EMERGENCE, INFLUENCE, AND BOUNDARIES OF THE GREENING SHIFT OF INTERNATIONAL HUMAN RIGHTS LAW

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EMERGENCE, INFLUENCE, AND BOUNDARIES OF THE GREENING SHIFT OF INTERNATIONAL HUMAN RIGHTS LAW

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International human rights law is paying more attention to environmental issues as challenges like climate change, pollution transfer by transnational corporations, and marine environmental crises become more acute. Its normative content and supervisory practices are showing a distinctive greening turn, and several clear patterns can be seen. First, traditional rights such as the right to life, the right to health, and the right to respect for private life have been given new meanings. Second, the right to the environment is slowly gaining recognition as an independent human right. Third, human rights mechanisms are being used more often to settle environmental disputes. Climate change litigation is a prime example, and this category of cases is increasingly taking on the features of public interest litigation. Fourth, the methodology of the greening shift of human rights law is steadily maturing, reinforced by theoretical approaches like extraterritorial human rights obligations, the rights of future generations, and business and human rights. Together, these are gradually widening the scope of human rights law. When developed in moderation, the greening shift of human rights law helps to achieve environmental justice and sustainable development. It fills gaps and silences in international environmental law and encourages a positive interaction between human rights law and environmental law. But if it expands too far, human rights law might displace international environmental law. This would undermine both the formal rationality and substantive justice of the international rule of law. China has made remarkable progress in building an ecological civilization, contributing Chinese wisdom to the world through the philosophy that lucid waters and lush mountains are invaluable assets. As the practices of the greening shift of human rights law continue to emerge, China should guide this development in a moderate direction and guard against excessive greening. In this way, it can, on the one hand, implement the concept of green development and, on the other hand, help build a just and equitable international order.

I. INTRODUCTION

International human rights law — and indeed the broader corpus of human rights law as a whole — barely touched upon environmental issues

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in its early stages. Yet global environmental challenges have intensified markedly, ranging from climate change and marine pollution to the transnational transfer of pollution by multinational corporations. In response, human rights law[1] has paid increasing attention to environmental concerns. Its normative content and supervisory practice have taken a greening turn, and it now works alongside international environmental law to advance global environmental governance.[2] In 2022, the United Nations General Assembly adopted a resolution recognizing the right to a clean, healthy and sustainable environment as a human right.[3] The European Court of Human Rights (ECtHR) has heard several climate change cases and has already issued rulings in favor of environmentalists.[4] The Inter-American Court of Human Rights (IACtHR) successively issued its *Advisory Opinion on the Environment and Human Rights* and *Advisory Opinion on the Climate Emergency and Human Rights*, clarifying states' human rights obligations in addressing environmental issues including climate change.[5] On July 23, 2025, the International Court of Justice (ICJ) delivered its landmark advisory opinion on climate change, in which human rights treaties served as an important basis for reasoning.[6] All these developments indicate that the concept and practice of the greening shift of human rights law are gradually taking shape. Accordingly, this article aims to extract the concept, characteristics, evolutionary process, generative mechanisms, and concrete manifestations of the greening shift of human rights law. It will then assess its evolutionary trajectories and examine its impact on, and challenges to, the international legal order.

II. HUMAN RIGHTS LAW AT ITS INCEPTION

The *Universal Declaration of Human Rights* (UDHR) and the two subsequent covenants inaugurated the international protection of human

1 Given the nature of the discipline and for the sake of narrative coherence, the present work employs 'human rights law' and 'international human rights law' interchangeably.

2 *See* Hélène Tigroudja, *From the 'Green Turn' to the Recognition of an Autonomous Right to a Healthy Environment: Achievements and Challenges in the Practice of UN Treaty Bodies*, 117 American Journal of International Law Unbound 179 (2023).

3 UNITED NATIONS, THE HUMAN RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT, at https://digitallibrary.un.org/record/3983329/?v=pdf (Last visited on September 21, 2026).

4 *See* Charlotte Blattner, *European Ruling Linking Climate Change to Human Rights Could Be a Game Changer — Here's How*, 628 Nature 691 (2024).

5 INTER-AMERICAN COURT OF HUMAN RIGHTS, THE ENVIRONMENT AND HUMAN RIGHTS, ADVISORY OPINION OC-23/17, at https://elaw.org/resource/iachr_co2317 (Last visited on September 21, 2026). *See* also INTER-AMERICAN COURT OF HUMAN RIGHTS, THE CLIMATE EMERGENCY AND HUMAN RIGHTS, ADVISORY OPINION, OC-32/25, at https://www.refworld.org/jurisprudence/caselaw/iacrthr/2025/es/150252 (Last visited on September 21, 2026).

6 INTERNATIONAL COURT OF JUSTICE, OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE, ADVISORY OPINION, at https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf (Last visited on September 21, 2026).

rights. These two covenants are the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Together, they marked the beginning of modern international human rights law.

From the very outset, human rights law displayed an ambitious vision aimed at constraining public power and preventing atrocities. Reflecting the priorities of its era, the nascent regime concentrated primarily on civil and political rights deemed most pressing at the time, and it encompassed a limited range of basic economic and social rights for which governments were held accountable. Environmental matters were regarded as marginal and scarcely figured in this early framework. Human rights law in this formative period exhibited the following features.

First, human rights law emerged at a particular historical moment. The protection of human dignity was an urgent imperative, while global environmental problems had not yet come to the fore. The UDHR was adopted in the immediate aftermath of the founding of the United Nations. It bore the imprint of reflection on the atrocities of the Second World War. Numerous phrases in the Preamble of the UDHR reveal its grand objective of preventing governmental tyranny. For example, it states that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. It was precisely the reflection upon the atrocities of war that propelled states to establish an international regime for the protection of human rights.[7] This injected a concern for human rights into the Westphalian system. It also altered the traditional landscape of international law, which had previously concerned itself only with inter-state relations. In doing so, it endowed international law with a constitutional dimension. For this reason, human rights law in its infancy focused exclusively on the most fundamental rights. From a historical perspective, before the 1972 United Nations Conference on the Human Environment, the world did not regard environmental problems as a major obstacle to the realization of fundamental rights.

