CRITICISM AND RECONSTRUCTION OF CLIMATE CHANGE CIVIL LITIGATION IN CHINA

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Abstract:
The civil litigation system for climate change in China is facing three practical dilemmas: first, difficulty in distinguishing it from traditional civil litigation cases, second, uncertainty in litigation objects, strategies between climate change litigation and traditional litigation, and third, the over-expansion of the social function of climate justice. It is necessary to reshape the civil litigation system for climate change in China. This article argues that the rights and obligations of climate change litigation should be constructed based on the quantifiable temperature control targets and NDCs of the Paris Agreement and China's emission reduction obligations. This should be the core standard to distinguish between broad and narrow climate change litigation according to the relevance of individual cases, and special adjustments in line with China's situations should be made through the interpretation of the CBDR principle. Under China's current legal system, the trial of broad climate change litigation still follows traditional litigation rules, and a restrained and cautious attitude towards climate policy and narrow climate change litigation should be maintained before climate change legislation is further developed.

Key words: *Climate Change Civil Litigation; Paris Agreement; Nationally Determined Contributions; Common But Differentiated Responsibilities*

I. INTRODUCTION

Climate change has now become a major challenge faced by the international community. According to annual reports in recent years, climate change litigation around the world is expanding in terms of the number and diversity of cases.[1] For example, at least 230 new climate

1 An analysis of annual reports since 2017 shows that since 2015, the cumulative number of global climate change litigation has more than doubled, with over 1,000 new cases added between 2015 and 2021. The growth rate of the number of climate change lawsuits has slowed down since then (190 cases in 2022, 230 cases in 2023). However, the diversity of climate change litigation

change lawsuits were added across various countries between May 2023 and May 2024, climate cases have continued to spread to new countries, with cases filed for the first time in Panama and Portugal in 2023. In terms of international climate change litigation, there were 9 new international and regional climate change lawsuits in 2023.[2] Now, there are many typical cases of climate change litigation around the world. For example, in Urgenda Foundation v. State of the Netherlands, the Dutch government was prosecuted for failing to fully comply with its obligation to prevent climate change and "the court concluded that the state has a duty to take climate change mitigation measures ".[3] In Milieudefensie et al. v. Royal Dutch Shell plc. Case, this national obligation to prevent climate change was further extended to private companies.[4] Additionally, the European Court of Human Rights made a decision on the case of KlimaSeniorinnen v. Switzerland on April 9, 2024.[5] In this case, the court found that Switzerland had failed to fulfill its obligations under the conventions related to climate change and had not achieved the greenhouse gas emission reduction targets, thereby determining that Switzerland had violated the right to respect private and family life under Article 8 of the European Convention on Human Rights, which "is likely to lead to the filing of further cases."[6] Based on this international background, China must establish a systematic climate change litigation system and constantly improve it in both domestic and international judicial practices, thereby better fulfilling the national obligations established by international climate change treaties such as the United Nations Framework Convention on Climate

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continues to expand, with different types of cases emerging, including government framework cases, corporate framework cases, cases incorporating climate considerations, cases to turn off the tap, cases of failure to adapt, polluter pays cases, climate-washing cases, and individual responsibility cases. *See* Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT, https://www.lse.ac.uk/granthaminstitute/?s=snapshot (last visited May 14, 2025).

2 *See* Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation: 2024 Snapshot*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT (June 2024), https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot.pdf (last visited May 14, 2025).

3 *See* Urgenda Foundation v. State of the Netherlands [2015] HAZA C/09/00456689 (Neth.), https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/ (last visited May 18, 2025).

4 *See* Milieudefensie et al. v. Royal Dutch Shell plc., ECLI:NL:GHDHA:2024:2099 (Neth.), https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/ (last visited May 18, 2025).

5 *See* KlimaSeniorinnen v. Switzerland (ECtHR), App. No. 53600/20 (Apr. 9, 2024), https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/ (last visited October 29, 2024).

6 *See* Setzer & Higham, *supra* note 2.

Change, the Kyoto Protocol, and the Paris Agreement.

In this international context, China has also taken various measures to deal with climate change. First, at the legislative level, although China does not have special legislation on climate change, the Standing Committee of the National People's Congress has promulgated the Decision on Approval of the United Nations Framework Convention on Climate Change (1992), the Resolution on Actively Responding to Climate Change (2009) and the Decision on Approval of the Paris Agreement (2016). However, these conventions have not yet been translated into Chinese domestic law, nor have other domestic laws made authorization provisions, so they cannot be directly used as the basis for adjudication in climate change litigation cases in China. There are other provisions on climate change in separate laws, such as Article 7 of the "Energy Conservation Law of the People's Republic of China", Article 9 of the "Promotion of Circular Economy Law of the People's Republic of China", Article 4 of the "Renewable Energy Law of the People's Republic of China", Article 5 of the "Electricity Law of the People's Republic of China", Article 8 of the "Promotion of Clean Production Law of the People's Republic of China", and Article 2 of the "Air Pollution Prevention and Control Law of the People's Republic of China".[7] Second, at the judicial level of rule-making and case decisions, China has shown a more positive and open attitude. On one hand, at the normative level, the Supreme People's Court of China has promulgated a number of judicial normative documents such as "China Environmental Resources Adjudication

7 The specific provisions of these separate pieces of legislation are mainly to achieve practical effects on climate change through provisions on energy conservation, waste emission reduction, energy consumption reduction, and environmental pollution prevention and control. Specifically, paragraph 1 of Article 7 of the Energy Conservation Law stipulates that the State shall implement industrial policies conducive to energy conservation and environmental protection, restrict the development of high-energy-consuming and high-polluting industries, and develop energy-saving and environmentally-friendly industries. Article 9 of the Circular Economy Promotion Law stipulates that enterprises and institutions shall establish and improve management systems, take measures to reduce resource consumption, reduce waste generation and emissions, and improve the level of waste reuse and recycling. Paragraph 1 of Article 8 of the Law on the Promotion of Cleaner Production stipulates that the comprehensive coordination department of cleaner production under the State Council, in conjunction with the departments of environmental protection, industry, science and technology and other relevant departments of the State Council, shall, in accordance with the national economic and social development plan and the national requirements for resource conservation, energy consumption and emission reduction, prepare a national cleaner production implementation plan, and publish it in a timely manner after approval by the State Council. Paragraph 1 of Article 2 of the Air Pollution Prevention and Control Law stipulates that the prevention and control of air pollution shall be aimed at improving the quality of the atmospheric environment, adhering to source control, planning first, transforming the mode of economic development, optimizing the industrial structure and layout, and adjusting the energy structure.

(2019)", "Environmental Resources Case Types and Statistical Norms (Trial)", "Kunming Declaration of the World Conference on Environmental Justice", "Opinions on Strengthening and Innovating Environmental Resources Justice in the New Era to Provide Judicial Services and Guarantees for the Construction of Modernization of Harmonious Symbiosis between Human Beings and Nature" and "Opinions on Completely, Accurately, and Comprehensively Implementing the New Development Concept and Providing Judicial Services for Actively and Steadily Promoting Carbon Peak and Carbon Neutrality". Among these, the Supreme People's Court of China promulgated the Specifications for the Types and Statistics of Environmental Resources Cases (Trial) in 2021, which defines the definition and scope of climate change litigation, making civil climate change litigation an independent case type in China.[8] The document further subdivides climate change mitigation and adaptation cases: mitigation cases cover "cases arising from the reduction or avoidance of greenhouse climate emissions through the development of renewable energy sources, energy efficiency, control of ozone-depleting substances, promotion of sustainable transport, and management of land-use change and forestry", and adaptation cases cover "the promotion of rapid and long-term adaptation measures through development policies, plans, projects and actions", enhancing capacity to better adapt to climate change in order to reduce the losses and impacts of climate change on people, property and public health".[9] Of course, there are also views that this classification is not comprehensive, because the dichotomy between mitigation and adaptation overlaps to a certain extent, and cannot cover all related situations, such as the emission of greenhouse gases by key emitting enterprises,[10] but this is only a difference in the specific system construction, and does not affect the consensus that China should establish and improve the climate

8 *See* Chen Nanrui (陈南睿), *Kuaguo Huanjing Qinquan Falu Xuanze de Zhongguo Jinlu: Yi Qihou Bianhua Minshi Susong Wei Shijiao* (跨国环境侵权法律选择规则的中国进路：以气候变化民事诉讼为视角) [*The Chinese Approach to Choice of Law Rules for Transnational Environmental Tort: From the Perspective of Climate Change Civil Litigation*], 34(03) ZHONGGUO HAISHANGFA YANJIU (中国海商法研究) [CHINESE JOURNAL OF MARITIME LAW] 103 (2023).

