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### The Law of Natural Conservation in China

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THE SECOND SINO-AMERICAN CONFERENCE

ON  
ENVIRONMENTAL LAW

October 1989

THE LAW OF NATURAL CONSERVATION IN CHINA

By

Ma Xiang-cong

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## THE LAW OF NATURAL CONSERVATION IN CHINA

### I. GENERAL INTRODUCTION TO THE LAW OF NATURAL CONSERVATION IN CHINA

It is one of the major tasks of environmental protection to conserve natural environment and natural resources, including making rational use of them, developing the renewable resources and maintaining ecological balance. To conserve natural environment and natural resources is also the main task and important content of environmental law. As the population increased greatly, economy developed rapidly and resources exhausted day by day, conservation and rational utilization of natural resources have become even more important.

China is rich in natural resources in sum total, but the per capita average is limited and for some even very little. To take the land as an example, China ranks the third of the world in territory, only next to the Soviet Union and Canada; but the average per capita occupation is only 13.3 mu (0.886 hectare), about one third of the world's average, or about one fourth of the United States' average. The average arable land is only 26 per cent of the world's average. The total amount of the water resource in China is 2,800 billion cubic metres, ranking the sixth in the world; but the per capita average is only the one fourth of that of the world, or ranking the eighty-eight in the world. There are 124.65 hectares of forests in China; but the coverage is only 12.98 per cent. The average forest land owned by each person is only about 12 per cent of the world's. China has a little more grassland, but the per capita average is only about 40 per cent of the world's average. In addition, mineral resources is also much below the world's average. These show that the natural ecological conditions in China are rather poor, the carrying capacity of the environment is small and the pressure brought about by social and economic activities is great and will become even greater. Therefore, conservation of natural environment and resources should be stressed so as to achieve the goal of rational utili-

zation of them. In the past, it did not become a cognition that natural conservation is of an importance and the law to govern in this field was not integrate. Since the late of 1970s, the government has put much stress on these matters while the construction of socialist modernizations in this country is developing rapidly. Not only has the state clarified natural conservation provisions in the revised constitution, but also adopted a series of laws and regulations. A legal system for natural conservation has been initiated. It includes:

1. Constitutional provisions concerning natural conservation and rational utilization of natural resources.

The 1978 constitution first provides "The state protects the environment and natural resources". The 1982 constitution further stipulates "The state ensures the rational use of natural resources and protects rare animals and plants. The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited." (Article 9) "The state protects and improves the living environment and the ecological environment, and prevents and remedies pollution and other public hazards. The state organises and encourages afforestation and the protection of forests." (Article 26) "All organizations and individuals who use land must make rational use of the land." (Article 10) and "The state protects places of scenic and historical interest, valuable cultural monuments and treasures and other important items of China's historical and cultural heritage." (Article 22) All these provisions in constitution lay a fundamental legal basis for natural conservation and its legislation in this country.

2. Provisions in environmental laws and regulations concerning natural conservation.

Environmental Protection Law of the People's Republic of China (For Trial Implementation) adopted by the Standing Committee of the 5th National People's Congress at its 11th Meeting on 13 September 1979, is the basic law for protecting the environment. It does not only set forth the tasks of conservation and rational utilization of natural resources in General Principles, but also a special chapter (Chapter 2) for protection of natural environment, which provides in principle conservation of natural resources, including land, wa-

ter, mineral resources, forests, grassland, wild animals and plants. In addition, The Marine Environmental Protection Law of P.R.C. provides marine environmental protection.

3. Natural resources laws concerning protection of natural environmental elements, such as land, mineral resources, water, forests, and grassland.

4. Laws and regulations specially on nature conservation and preservation. For example, Wild Animals protection Law of P.R.C., Interim Regulations on Management of Scenic Spots and Management Guidelines on Protected Areas of Forests and Wild Animals.

5. Local Laws and regulations concerning natural environment and natural resources, such as those adopted by provinces, autonomous regions and cities.

6. Other regulations concerning nature and natural resources conservation, such as Interim Provisions on Several Issues concerning the Development and Comprehensive Utilization of Resources.