Second, the spatial scope of human rights law in its early years was limited. It rarely touched upon transboundary rights protection and therefore lacked the normative foundation to address global environmental problems. Although the term 'international' appears in its title, human rights law at its inception was principally concerned with how a state treated its own residents. It was essentially a domestic matter, indifferent to how a state

7 JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT, at 36-37 (University of Pennsylvania Press, 1999).

treated people beyond its borders.[8] Taking the ICCPR as an illustration, article 2(1) requires states parties to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant. The ICESCR does not contain a general territorial or jurisdictional clause, but its practice demonstrates a similar pattern. It rarely addresses issues such as how a state must guarantee the right to education, the right to health, or the right to an adequate standard of living for people in another country. It can be said that the human rights law of its early period simply subjected an intra-state relationship to international supervision. It did not regulate transboundary harm to rights. Yet major global environmental problems are inherently transboundary. If human rights law were to adhere strictly to the spatial scope of its founding years, it could not genuinely resolve global environmental challenges.

Third, the supervisory mechanisms of human rights law at its inception were not mature. The ICCPR and the ICESCR both entered into force in 1976. The *Optional Protocol to the ICCPR*, which established an individual communications procedure, entered into force simultaneously with the Covenant. In contrast, the ICESCR had no individual communications mechanism when it came into force. This is noteworthy because the ICESCR is more closely connected to environmental issues. Such a mechanism was established, among a limited number of states parties, only in May 2013 through an optional protocol. By comparison, at the regional level, the ECtHR pioneered human rights judicial practice. However, it was only after the entry into force of Protocol No. 11 in 1998 that the Strasbourg system matured into the most developed human rights judicial mechanism. This protocol established a single, permanent ECtHR as the sole judicial body for human rights complaints.[9]

It is thus apparent that human rights law in its early years needed to be further developed and improved. Realistically, it had no capacity to attend to environmental issues, which were not then at the core of its mandate.

III.THE EMERGENCE AND DEVELOPMENT OF THE GREENING SHIFT OF HUMAN RIGHTS LAW

A. The Rise of the Greening Shift of Human Rights Law

Human rights law and international environmental law developed independently as two important branches of international law. A close

8 *See* Sigrun Skogly & Mark Gibney, *Transnational Human Rights Obligations*, 24 Human Rights Quarterly 781, 782-783 (2002).

9 *See* Andrew Drzemczewski, *Protocol No. 11: Entry into Force and First Assessment*, 20 Human Rights Law Journal 1, 1-3 (1999).

nexus between human rights and the environment was forged only after the successive emergence of several key declarations.

Viewed through its evolutionary process, the greening turn of human rights law may be divided into two phases. The first phase is the embryonic stage. In this phase, citizens used human rights mechanisms to complain against their own governments. They demanded protection of their immediate living environment from pollution. At this stage, a substantive right to the environment had not yet gained universal recognition. Applicants mostly brought claims based on procedural environmental rights and on the right to respect for private life. For example, in *López Ostra v. Spain*, the ECtHR held that inaction by the government in environmental enforcement could amount to a breach of the right to respect for private life.[10] The Human Rights Committee adopted a similar approach in *Cáceres et al. v. Paraguay*. It found that the state party violated its positive obligations under the Covenant regarding the right to life and the right to respect for private life.[11] These cases demonstrate that regional and international human rights mechanisms can supervise states' environmental obligations, but do not directly impose specific environmental standards or replace states in environmental decision-making.

The second phase is the current period of rapid development. It is marked by the gradual recognition of the right to the environment by the international community. The *1972 Declaration of the United Nations Conference on the Human Environment* (hereinafter referred to as the Declaration) recognized a fundamental right to an environment conducive to human dignity and well-being and affirmed the responsibility to protect it for present and future generations.[12] However, at that time, the legal status of an environmental human right remained unclear, as the Declaration primarily viewed the environment as a condition for enjoying other human rights rather than recognizing an independent substantive right to a clean and healthy environment. It was not until 2012, when the UN Human Rights Council (UNHRC) appointed the Special Rapporteur on human rights and the environment, that this right began to receive unprecedented attention. In particular, in 2021 and 2022, the UNHRC and the General Assembly successively adopted resolutions on the right to the environment. They declared that everyone has the right to a clean, healthy, and sustainable

10 EUROPEAN COURT OF HUMAN RIGHTS, LÓPEZ OSTRA V. SPAIN, at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57905%22]} (Last visited September 21, 2026).

11 UNITED NATIONS HUMAN RIGHTS COMMITTEE, VIEWS ADOPTED BY THE COMMITTEE UNDER ARTICLE 5(4) OF THE OPTIONAL PROTOCOL, at https://digitallibrary.un.org/record/4027144?v=pdf (Last visited on September 21, 2026).

12 UNITED NATIONS, REPORT OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT, at https://digitallibrary.un.org/record/729866?v=pdf (Last visited on September 21, 2026).

environment.[13] From the perspective of the sources of law and the evolution of rules, these two resolutions further strengthen the evidence that the rule on the right to the environment has acquired customary international law status.[14] It can be said that the right to the environment is the most influential emerging right since the establishment of the international human rights treaty system. Despite lacking formal incorporation through treaty amendments, its legitimacy and normative force are universally recognized.

As the right to the environment gradually emerges as a new human right, and as the use of international human rights mechanisms to address environmental problems becomes increasingly common, the idea and the relevant practice of the greening shift of human rights law are gradually taking shape. The greening shift of human rights law refers to human rights concepts, principles, rules, and associated practices that operate in the field of environmental governance. At the current stage of development, the greening shift of human rights law does not aim to build an entirely new treaty or customary law mechanism on top of the existing human rights framework. Rather, it represents a self-iterative upgrading of the existing legal system in order to meet the internal demands of global environmental governance. Specifically, the practice of the greening shift of human rights law manifests itself in the following ways.

On the one hand, the use of international human rights mechanisms to resolve traditional environmental problems is steadily maturing. In 2006, Trafigura, a major oil trader, chartered a vessel from the Netherlands to carry hazardous waste to Côte d'Ivoire. The dumping resulted in several deaths and health damage to over 100,000 people.[15] Although legal proceedings were initiated in several countries, the victims did not obtain adequate redress. On July 16, 2016, three non-governmental organizations, on behalf of the victims, brought a case against the government of Côte d'Ivoire before the African Court on Human and Peoples' Rights (ACtHPR). In its judgment of September 5, 2023, the court found violations of several rights, including the rights to life, health, and a satisfactory environment, as well as the right to an effective remedy, and ordered Côte d'Ivoire to take a series of remedial

13 HUMAN RIGHTS COUNCIL, THE HUMAN RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT, U.N. DOC. A/HRC/RES/48/13, at https://digitallibrary.un.org/record/3945636?v=pdf (Last visited on September 21, 2026). *See also* UNITED NATIONS, G.A. RES. 76/300, THE HUMAN RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT, at https://docs.un.org/en/A/RES/76/300 (Last visited on September 21, 2026).

