

## **Structure and Law Enforcement of Environmental Police in China\***

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### **Abstract:**

Is the Environmental Police (EP) the solution to close the remaining gaps preventing an effective Environmental Protection Law (EPL) implementation? By analyzing the different concepts behind and needs for a Chinese EP, this question is answered. The Environmental Protection Bureau (EPB) has the task of establishing, implementing, and enforcing the environmental law. But due to the fragmented structure of environmental governance in China, the limited power of the EPBs local branches, e.g. when other laws overlap with the EPL, low level of public participation, and lacking capacity and personnel of the EPBs, they are vulnerable and have no effective means for law enforcement. An EP could improve this by being a legal police force. Different approaches have been implemented on a local basis, e.g. the Beijing or Jiangsu EP, but they still lack a legal basis and power. Although the 2014 EPL tackled many issues, some implementation problems remain: The Chinese EP needs a superior legal status as well as the implementation of an EP is not further described. It is likely that the already complex police structure further impedes inter-department-cooperation. Thus, it was proposed to unite all environment-related police in the EP. Meanwhile the question will be raised, which circumstance is making large scale environmental pollution possible and which role environmental ethics play when discussing the concept of EPs.

**Key Words:** China, Environmental Police, Law Enforcement, Environmental Protection Law

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## 1. INTRODUCTION

The Chinese government is well aware of the environmental trade it has made for allowing the fast economic growth during and after the Deng Xiaoping era. The environmental protection gained its momentum in the late 1990s and is a much-discussed political topic.<sup>1</sup> After the environmental protection law has been revised in 2014, its implementation hasn't brought the desired outcomes yet – mostly due to the low law enforcement capabilities and charges towards the local Environmental Protection Bureaus<sup>2</sup> (EPB) and China's complex administrative structure and responsibilities. To accelerate the implementation of the new environmental law and to strengthen the authority of the environmental law by improving law enforcement, the National People's Congress (NPC) and National People's Political Consultative Conference (NPPCC), in the following simply described as the two sessions (liang hui, 两会), as well as their regional counterparts, the Provincial PC and PPCC had introduced the idea of an environmental police. After being an academic topic for a while, the Central Committee member Wang Xudong 王旭东 proposed during the 2013 “two sessions” the establishment of an environmental police directly under the control of the central government.<sup>3</sup> This would enable it to investigate environmental cases independently. Accordingly, there have been further proposals to establish environmental polices on several Chinese administrative levels.<sup>4</sup> The CPPCC member Pan Xiaoyan 潘晓燕 proposed the establishment of an environmental police again in the 2015 “two sessions”.<sup>5</sup> Although Environmental Protection Bureaus have already been established on various administrative levels, they haven't been able to improve environmental protection. They are often underfinanced and understaffed, as well as lacking significant means of enforcing environmental protection.<sup>6</sup> Voices at the two sessions claimed that the low efficiency is caused by the local EPBs not having sufficient power and authority to establish, implement and enforce the environmental law. They are unable to control environmental pollution, prosecute environmental law violations and check on reported issues simultaneously.<sup>7</sup>

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<sup>1</sup> Tong, Yangqi “Bureaucracy Meets the Environment: Elite Perceptions in Six Chinese Cities” Cambridge University Press, *The China Quarterly*, No.189, pp100-121

<sup>2</sup> Unknown “China's Anti-Corruption Fight Turns Toward Environmental Agency”, <https://thediplomat.com/2015/08/chinas-anti-corruption-fight-turns-toward-environmental-agency/> accessed: 19.08.2017

<sup>3</sup> Mo Quan 墨泉 “Forging of the Environmental Police: New weapon against environmental pollution” <http://www.hbzhnan.com/news/detail/115596.html> accessed: 21.09.2017

<sup>4</sup> Tang Shujian 唐书剑 “On the Feasibility of Constructing Environmental Police System in China 我国构建环保警察制度的可行性论析”, *Journal of Sichuan Police College*, Vol. 27-5, 2015

<sup>5</sup> Ibid.