All these laws and regulations, based on the necessity of protecting the ecological environment as a whole and conserving all the natural resources, the practical experience gained from the past and with the reference of foreign successful achievement, have played a very important role in governing natural environmental protection and natural resources conservation. The general principles and major legal institutions are as follows:

1. To protect the socialist public ownership of natural resources. It is clarified by law that the state has ownership right over natural resources and organizations and individuals only have the right to use them. These legitimate rights should be protected.

2. Natural environment and resources should be protected and be used rationally at the same time when they are developed.

3. The interests of the state, collective and citizens should be given the same considerations in developing, utilizing and protecting natural resources.

4. Planning should be worked out in managing natural resources.

5. To encourage comprehensive use of natural resources.

6. To Practise registration, approval and permits systems in developing and using natural resources.

7. To exercise the chargeable use system. That is, to collect resources tax and charge for using the state-owned resources.

8. Environmental impact assessment should be conducted while developing and utilizing natural resources.

9. Any violations should be severely punished.

These principles and institutions are embodied in various laws and regulations concerning the conservation of all the natural elements. In the next few sections, the protection of each natural element will be dealt with.

## II. PRESERVATION OF LAND

Land is the basic natural condition on which the human being relies. It is one of the valuable natural resources as well. With the large population and a little land, China has a serious land problem. Thus, to preserve and use rationally the land becomes one of the protruding tasks in this country at the present time. In this connection, laws and regulations have been adopted. They include: Land Management Law of P.R.C.(adopted in 1986 and revised in 1988), Interim Regulations on Arable Land Appropriation Tax(1987), Interim Planning and Management Guidelines of Using Land for Construction (1987), Interim Regulations concerning Tax of Using Township-owned Land(1988) and Regulations on Land Recovery and Reclamation(1988). The legal principles have been established for preservation and utilization of land. They are:

1. Safeguarding the socialist Public Ownership of land, Prohibiting any organization and individual to appropriate, buy, sell or lease land, or unlawfully transfer land in any other ways. The right of using state-and collective-owned land can be transferred according to the law procedures. To protect land ownership right and land using right and to handle properly the contravencies over the rights in the light of the law.

2. The governments at all levels carrying out the policy of treasuring and making rational use of natural resources, practising overall planning, strengthening management, protection and development of land resource, and prohibiting unlawful appropriation of arable land and abuse of land.

3. Establishing system of land investigation and statistics, making overall planning for land utilization and using the land in line with the planning.

4. Implementing planned management of the land used for construction, limiting non-agricultural use of land and ensuring enough arable land.

5. Practising the system of the user pays of using state-owned land.

6. Levying tax on appropriation of arable land and use of township-owned land.

7. Preserving the arable land and promoting its productivity.

8. Practising land recovery and reclamation system. Any organizations and individuals should take the responsibility of recovery and reclaiming the land after their productive or constructive activities of mining, brick-making and coal-burnig electricity generating which will cause land deterioration in accordance with the principle of "Whoever exploits the land should be responsible for its recovery and reclamation."

9. Strengthening the supervisions over land management, which is the responsibility of State Land Administration and land management departments of the local governments at all levels.

10. Preventing land pollution, especially arable land pollution.

### III. PRESERVATION OF GRASSLAND

Grassland is one part of land. As China has a large area of grassland, covering 33 per cent of its whole territory, preservation of grassland plays an important role in developing husbandry and maintaininhg ecological balance. The State adopted Grassland Law on 18 June 1985. It stipulates the principles for protecting, constructing and making rational utilization of grassland. They include

1. Setting forth ownership right and using right of grassland, declearing these rights are protected by law and can not be infringed.

2. Limiting strictly the appropriation of grassland. The appropriation and requisition for constructive use should be approved through the legal procedures.

3. Protecting the vegetation on grassland, prohibiting open-up and damage activities on grassland. The grassland already opened up and caused desertification or serious soil erosion should be reforested within a limited time, changing farming into herding.

4. Making rational use of grassland and preventing over-herding.

5. Controlling the activities which will cause damage to grassland.

6. Preventing and controlling mouse and insect pest diseases and strengthening the work of fire prevention.

In addition to Grassland Law, the governments in the grassland regions have also worked out some local regulations, making the law more specifying. For example, Inner Mongolian Autonomous Region issues Regulations on Grassland Management, Gansu Province adopts Implementation Rules for Planting Grass and Plants and Hebei stipulates Regulations on Grassland Management.