9 *See* Zuigao Renmin Fayuan Guanyu Yinfa Huanhuan Jingji Ziyuan Anjian Leixing He Tongji Guifan de Guiding (Shixing) de Tongzhi (最高人民法院关于印发《环境资源案件类型与统计规范（试行）》的通知) [Notice of the Supreme People's Court on Printing and Distributing the Provisions on the Types and Statistical Specifications for Environmental Resources Cases (Trial)] (promulgated by the Sup. People's Ct., Feb. 4, 2021).

10 *See* Zhang Ting (张挺), *Quanqiu Qihou Bianhua Xingshi Xia Zhongguo Qihou Minshi Susong de Lilun Zhangai yu Jinlu* (全球气候变化形势下中国气候民事诉讼的理论障碍与进路) [*Theoretical Obstacles and Approaches to China's Climate Civil Litigation under Global Climate Changes*], 4 YUNNAN SHEHUI KEXUE (云南社会科学) [SOCIAL SCIENCES IN YUNNAN] 79 (2023).

change litigation system.

On the other hand, at the level of specific cases, the Supreme People's Court of China has published a number of Typical cases and Guiding cases on climate change response in recent years. Since July 2014, the Supreme People's Court of China has released nine typical cases of environmental resources adjudication,[11] and in 2021, 2022 and 2023, it has published annual typical cases of environmental resources adjudication for three consecutive years.[12] In addition, in February 2023, the Supreme People's Court also promulgated 11 typical cases of judicial active and steady promotion of carbon peak and carbon neutrality.[13] As to the Guiding cases, in December 2022 and October 2023, the Supreme People's Court of China respectively released the 37th and 38th batches of Guiding Cases, all of which involved environmental resources adjudication cases and were closely related to climate change issues.[14] Among these cases, many of which are closely related to climate change issues, such as the Typical Case "Deqing County People's Procuratorate v. Deqing Thermal Insulation material

11 *See Zuigao Renmin Fayuan Fabu Huanjing Ziyuan Shenpan Dianxing Anli* (最高人民法院发布环境资源审判典型案例) [*Typical Cases of Environmental Resources Adjudication Published by the Supreme Court*] https://www.pkulaw.com/CLI.3.228786 (last visited October 29, 2024).

12 *See* Zuigao Renmin Fayuan Fabu 10 Jian 2023 Niandu Huanjing Ziyuan Shenpan Dianxing Anli, 3 Jian Renmin Fayuan Yifa Shenli Shengtai Huanjing Lingyu Disanfang Fuwu Jigou Nongxu Zuojia Dianxing Anli (最高人民法院发布 10 件 2023 年度环境资源审判典型案例、3 件人民法院依法审理生态环境领域第三方服务机构弄虚作假典型案例) [The Supreme People's Court Releases 10 Typical Cases of Environmental Resources Adjudication in 2023 and 3 Typical Cases of Fraud by Third-Party Service Institutions in the Field of Ecology and Environment Heard by the People's Court in Accordance with Law], https://www.pkulaw.com/CLI.3.5194018 (last visited Oct. 29, 2024); Zuigao Renmin Fayuan Fabu 2022 Niandu Renmin Fayuan Huanjing Ziyuan Shenpan Dianxing Anli (最高人民法院发布 2022 年度人民法院环境资源审判典型案例) [The Supreme People's Court Releases 2022 Typical Cases of Environmental Resources Adjudication by the People's Court], https://www.pkulaw.com/CLI.3.5168430 (last visited Oct.29, 2024); Zuigao Renmin Fayuan Fabu 2021 Niandu Renmin Fayuan Huanjing Ziyuan Shenpan Dianxing Anli (最高人民法院发布 2021 年度人民法院环境资源审判典型案例) [The Supreme People's Court Released the 2021 Typical Cases of Environmental Resources Trial in the People's Courts], https://www.pkulaw.com/CLI.3.5118577 (last visited Oct. 29, 2024).

13 *See* Zuigao Renmin Fayuan Fabu 11 Qi Sifa Jiji Wentuo Tuijin Tandafeng Tanzhonghe Dianxing Anli (最高人民法院发布十一起司法积极稳妥推进碳达峰碳中和典型案例) [The Supreme People's Court Released 11 Typical Cases of Judicial Actively and Steadily Promoting Carbon Peak and Carbon Neutrality], https://www.pkulaw.com/CLI.3.5157757 (last visited Oct. 29, 2024).

14 *See* Zuigao Renmin Fayuan Guanyu Fabu Di 37 Pi Zhidao Anli de Tongzhi (最高人民法院关于发布第 38 批指导性案例的通知) [Notice of the Supreme People's Court on the Release of the 38th Batch of Guiding Cases] (promulgated by the Supreme People's Court, Oct. 19, 2023); Zuigao Renmin Fayuan Guanyu Fabu Di 37 Pi Zhidao Anli de Tongzhi (最高人民法院关于发布第 37 批指导性案例的通知) [Notice of the Supreme People's Court on the Release of the 37th Batch of Guiding Cases] (promulgated by the Sup. People's Ct., Dec. 30, 2022).

Company Air pollution liability dispute Civil Public interest lawsuit" involves controlled ozone-depleting substances (ODS) emissions, and Guiding Case No. 204 "Chongqing People's Procuratorate Fifth Branch v. Chongqing Yuhuang Electric Equipment Manufacturing Co., Ltd. and other environmental pollution civil public interest litigation" involves energy conservation and emission reduction through environmental protection technology transformation, and " A Shanghai Industrial Company v. a Beijing Computing Technology Company over Entrustment Contract Case", which will be described in detail later. Additionally, there have been many hot cases involving the carbon emission market and renewable electricity closely related to climate change, which have attracted great attention in society and have been called China's "The First Case of Dual Carbon Public Interest Litigation"[15] and "First Case of Climate Change Litigation in the Narrow Sense"[16].[17]

However, through the detailed analysis of the development of global and China's climate change litigation, there is no relatively unified and clear consensus on the definition and scope of "climate

15 As a key emitting entity, the defendant Shangcheng Company failed to perform on time and failed to pay 818148 tons of carbon emission allowances in the first compliance cycle of the national carbon emission trading market, and was sued by a public welfare organization on the grounds of environmental pollution, but in the trial of the environmental pollution case, it was faced with the problem of how to quantify the damage caused by the excessive greenhouse gas emissions to the environment. *See* Zhao Meng (赵孟), *"Shuangtan Gongyi Susong Diyi An" Luochui: Ruhe Lianghua Wenshi Qiti de Huanjing Sunhai?* ("双碳公益诉讼第一案"落锤：如何量化温室气体的环境损害？) [*"The First Case of "Dual Carbon Public Interest Litigation": How to Quantify the Environmental Damage of Greenhouse Gases?*], INTERFACE NEWS (Sept. 20, 2024), https://www.jiemian.com/article/11737638.html.

16 The environmental public welfare organization Friends of Nature filed a lawsuit against the Gansu Branch of State Grid Corporation of China for failing to fulfill its obligation to purchase the full amount of electricity generated by wind and solar photovoltaic grid-connected power generation projects within its grid coverage, and instead using coal-fired power generation, which resulted in a large amount of pollutant emissions and ecological environmental damage. The case was settled in April 2023 through mediation, with the defendant agreeing to invest at least 9.13 billion yuan in the construction of new energy supporting power grids in the future. *See* Zhang Xiuxiu (张秀秀) & Shao Yuantong (邵元彤), *Zhongda Anli Pingshu | Gansu Guowang "Qifengqiguang" An* (重大案例评述丨甘肃国网"弃风弃光"案) [*Major Case Review | Gansu State Grid's "Abandoned Wind and Solar" Case*], EEHS (Apr. 24, 2024), https://mp.weixin.qq.com/s/RrQhH-Zm57RFnML59orCvg.

17 It should be noted that the LSE annual report indicates that climate change litigation began to occur in China from May 2022 to May 2023, but this article argues that the two cases in 2017 and 2018 in which Friends of Nature sued State Grid Gansu and Ningxia companies for "curtailing wind and solar power" already reflect the rise of civil litigation on climate change in China. For more information on LSE's annual report. *See* Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation: 2023 Snapshot*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT (June 29, 2023), https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2023-snapshot.

change litigation", especially "climate civil litigation" in China, which directly hinders its construction. Therefore, this paper aims to review the existing literature in China and the world, analyze the main views on the definition and scope of climate change civil litigation in China, and further propose the views on the definition and scope of climate change civil litigation in China and specific institutional suggestions.