14 *See* INTERNATIONAL LAW COMMISSION, CONCLUSION 12, at https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_13_2018.pdf (Last visited on July 1, 2026).

15 OKECHUKWU IBEANU, REPORT OF THE SPECIAL RAPPORTEUR ON THE ADVERSE EFFECTS OF THE MOVEMENT AND DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES ON THE ENJOYMENT OF HUMAN RIGHTS, at https://digitallibrary.un.org/record/665589?v=pdf (Last visited on September 21, 2026).

measures.[16] This case marks the first time that the ACtHPR substantively interpreted the right to the environment under article 24 of the *African Charter on Human and Peoples' Rights* and rendered a judgment in favor of individuals.

On the other hand, global problems such as climate change and marine pollution have become key targets of the greening shift of human rights law. Taking climate change litigation as an example, cases brought under human rights mechanisms or argued on the basis of human rights before ordinary courts are rapidly proliferating. According to the Climate Litigation Database maintained by the Sabin Center for Climate Change Law at Columbia University, as of July 17, 2026, there were 238 human rights-based climate change cases brought against states outside the US jurisdiction[17] (See Table 1).

Table 1:

Case category	Number of cases
Youth/Children	30
Women	2
Climate migration	33
Right to a healthy environment	58
Indigenous groups	29
Other	98
Total	238

In addition to the climate change litigation cases mentioned above, the IACtHR and the ICJ delivered landmark advisory opinions on climate change, respectively. They elaborated on the human rights obligations of states in addressing climate change and brought the practice of the greening shift of human rights law to a climax.

16 AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS, LIGUE IVOIRIENNE DES DROITS DE L'HOMME AND OTHERS V. CÔTE D'IVOIRE, APPLICATION NO. 002/2016, at https://www.african-court.org/cpmt/storage/app/uploads/public/650/d64/473/650d644739d6f587166974.pdf (Last visited on September 21, 2026).

17 SABIN CENTER FOR CLIMATE CHANGE LAW, CLIMATE LITIGATION DATABASE, at https://www.climatecasechart.com (Last visited July 17, 2026). Categories are not mutually exclusive; a case may fall under more than one category.

B. Application Scenarios of the Greening Shift of Human Rights Law

The greening shift of human rights law finds application in the following scenarios.

1. Climate Change. — At present, the rules of international climate change law are centered on the *United Nations Framework Convention on Climate Change* (UNFCCC). The UNFCCC and its *Paris Agreement* have adopted a model of nationally determined contribution. This model has drawn criticism from some environmentalists and small island states. They call for more binding emission reduction obligations to be imposed on states. Against this background, environmentalists have resorted to human rights treaty bodies or regional human rights courts. They bring individual communications or lawsuits against states, seeking judicial or quasi-judicial determinations that confirm states' obligations to mitigate climate change. In addition to complaint procedures, human rights treaty bodies have issued general comments on climate change. The IACtHR and the ICJ have also delivered advisory opinions, interpreting states' obligations to address climate change under human rights treaties.

The Human Rights Committee's practice on climate change began to take shape with *General Comment No. 36* on the right to life. The Committee recognized environmental degradation, climate change and unsustainable development as serious threats to the right to life of present and future generations. It further affirmed that states must take measures to protect the environment and prevent harm, pollution and climate change caused by public and private actors.[18] Building on *General Comment No. 36*, the Committee examined the case of indigenous peoples against Australia. It found that Australia's inadequate response to climate change had caused flooding and disruption to the traditional way of life of indigenous applicants, violating their rights to life, private and family life, and minority culture under articles 6, 17 and 27 of the ICCPR. It recommended compensation and measures to prevent recurrence, thereby strengthening states' human rights obligations concerning climate change.[19] However, the Committee did not directly determine whether human rights treaties impose an obligation to mitigate emissions, leaving this issue unresolved. The question may return to the Committee, as ten Australian individuals filed a communication in June

18 UNITED NATIONS HUMAN RIGHTS COMMITTEE, GENERAL COMMENT NO. 36 (2018) ON ARTICLE 6 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, ON THE RIGHT TO LIFE, UN.DOC.CCPR/C/GC/36 (SEPT. 3, 2019), PARA. 62, at https://docs.un.org/en/CCPR/C/GC/36 (Last visited on September 21, 2026).

19 UNITED NATIONS HUMAN RIGHTS COMMITTEE, VIEWS ADOPTED BY THE COMMITTEE UNDER ARTICLE 5(4) OF THE OPTIONAL PROTOCOL, CONCERNING COMMUNICATION NO. 3624/2019, UN.DOC.CCPR/C/135/D/3624/2019, at https://docs.un.org/en/CCPR/C/135/D/3624/2019 (Last visited on September 21, 2026).

2026 challenging Australia's continued production and export of coal and gas under the ICCPR.[20]

Compared to the Human Rights Committee, the Committee on the Rights of the Child is more proactive in advancing states' emission reduction commitments. In 2019, sixteen children filed complaints against Argentina, Brazil, France, Germany, and Turkey. They alleged that these states had violated children's rights by failing to take sufficient emission reduction measures and by failing to urge large emitting corporations to reduce emissions. Although the Committee declared the complaints inadmissible on the ground that the authors had not exhausted domestic remedies, it affirmed, in the reasoning part of its decisions, the possibility that a state could incur responsibility for failing to take sufficient mitigation measures. It also affirmed the conclusion that states have extraterritorial obligations in the context of climate change.[21] In addition, the Committee developed an important proposition in this case. The fact that all states emit greenhouse gases does not preclude a state from bearing its own share of responsibility individually.[22] In 2023, the Committee issued *General Comment No. 26* specifically concerning climate change. This Comment incorporated the precautionary principle, recognized the right to a clean, healthy and sustainable environment, affirmed states' obligations to regulate transnational corporations, including certain extraterritorial obligations of home states, and linked human rights obligations to the mitigation objectives of the *Paris Agreement*.[23] It seeks to create emission reduction obligations that go beyond the UNFCCC regime.