#### IV. WATER PROTECTION

Water shortage has been a critical issue and water pollution has become more and more serious in this country. To protect and make a rational use of it is one of the important tasks of natural conservation. The government has adopted a series of laws and regulations for protecting water, including Water Law of P.R.C.(1988), Regulations on Soil and Water Conservation Work(1982), Water Pollution Prevention and Control Law of P.R.C.(1984), Implementation Rules for Water Pollution Prevention and Control Law of P.R.C.(1989), Regulations on Management of Navigable Watercourses of P.R.C.(1987), Provisions on Urban Management and Economic Use of Water(1988) and Provisions on Pollution Prevention and Control of Protected Areas for Drinking Water Supplies(1989). These and other related laws and regulations provide detailed and integrate measures for water protection. Water protection consists of two parts---quantity conserva-

tion and quality protection. That is we should conserve a certain water area so as to prevent water exhaustion, keep good quality of water and prevent water pollution, to maintain watercourses navigable and prevent blocking, conserve water and soil so as to prevent erosion, to ensure safety and to prevent water diseases, and to protect water resource in a sustainable way. Thus, it is formulated as follows:

1. Development, utilization, protection and management of water resources should comply with the following basic principles and requirements:

(1). Maintaining the state ownership of water resource and protecting the legitimate right of using water resource enjoyed by organizations and individuals;

(2). Developing and utilizing water resource, and preventing water diseases;

(3). Making overall planning and taking all factors into consideration, conducting comprehensive utilization so as to achieve the utmost benefit and make full use of water resource in developing, using water and preventing water diseases;

(4). Protecting water resource while developing and utilizing;

(5). Practising planned and economic use of water;

(6). Combining central unified management with multi-level and multi-department management;

2. To ensure a rational use of water resource, the following measures should be taken:

(1). Conducting unified scientific surveys and investigative assessments on water resource;

(2). Making overall plan for water development, utilization and protection and prevention water diseases for river basins and in regions;

(3). Development and utilization should benefit the nation and the people. Any activities by organizations and individuals should not damage the legal interests of the public as well as the private;

(4). Adopting a principle of promoting what is beneficial and abolishing what is harmful. Water resource development and utilization should be subordinated to the overall arrangement of flood con-

trol and all interests be taken into consideration so as to achieve a comprehensive benefit to all;

(5). Meeting the demands of domestic use first and then considering all other water uses.

3. Measures should be taken to protect water areas, water projects and the entire water environment in the process of water resource development and utilization. They are:

(1). Emphasizing ecological environmental protection in every development and utilization and taking all other water uses into consideration so as to ensure a comprehensive use of water;

(2). The overall plan and scientific proof should be done to prevent the negative impacts on the ecological environment in constructing trans-river-basin projects;

(3). Preventing water-courses blocking;

(4). Preventing reduction of water area;

(5). Preventing over-exploitation of ground water;

(6). Preventing and controlling soil erosion;

(7). Preventing and controlling water pollution;

4. Vigorous enforcement of supervision over water management

(1). Practicing a planned water use system;

(2). Exercising permits system for obtaining water directly from underground, rivers, streams and lakes;

(3). Implementing user pays system;

(4). Exercising economic use of water system.

## V. MARINE PROTECTION

Ocean is a vast and special eco-system. Like many other countries, China has enacted specific laws and regulations to govern marine protection. They include Marine Environmental Protection Law of P.R.C.(1982), Regulations concerning Prevention of Marine Pollution by Ships(1983), Regulations on Marine Environmental Protection concerning Off-shore Oil Exploration and Exploitation(1983) and Regulations concerning the Dumping of Wastes at Sea. These laws and regulations, from a perspective of protecting the entire marine eco-

gical environment and preventing marine pollution damages, stipulate provisions to prevent the potential pollution and damage by coastal construction projects, off-shore oil exploration and exploitation, land-based pollutants, vessels and dumping of wastes. The Provisions conform to not only the practical needs of this country, but also the spirit of the relevant international conventions which China has approved. This makes China's marine environmental law consistent with international marine environmental law. It shows that marine environmental protection is an urgent international problem which should be addressed by a worldwide joint cooperation.