The research structure of this paper is as follows: first, sort out the development of the climate change litigation system and refine its definition; second, analyze the practical dilemmas faced by climate change litigation in China in combination with the existing main viewpoints; then propose the definition and classification criteria advocated by this paper; finally, based on this, put forward corresponding institutional suggestions. Under this research structure, the second part of this article will briefly introduce the institutional development of global climate change litigation, analyze the relevant literature in China and the world, sort out the development of global and Chinese climate change litigation systems and theories, and clarify the important role of the Paris Agreement signed in 2015 in the development of climate change litigation. The third part will evaluate the four main perspectives on the definition and scope of climate change litigation in China, analyze the practice of climate change civil litigation in China from the perspective of several typical climate change litigation cases, and present the current practical dilemmas in three aspects: difficulty in distinguishing from traditional civil litigation cases, vacillating in the choice of litigation strategies, and excessive expansion of the social function of climate justice. The fourth part will advance the main point of this paper, that is, on the basis of absorbing the relevant content of the Paris Agreement, establish the criteria for the concept and scope of China's climate change civil litigation, while retaining the legal source status of the Kyoto Protocol and its three flexible mechanisms in China's climate change litigation system, and realize the harmonization of China's unique emission reduction quantitative standards with the standards set by the Paris Agreement through the interpretation of "differentiated responsibilities". The fifth part will propose some suggestions for China's climate civil litigation system on the basis of the research in the fourth part, specifically at the level of institutional design and judicial practice.

II. DEVELOPMENT AND DEFINITION OF CLIMATE LITIGATION

A. Development of the Climate Litigation System

Climate change litigation emerged in the United States in the late

80s and early 90s of the 20th century[18] when the United States was deeply trapped in the dilemma that "the political process is difficult to solve the value conflicts and interest disputes in the domestic action to deal with climate change". As a way of judicial relief, climate change litigation arises at the historic moment.[19] There is a view on the distinction between three different "waves" of climate change litigation. The first stage, that is, from the 80s of the 20th century to 2007, climate change litigation mainly occurred in the United States and Australia. In the second phase, from 2007 to 2015, there was a rapid increase in the total number of climate change litigation cases, which was extended to European countries like Germany and the Netherlands. In the third phase, that is, from 2015 to the present, the signing of the Paris Agreement and the development of attribution science[20] and other related research have led to a further increase in the number of climate change litigation cases, which have expanded to countries in Asia, Latin America and Africa, and human rights and constitutional grounds have begun to play an important role in specific cases.[21]

Beyond time dimension, there are also viewpoints to distinguish the development of the global climate change litigation system according to the nature of global climate governance and the choice of climate justice litigation path. In terms of the nature of governance, climate change litigation can be divided into two leaps from scientific issues to social-political issues, and then to legal issues.[22] In particular, since the beginning of the 21st century, climate change litigation in the United States has increased rapidly,[23] which has affected the establishment of climate change litigation systems in developed

18 *See* Zeng Deming (曾德明), *"Shuangtan" Mubiao Xia Qihou Bianhua Susong de Lujing Xuanze* ("双碳"目标下气候变化诉讼的路径选择) [*The Way for Climate Change Litigation under the "Carbon Peaking and Carbon Neutrality" Goal*], 1 XINGZHENG YU FA (行政与法) [ADMINISTRATION AND LAW] 27 (2024).

19 *See* Shen Yuedong (沈跃东), *Qihou Bianhua Zhengzhi Jueli de Sifa Zhiheng* (气候变化政治角力的司法制衡) [*Courts Balancing on Political Confrontation concerning Climate Change*]; 32(6) FALU KEXUE (XIBEI ZHENFA DAXUE XUEBAO) (法律科学(西北政法大学学报)) [SCIENCE OF LAW (JOURNAL OF NORTHWEST UNIVERSITY OF POLITICAL SCIENCE AND LAW)] 32 (2014).

20 Details of scientific research on attribution related to evidence in climate change litigation, *see* Rupert F. Stuart-Smith et al., *Filling the evidentiary gap in climate litigation*, 11 NATURE CLIMATE CHANGE 651 (2021).

21 *See* Maryam Golnaraghi et al., *Climate Change Litigation – Insights into the evolving global landscape*, THE GENEVA ASSOCIATION (Apr. 11, 2021).

22 *See* Du Qun (杜群), *Bali Xieding Dui Qihou Bianhua Susong Fazhan de Shizheng Yiyi* (《巴黎协定》对气候变化诉讼发展的实证意义) [*On the Impact of the Paris Agreement on the Evolution of Climate Change Litigation From the Positive Perspective*], 7 ZHENGZHI YU FALU (政治与法律) [POLITICAL SCIENCE AND LAW] 48 (2022).

23 *See* Micheal B. Gerrard, *Growth of U.S. Climate Change Litigation: Trends and Consequences*, http://www.dbadvisiors.com/content/-meidia/us-cc-litigation.pdf (last visited Oct. 29, 2024).

countries such as Canada, Germany, and the Netherlands, and climate change litigation cases have also begun to appear in some developing countries.[24] The Paris Agreement is precisely the result of the second phase of transformation and the "midwifery" of the climate change litigation movement, marking the arrival of the era of the rule of law in global climate governance. In terms of the choice of litigation paths, they can be divided into three generations: among them, the first two generations of climate litigation mostly used individual litigation cases as a means to achieve specific climate change claims,[25] while the third generation of climate litigation that originated from the Paris Agreement began to seek more systematic social, policy and legal changes.[26] Under the influence of the Paris Agreement, climate change lawsuits have begun to increase significantly in various countries: according to the Sabine Climate Change Law Center of Columbia University, a total of more than 2341 climate change lawsuits are being heard or concluded worldwide in May 2023,[27] and the cumulative number of climate-related cases has more than doubled since the Paris Agreement in 2015.[28]

It is not difficult to find that the consensus that can be reached in the theoretical and practical circles is the important role played by the Paris Agreement in the development of global climate change litigation. Therefore, it can be made clear that the relevant content of the Paris Agreement is an important institutional document that cannot be avoided in the conceptual construction and scope division of China's climate change civil litigation. The specific discussion on this topic will also be carried out in the context of the Paris Agreement.

B. Definition of Climate Litigation

24 *See* UNITED NATIONS ENVIRONMENT PROGRAMME, THE STATUS OF CLIMATE CHANGE LITIGATION: A GLOBAL REVIEW 11 (May 2017), http://wedocs.unep.org/bitstream/handle/20.500.11822/20767/climate-change-litigation.pdf?sequence=1&isAllowed=y.

25 Gao Lihong (高利红), *Woguo Qihou Susong De Falu Lujing: Yige Bijiaofa de Yanjiu* (我国气候诉讼的法律路径：一个比较法的研究) [*The Legal Path of Climate Litigation in China: A Study of Comparative Law*], 1 SHANDONG DAXUE XUEBAO (ZHEXUE SHEHUI KEXUE BAN (山东大学学报（哲学社会科学版）) [JOURNAL OF SHANDONG UNIVERSITY (PHILOSOPHY AND SOCIAL SCIENCES)] 167 (2022).

26 Lisa Benjamin, *Directors are in the Cros Hairs of Corporate Climate Litigation*, THE CONVERSATION (July 9, 2019), https://theconversation.com/directors-are-in-the-croshairs-of-corporate-climate-litigation-117737.

27 Setzer & Higham, *supra* note 17.

28 Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation: 2022 Snapshot*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT (June 30, 2022), https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2022.

A clear definition of climate change litigation helps to refine the characteristics of climate change litigation that distinguishes it from traditional litigation and clarify its judgment criteria, which are the basis for the targeted design of climate change litigation rules, so it is crucial for the construction of climate change litigation system. The question of how to define climate change litigation and delineate its scope has sparked a wide range of international discussions, resulting in many different views.[29] After combing through these views, some scholars have summarized several major differences that currently exist. First, should climate change litigation be limited to cases that are directly related to climate science and climate change policy, or should it extend to cases where underlying facts or litigation consequences are closely related to climate change? Second, should the definition be limited to cases where the court has made an effective judgment, or should it also include cases handled through non-judicial means? Third, should climate litigation be limited to climate change regulatory administrative cases, or should it also include cases targeting regulatory authorities?[30] This view further divides climate change litigation into four levels based on the relevance of litigation cases to climate change: a. litigation with climate change response as the core claim, b. as a secondary claim, c. as an underlying motive and d. litigation without specific reference criteria but with potential impact on climate change mitigation or adaptation.[31]

The study of the definition and scope of climate change litigation in Chinese academia has also formed a pattern similar to the above distinctions. Specifically, the Chinese academic community generally defines and divides the scope of "climate change litigation" through a narrow and broad dichotomy (or more), and mainly forms four views: The first view is that climate change litigation refers to "litigation in which the parties directly raise legal, policy, and factual issues of climate change.",[32] which is obviously only delineated from a narrow sense. The second view, using the purpose of litigation as the criterion, argues that the generalized climate change litigation can be defined as "climate change-related litigation", that is, the assistance to the climate change response is only a collateral effect of the litigation claim rather than the direct litigation purpose. Climate change litigation in the narrow sense

29 *See* Joana Setzer & Lisa C. Vanhala, *Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance*, 10 WILEY INTERDISCIP. REV. CLIM. CHANGE 580 (2019).