<sup>6</sup> Economy, Elizabet “China's Environmental Enforcement Glitch”, [thediplomat.com](https://thediplomat.com/2015/01/chinas-environmental-enforcement-glitch/), 2015, <https://thediplomat.com/2015/01/chinas-environmental-enforcement-glitch/> accessed: 21.08.2017

<sup>7</sup> He Zhen 贺震 “Design of the Environmental Police as Weapon for Environmental Protection 设立环境警察锻造环保新利器”, *China Environmental Protection Online*, 13.03.2017

The concept of an Environmental Police (EP) is often proclaimed to be the solution to close the remaining gaps preventing an effective Environmental Protection Law (EPL) implementation. However, the implementation and structure behind an EP can be manifold. The aim of this article is to show the actual concept behind a Chinese environmental enforcement corps and whether it can really enforce the Chinese Environmental Law. To understand the two implementation and operation approaches, which have been discussed and tested by local pilot projects, this paper shows them exemplarily and discusses their advantages and disadvantages. Based on this evaluation it is possible to get a better idea of the main purpose of an EP and the need for a nationwide solution: By showing the concerned public that the government is taking care of environmental law violations, the primary goal might be to lower the number of environment-related major protest. Moreover, as the political terminus of “grab criminals with both hands” replaced with “adhere to the principle of doing two jobs at once and attaching equal importance to each (两手硬)” is used at multiple locations, another intention behind an EP might be to scare non-compliant companies by carrying out model prosecutions which act as a deterrent. One of the major reason for non-compliance with the new EPL might be the four implementation gaps, that were left wide open after environmental law reforms in 2014. These gaps are the limited power of the new EPL as it can be trumped by more specific and overlapping environmental laws, thus specialized departments could challenge EPL ruling. The second gap is the very fragmented structure of environmental governance in China. The third problem is the low level of public participation, as just approved, or more specifically environmental Non-Governmental-Organizations (ENGOS), are permitted to open public litigation suits against the government. The fourth gap is the lacking capacity of Environmental Protection Bureaus (EPB) to implement effective surveillance and enforcement mechanisms. This might be caused by still insufficient spending of the central government in EPB, resulting in the bureaus to be understaffed and vulnerable. They are unprotected from various offenders when carrying out investigation, unless the Public Security Bureau (PSB) is supporting them with their resources. The EP could be a solution to close some of the gaps as it could investigate EPL violation cases and detain suspects for a more efficient evidence collection. Equipped with police rights, granted by the Chinese police law, there would be sufficient tools available to prosecute environmental crimes and specially educated task-force-teams could react fast, thus lowering human caused environmental damages. After studying the available literature this conception must be regarded critically. Despite being the new reinforcement tool to finally carry out effective EPL implementation, there are still many problems, an EP cannot overcome without a broad preparation. To implement a separate EP-Bureau, it will be necessary to change the Chinese police law to permit the establishment of an EP on all levels and to equip it with full police rights. Furthermore, the EP cannot solve all the implementation problems of the 2014 EPL: to be effective, the Chinese EPL needs a superior legal status. Another problem might be caused by the introduction of another special police force: It is likely that the already complex police structure further impedes inter-department-cooperation; thus it was proposed to unite all environment-related police in the EP. Meanwhile the question will be

raised, which circumstance is making large scale environmental pollution possible and which role environmental ethics play when discussing the concept of EPs.

## 2. ENVIRONMENTAL POLICE IN CHINA

### 2.1 The Making of the Environmental Police

Following the revision of the environmental protection law in 2014, its implementation hasn't brought the desired outcomes, yet. Low law enforcement capabilities of the local EPBs and China's complex administrative structure and responsibilities has made environmental protection a difficult task. The idea of an environmental police has therefore been mentioned. As police institutions are generally responsible for law enforcement, the term "Environmental Police" (环境警察, EP) was introduced as countermeasure to the environmental pollution and polluters. The duty of this EP is expected to raise environmental protection and administrative law enforcement by executing criminal justice following the "grab criminals with both hands" replaced with "adhere to the principle of doing two jobs at once and attaching equal importance to each (两手硬)" political terminus. This way problems could be addressed, which the local governments and their EPBs were reluctant or unable to solve. The reasons for this "reluctance" to act and "ineffectiveness" are elaborated in the section 2.2.