## VI. MINERAL RESOURCES PROTECTION

It is the important content of natural conservation to protect mineral resources and to prevent pollution in the mining process. In this aspect, China has adopted Mineral Resources Law of P.R.C. (1986), Interim Provisions on Mineral Resources Reconnaissance, Registration and Management, Interim Management and Registration Guidelines for Mining of the Whole People Ownership Enterprises and Interim Provisions on Mineral Resources Supervision and Management, providing the legal basis for protecting mineral resources and establishing some necessary regulatory systems. These include:

1. Emphasizing the state ownership of mineral resources. The state ensure the rational development and use of mineral resources. No organization or individual may appropriate or damage these resources in any means.

2. Carrying out the policy of overall planning, rational layout, comprehensive survey, rational exploitation and comprehensive use of these resources in conducting survey and exploitation.

3. The state exercises a miner pays system.

4. The state manages mineral resources at both central uniform level and at all different levels.

5. The state carries out an uniform registration system of mineral resources survey.

6. The state carries out the permits system for mining so as to prevent abuse and reckless opening.

7. The state carries out the planned exploitation in the state-planned mining areas, in the mining area with the national economic value and for opening the minerals which should be protected according to the state law.

8. Individuals and organizations who/which conduct the survey and opening should protect and make rational use of minerals in their activities in order to achieve the goal of comprehensive reconnaissance, exploitation and utilization.

9. Exploitation activities are forbidden in some specific areas in order to protect the environment and safeguard the economic, political, cultural, national defence and ecological interests of the nation and the people.

10. Protecting the whole natural environment of scientific and cultural importance. If any rare geological phenomena with some scientific and cultural importance discovered in reconnaissance or opening, appropriate protective measures should be taken.

11. In exploiting and opening, measures should be taken to make economic use of land and to protect land, especially arable land, woods and grassland. Damaged land should be restored and reclaimed.

12. Environmental pollution should be prevented and eliminated. in exploiting and opening.

## VII. FOREST PROTECTION

As forest plays a very important role in improving the natural ecological environment, forest protection holds a dominant position in natural conservation. China is a country with a little forest. The government has taken afforestation and planting trees as the fundamental way out to get a new look of this country. Therefore, it has become more and more concerned about the legislation and adopted a series of laws and regulations, which form the forest law in shape. They include: Forest Law of P.R.C.(1984), Implementation Rules for Forest Law(1986), Resolution of the 4th Meeting of the 5th National People's Congress concerning the Whole People's Movement of Planting Trees(1981), the State Council Implementation Guidelines for the Whole People's Movement of Planting Trees(1982), Management

Guidelines for Forest Felling and Renewing(1987), Regulations on Forest Fire Prevention(1988) and Provisions on Several Issues of Strengthening Forest Resource Management(1988). These laws and regulations highlight the necessary legal measures for protecting, cultivating and making rational use of forest, as it has an important ecological value in conserving soil and water, adjusting climate and improving the environment quality. These measures are as follows:

1. Being aware of the important role of forestry in the nation's economy and social life, and establishing that protection, rational use and development of forest are the major responsibility of the governments at all levels. In forestry construction, the state carries out the policy of "general protection, vigorous afforestation, combination of felling with planting and sustainable utilization".

2. Carrying out protective and rewarding measures which can promote forestry development, including rational felling, encouraging planting, closing hillsides to facilitate afforestation, providing economic support or low interests, or long-term loans to afforestation and cultivation and protection; establishing forestry foundation system; developing forestry scientific research; and rewarding advanced organizations and individuals which/who make remarkable progress in afforestation and forest protection and management.

3. Clarifying the ownership right and use right of forests and woodland.

4. Classifying forests as prevention and protection forest, commercial forest, economic forest, fire-wood forest and special uses forest and setting the protective measures and requirements accordingly.

5. Adhering to the principle of consumption being lower than growth rate and carrying out rationaed felling and permits system.

6. Strengthening forest protection work, namely, to establish forest protection organization, to stress forest fire and insect pest diseases prevention work, to forbid destructive activities, to limit appropriation and requisition of woodland and to zone natural forest reserves.

7. Encouraging afforestation. The governments at all levles should make plans of afforestation, set goals for increase the forest cove-

rage of their own regions and then try to reach to the targets. Mobilizing all the people in all trades and professions to plant trees. Launching a whole people's movement for voluntary planting trees. Everybody except the unabled, the male from 11 to 60 and the female from 11 to 55, should plant 3-5 trees every year. The organizations and individuals which/who conduct felling should be responsible for the renewing and re-planting within a limited time.