30 *See* Jacqueline Peel & Hari M. Osofsky, *Climate Change Litigation*, 16 ANNU. REV. LAW SOC. SCI. 21 (2020).

31 *Id.*

32 Gao, *supra* note 25, at 167.

is a litigation that takes climate change issues as the center of litigation and aims to respond to climate change and provide relief to the environmental public interest.[33] The third perspective, focusing on the Paris Agreement, also considers the issue from both a broad and narrow sense. In the broad sense, it refers to "all possible climate change litigation before and after the Paris Agreement," while in the narrow sense, it specifically points to "litigation reflecting the core themes and rights and obligations of climate change after the Paris Agreement." This perspective further proposes that narrow climate change litigation "can directly serve the management objectives of the core theme" and "only refers to litigation that directly and explicitly raises issues related to climate change or climate change policies."[34] The fourth perspective, based on the previous broadest (all situations related to climate change) and medium-range (cases where climate change is the core issue, etc.[35]) interpretations of climate change litigation, divides narrow climate change litigation according to the subject matter (litigation claims and factual reasons). Such litigation must meet the criteria that "the core dispute facts of the case must be directly related to greenhouse gases, and the litigation claims should take carbon reduction (such as stopping excessive emissions) as the main goal," and excludes several special cases that lack judicial remediability, have no direct association between the core issue and greenhouse gases (such as destruction of forests and grasslands), or have no association with carbon reduction (such as tort claims, transaction breaches, etc.).[36]

The above four perspectives all believe that climate change litigation in the narrow sense must take climate change issues as the core of the litigation. In addition, except for the first view, which does not make a broad distinction, the remaining three views emphasize that generalized climate change litigation should have a certain degree of direct or indirect relevance to climate change issues. However, these

33 *See* Zhang Zhongmin (张忠民), *Qihou Bianhua Susong de Zhongguo Fanshi – Jiantan yu Shengtai Huanjing Sunhai Peichang Zhidu de Guanxi* (气候变化诉讼的中国范式——兼谈与生态环境损害赔偿制度的关系) [*The Chinese Paradigm of Climate Change Litigation——Also on the Relationship between it and the System on Compensation for Eco-environmental Damage*], 7 ZHENGZHI YU FALU (政治与法律) [POLITICAL SCIENCE AND LAW] 34 (2022).

34 *See* Du, *supra* note 22, at 48.

35 *See* Hari M. Osofsky & Jaqueline Peel, *Litigation's Regulatory Pathways and the Administrative State: Lessons from U.S. And Australian Climate Change Governance*, 25 GEO. INT'L ENVTL. L. REV. 207 (2013).

36 *See* Lin Wei (林洧), *Qihou Bianhua Susong de Qinquan Shishi Rending: Kunjing, Jiagou yu Jinlu* (气候变化诉讼的侵权事实认定：困境、架构与进路) [*Infringement Fact Finding in Climate Change Litigation: Dilemma, Framework and Approach*], 4 FAZHI YANJIU (法治研究) [RESEARCH ON RULE OF LAW] 147 (2024).

four viewpoints differ on what standards should be used to divide the scope of narrow climate change litigation, which is the core of their disputes. Specifically, on this issue, the first viewpoint adopts a substantive judgment approach, emphasizing factual determination and substantial trial,[37] that is, it requires that in the division and specific identification of the scope of narrow climate change litigation, one should delve into the internal specifics of individual cases to explore the root contradictions. The second perspective establishes objective criteria such as the cause of action and claims,[38] but fundamentally, it is a subjective path, as these criteria are rooted in the subjective litigation objectives of the parties, especially the plaintiff.[39] It also highlights the focus on greenhouse gases by listing them separately alongside "climate change,"[40] emphasizing the concern for greenhouse gas issues in narrow climate change litigation. The fourth viewpoint also emphasizes the critical role of "greenhouse gases" in narrow climate change litigation, and develops a dual theory of claims and facts based on the theoretical basis of the subject matter of the lawsuit, in order to achieve a balance between the subjective and the objective, which is also further emphasized by the proponents of this viewpoint in their other literature.[41]

Based on the current analysis, it can be found that there is still a great deal of controversy in the existing representative views of Chinese academics on the division of the scope of narrow climate change litigation, and it is unable to form a relatively general consensus on the establishment of this standard. This is why this article focuses on the delineation of the scope of climate change litigation in a narrow sense. Accordingly, this article will evaluate each of these four representative views in the following sections, and on the basis of summarizing their shortcomings, propose the main point, that is, the specific criteria for delineating the scope of climate change litigation.

37 *Id.*

38 The four types of climate change lawsuits listed by the viewers are based on the cause of the case or the subject matter of the action. *See* Zhang, *supra* note 33, at 34.

39 *See* David Markell & J. B. Ruhl, *An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?*, 64 FLA. L. REV. 15 (2012).

40 *See* CLIMATE CHANGE LITIGATION: GLOBAL PERSPECTIVES (Ivano Alogna et al. eds, 2021).

41 *See* Li Shuxun (李树训), *Kexue Jifu Yiwu Shiye Xia Woguo Qihou Bianhua Susong de Maijin Luoji* (科学给付义务视野下我国气候变化诉讼的迈进逻辑) [*The Logic of China's Climate Change Litigation from the Perspective of Scientific Payment Obligations*], 37(3) HUAZHONG KEJI DAXUE XUEBAO (SHEHUI KEXUE BAN) (华中科技大学学报（社会科学版）) [JOURNAL OF HUAZHONG UNIVERSITY OF SCIENCE AND TECHNOLOGY (SOCIAL SCIENCE EDITION)] 81 (2023).

III. ANALYSIS OF THE SCOPE OF CLIMATE LITIGATION

A. Critical Analysis of the Existing Theoretical Viewpoints

Although the four views have their own reasonableness, there are still certain shortcomings in general. Specifically, the first view only classifies climate change litigation in a narrow sense, and the description is relatively abstract, without further explaining what the "substantive issues" are, nor does it involve a description of the specific legal relationship and the content of rights and obligations. In other words, this view only puts forward an abstract concept, but does not further propose a specific method for making substantive judgments, nor does it list the elements that should be examined in the determination of facts of the case, which lacks operability. Based on this view, the scope of the case is relatively vague, and it is impossible to accurately define whether those marginal cases are climate change litigation in the narrow sense or not (e.g., the Friends of Nature v. State Grid Gansu Company case, in the absence of a more specific method, it is difficult to "substantively determine" whether the core issue of the case is a breach of a general contract or a breach of emission reduction obligations), so it is difficult to effectively deal with the large number of climate change litigation cases that will rise in the future.

Regarding the second view, the subjective purpose of the parties and their objective acts are not completely one-to-one, and there may be a deeper litigation purpose hidden behind their objective litigation behaviors. The distinction between broad and narrow meanings around the litigation purpose will lead to an overly subjective standard, making it difficult to accurately judge the real litigation purpose of the parties in practice, and it will not be possible to distinguish the real narrow climate change litigation from those cases that use litigation as a means of competition, which will affect the accurate identification of climate change litigation and may result in an improper allocation of judicial resources. In other words, it is not uncommon for parties to file litigation as a means of restricting the business activities of their competitors, especially in civil and commercial matters, and adopting this view could lead to the misidentification of these cases, which in turn could lead to the deflection of already strained climate justice resources into non-climate litigation.