The ECtHR has long addressed environmental issues and has increasingly engaged with climate change litigation. In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the court held that article 8 of the *European Convention on Human Rights* could apply to climate change where its effects substantially interfere with private life.[24] It found that Switzerland had failed

20 ANNE POELINA AND OTHERS V. AUSTRALIA, COMMUNICATION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE UNDER THE FIRST OPTIONAL PROTOCOL TO THE ICCPR, at https://www.climatecasechart.com/document/anne-poelina-and-others-v-australia_7e6c (Last visited on July 17, 2026).

21 COMMITTEE ON THE RIGHTS OF THE CHILD, DECISION ADOPTED BY THE COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE IN RESPECT OF COMMUNICATION NO. 107/2019, CRC/C/88/D/107/2019, PARAS. 9.2-9.20, at https://juris.ohchr.org/casedetails/2955/en-US (Last visited on September 21, 2026).

22 *Id.*, para. 9.8.

23 COMMITTEE ON THE RIGHTS OF THE CHILD, GENERAL COMMENT NO. 26 (2023) ON CHILDREN'S RIGHTS AND THE ENVIRONMENT, WITH A SPECIAL FOCUS ON CLIMATE CHANGE, UNITED NATIONS DOCUMENT CRC/C/GC/26, at https://digitallibrary.un.org/record/4019010?v=pdf (Last visited on September 21, 2026).

24 EUROPEAN COURT OF HUMAN RIGHTS, VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHER V. SWITZERLAND, APPLICATION NO. 53600/20, at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-233206%22]} (Last visited on September 21, 2026).

to establish an adequate regulatory framework for reducing greenhouse gas emissions and had therefore violated article 8.[25] The court also interpreted article 6 more flexibly in the climate context, strengthening procedural access to justice while not requiring states to enact specific legislation.[26] It can be seen from this practice that the right to respect for private life provides a substantive legal basis for human rights-based climate change litigation, enabling a review of governmental climate policies, while the right of access to a court offers a procedural guarantee for climate change activists to obtain a fair hearing before domestic courts.

The IACtHR delivered its advisory opinion on climate change on May 29, 2025.[27] The court grounded states' climate obligations in both substantive and procedural human rights. It recognized the right to a clean environment as an implied right under article 26 of the *American Convention* and linked climate protection to traditional rights such as life, health, property, and water.[28] The court also adopted an ecocentric approach by recognizing nature as worthy of protection in its own right.[29] Moreover, the court affirmed extraterritorial obligations to prevent transboundary climate harm, and emphasized international cooperation and the duty of states not to adopt regressive measures in rights protection.[30]

The ICJ is not a specialized human rights court. It is a general international judicial body. Nonetheless, a significant portion of its advisory opinion on climate change, delivered on July 23, 2025, is devoted to elaborating the human rights obligations of states in addressing climate change.[31] As to its content, the ICJ's reasoning on human rights law does not substantially go beyond the interpretations given by regional human rights courts and human rights treaty bodies. The analysis of the ICJ's advisory opinion will be integrated into the discussion below on the overall status of the greening shift of human rights law within the family of international law.

2. Transnational Transfer of Pollution by Multinational Corporations. — In an era of global connectivity, the cross-border trade and investment frequently give rise to environmental problems. Instances of multinational corporations transferring pollution through international trade and cross-border investment occur with some regularity. The Trafigura case of transboundary dumping of

25 *Id.*, paras. 573-574.

26 *Id.*, para. 609.

27 INTER-AMERICAN COURT OF HUMAN RIGHTS, THE CLIMATE EMERGENCY AND HUMAN RIGHTS, ADVISORY OPINION AO-32/25, at https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf (Last visited on July 17, 2026).

28 *Id.*, para. 270.

29 *Id.*, para. 273.

30 *Id.*, para. 277.

31 *Supra* note 5.

toxic substances is a classic example. At the time of the incident, Shell was headquartered in the Netherlands, a country with relatively high environmental standards. Its Nigerian subsidiary, aware of the frequent occurrence of oil theft in the locality, refused to install pipeline pressure sensors in order to save costs. These sensors would have triggered a timely alarm in the event of an oil leak. Eventually, oil theft by criminals led to a massive oil spill, causing local environmental pollution and damage to the health of residents. Such cases expose the limitations of relying solely on host-state law to ensure effective prevention and remedy, raising the question of whether multinational corporations should be subject to higher human rights standards.[32] To address the environmental problems caused by multinational corporations, two theoretical approaches and their corresponding practical explorations have emerged in the field of human rights law, namely the theories of indirect and direct horizontal effect.

International law primarily treats states and international organizations as legal subjects, while human rights law grants individuals rights but traditionally places obligations mainly on states. The field of constitutional law was the first to witness a debate on whether constitutional rights or fundamental rights have horizontal effect. This discussion gradually spread to the field of human rights law. It generated a debate on whether and how human rights law can be applied to multinational corporations, giving rise to the theoretical paradigm and associated practice of business and human rights. Among these, the indirect horizontal effect theory is generally closer to the traditional view. It emphasizes the realization of the goal of making multinational corporations respect human rights through the state's duty to protect. In contrast, the direct horizontal effect theory maintains that human rights law can directly regulate the relationship between multinational corporations and other private actors. This gives rise to the novel idea that multinational corporations bear human rights obligations. The *2011 UN Guiding Principles on Business and Human Rights* (hereinafter referred to as the Guiding Principles) incorporated both approaches through the state duty to protect and corporate responsibility to respect human rights.[33] This paradigm provides an important framework for addressing transnational pollution and advancing the greening shift of human rights law.

32 JOHN RUGGIE, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS 'PROTECT, RESPECT AND REMEDY' FRAMEWORK, UN DOC. A/HRC/17/31, PARAS 1-6, at https://docs.un.org/en/A/HRC/17/31 (Last visited on September 21, 2026).

33 HUMAN RIGHTS COUNCIL, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS PROTECT, RESPECT AND REMEDY FRAMEWORK, at https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights (Last visited on September 21, 2026).