8. establishing and making perfect of management systems and supervision institutions of forest resource in order to reinforce supervisonal management.

9. Making the governments at all levels responsible for afforestation, namely, carrying out the responsibility system of consumption-growth goal for leading persons with their terms.

10. Any violations should be severely punished. Forest Law provides that whoever fell trees unlawfully and the amount is huge shall be hold criminal liability by applying Article 152 of the Criminal Law of the People's Republic of China, namely, the person shall be sentenced to not less than five years or not more than ten years of fixed-term imprisonment; when the circumstances are serious, the sentence is to not less than ten years of fixed-term imprisonment or life imprisonment, and the offender may in addition be sentenced to confiscation of property.

Since the government lays stress on forest protection and afforestation, the forest coverage in this country increased from 8.6 per cent in 1949 to 12.98 in 1988. But forest resource is still a current critical issue in China. To protect and develop forest is an arduous task.

## VIII. WILDLIFE CONSERVATION

China is rich in resources of wild animals and plants. According to statistics, there are more than 2,100 animals of beasts, birds, reptiles and amphibians, about ten per cent of the world' total, and 30,000 seed-bearing plants, also about ten per cent of the world species. But in the past decades, stress was not put on their conservation. Illegal hunting and capture are very serious. The govern-

ment has recently become much concerned about wildlife conservation, especially the rare animals and plants. A series of laws and regulations have been adopted in succession. They are Wild Animals Protection Law of P.R.C.(1988), Supplementary Provisions of the Standing Committee of the National People's Congress regarding Punishment for the Offence of Hunting and Killing Rare and Endangered Wild Animals (1988), State Directives concerning Conservation and Rational Utilization of Wild Animal Resource(1962), Fisheries Law of P.R.C. (1986), Implementation Rules for Fisheries Law(1987), Regulations on the Breeding and Protection of Fishery Resources(1979), Regulations on Quarantine of Import and Export of Animals and Plants(1982), Regulations on Plants Quarantine(1983) and Regulations on Management of Wild Medical Plants Conservation. They, in different perspectives, provide for conservation and rational use of wild animals and plants.

1. The major provisions for protecting wild animals in Wild Animals Protection Law:

(1). Declaring the state owns wild animals resources and carries out the policy of strengthening the conservation, domestication, propagation, and rational development and utilization of wild animal resources. The state protects wild animals and their habitats, forbids illegal hunting or destroying and protects the legitimate rights owned by organizations and individuals to develop and utilize according to the law procedures.

(2). The state stresses the protection of rare and endangered species. These animals are classified as two classes---the first and second protection species. According to the List Of Wild Animals under the State Key Protection approved by the State Council on 10 December 1988, there are 96 species under the first protection and 161 under the second protection. Furthermore, provinces, autonomous regions and municipalities directly under the state also have their own lists of protection species. Hunting for the animals under the state protection is forbidden. Under certain circumstances, captures should get special permits from relevant departments designated by law.

(3). For the hunting of the animals which are not under the state protection, administration should be stressed. Hunting should get permits and be in accordance with the amount limits, hunting-prohibiting periods and zones.

(4). Strengthening the management of wild animals and their products.

(5). Strengthening the management of import and export of wild animals and their products.

(6). Collecting management fees of conservation for trading and using animal resources.

(7). Holding strictly the legal responsibilities of the violations.

2. Provisions regarding fisheries protection in Fisheries Law, its implementation rules and Regulations on Breeding and Protection of Fishery Resources,

(1). Exercising the permit system for fishing in the inland and coastal waters so as to control and coordinate fishing activities and prevent over-fishing.

(2). Protecting fisheries waters so as to accelerate breeding of fishery resources.

(3). Collecting fees for fisheries conservation.

(4). Measures should be taken to protect fisheries while conducting hydraulic or other constructions.

(5). Stressing protection of rare and important aquatic animals.

3. The legal basis for wild plants protection

(1). The provisions in Forest Law, Grassland Law and Environmental Law(Trial) concerning wild plants protection.

(2). The provisions in Regulations on Management of Wild Medical Plants Conservation and others concerning plants protection.