The third view has certain practical value in incorporating the Paris Agreement into the division of climate change litigation and using it as the legal basis for the latter. However, in order to transform the national emission reduction obligations established by the Paris Agreement into a part of China's domestic legal system, it is not only

required to set public law obligations on emission reduction planning and supervision for public entities such as the government and environmental protection departments, but also to set specific emission reduction and environmental protection obligations for private entities such as a larger number of greenhouse gas emitting enterprises. Therefore, civil litigation on climate change is crucial for the fulfillment of emission reduction obligations of private entities and even the state. However, this view limits the narrow sense of climate change litigation to the scope of "management objectives" and "climate change policy", which excludes relevant civil litigation from the scope of narrow climate change litigation, which not only undermines the integrity of the climate change litigation system, but also excessively restricts its narrow scope, making it impossible to use civil litigation to achieve the fulfillment of emission reduction obligations and climate change response, and cannot adapt to China's existing system design of dichotomy between environmental public interest civil litigation and environmental public interest administrative litigation.[42]

Compared to the previous views, the fourth one provides a more explicit description of climate change litigation, which is worthy of reference and learning. However, this view still lacks reasonable argumentation for excluding some special cases. For example, the author proposes that the destruction of forests and grasslands has no direct connection with greenhouse gases, but it is widely known that these plant resources play an important role in absorbing carbon dioxide during photosynthesis. Although their reduction in emissions is limited by natural laws and cannot be the main method of carbon reduction, they are still an indispensable part. Therefore, the statement that the destruction of forests and grasslands has no direct connection with greenhouse gases does not conform to objective facts. Also for instance, the author suggests that tort claims and breach of contract have no relation to carbon reduction, which actually deprives the right and possibility of the parties in climate change litigation to file claims for damages in the climate change litigation. This viewpoint also confines climate change litigation to the characterization of acts without compensation or reparation, which is not conducive to the litigants using the compensation they may obtain in response to climate change work, such as carbon reduction, and thus indirectly weakens the

42 Environmental public interest civil litigation and environmental public interest administrative litigation are two statutory types clearly stipulated in Chinese law. *See* Minshi Susong Fa (民事诉讼法) [Civil Procedure Law] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 1, 2023, effective Jan. 1, 2024), art. 58 (Chinalawinfo); Xingzheng Susong Fa (行政诉讼法) [Administrative Litigation Law] (promulgated by the Standing Comm. Nat'l People's Cong., June 27, 2017, effective July 1, 2017), art. 25(4) (Chinalawinfo).

collateral effect that can be achieved by climate change litigation.

Based on the above four perspectives, this paper argues that the following two problems should be solved in terms of the criteria for delineating the scope of narrow climate change litigation. First of all, it is necessary to clarify the legal source of climate change litigation in a narrow sense, that is, on what legal basis the subject of the litigation should initiate it, and on what legal basis the judicial authorities should rely on to hear the specific narrow climate change litigation. On this problem, only the third viewpoint considers the Paris Agreement as the legal basis, but without further elaboration. Secondly, it is necessary to clarify the core characteristics of narrow climate change litigation, which is the key to defining its scope; neither the "substantive issues" of the first viewpoint nor the "litigation purpose" of the second viewpoint can fulfill this role; it can be attempted to combine the "content of rights and obligations" of the third viewpoint and the "litigation object" of the fourth viewpoint for a corresponding description.

B. Practical Dilemma of Climate Civil Litigation in China

On the basis of evaluating the above views one by one, this part will focus on the judicial practice of climate change litigation in China, and analyze and present three practical dilemmas in China's climate change litigation based on several typical judicial cases, namely: a) there is an intersection with traditional civil litigation cases and it is difficult to accurately distinguish them, b) the indecisiveness of the litigation objects and litigation strategies between climate change litigation and traditional litigation, and c) the social function of climate justice is excessively expanded.

The first dilemma faced by China's climate change civil litigation is that there is a certain overlap between climate change civil litigation and general contract, tort, and other traditional civil litigation cases, which will lead to many traditional civil litigation cases being wrongly classified as climate change litigation cases under the influence of China's climate change response policies. For example, in "A Shanghai Industrial Company v. a Beijing Computing Technology Company over Entrustment Contract Case', in May 2020, the defendant, a computing technology company in Beijing, signed a purchase agreement with an outsider and purchased a number of servers, agreeing that the outsider would retain ownership of the servers and host the servers in a cloud computing center operated by the defendant company until the payment was made. On June 1, 2020, the plaintiff, an industrial company in Shanghai, signed a Project Cooperation Contract with the outsider and agreed that the plaintiff company would represent the outsider. On

June 5, 2020, the plaintiff company and the defendant company signed the Equipment Service Agreement and entrusted the defendant company to provide technical services, and the defendant company should ensure the power supply and the normal and continuous operation of the equipment. Due to the repeated power outages in the computer room during the service period involved in the case, the plaintiff company requested the People's Court to order the defendant company to compensate for the loss of Bitcoin income of more than 5,300,000 yuan on the grounds of breach of contract by the defendant company.[43] The core dispute, in this case, involved a dispute over an entrustment contract between the plaintiff and the defendant over the Bitcoin business. The court found the contract invalid on the grounds that it violated the "green principle" of Article 9 of the Civil Code of the People's Republic of China, violated the principle of public order and good customs, and violated the "policies, regulations and regulatory requirements related to industrial structure adjustment", and then rejected the plaintiff's claim. Although such cases will indirectly affect climate change issues by regulating the Bitcoin business, they are still ordinary civil contract disputes in nature. Taking climate change-related policies as the direct basis for hearing such cases, and classifying them as climate change lawsuits, or even listing them as typical cases to promote the realization of the dual carbon goals, is conducive to achieving the extra-judicial effect of energy conservation and emission reduction, but it will also lead to a trend of climate policy-oriented trials, and local courts are likely to classify too many general cases as climate change lawsuits in order to adapt to this orientation, which will lead to the expansion of the scope of climate change litigation and the excessive use of climate policies in the judiciary. In addition, the instability of the policy may undermine the stability of the existing litigation system.

The second dilemma faced by civil climate change litigation in China lies in the phenomenon that, in the current practice of climate change civil litigation, there is often uncertainty in the selection of litigants, litigable objects, litigation claims, and litigation strategies between climate change litigation and traditional litigation. For example, China's "First Narrow Climate Change Litigation Case," where Friends of Nature sued the Gansu Branch of State Grid Corporation,[44] as well as the subsequent case of wind and light abandonment against the Ningxia Branch the following year. Specifically, in September 2016, the Friends of Nature Environmental

43 *See supra* note 13.
44 *See* Zhang, *supra* note 33, 34.

Research Institute in Chaoyang District of Beijing, filed an environmental public interest lawsuit against the State Grid Gansu Electric Power Company, demanding that the latter stop the environmental infringement, purchase the full amount of on-grid electricity from wind and solar photovoltaic grid-connected power generation projects, bear the corresponding liability for damages, and apologize to the public. After the Lanzhou Intermediate People's Court ruled to dismiss the lawsuit and the Gansu Provincial High People's Court appointed the Gansu Provincial Mining District Intermediate People's Court to hear the case, Friends of Nature partially amended its claims in 2020 to order the defendant to invest funds in the research and development of the construction of smart grids, renewable energy storage and other projects to ensure and promote the priority development of renewable energy within a certain period of time, and added several other claims requiring the defendant to disclose relevant information. After a lengthy trial process, the parties reached a mediation agreement in April 2023, in which the defendant agreed to invest a total of RMB 2.893 billion in the construction of new energy-supporting power grids, and regularly disclose relevant information and comply with relevant regulations.[45] In addition, two years later, in January 2018, Friends of Nature filed an environmental public interest lawsuit against the Ningxia branch of State Grid, demanding that the latter bear environmental tort liability for failing to fulfill its obligation to fully purchase the on-grid electricity of renewable energy grid-connected power generation projects.[46] The case was negotiated between the two parties and the case was closed by the plaintiff withdrawing the lawsuit.[47] Through these two cases, it is not difficult to find the plaintiff's difficulties in the choice of strategy in the litigation. In the beginning, in the case against the Gansu Company, the litigable object of Friends of Nature was the defendant's active behavior of using coal-fired power generation to emit pollutants, and they claimed the tort liability for causing environmental pollution and ecological damage based on this, but they found it difficult to prove the behavior and the consequences of the damage. Precisely because of this, Friends of Nature adjusted their litigation strategy when suing the Ningxia

45 *See* Zhang & Shao, *supra* note 16.

46 *See* Chen Wei (陈微), *Qihou Bianhua Susong Bijiao Yanjiu – Jiyu Liangqi "Qifengqiguang" Huanjing Gongyi Susong An Zhankai de Fenxi* (气候变化诉讼比较研究——基于两起"弃风弃光"环境公益诉讼案展开的分析) [*Comparative Study of Climate Change Litigation——Analysis Based on Two Environmental Public Litigation Cases for "Wind Power and Solar Power out of Service"*], 8 FALU SHIYONG (法律适用) [JOURNAL OF LAW APPLICATION] 80 (2020).

47 *See* Zhang Yedong, *Research on the Legal Guarantee of the Carbon Market from the Perspective of Chinese-style Modernization*, 2 SHANGHAI LAW REVIEW 276 (2023).