With regard to transnational pollution transfer by multinational corporations, the state duty to protect human rights requires states to take appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.[34] This is an obligation of conduct, not an obligation of result. The state does not automatically bear responsibility for environmental pollution caused by multinational corporations under its jurisdiction. It only incurs responsibility when it fails to take reasonable regulatory measures. The justiciability of this duty and its adjudicative standards were long controversial, yet in the environmental context judicial practice has advanced rapidly, strengthening the state's duty to protect. In *Social and Economic Rights Action Center (SERAC) and Another v. Nigeria*, the African Commission found that the Nigerian government had violated human rights, as it failed to take adequate action to prevent oil companies from polluting the environment.[35] While the host state has traditionally borne the obligation to protect human rights against infringement by multinational corporations, the home state's regulatory obligation was long unclear. The Guiding Principles took a negative view on this point. In the subsequent practice of human rights law, the approach of extraterritorial human rights obligations gradually emerged. The obligations of the home state of multinational corporations have been recognized.[36] In 2014, the UNHRC initiated negotiations on a business and human rights treaty. The draft explicitly includes home state obligations as a key element, together with complementary mechanisms on the jurisdiction of home state courts, applicable law, and the recognition and enforcement of judgments.[37] Overall, the strengthening of the state's duty to protect contributes to resolving the problem of transnational pollution transfer by multinational corporations.

In addition to the strengthening of the state's duty to protect, another development in the formation of the greening shift of human rights law is that corporate human rights due diligence has gradually become a new paradigm. This concept means that a corporation should not only refrain from harming human rights itself, but also take measures to prevent its subsidiaries and supply chains from harming human rights. The European

34 *Id.*, principle 1.

35 *See* SOCIAL AND ECONOMIC RIGHTS ACTION CENTER AND ANOTHER V. NIGERIA, COMMUNICATION NO. 155/96, PARA. 58, at https://leap.unep.org/sites/default/files/court-case/achpr30_155_96_eng.pdf (Last visited on September 21, 2026).

36 *See* Olivier De Schutter, *Towards a New Treaty on Business and Human Rights*, 1 Business & Human Rights Journal 41, 53-56 (2016).

37 OEIGWG CHAIRMANSHIP, LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES, at https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf (Last visited on September 21, 2026).

Union adopted the *Corporate Sustainability Due Diligence Directive*. It requires large EU companies to conduct due diligence on the human rights performance of their global business partners. Companies that fail to fulfill their human rights due diligence obligations may face administrative penalties. Corporate human rights due diligence holds great potential for development in the environmental field. It has already become a litigation strategy for environmentalists seeking to hold multinational corporations accountable for environmental harm.[38]

3. Marine Environmental Crisis. — The greening shift of human rights law is gradually extending from terrestrial to maritime contexts. As expanding maritime activities such as shipping, deep-seabed mining and distant-water fishing generate environmental challenges, including marine pollution, climate change and biodiversity loss, their implications for human rights have become increasingly apparent. Although the *United Nations Convention on the Law of the Sea* (UNCLOS) provides the principal legal framework for addressing marine environmental problems, its reciprocity-based rules may be constrained by inter-state bargaining and political considerations. This has created a need to supplement the law of the sea with a non-reciprocal human rights approach. The UN Special Rapporteur on human rights and the environment, *Astrid Puentes Riaño*, has pointed out that ocean issues are human rights issues.[39] Due to her efforts, the UNHRC adopted the report *Ocean and Human Rights*. This further strengthens the approach of ocean environmental governance based on human rights.

Human rights-based ocean environmental governance has numerous application scenarios. For instance, Japan's approval and repeated initiation of the discharge of nuclear-contaminated water into the sea have aroused concerns among neighboring countries and environmentalists worldwide. Traditional international law imposes obligations on states to protect and preserve the marine environment and not to cause harm to the rights of other states. However, the traditional reciprocity-based mechanisms have proven ineffective in addressing the Fukushima nuclear-contaminated water incident for three reasons. First, these obligations primarily provide a basis for compensation after environmental harm occurs and have limited *ex ante* preventive force. Second, their implementation depends on states invoking other states' obligations, which may be weakened by political and diplomatic considerations. Third, traditional international law tends

38 *See* Hans van Loon, *Principles and Building Blocks for a Global Legal Framework for Transnational Civil Litigation in Environmental Matters*, 23 Uniform Law Review 298 (2018).

39 *See* UNITED NATIONS, OCEAN ISSUES ARE HUMAN RIGHTS ISSUES, SAYS UN EXPERT, at https://www.ohchr.org/en/press-releases/2025/03/ocean-issues-are-human-rights-issues-says-un-expert (Last visited on July 1, 2026).

to address environmental issues at a systemic level and provides limited protection from an individual perspective. The many advantages of human rights law can make up for these deficiencies. First, human rights law imposes multidimensional obligations on Japan, including duties to respect, protect, and fulfil human rights. Japan may have breached its duty to protect by failing to take adequate precautionary measures and, if actual harm is established, its duty to respect. Second, human rights obligations are non-reciprocal, allowing affected individuals to invoke Japan's responsibility independently. Third, these obligations are continuous and dynamic, expanding as the risks associated with the ongoing discharge increase.

Seabed mining in the area, often referred to as deep seabed mining, can easily cause damage to marine ecosystems and biodiversity. It has become a new application scenario for the greening shift of human rights law. Environmental organizations such as the International Union for Conservation of Nature (IUCN) have issued advocacy documents. They call for the adoption of a human rights-based environmental governance mechanism for deep seabed mining to supplement the deficiencies of the secondary legislation of the International Seabed Authority. The IUCN advocacy pointed out that member states of the International Seabed Authority should fulfill their obligations to respect, protect and fulfill human rights, including the right to a clean, healthy and sustainable environment. In particular, they should incorporate human rights-based decision-making when participating in the voting processes of the authority.[40] Furthermore, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published a working paper that further elaborated on the human rights-based governance mechanism for deep seabed mining. This includes fulfilling the obligations to respect, protect, and fulfill the right to a clean, healthy, and sustainable environment. It also covers protecting the ability of future generations to enjoy human rights, establishing a framework for corporate human rights responsibility in mining operations, and ensuring access to information and public participation, among other aspects.[41]

40 INTERNATIONAL UNION FOR CONSERVATION OF NATURE AND OTHERS, DEEP SEABED MINING AND HUMAN RIGHTS, at https://iucn.org/resources/grey-literature/deep-seabed-mining-and-human-rights-statement (Last visited on July 1, 2026).

41 OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, KEY HUMAN RIGHTS CONSIDERATIONS ON THE IMPACT OF SEABED MINING, at https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/ohchr-seabed-mining-10-july.pdf (Last visited on July 1, 2026).

C. Methodology of the Greening Shift of Human Rights Law

From the relevant practices described above, the methodology of the greening shift of human rights law can be distilled as follows.

