constitution) and may to some degree alter the original laws by wielding its discretion in interpreting the laws (referring to laws made by NPC and its Standing Committee)[45].

Following its commitment to economic reform and opening up in late 1970s, China has actively participated in the realm of international law, signing a significant number of international documents that would soon be part of its judicial ordainment. The hierarchical level of the treaty has, thus, limited options. National laws are passed by the National People's Congress and its Standing Committee. Björn Ahl suggests that

> [T]he rank of treaties is the same as the rank of the law which is adopted by the State organ that participates in the process of treaty-making, international treaties which are subject to the approval

rent legislation structure. Available at: http://www.china.org.cn/english/kuaixun/76212.htm. Access on: 13 Jan. 2023.

[45] CHINA INTERNET INFORMATION CENTER. *China's current legislation structure*. Available at: http://www.china.org.cn/english/kuaixun/76212.htm. Access on: 13 Jan. 2023.

> of the NPC Standing Committee have the rank of national statutes[46]

Which is the same level as national laws passed by the NPCSC, however "[I]n Chinese practice, a treaty is superior to municipal law in application, though the Chinese Constitution has no express provision on the relative status of treaties and laws[47]."

The importance of having a clear definition over the status of the international norm within the domestic legal system rely on the need to avoid conflict alongside with the enforceability according to the internal hierarchy of law. Currently there is a lack of provision in this direction, what results in the lack of coordination between the organs in the treaty making process.

5 The Chinese Agenda 21 Legal Process

The adoption of the global Agenda 21 by the Chinese government happened in a very pioneering way for the country[48]. Its adoption process lasted for 2 years, from 1992 to 1994, when the State Council finally promulgated the "China's Agenda 21: White Paper on China's Population, Environment, and Development in the 21st Century". The document brings a mix of policies, measures, and strategies to implement sustainable development as result of its active participation in the Earth Summit[49].

China's international commitment to sustainability had direct impact into the legal system, with new policies, laws and regulations being updated and enacted accordingly. The new concept of sustainable development was now incorporated to the legal framework, covering the three-pillar economy, society, and environment, with great influence from the ideologies contained in the international document. These laws are complementary to the China Agenda 21- and Five-Years Plans, which gave a legal enforceability to the government's agenda towards sustainable development.

During the process of interaction and internalization, the term sustainable development was internalized and indeed had direct impact to determine China's values and identities, since the Chinese government has been influenced by international discourse over sustainable development definitions and interpretations[50]. The term 'sustainable development' has been adopted by the government in national and international speeches, as well as in legislative pieces, such as the Five--Year Plans and Renewable Energy Law, becoming a national policy goal to be achieved through short and long-terms.

The Chinese Agenda 21 reinforces China as a developing country, and emphasizes that traditionalism is still present in the country:

> There has been great progress in coordinating the relationship between economic development and environmental protection and in creating China's own mode of environmental protection with Chinese characteristics. Sustainable development is a strategic choice that must be made by both developing and developed countries. For a developing country like China, however, the precondition for sustainable development is development[51].

The government's main concern is to promote economic growth, and progressively adopt a more sustainable agenda. It is important to mention that, in the Chinese political context, development is also perceived as economic growth[52].

[46] AHL, Björn. Chinese law and international treaties. *Hong Kong Law Journal*, v. 39, n. 735, 2009. Available at: http://www.cesl.edu.cn/upload/201101136092167.pdf. Access on: 13 Jan. 2023.

[47] ZOU, Keyua. International law in the chinese domestic context. *Valparaiso University Law Review*, v. 44, n. 3, p. 935-956, 2010. Available at: http://scholar.valpo.edu/vulr/vol44/iss3/10. Access on: 27 June 2023.

[48] ZHANG, Junjie. Delivering environmentally sustainable economic growth: the case of China. *Asia Society*, 2012. Available at: http://asiasociety.org/files/pdf/Delivering_Environmentally_Sustainable_Economic_Growth_Case_China.pdf. Access on: 29 May 2023.

[49] OBERHEITMANN, Andreas. *Approaches towards sustainable development in China*. [*S. l.*]: German Institute of Global and Area Studies, 2005. Available at: http://www.giga-hamburg.de/sites/default/files/openaccess/chinaaktuell/2005_4/giga_cha_2005_4_oberheitmann.pdf. Access on: 16 July 2023.