Company, focusing on the defendant's inaction of not fulfilling the full acquisition obligation, and claiming tort liability based on the increased greenhouse gas emissions and other climate change consequences caused by this.[48] Although these two cases were concluded through mediation and withdrawal of the lawsuit, with the court not making corresponding judgments, it can also be found from the litigation process that the plaintiff was unable to accurately grasp the core disputes and the rights and obligations in the case.

From the dilemmas mentioned in the two preceding aspects, we can further discover the third dilemma of China's climate change civil litigation, namely, due to the fact that China has not yet formed specialized climate legislation nor a legal system for climate change, the current climate change litigation in China mostly relies on climate policies. Under China's inherent "policy-oriented judicial" tradition, further implementation of climate policies in climate justice is achieved through case adjudication and the formulation of judicial policies, which has led to the further expansion of the role of policy in China's climate justice. "The new materials of climate change litigation all indicate that the judiciary is going beyond the traditional function of resolving disputes and is increasingly actively dealing with climate change policies."[49] Concerning this, some scholars are worried that the current orientation of promoting climate change policies may lead to a certain degree of expansion of the social function of climate justice, resulting in issues such as delayed litigation efficiency, exaggerated basic rights, and erosion of the coherence of the legal system. Specifically, first, the excessive involvement of climate policy in climate justice will lead to the generalization of the latter's evaluation objects, and judges need to consider extralegal factors such as politics, economy, and morality in addition to "normative implications", thus dragging down the efficiency value that justice should have. Second, the lack of climate legislation has forced climate policy and climate justice to seek a higher foundation of rights, so they derive "climate human rights" and interpret them as "all-in" or "all-nothing" absolute rights, ignoring the huge difference between the subjective claims of rights and the conditions of the social system, and causes the expansion of basic rights themselves. Third, the excessive involvement of climate policy will also lead to the overuse of creative interpretation in the judiciary, which will undermine the regulatory effect of abstract concepts in legal doctrine

48 Chen , *supra* note 46.

49 *See* Zhu Mingzhe (朱明哲), *Sifa Ruhe Canyu Qihou Zhili – Bijiaofa Shijiao Xia de Guancha* (司法如何参与气候治理——比较法视角下的观察) [*On the Judicial Power's Role in Climate Governance——An Observation from the Perspective of Comparative Law*], 7 ZHENGZHI YU FALU (政治与法律) [POLITICAL SCIENCE AND LAW] 18 (2022).

on the rule system, thus eroding the coherence of the legal system.[50]

The fundamental reason for the dilemmas faced by China's climate justice system lies precisely in the ambiguity of the scope of climate change litigation in China and the lack of clear boundaries in climate change litigation. The division of the scope of climate litigation in China requires, on one hand, to clarify its legal basis, and on the other hand, to refine its core characteristics. As China's refinement of the core characteristics of climate change litigation is insufficient, it is difficult to distinguish it from traditional litigation, and even more difficult to build a complete climate change litigation system in practice, including litigation objects and strategies. At the same time, due to China's blurred understanding of the legal basis of climate change litigation, there is a lack of legislation on climate change, which makes it difficult to provide normative support for climate justice, leading to the climate justice system seeking policy assistance, and causing an excessive expansion of social functions.

IV. VIEWPOINT ABOUT THE SCOPE OF CLIMATE CIVIL LITIGATION IN CHINA

A. Division Criteria Based on the Paris Agreement

On the basis of the existing research results, the delineation of the scope of climate change litigation should also solve the problem of the legal basis and the description of the core characteristics of climate change litigation. This paper argues that in the context of China's climate justice, the emission reduction obligations set out in the Paris Agreement and the relevant achievements of China's domestic law should be taken as the basis of its legal source, and an understanding of the relationship between rights and obligations directly related to climate change should be established as the core feature, and the judgment should be made in combination with the litigation claims and factual reasons of specific cases. This will allow it to more accurately delineate the scope of climate change litigation to cover civil litigation on climate change, and to address the aforementioned issues of existing views and the practical dilemmas facing China's climate justice today.

In the second part above, the different stages of the development of climate change litigation have finally taken the Paris Agreement as the latest development of climate change litigation, which shows its significance to the development of climate change litigation at present.

50 *See* Sun Xueyan (孙雪妍), *Qihou Sifa Fali Gongneng de Zai Sikao* (气候司法法理功能的再思考) [*Rethinking on the Jurisdictional Functionalities of Climate Judiciary*], 16(6) QINGHUA FAXUE (清华法学) [TSINGHUA LAW JOURNAL] 194 (2022).

The Paris Agreement, adopted in 2015, is, on one hand, an international substantive law product spawned by the previous climate change litigation movement, and on the other hand, it has promoted the further development of climate justice practice towards the core demand for damage relief. Although Trump announced his withdrawal from the Paris Agreement again after taking office as US President in 2025, [51] this will not directly reverse the global trend of preventing climate change. Additionally, although the Trump administration has diametrically opposite positions to the Biden administration on many climate change issues, it does not mean that Trump is completely opposed to the core issue of preventing climate change. For example, both executive orders issued by Trump on his inauguration day, namely "Declaring a National Energy Emergency" [52] and "Unleashing American Energy"[53], mentioned support for the development of the nuclear energy industry. Futhermore, the " Declaration to Triple Nuclear Energy"[54] promoted during Biden's term of office and the domestic action framework announced at COP29[55] are still valid since Trump took office. These are enough to show that the global trend of preventing climate change will not undergo a fundamental change because of Trump. Specifically, Article 2 of the Paris Agreement formalizes for the first time a quantifiable goal to address climate change, that is, "to limit the increase in global average temperature to well below 2°C above pre-industrial levels, and strive to limit the temperature increase to 1.5°C above pre-industrial levels",[56] which not only provides a clear standard for climate justice, but also greatly improves the degree of certainty of scientific and technological matters involved in climate change litigation cases. In addition, the Paris Agreement also creatively proposes "Nationally Determined

51 *See* Donald J. Trump, *Putting America First In International Environmental Agreements*, THE WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/putting-america-first-in-international-environmental-agreements/.

52 *See* Donald J. Trump, *Declaring A National Energy Emergency*, THE WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/.

53 *See* Donald J. Trump, *Unleashing American Energy*, THE WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/ (last visited on May 20, 2025).

54 *See At COP28, Countries Launch Declaration to Triple Nuclear Energy Capacity by 2050, Recognizing the Key Role of Nuclear Energy in Reaching Net Zero*, U.S. DEPARTMENT OF ENERGY (Dec. 1, 2023), https://www.energy.gov/articles/cop28-countries-launch-declaration-triple-nuclear-energy-capacity-2050-recognizing-key.

55 *See* Nuclear News, *U.S. unveils road map to triple nuclear capacity by 2050*, NUCLEAR NEWSWIRE (Nov. 13, 2024), https://www.ans.org/news/article-6555/us-unveils-road-map-to-triple-nuclear-capacity-by-2050/ (last visited May 20, 2025).

56 Paris Agreement art. 2(1)(A), Dec. 12, 2015, 3156 U.N.T.S. 79.

Contributions" (NDCs), including nationally determined greenhouse gas emission reduction plans, peaking and net-zero emission plans, and incorporates them into the international legal system.[57] This "common responsibility" emission reduction compliance mechanism, together with the "differentiated responsibility" international quantitative mandatory emission reduction compliance mechanism based on the Kyoto Protocol, constitutes the dual regulatory mechanism of climate change international law under the United Nations Framework Convention on Climate Change (UNFCCC).[58] Consequently, the Paris Agreement, in a relatively objective manner, established relatively clear emission reduction obligations for signatory countries, including China, which can serve as the foundation for the legal sources of climate litigation in China. However, the Paris Agreement, as a source of law, cannot be directly applied by the courts in climate change litigation, but needs to be translated into Chinese law first. Specifically, the application of international treaties by Chinese courts in practice is premised on the authorization provisions of Chinese law, and in the absence of express authorization by law, courts can only invoke the provisions of international treaties, but cannot use them as the basis for adjudication.[59] Since the national emission reduction obligations established by the Paris Agreement have not yet formed a relatively mature legislative transformation in China, and there is no specific Climate Change Law, Chinese courts cannot directly apply the provisions of the Paris Agreement. However, in the judicial field, the "Types and Statistical Norms for Environmental and Resource Cases (Trial)" can serve as a reference in the form of an invocation. This trial regulation specifically lists "Climate Change Response Cases" as an independent case type, with subcategories for climate change mitigation and adaptation cases. This clearly incorporates the "mitigation" and "adaptation" content from the Paris Agreement, indicating China's acceptance and adaptation of the Paris Agreement and its national emission reduction obligations, and indirectly confirming its status as a legal source in Chinese climate litigation. As

57 *See* UNITED NATIONS ENVIRONMENT PROGRAMME, *supra* note 24, at 18.