First, traditional rights are endowed with new meanings in order to meet the needs of climate governance and pollution prevention. For instance, every person enjoys the right to freedom from torture or cruel, inhuman or degrading treatment. Originally, this right did not address environmental issues. Yet, with the emergence of global environmental problems such as climate change, some scholars have argued that a state's failure to take mitigation or adaptation measures may amount to a violation of the right to be free from inhuman treatment.[42] Other traditional rights have likewise been expansively interpreted for the purpose of resolving environmental problems. This falls within the category of the expansion of the content of rights.

Second, the right to the environment has been recognized by the international community as a human right. It has evolved from a procedural environmental right to a substantive one. In addition to traditional rights being given new connotations, the right to the environment has become an emerging human right. Before the right to the environment was recognized as an independent right, using human rights mechanisms to address environmental problems usually required proof that the victim had suffered harm to person or property as a result of environmental pollution. Recognizing the right to the environment means that the protection of the environment is, in and of itself, a human right. This is likely to give rise to a greater number of environmental human rights claims.

Third, the human rights narrative has led to a strengthening of states' obligations to protect the environment. Some commentators seek to use human rights discourse to derive entirely new state obligations that are independent of the environmental treaty regime. International environmental treaties were originally intended to serve as the main channel for addressing global environmental problems. However, due to the complexity of international relations and international politics, deficiencies in that main channel have been exposed. In response, environmentalists have turned to human rights mechanisms. They attempt to construct state environmental protection obligations within the framework of the individual-state relationship.

Fourth, the theoretical approach of extraterritorial human rights obligations has been reinforced in its application to transboundary

42 *See* Jelena Belic, *Climate Change as Inhuman Treatment*, 14 Global Justice: Theory Practice Rhetoric 67, 67 (2024).

environmental problems. Traditional human rights law has primarily addressed the protection of rights within a state's territory and has paid little attention to extraterritorial human rights harm. If human rights obligations lacked an extraterritorial dimension, it would be impossible to truly resolve the global environmental crisis. In the evolution of the theory and practice of human rights law, the spatial scope of states' human rights obligations has shown a trend of expansion. This has gradually given rise to the theoretical approach of extraterritorial human rights obligations.[43] In the process of the formation of the greening shift of human rights law, this theoretical approach has been strengthened in order to address global environmental problems such as climate change and pollution of the high seas.

Fifth, the idea of the rights of future generations has gradually emerged. It introduces considerations of intergenerational equity into human rights reasoning. Past human rights discourse typically only considered the distribution of interests among contemporary persons. Environmental problems, by contrast, are often diachronic and cumulative in nature. Against this background, a new view has emerged. It holds that future persons may claim human rights against present-day states, including the right to the environment.[44] The core idea is that contemporary states must not deprive future generations or succeeding generations of their living space. This notion expands, at the conceptual level, the pool of beneficiaries of state obligations and even constructs future persons as subjects capable of making claims.

Sixth, the business and human rights approach has further broadened the ways in which human rights law can act upon environmental issues. Under the traditional view, the state is the subject of obligations in human rights law. The principal way for human rights law to play a role in environmental matters is to hold the state accountable for failing to protect the environment. The multinational corporations that are the originators of environmental problems are not directly constrained by human rights law. In order to alter this mismatch of responsibility, the business and human rights approach has gradually emerged within human rights law. This approach emphasizes both the state's duty to protect human rights and the proposition that multinational corporations bear human rights due diligence obligations. The business and human rights approach will enrich the toolbox of the greening shift of human rights law.

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43 *See* SIGRUN SKOGLY, BEYOND NATIONAL BORDERS: STATES' HUMAN RIGHTS OBLIGATIONS IN INTERNATIONAL COOPERATION, at 85-90 (Intersentia Publishers, 2006).

44 *See* Fons Coomans, *Towards 2122 and Beyond: Developing the Human Rights of Future Generations*, 40 Netherlands Quarterly of Human Rights 53, 59 (2022).

IV. THE INFLUENCE AND BOUNDARIES OF THE GREENING SHIFT OF HUMAN RIGHTS LAW

The greening shift of human rights law objectively reflects the keen concern of people around the world for ecological and environmental governance and holds considerable normative promise. Nevertheless, its boundaries remain ambiguous, which could consequently give rise to a green barrier that constrains the ascent of emerging powers. It is therefore necessary to fully examine the positive effects of this trend, to mitigate its adverse impacts, and to reasonably delineate the boundaries of the greening shift of human rights law.

A. Positive Effects of the Greening Shift of Human Rights Law

The greening shift of human rights law has offered novel conceptual frameworks and fresh momentum for contemporary global environmental governance. Its positive effects can be seen in several respects.

First, it has strengthened the legitimacy and legal foundation of states' obligations to protect the environment. Under international environmental law, states must not cause harm to the environment of other states or to the global environment. However, these obligations are essentially the product of the harmonization of the wills of states. To a large extent, they are also the result of bargaining among states. Taking the climate change regime as an example, the *Kyoto Protocol* set quantified emission reduction obligations for industrialized countries. Ultimately, the model of quantified emission reduction established by the Protocol was replaced by the nationally determined contributions model of the *Paris Agreement*. To a certain extent, the greening shift of human rights law has strengthened states' environmental protection obligations. Human rights are non-reciprocal and, to some degree, transcendental. Human rights-based reasoning can reinforce states' general obligations of emission reduction and environmental protection that exist outside the UNFCCC and the *Paris Agreement*.

Second, it has challenged the state-centered model of environmental protection. Traditional international environmental law is a state-centered environmental protection regime. Under this regime, only a state may invoke the state responsibility of another state for breaching environmental obligations. In the reality of international relations, whether a state invokes another state's environmental responsibility often depends on multiple factors. These factors include the international political environment, core national interests, diplomatic relations, and legal capacity. It is also

constrained by considerations such as whether both the invoking state and the wrongdoing state have accepted the jurisdiction of a given dispute settlement body. Taking the ICJ as an example, environmental cases have gradually emerged in recent years, such as *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*. But purely environmental protection cases still account for a relatively small proportion of the court's docket. The advantage of human rights law is that individuals have claims that are independent of the state. Even if the individual's own state is unwilling or unable to invoke another state's environmental responsibility, the individual may invoke that other state's responsibility before a human rights treaty body or a regional human rights court. Taking climate change as an example, in the field of international law, there has been no case to date in which one state has invoked another state's state responsibility for failing to take mitigation or adaptation measures. Yet before human rights treaty bodies and regional human rights courts, there have already been a number of cases.