[50] NIELSEN, Stine Lykke. Chinese interpretations of sustainable development. *In:* NORDIC CONFERENCE OF CHINA STUDIES, 2003. *Proceedings* [...]. [*S. l.*]: University of Oslo, 2003. Available at: http://www.nacsorg.com/nacs2003_papers/nacs_papers_fulltext_lykkenielsen.pdf. Access on: 15 Jan. 2023.

[51] CHINA. Ministry of Ecology and Environment of the People's Republic of China. Environment of the People's Republic of China. *Report on "China's Agenda 21"*. 1994. Available at: https://english.mee.gov.cn/Events/Special_Topics/AGM_1/1994agm/meetingdoc94/201605/t20160524_345213.shtml. Access on: 16 July 2023.

[52] OBERHEITMANN, Andreas. *Approaches towards sustainable development in China*. [*S. l.*]: German Institute of Global and Area Studies, 2005. Available at: http://www.giga-hamburg.de/sites/default/files/openaccess/chinaaktuell/2005_4/giga_cha_2005_4_oberheitmann.pdf. Access on: 16 July 2023.

NIELSEN, Stine Lykke. Chinese interpretations of sustainable devel-

The incorporation of international documents within the Chinese legal system must be in line with Party's ideologies, the country's sovereignty, security and economic development aims. It is paramount for Beijing to avoid any conflict with its traditional socialist values, still strongly present in the three political, legal and societal spheres to ensure continuity and stability in governance. Socialism and sustainable development can go hand-to-hand since their core concepts are based on the wellbeing of the society.

In China, the global Agenda 21, was not an official State document nor a national sustainable energy plan, and as suggested by the United Nations, it assumed the form of internal guidelines, with directives and strategies for new policies, which means that it has limited enforceability, supported by governmental programs and legislation. China's Agenda 21 thus presented innovative element with clearly defined objectives as means of strengthening the generation of hydroelectric power, advancing the establishment of heat recovery thermal facilities and nuclear power plants, and fostering energy conservation with consistent yearly efficiency gains, coupled with advancements in technical expertise and managerial proficiency, will amplify the significance of science and technology's contributions.

As result of the summit, Chinese legal system faced increasing changes, which around 120 laws and regulations were enacted and/or revised, including 13 natural resources protection laws, 3 disaster preparedness and mitigation laws, 6 environmental protection laws and over 100 regulations concerning population, resources, environment and disasters[53]. Special attention was given to environmental laws, which

> [B]y the end of 2000, 18 national laws, 29 State Council decrees, numerous central governmental department regulations (more than 70 established by the State Environment Protection Agency), 375 items pertaining to national standards, and more than 900 local regulations were enacted[54].

Sustainable development is an important element for China to promote the country's modernization, so

> [T]o reach the overall goal of a sustainable development, the national strategy aims at balancing the Chinese society in different ways: urban and rural development, development among regions, economic and social development, domestic development and opening wider to the outside world, and the development of man and nature[55].

The Ninth Five-Year Plan (1996-2000) was the first domestic plan to address and incorporate sustainability premises, supporting The Chinese Agenda 21's commitments with the enhance of the use of hydropower, thermal and nuclear energy and R&D investments. Through the Plan, China started more specific programs for energy conservation and efficiency such as the Riding Wind, Integrated and Comprehensive Rural Electrification, Energy Efficient Lighting, the Brightness Programs.

As Junjie Zhang highlights,

> [S]ome of the major advances that China has achieved in sustainable development include poverty reduction, population control, economic restructuring, transforming development patterns, incorporating environmental protection into national economic and societal planning, and implementing environmental and resource legislation and regulation[56].

These achievements were thus allowed by the continuation, expansion and updated directives based on the economic and societal dynamics, being characteristics present in the government's plans.

As the domestic programs and legislations were gradually aligned, the Five-Year Plan together with the Renewable Energy Law became the core legislation related to sustainability in the country.

opment. *In:* NORDIC CONFERENCE OF CHINA STUDIES, 2003. *Proceedings* [...]. [*S. l.*]: University of Oslo, 2003. Available at: http://www.nacsorg.com/nacs2003_papers/nacs_papers_fulltext_lykkenielsen.pdf. Access on: 15 Jan. 2023.

[53] OBERHEITMANN, Andreas. *Approaches towards sustainable development in China*. [*S. l.*]: German Institute of Global and Area Studies, 2005. Available at: http://www.giga-hamburg.de/sites/default/files/openaccess/chinaaktuell/2005_4/giga_cha_2005_4_oberheitmann.pdf. Access on: 16 July 2023.