58 *See* Du Qun (杜群), Zhang Qijing (张琪静), *Bali Xieding Hou Woguo Wenshi Qiti Kongzhi Guizhi Moshi De Zhuanbian Ji Falu Duice* (《巴黎协定》后我国温室气体控制规制模式的转变及法律对策) [*Regulatory and Law Reforms in Reflection to the Strategic Transit of Greenhouse Gases Control in China after Paris Agreement*], 1 ZHONGGUO DIZHI DAXUE XUEBAO (SHEHUI KEXUE BAN) (中国地质大学学报（社会科学版）) [JOURNAL OF CHINA UNIVERSITY OF GEOSCIENCES (SOCIAL SCIENCES EDITION)] 19 (2021).

59 *See* Che Pizhao (车丕照), *Zhongguo Fayuan Shiyong Guoji Tiaoyue Suoshe Ruogan Jiben Gainian Bianxi* (中国法院适用国际条约所涉若干基本概念辨析) [*Analysis of some basic concepts involved in the application of international treaties by Chinese courts*], 1 ZHENGFA LUNCONG (政法论丛) [JOURNAL OF POLITICAL SCIENCE AND LAW] 87 (2023).

for the core characteristics of climate litigation, they should be described based on the general premise of direct rights and obligations related to climate change, which relies on the legal transformation of the national emission reduction obligations within the domestic legal system, and then combined with the specific claims and facts of the case for a comprehensive judgment.

Certainly, it should be noted that the delineation method proposed in this article, which is based on the Paris Agreement, should also take into account the following: the current international legal regulatory model for climate change is still a dual-track mechanism under the Kyoto Protocol and the Paris Agreement within the framework of the United Nations Framework Convention on Climate Change (UNFCCC), and the three flexible mechanisms established by the Kyoto Protocol, namely the emissions trading mechanism, the joint implementation mechanism and the clean development mechanism,[60] are still effective in the international community and in China's domestic legal system. Therefore, the rights and obligations related to the Kyoto Protocol and the three mechanisms of it should still be considered as one of the sources of law for China's civil litigation system on climate change, together with the relevant provisions of the Paris Agreement.

B. Special Interpretation of the CBDR Principle under the Chinese Legal System

On the basis of absorbing the quantifiable temperature control goals and Nationally Determined Contributions commitments of the Paris Agreement, and confirming the legal source status of the Kyoto Protocol and its three flexible mechanisms, the construction of China's climate change civil litigation system still needs to be adjusted to adapt to China's domestic law system. This adjustment is especially reflected in the quantification of greenhouse gas emission reductions. Although China, as one of the contracting parties to the Paris Agreement, has always actively taken measures to reduce emissions in response to climate change, it is difficult to achieve an accurate conversion between the measurement standards of China's energy conservation and emission reduction work and the emission reduction targets recorded in the Paris Agreement. Specifically, the Conference of the Parties to the Paris Agreement recorded the temperature control target for maintaining the global average temperature increase below 2°C and the quantitative emission reduction target for reducing greenhouse gas

60 *See* GUOJI HUANJING FA (国际环境法) [INTERNATIONAL ENVIRONMENTAL LAW] 174 (Lin Canling (林灿铃) & Wu Wenyan (吴汶燕) eds., 2018).

emissions to 40 billion tons.[61] In the energy-saving and carbon-reducing action plan announced by the State Council of China, in addition to establishing an annual target of "forming energy-saving and carbon-reduction transformations in key areas and industries, achieving approximately 50 million tons of standard coal in energy savings and reducing carbon dioxide emissions by approximately 130 million tons," also proposes a quantified emission reduction indicator of "reducing energy consumption per unit of industrial added value by around 3.5%".[62] Obviously, there is a certain gap between the absolute measurement of greenhouse gas emissions adopted by the Paris Agreement and the individual measurement of standard coal and carbon dioxide in China, and the calculation standard of energy consumption rate proposed by China is also difficult to convert through specific formulas. How to coordinate this measurement standard with Chinese characteristics and in line with China's national conditions, with the quantified emission reduction targets established by the Paris Agreement, is also a consideration needed when delineating the scope of China's climate change civil litigation standards.

This paper argues that the adaptation and harmonization of China's unique standards with the Paris Agreement can be achieved through the interpretation of the "Common but Differentiated Responsibility Principle" (CBDR). The CBDR principles are the core principles of the current international climate legal regime and a guide to action to achieve the goal of carbon neutrality.[63] This principle emphasizes that "due to the integrity of climate capacity resources, the diversity of global climate change factors, and the differences in the development stages of countries, all countries have common but differentiated responsibilities in responding to climate change", including two elements: "common responsibility" and "differentiated responsibility"; The former refers to the common responsibility of all mankind to take action to address climate change and protect the earth and human well-being, while the latter refers to the different responsibilities and consequences of international climate change according to the historical responsibilities of countries for climate

61 *See* Paris Agreement, Dec. 12, 2015, 3156 U.N.T.S. 79.

62 *See* Guowuyuan Yinfa 2024 - 2025 Nian Jieneng Jianpai Xingdong Fang'an de Tongzhi (国务院印发《2024-2025 年节能减排行动计划》的通知) [Notice by the State Council of Issuing the 2024-2025 Energy Conservation and Carbon Reduction Action Plan] (promulgated by the State Council, May 23, 2024, effective May 23, 2024) (Chinalawinfo).

63 *See* Zeng Wenge (曾文革) & Gao Ying (高颖), *Tanzhonghe Shidai Gongtong dan Youqubie de Zeren Yuanze Xinyangtai jiqi Guize Wanshan* (碳中和时代共同但有区别的责任原则新样态及其规则完善) [*The New Form of the Principle of Common but Differentiated Responsibilities and the Improvement of its Rules in the Carbon Neutral Era*], 2 LILUN YUEKAN (理论月刊) [THEORY MONTHLY] 134 (2023).

change, their current situation and their future development needs.[64] Within the framework of the CBDR principle, the construction of China's civil litigation system for climate change can lead to a more adapted interpretation of this principle to meet China's actual needs. On the one hand, the concept of a community with a shared future for mankind and the concept of a community of life between man and nature can be injected into the "shared responsibility" emphasized by the CBDR principles, and the concept of "extensive consultation, joint contribution and shared benefits" can be established to reflect the progressive international cooperation obligations from low to high; On the other hand, in the "differentiated responsibility", we can also design the differentiation criteria of the constituent elements around the central element of carbon and the system, and consider the key constituent elements comprehensively, scientifically and objectively.[65]

In the above interpretation of the CBDR principle, the adjustment of "differentiated responsibilities" can achieve the harmonization of China's specific emission reduction standards with the standards of the Paris Agreement. Specifically, the "differentiated responsibility" in the CBDR principle is a kind of "self-differentiation" in which each country has broad autonomy, which determines that this differentiated responsibility "is not fixed, but should be dynamically bound by the requirements of 'best effort' and 'only advance and not retreat'".[66] Therefore, China can establish a dynamic and composite quantitative standard for emission reductions around the central element of carbon, so as to "face the different forces of carbon concentration in the atmosphere and consider them comprehensively and continuously".[67] This, in turn, can lay the institutional basis for China's unique quantitative emission reduction standards. Specifically, China's unique quantitative standard for emission reduction per unit of added value

64 *See* Cao Mingde (曹明德), *Zhongguo Canyu Guoji Qihou Zhili de Falu Lichang he Celue: Yi Qihou Zhengyi wei Shijiao* (中国参与国际气候治理的法律立场和策略：以气候正义为视角) [*The Legal Standpoint and Strategy of China to Participate in International Climate Governance: From the Perspective of Climate Justice*], 1 ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCIENCE] 29 (2016).

65 *See* Zhou Chen (周琛), *Lun Tanzhonghe Yuanjing Xia de Gongtong dan Youqubie Zeren Yuanze* (论碳中和愿景下的共同但有区别责任原则) [*On the Common But Differentiated Responsibilities Principle In the Context of Carbon Neutrality*], 76(2) WUHAN DAXUE XUEBAO (ZHEXUE SHEHUI KEXUE BAN) (武汉大学学报（哲学社会科学版）) [WUHAN UNIVERSITY JOURNAL (PHILOSOPHY & SOCIAL SCIENCE)] 152 (2023).

66 *See* Liu Jing (刘晶), *Quanqiu Qihou Zhili Xinzhixu Xia Gongtong dan Youqubie Zeren Yuanze de Shixian Lujing* (全球气候治理新秩序下共同但有区别责任原则的实现路径) [*The Path to Realizing the Principle of Common but Differentiated Responsibilities under the New Order of Global Climate Governance*], 2 XINJIANG SHEHUI KEXUE (新疆社会科学) [SOCIAL SCIENCES IN XINJIANG] 90 (2021).