Third, it may give rise to more international environmental public interest litigation. Traditional international environmental disputes often center on reciprocal obligations. That is, the directly injured state of transboundary pollution claims that the act or omission of the polluting state constitutes an internationally wrongful act. In such disputes, the state is protecting its own environmental interests, not the global public interest. For example, in *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Nicaragua claimed that Costa Rica, in constructing a road along a transboundary river, had failed to fulfill its environmental impact assessment obligation, thereby harming Nicaragua's interests.[45] The essence of the case was that one state had harmed the environmental interests of another state. However, environmental problems represented by climate change and high seas pollution are global in nature. A single state may suffer only a portion of the harm, or may not even necessarily suffer direct harm at all. In *Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening)*, the ICJ found that Japan's issuance of whaling permits in the Southern Ocean violated its obligations under the *International Convention for the Regulation of Whaling* and constituted an internationally wrongful act.[46] In that case, the applicant, Australia, was not seeking to protect its own domestic environmental interests but rather the global interest in biodiversity.

45 INTERNATIONAL COURT OF JUSTICE, CONSTRUCTION OF A ROAD IN COSTA RICA ALONG THE SAN JUAN RIVER (NICARAGUA V. COSTA RICA), JUDGMENT, at https://icj-cij.org/sites/default/files/case-related/152/152-20151216-JUD-01-00-EN.pdf (Last visited on September 21, 2026).

46 INTERNATIONAL COURT OF JUSTICE, WHALING IN THE ANTARCTIC (AUSTRALIA V. JAPAN: NEW ZEALAND INTERVENING), JUDGMENT, at https://www.icj-cij.org/sites/default/files/case-related/148/148-20140331-JUD-01-00-EN.pdf (Last visited on September 21, 2026).

The case thus bore the characteristics of public interest litigation. However, in light of the current judicial mechanisms of the ICJ and the customary rules on state responsibility, such international environmental public interest litigation is unlikely to become the norm. In the process of the formation of the greening shift of human rights law, several developments have occurred. These include the establishment of the right to the environment, the approach of extraterritorial human rights obligations, and the idea of the rights of future generations. On these bases, individuals or groups of individuals may claim that a state's act or omission harms the environmental interests of the globe or even of future persons. This may potentially give rise to more complaints or litigation of a public interest character.

B. Negative Effects of the Greening Shift of Human Rights Law

The negative effect of the greening shift of human rights law lies in the risk that it may be abused, leading to an excessive greening of human rights law that fundamentally negates or even replaces international environmental law. Human rights law and international environmental law are two parallel legal systems that impose specific environmental obligations on states from different perspectives. Environmental obligations derived from human rights law are not inherently superior to those derived from international environmental law. The excessive greening of human rights law seeks to set aside the treaty framework of international environmental law and to transfer decision-making power over global environmental issues to international human rights judicial or quasi-judicial mechanisms — composed of individuals who do not represent states — thereby fundamentally negating the collective legislative authority of states.

The greening shift of human rights law may also be misused by certain states in the context of climate negotiations, creating a new category of green barrier that constrains the rise of emerging powers. Theoretical approaches such as extraterritorial human rights obligations and the rights of future generations, which have accompanied the greening turn of human rights law, may be used to derive strong environmental protection obligations, effectively negating the principles of common but differentiated responsibilities and sustainable development that international environmental law has established.

C. Reasonable Boundaries of the Greening Shift of Human Rights Law

The greening shift of human rights law is, in essence, a critical international discourse system that provides small island developing states

and the least developed countries with an emerging discourse for the redistribution of developmental resources. A moderate greening shift of human rights law contributes to the realization of environmental justice and sustainable development, and fills the gaps left by international environmental law. However, when confronting non-traditional pollution problems such as climate change, the greening shift of human rights law may mutate into a green barrier that restrains the development of emerging powers. For example, the European Union introduced the Carbon Border Adjustment Mechanism (CBAM), which has been questioned as a unilateral carbon tariff disproportionately affecting developing countries.[47] Although the EU may justify it by reference to human rights obligations and the Polluter Pays Principle, the measure raises legitimacy concerns. It focuses on carbon mitigation without adequately addressing adaptation or directing revenues to countries most affected by climate change. Therefore, the measure risks functioning as a disguised green trade barrier rather than genuine implementation of human rights obligations.

The advisory opinion of the ICJ on climate change ultimately adhered to the rationality expected of an authoritative international judicial institution. In terms of content, the court affirmed that human rights law is a body of law directly applicable to the settlement of climate change issues.[48] When it specifically elaborated on states' obligations under human rights law, however, it did not derive strong emission reduction obligations that go beyond the UNFCCC regime.[49] Yet it stopped short of concluding that a strong emission reduction obligation exists. Instead, the court repeatedly stressed that human rights treaties should be interpreted in the light of environmental treaties, and vice versa.[50] On the question of whether the Polluter Pays Principle could be applied, the court exercised due restraint. It pointed out, on the one hand, that the Polluter Pays Principle is neither a customary norm nor a general principle of law, and is therefore not applicable law for the settlement of climate change issues. On the other hand, this principle is a principle of domestic law and cannot be transposed to govern inter-state relations.[51] The practice of the ICJ demonstrates that, in the context of climate change, human rights law plays a primarily declaratory, exhortatory and indicatory role. It does not directly impose emission

47 UNITED NATIONS UNCTAD, A EUROPEAN UNION CARBON BORDER ADJUSTMENT MECHANISM: IMPLICATIONS FOR DEVELOPING COUNTRIES, U.N. DOC. UNCTAD/OSG/INF/2021/2, at https://unctad.org/system/files/official-document/osginf2021d2_en.pdf (Last visited on September 21, 2026).

48 *Supra* note 5, para. 172.

49 *Id.*, para. 403.

50 *Id.*, para. 404.

51 *Id.*, paras. 159-160.

reduction obligations by circumventing environmental treaties.