[54] XUE, Hanqin; JIN, Qian. International treaties in the chinese domestic legal system. *Chinese Journal of International Law*, v. 8, n. 2, p. 299-322, 2009. DOI: 10.1093/chinesejil/jmp007. Access on: 27 Nov. 2014.

[55] OBERHEITMANN, Andreas. *Approaches towards sustainable development in China*. [*S. l.*]: German Institute of Global and Area Studies, 2005. Available at: http://www.giga-hamburg.de/sites/default/files/openaccess/chinaaktuell/2005_4/giga_cha_2005_4_oberheitmann.pdf. Access on: 16 July 2023.

[56] ZHANG, Junjie. Delivering environmentally sustainable economic growth: the case of China. *Asia Society*, 2012. Available at: http://asiasociety.org/files/pdf/Delivering_Environmentally_Sustainable_Economic_Growth_Case_China.pdf. Access on: 29 May 2023.

6 Renewable Energy Law

Despite of the great economic opportunities, the Open Up policy also resulted into uncoordinated development[57]. That was the milestone for China to enter its 'industrial revolution' phase, at the cost of causing environmental damage. China's reliance on traditional energy sources like coal contributes to the current environmental scenario, at the point of reaching alarming levels.

China is a leader in solar and wind power, mostly due to effective programs that allowed investments and create an environment to grow its own technology. The centralized government favored a more incisive approach to renewables, enabling therefore increasing investment. One may say that the government's strong position and influence contributes to intensify the renewable energy industry.

Chinese legislation regarding renewable energy have been developed in a faster pace, since a non-democratic government concentrates the law-making process and aligns with the goals set on the national agenda. While China has attached attention to improve the Renewable Energy Law according to its societal dynamics, and the growing environmental issues, somewhat highlighted but its eventual inefficiencies.

China's Renewable Energy Law is the result of the government's commitment with the Agenda 21. The importance of such law demonstrates the efforts on regulating renewable energy through the implementation of targets, strategies, and legal measures. The innovative element of the Chinese Renewable Energy Law is target for each renewable energy source, based on the Five years plans, with on-grid price and cost allocation system of renewable energy sources; and financial incentives[58].

Promulgated in 2005, the Law was later amended in 2009 by the NPCSC, adapting the legislation to current scenarios, in order not only to promote renewable energy sources, but also to protect the environment and support sustainable development[59]. Turkey, Germany, Switzerland, the Philippines are example of countries with a Renewable Energy Law.

The law provides investment in R&D, important for any developing country that aims to develop its own technology, alongside knowledge creation reduces costs, which is nowadays the reality of renewable energy[60]. China has investing into developing its own R&D, which has shown great results particularly solar and wind power, which strongly contributed for the development of green energy industry to record the greatest expansion if compared to other countries[61]. China's main strategy is to develop a strong R&D base to enable national players to export and expand their business to foreign markets, which has already happened in the recent years.

The wind energy industry is perhaps the most successful example of renewable energy development. Before 2005, China would not possess its own technology, relying on importing wind turbines and other parts. The Renewable Energy Law facilitated the development of the industry through the development of national technology. Due to the mandatory connection to the grid and tax incentives, provided by the Law, there was a natural creation of a domestic market, where wind power could be commercialized at greater market scale. Some adjustments in terms of legislation and policies were put in place to adjust the strategy, according to the challenges and successes faced. In addition, setting ambitious but achievable targets pushed the program to succeed, and reaching the goal would have as outcome

[57] ZHANG, Junjie. Delivering environmentally sustainable economic growth: the case of China. *Asia Society*, 2012. Available at: http://asiasociety.org/files/pdf/Delivering_Environmentally_Sustainable_Economic_Growth_Case_China.pdf. Access on: 29 May 2023.

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a target revision. This mechanism was found successful in China.

According to the World Bank, comprehensive package of policy measures, including fiscal, financial, and economic incentives, overly regulation phasing out fossil fuel subsidies and the carbon pricing are some of the fields in considerable need of improvements, since the government's challenge is to decrease the dependency on coal, and abolish subsidies for non-traditional energy sources. The Renewable Energy Law (2005 and April 2010) and the Five Year-Plans have resulted on satisfactory achievements, which, in summary, are the increase of renewable energy capacity as well as investments in technology.

Despite the fact China retains somewhat leadership in solar photovoltaic technology, hydropower, biofuels, and wind energy, its reliance on coal is primarily the main source of energy amid growing energy demands.