(3). Lists of Rare and Endangered Plants under the Protection announced by the Environmental Protection Commission under the State Council in July 1984. 345 species are designated under the state protection.

Now, the relevant departments are drawing the Regulations on Rare and Endangered Plants Protection to specify the protective measures.

## IX. PERSERVATION OF NATURAL AND CULTURAL HERITAGE

China has a complex and diverse natural environment, with its magnificent land and long history. It is rich in natural and cultural heritage. In order to protect such valuable resources and meet the demands of this and the next generations, China not only entered the Convention concerning Protection of the World Cultural and Natural Heritage in 1985, but also worked out some necessary regulations and took some active measures as well to protect them.

1. Establishing natural reserves and strengthening their protection and management.

Establishment of natural reserves began in this country in 1956, and it has been further developed since the late of the 1970s. Up to 1987, there are 482 natural reserves, covering 2.47 per cent of the country's total territory. There are two kinds of natural reserves. One is the state-protected and the other local-protected. The state-protected reserves are those which have high scientific value, or represent the specific ecological patterns, or are the original habitats for rare and endangered plants and animals or have international influence. The State-protected reserves should be approved by the state. There are now about 50 of them. The local-protected reserves are divided into provincial, municipal and county reserves, approved by the governments accordingly.

Among all the established natural reserves, there are many of forest and wild animals typies. Therefore the state approved the Guidelines for Management of Forest and Wild Animal Preserves in June 1985. Now a network of the natural reserves, with various patterns and rational layouts is under the consideration.

2. Zoning scenic spots and strengthening the rotection and management.

China has a lot of beautiful scenic spots. to zone these spots is not only the main task of natural conservation, but also the important measures to develop tourism so as to provide people with the places for rest and tour. The state issued Interim Regulations on Management of Scenic Sopts on 7 June 1985 and later, on 10 June 1987 ministry of Urban and Rural Construction and Environmental Protection(which is now divided into Ministry of Construction and

National Environmental Protection Agency) issued Implementation Rules for Interim Regulations on Management of Scenic Spots. The two documents set forth the detailed provisions for zoning, classifying, managing, protecting and constructing scenic spots.

The scenic spots in this country, based on their environmental quality, size, tourist conditions and value of culture and science, is classified into three classes, namely, municipal( or county), provincial and the state-stressed scenic spots. The state approved 84 scenic spots under the state protection in 1982 and in 1988. Many provinces, autonomous regions and municipalities directly under the state have also approved some scenic spots under their protection.

### 3. Establishing natural parks

China began to establish natural parks in the early 1980s. Up to now, there are only a few of them and most of them are forest parks. Establishment of natural parks is regarded as a kind of natural conservation between natural reserves and scenic spots, for the parks have the nature of eco-system protection and can provide people with places for tour and rest. There is no special laws and regulation in this country to govern the protection and management of natural parks, which are usually done by referring to the provisions in the laws or regulations concerning the natural reserves, or according to the regulations stipulated by the local governments.

### 4. Preserving well-known historic and cultural cities.

There are many cities in this country which used to be the political, economic and cultural centres in the ancient time, or the places where some significant historic events took place in the modern history. Most of them preserve a large number of historical and cultural relics which show the Chinese long history, glorious revolutionary tradition and splendid national culture. They are valuable historical and cultural heritage. The state decides to preserve them as a whole by designating them as 'well-known historic and cultural cities', requiring the governments or the related cities to preserve and develop the inherent historical and

cultural relics and prevent environmental pollution and destruction by defining the cities' nature and direction for development in their urban construction. The state approved 24 cities in 1982 and 38 cities in 1986 as the well-known historical and cultural cities in this country.

#### 5. Preserving natural historical sites and ruins

There are a lot of fragmentary natural historical sites and ruins in this country, such as the famous trees of the ancient time, wonderful views of stone and stone peaks, caves, waterfalls, springs and other historical sites. These sites and ruins are mainly under the protection of the local governments. Some local governments have worked out special regulations for preserving them. For example, Beijing Municipal Government issued Guidelines for Preservation and Management of Beijing Ape-Man Site in Zhoukoudian.

To sum up, the law of natural conservation has been initiated in this country. But there is much room for improvement and it is still in progress.