Domestic courts in some countries have also reflected critically on radical conceptions of green human rights. In 2024, the Hague Court of Appeal overturned the first-instance judgment in the Shell climate change litigation. In that case, the Hague District Court, as the court of first instance, used human rights law, international climate change law and EU law as external sources to interpret Dutch tort law. It ordered Shell to assume a quantified emission reduction obligation.[52] The Hague Court of Appeal affirmed that Shell had an obligation to combat climate change under Dutch civil law and human rights law. However, it refused to set a specific quantified emission reduction target and consequently reversed the first-instance judgment.[53] The approach of the Hague Court of Appeal indicates that human rights law may impose an obligation on states and corporations to address climate change. But on the basis of human rights law alone, one cannot derive a concrete emission reduction obligation. The case is currently pending before the Supreme Court of the Netherlands on cassation; a hearing was held on May 22, 2026, and a final judgment is not expected before 2027.[54]

For China, on the one hand, the greening turn of human rights law should be properly channeled. We should advocate moderate greening and harness its favorable elements. It should safeguard its ecological sovereignty, convey to the international community the concepts of green development and a community with a shared future for mankind, and foster the image of a responsible major country. On the other hand, we should guard against the excessive greening of human rights law. It should unequivocally oppose the radical view that seeks to replace international environmental law with human rights law. It should advocate the right to development and promote the negotiation and conclusion of the draft *Convention on the Right to Development*. It must also avoid the traps of new types of green barriers.[55] At

52 *See* THE HAGUE DISTRICT COURT, VERENIGING MILIEUDEFENSIE AND OTHERS V. ROYAL DUTCH SHELL PLC, at https://www.climatecasechart.com/document/milieudefensie-et-al-v-royal-dutch-shell-plc_c3e4 (Last visited on September 21, 2026).

53 COURT OF APPEAL OF THE HAGUE, SHELL PLC AND FOUNDATION FOR ENVIRONMENT AND PEOPLE V. ENVIRONMENTAL DEFENSE ASSOCIATION AND OTHERS, JUDGMENT OF NOV. 12, 2024, PARA. 7.111, at https://www.climatecasechart.com/documents/milieudefensie-et-al-v-royal-dutch-shell-plc-judgment_7bfb (Last visited on September 21, 2026).

54 SUPREME COURT OF THE NETHERLANDS, MILIEUDEFENSIE V. SHELL PLC, NO. 25/00497, at https://www.climatecasechart.com/documents/milieudefensie-et-al-v-royal-dutch-shell-plc-appeal_a555 (Last visited on September 21, 2026). *See* MILIEUDEFENSIE, HIGHEST COURT WEIGHS HISTORIC CLIMATE CASE BROUGHT BY MILIEUDEFENSIE V. SHELL, at https://en.milieudefensie.nl/news/press-release-dutch-supreme-court-climate-case-shell (Last visited on July 17, 2026).

55 UNITED NATIONS HUMAN RIGHTS COUNCIL RESOLUTION 39/9, THE RIGHT TO DEVELOPMENT, UN DOC. A/HRC/RES/39/9, at https://docs.un.org/en/A/HRC/RES/39/9 (Last visited on September 21, 2026).

the domestic level, China adopted its *Ecological and Environmental Code* on March 12, 2026. It is the second statute after the *Civil Code* to be designated a code. During its drafting, there was discussion on whether to incorporate a right to the environment. The final text declined to enshrine such an independent right. Instead, it reaffirmed that all units and individuals bear the obligation to protect the ecological environment. This choice reflects China's philosophy of steadily advancing the rule of law in environmental matters and of correctly handling the relationship between high-quality development and high-level protection. At the international level, China submitted a written statement in the advisory proceedings before the ICJ on climate change. It recognized the links between climate change and its adverse impacts on human rights. At the same time, it emphasized that human rights law plays only a supplementary role and cannot replace international environmental law, given its inherent limitations in addressing climate change.[56] Overall, in view of China's status as an emerging power and its current stage of development, it should, with respect to the non-traditional pollution problem of climate change, adhere to the negotiation of a consensus-based emission reduction plan under the UNFCCC regime.

V. CONCLUSION

The limitations of traditional international environmental law have prompted a greening shift in international human rights law, whereby human rights concepts, principles, rules and practices increasingly address environmental concerns. This shift has broadened the regulatory objects and domain of human rights law. It is reflected in four main developments. First, traditional rights such as the rights to life and health have been reinterpreted in environmental contexts. Second, a substantive right to a clean, healthy and sustainable environment has gradually gained recognition. Third, human rights mechanisms have been increasingly used in environmental and climate litigation. Fourth, extraterritorial obligations and the rights of future generations have also expanded the spatial and temporal reach of human rights law. Its evolution has moved from local environmental claims under existing rights toward global climate litigation and broader public interest claims.

A moderate greening shift of human rights law contributes to the realization of environmental justice and sustainable development. It fills the gaps and deficiencies of international environmental law and fosters a virtuous interaction between human rights law and international

56 *Supra* note 18, paras. 115-125.

environmental law. However, an excessive greening may produce the effect of replacing international environmental law with human rights law, thereby undermining the formal rationality and substantive justice of international law. For China, the appropriate response to the greening shift of human rights law is anchored in Xi Jinping Thought on Ecological Civilization and Xi Jinping Thought on the Rule of Law. A moderate greening shift of human rights law is consonant with these ideas. It also aligns with the philosophy that lucid waters and lush mountains are invaluable assets, and with the spirit of China's newly adopted *Ecological and Environmental Code*. China is well-positioned to guide the greening shift of human rights law towards moderation, while remaining vigilant against excessive greening. It might share with the world the Chinese story of green development and advocate the right to development. In this way, it can contribute to a community with a shared future for mankind.

(Edited by Li Jiesi)

国际人权法绿色化转向的兴起、影响及限度

内容提要 随着气候变化、跨国公司转移污染、海洋环境危机等全球性环境问题日益凸显，国际人权法越发重视环境问题，其规范内容和监督实践呈现出绿色化转向。国际人权法的绿色化转向呈现下列规律。在权利内涵上，生命权、健康权、私生活受尊重权等传统权利被赋予新含义，并在环境争端中发挥作用。在权利种类上，环境权作为一项独立的人权逐渐获得承认。在实现方式上，利用人权机制解决环境争端的实践不断丰富，尤以气候变化诉讼为典型代表，这些案件逐渐呈现公益诉讼的色彩。在法律方法论层面，人权绿色化转向进程中，域外人权义务、未来世代权利、工商业与人权等理论进路得到强化，其逐步扩大了人权法的调整范围。人权法适度绿色化有助于环境正义和可持续发展理念的实现，填补国际环境法的不足和漏洞，并实现人权法与环境法的良性互动。然而，过度绿色化则可能产生以人权法取代国际环境法的效果，破坏国际法治的形式理性和实质正义。新时代，我国生态文明建设取得巨大成就，向世界贡献了绿水青山就是金山银山的中国智慧。面对人权法绿色化转向，我国应引导其朝适度绿色化方向发展，防范过度绿色化，以实现绿色发展理念，构建公正合理的国际秩序。