UNESCAP states that "[T]he Chinese renewable energy strategy and its success may be unique in some respects. Not many countries feature such an extensive and rapidly growing energy demand that eases the entrance of new companies into the market[62]." Additionally, the current laws and plans have brought results. Overall, the Renewable Energy Law, which provides technology development and investment measures, the Five Years Plans with aggressive targets, have generated positive outcomes that shall be taken as examples by other jurisdictions particularly in developing countries, but not suffice to alter the energy matrix since its implementation in 2009.

Finally, it is wise to conclude that Beijing should take a two-folded approach. First, to implement continued efforts to enhance legal framework with strict control over fossil fuel production. As underscored by Champenois *et al.*,

> […] the provinces building most new coal aren't using it to "support" a correspondingly large buildout of clean energy; the majority of projects are in provinces that have no shortage of generating capacity to meet demand peaks; and most new project locations already have more than enough coal power to "support" existing and planned wind and solar capacity. This shows that there is no effective enforcement of the policies limiting new project permitting.[63]

Wang, Yu, and Wu add that "the existing policies and laws remain unclear, with low levels of legislation and insufficient public participation[64]", which may impact the commitments to achieve carbon neutrality by 2060. China's environmental protection mechanisms are tied to its legal and policy landscape: the Renewable Energy Law and existing policies do not suffice to enforce carbon reduction measures.

Second, to implement a clear definition of the status of international norms within the domestic legal system and coordination between various organs involved in the treaty-making process, since, as previously discussed, it creates potential conflicts in aligning international commitments with domestic laws and regulations.

Achieving carbon neutrality can be done through harmonized legal framework that aligns international commitments with domestic legislation and promoting effective enforcement through a centralized body with provincial-based sub-organs.

7 Conclusions

Sustainable Development was first mentioned on the Brundtland Report in 1987 published by the United Nations World Commission on Environment and Development. Since then, it became an international principle that influenced and modified countries' legal environments to accommodate premises never present before, as highlighted in international conferences, including the Conference of the Parties. Sustainable development is a goal to be reached with a responsible application of national directives and legislation aiming at protecting the environment.

Since the adoption of international documents to establish an international legal framework, international

[62] UNESCAP. *Finding a green engine for economic growth*: China's renewable energy policies. [2012]. Available at: https://www.unescap.org/sites/default/files/14.%20CS-China-Renewable-Energy-Policies.pdf. Access on: 8 Oct. 2023.

[63] CHAMPENOIS, Flora *et al.* China's new coal power spree continues as more provinces jump on the bandwagon. *Center for Research, Energy and Clean Air*, 23 Aug. 2023. Available at: https://energyandcleanair.org/publication/chinas-new-coal-power-spree-continues-as-more-provinces-jump-on-the-bandwagon/. Access on: 8 Oct. 2023.

[64] WANG, Bo; YU, Junping; WU, Rui. Achieving carbon neutrality in China: legal and policy perspectives. *Frontiers in Environmental Science*, v. 10, 2022. Available at: https://www.frontiersin.org/articles/10.3389/fenvs.2022.1043404/full. Access on: 8 Oct. 2023.

commitment has grown as well as international cooperation from both bilateral and multilateral levels, having the sustainable development documents influencing and modifying the entire legal environment to accommodate premises never present before. In transnational law, the relevance of domestic law to international cooperation is noticed when international public or private laws are not well determined.

This paper analyzed the adoptions of international treaties as domestic laws, through an empirical study of the Paris Agreement, Agenda 21 and Renewable Energy Law. This approach was thus correlated with the current efficacy of the domestic laws in supporting the country to achieve carbon neutrality by 2026 as to provide two recommendations, which are: the need to strengthen the legal framework governing fossil fuel production, since existing policies lack of clear legislation and lack of effective enforcement mechanisms amid the dominance of coal in the energy matrix; and the need to establish improved coordination among various governmental organs involved in the treaty-making process to promote harmonized legal framework, aligning international and domestic legislation, coupled with centralized enforcement mechanisms at both national and provincial levels.

China's prominence on the global stage is undeniable, and its significant strides in renewable energy production over the past decade have garnered international attention. However, to foster further advancements in renewable energy integration into the national grid, it is imperative to institute robust legal mechanisms, which will play a pivotal role in facilitating the continued growth of renewable energy sources, while aligning its commitment to reducing carbon emissions amid global pressing towards cleaner and more sustainable energy solutions.

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