67 *See* Zhou, *supra* note 65.

can be used to determine the emission reductions required by the Paris Agreement through formula conversion, and on the other hand, it can adapt to the differences between carbon emission concentrations of different energy sources. In addition, this quantitative indicator of emission reduction based on unit energy consumption is more conducive to promoting China's energy technology innovation and progress than the absolute index.

Therefore, in future judicial practice, China's emission reduction obligations should be further clarified based on the main provisions of the Paris Agreement and its quantifiable temperature targets, Nationally Determined Contributions commitments, etc., and apply them to the construction of specific rights and obligations, and whether such rights and obligations are directly involved as the criteria for judging whether a particular case is a climate change lawsuit, so as to delineate a relatively clear scope. At the same time, on the one hand, the Kyoto Protocol and its three flexible mechanisms should be retained as the source of law in China's civil litigation system for climate change, and on the other hand, China's emission reduction obligations and emission reduction quantification standards should be adjusted accordingly with the help of the differentiated responsibilities in the "Common but Differentiated Responsibility Principle" (CBDR) to meet China's actual needs.

The judgment criteria for climate change litigation proposed in this article are based on the "Paris Agreement" and combine the CBDR principle with a special interpretation that conforms to China's actual national conditions. The advantage of this standard compared to the aforementioned views is as follows. First, it provides more concrete, substantial judgment elements for the delimitation of the scope of climate change litigation, avoiding the abstraction in defining climate change litigation. Second, it adopts objective elements such as quantifiable temperature control targets and NDCs, which can avoid the subjectivity caused by judgment criteria centered on the purpose of litigation, thus more accurately distinguishing climate change litigation. Third, it can better integrate civil climate change litigation into it, avoiding the possible incompleteness caused by the classification of climate change litigation mainly targeting administrative management.

V. SUGGESTIONS ON THE SYSTEM OF CLIMATE CIVIL LITIGATION IN CHINA

The preceding text has delineated a relatively clear scope for "climate change litigation" within the Chinese judicial context. Correspondingly, the criteria for determining whether a specific case

falls under "climate change civil litigation" have also been established, namely: whether the core dispute of a particular civil case directly involves civil rights and obligations closely related to climate change, and whether such civil rights and obligations are the specific manifestations of the national emission reduction obligations established under the Paris Agreement within the domestic legal system. In other words, whether the emergence of the core rights and obligations dispute is fundamentally rooted in the Paris Agreement.

From this, it is also possible to broadly and narrowly define climate change civil litigation in China. In a broad sense, climate change civil litigation generally refers to civil litigation cases that have some connection with climate change. The handling of such cases should still be conducted under the traditional civil litigation model, that is, following the evidence rules, adjudication rules, etc., of traditional civil torts, contract disputes, and other types of cases. On this basis, the parts of these cases that are associated with climate change should be transformed from the perspective of judicial activism into the ancillary social effects achieved by civil litigation cases, addressing the climate change issues arising from the rights and obligations disputes in addition to the disputes themselves; only in this way can the special needs of broad-sense climate change civil litigation be taken into account while maintaining the stability of the existing litigation system. For example, the typical case of "A Shanghai Industrial Company v. a Beijing Computing Technology Company over Entrustment Contract Case" falls under the broad category of civil climate change litigation. This case does not exceed the scope of traditional civil litigation cases; its core dispute is still a generally entrusted contract dispute. The various claims and corresponding obligations of payment for entrusted fees, provision of technical services, and ensuring the normal operation of equipment for the parties to the contract are derived from the contract provisions and the provisions of the "Civil Code" on entrusted contracts, and have no direct connection with the "Paris Agreement" and the national emission reduction obligations established thereby. In this case, the invalidation of the entrusted contract is due to the violation of the "Civil Code" provisions on the green principle and the regulatory requirements and policy requirements of the regulatory authorities, rather than the direct obstruction of the fulfillment of the national emission reduction obligations by the relevant business. On the other hand, this judicial determination indeed has the extrajudicial effect of curbing the Bitcoin business, thereby reducing energy consumption and benefiting the response to climate change. Therefore, this case should be classified as a broad civil climate change litigation case and be tried under the traditional civil litigation model.

In a narrow sense, climate change civil litigation specifically refers to cases where the core rights and obligations directly involve climate change issues. The emergence of the rights and obligations involved in such cases is fundamentally rooted in the Paris Agreement and is the specific manifestation of the national emission reduction obligations within the domestic legal system. However, at the current stage, China has relatively few laws related to climate change, with more policies than legal provisions, and the legal system for climate change still has a lot of gaps; against this backdrop, the narrow-sense climate change civil litigation in China at the current stage lacks a relatively sufficient legal basis and relies more on policy documents, which cannot lead to a relatively stable and predictable climate justice system. Therefore, in the current judicial practice in China, a relatively restrained and cautious attitude should be maintained towards narrow-sense climate change civil litigation and various climate change policies that have not yet been legalized, to avoid the phenomenon of policies replacing laws in climate justice, and to avoid overemphasizing the social functions and effects of the judiciary while neglecting the core issue of legal application judgment. For example, in the case of Friends of Nature v. the Gansu Branch of State Grid Corporation of China, which is referred to as the "first narrow climate change litigation case in China," its biggest difficulty lies in determining whether the defendant, the Gansu Branch of State Grid Corporation of China, has the obligation and has violated the duty to prevent climate change, and whether its behavior of giving up wind and light has a causal relationship with climate change. These are key factors in narrow climate change litigation cases, which need to be clarified through climate change legislation in the future. Therefore, the current legal system in China is not sufficient to provide sufficient institutional support for the trial of narrow climate change litigation cases, and a more restrained and cautious attitude is needed for this.

This kind of binary division would help to solve the dilemmas of climate change litigation in China. First of all, this division solves the problem that climate change litigation is difficult to distinguish from traditional civil litigation cases, and for the generalized climate change litigation that accounts for the majority in practice, it is still carried out under the traditional litigation model, and the existing litigation rules are followed, so there is no longer a need to distinguish between them. On the basis of this, secondly, China will only need to build a special litigation system for narrow-sense climate change litigation in the future, and the narrow-sense climate change litigation will adopt this specialized system, while at the same time solving the problem of vacillating litigation objects and litigation strategies. Finally, due to the

lack of existing climate change legislation in China and the lack of directly applicable legal authorization provisions of international conventions such as the Paris Agreement, it is prudent to maintain a cautious attitude towards narrow climate change litigation at this stage, and to build a dedicated litigation system when future climate change legislation is relatively mature, which can also effectively avoid problems such as policy substitution of legislation in the field of climate change and excessive expansion of the social function of climate justice.

VI. CONCLUSION

Based on the discussions on the development of climate change litigation globally and in China, as well as the main theoretical viewpoints and institutional practice dilemmas in China, the main viewpoints proposed in this article can be summarized as follows: In light of the challenges faced by climate justice in the development of its practice in China, such as the ambiguity in distinguishing it from traditional cases, the indecisiveness in litigation strategy selection, and the expansion of its social functions, it is necessary to clearly and accurately delineate the scope of "climate change litigation." This should be done with reference to the Paris Agreement and the quantifiable temperature control targets and the Nationally Determined Contributions it establishes. The criteria for judgment should be whether the core rights and obligations of the case are the specific manifestations of national emission reduction obligations under domestic law, and whether the dispute originates from the Paris Agreement. At the same time, the Kyoto Protocol and its three flexible mechanisms should be retained as legal sources, and the interpretation of the CBDR principles, especially the "differentiated responsibilities" therein, should be adopted to achieve the harmonized application of China's unique emission reduction quantification standards and the standards established by the Paris Agreement. Furthermore, civil cases can be divided into two categories: broad sense and narrow sense. In a broad sense, climate change civil litigation should still be handled under China's existing traditional litigation models, while a restrained and cautious attitude should be maintained towards narrow-sense climate change civil litigation and various climate change policies that have not yet been legalized. On one hand, this paper provides specific and objective substantive elements for the judgment criteria of climate change litigation, and can include climate change civil litigation, so as to avoid the judgment of climate change litigation being too abstract and subjective, and ensure its comprehensiveness. On the other hand, in the future judicial practice in China, it can be better distinguished

from traditional litigation in terms of litigation objects, strategies and applicable litigation rules, and effectively avoid the replacement of climate legislation by climate policies and the excessive expansion of climate justice functions. It should be noted that this article does not provide a more detailed division of civil litigation on climate change in China, nor does it make further recommendations on the future development of China's climate change litigation system, which will be the subject of our future research.