The idea behind this is not totally new: There have already been some pilot projects on local level experimenting with the establishment of an "environmental protection security", which will in the following be more appropriately called EP. However, they achieved mixed results. One issue of local solutions is, that they tend to lack in authority and means to enforce the law. But as the idea behind such EPs is quite promising, the design of a national standardized EP, equipped with powerful tools by a national guideline is highly anticipated. This is e.g. described in the article of the Jiangsu provincial EPB.<sup>8</sup> They argue that the establishment of an EP is an important mean to solve environmental problems by achieving environmental protection through environmental law enforcement and criminal law justice. Although the topic particularly emerged in recent literature and is being discussed intensively nowadays, the urge to establish an EP instance is not a recent idea of Chinese officials. This demand was already raised in the last two sessions (两会) and has already been a topic during the 12<sup>th</sup> national people's congress.<sup>9</sup> The establishment of a nationwide EP could be an act to strengthen the environmental protection and to support the weak local EPBs. Additionally, the establishment of an ecological civilization could be promoted. In general, there are several trends, which could support the development of an EP. One of them is the newly reinforced environmental special court.<sup>10</sup> This instance can help to accelerate decision making and therefore enable fast reaction to arising human made environmental risks. In combination with the independent

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<sup>8</sup> He Zhen 贺震, 2017

<sup>9</sup> He Zhen 贺震, 2017

<sup>10</sup> J. Knudsen, Daniel "Environmental Protection Bureau, 2.0" Yale Law School, J.D.2012

special “law enforcement unit”, which is the in this paper described as EP, these two new specialized instances might allow China to tackle environmental law infliction and bridge gaps in its new environmental law more precisely.

## 2.2 Background and Shortcomings

Before analysing the empowerment, role and possibilities of a national EP, the background and shortcomings of existing local solutions are introduced. They motivate the establishment of a nationwide EP. On the 7<sup>th</sup> January 2017, the secretary of the Beijing Municipal Committee, on behalf of major Cai Qi 蔡奇 announced the establishment of an environmental security police. Only 9 days later, on 18<sup>th</sup> of January 2017, the “Environmental, Food and Drugs and Tourism Security Corps” was publicly announced. This department of 50 people was called “Beijing Environmental Police”. In addition to the municipal level police force, the district Public Security Bureaus (PSBs) set up their own EP.<sup>11</sup> Although proclaimed as an innovative idea, the Beijing EP wasn’t the first one of its kind. Many places have developed their own enforcement units in response to frequent environmental pollution and the lacking capacity of the local EPBs to deal with them effectively, ultimately to strengthen businesses and criminal accountability. Hebei – one of the most industrially polluted provinces, and being located around Beijing effecting millions of citizens has designed a so called “green public security” (绿色共安) in Anping county. This police department was already set up in 2006 and was concerned with environmental protection. Other examples can be seen in Shandong, where the Shandong Provincial PSB set up a “Food and Drug and Environmental Crime investigation corps” in August 2012 or a little bit different kind of environmental security office being established on the Hebei provincial level 2013 in cooperation with the PSB. Besides such individual approaches, the system used in Jiangsu is even broader: In June 2015, the Jiangsu Provincial PSB set up a “food and environmental crime investigation corps”. Until now, all 13 Jiangsu districts and municipalities PSBs have set up special detachments, which are stationed in the Environmental Protection Agency. They also established an EP room to jointly handle the implementation of administrative and criminal law enforcement.<sup>12</sup> The following quotation shows the present situation quite visually:

“So far, Hebei, Jinan, Qingdao and Kunming have established EP offices to explore ways to strengthen environmental governance. However, harsh measures can be difficult to deploy in any but the most egregious cases of violations. Occasionally, enforcement by way of ‘killing the chicken to scare the monkey’ can be effective; but if chickens run out, enforcement should keep an eye on the monkey. Therefore, routine monitoring and record-keeping, inspections, and fines for less severe

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<sup>11</sup> He Zhen 贺震, 2017

<sup>12</sup> He Zhen 贺震, 2017

violations may be at least as important as these severe measures in fostering compliance.”<sup>13</sup>

Such vast responsibilities require a well-developed EP structure. One of the first pilots was the Yunnan Province, Kunming city EP, which was labelled as being “successful”. This success was used to elevate the Kunming EP to a national model role. But why was it proclaimed as being so successful and was it really? To briefly evaluate it, here are the basic facts: The Kunming EP was founded mid-2008 to counteract the environmental crisis that occurred at Yangzhong Hai 阳宗海: after industrial sewages were dumped into the lake for a long period the lake’s arsenic concentration climbed an excessive level. This high level of arsenic was toxic and therefore the water was rated harmful, moreover, its danger to health even exceeded the scale of the Chinese river and lake water quality rating scale (rating water quality on a scale from 1 (good) to 5 (serious danger to health)).<sup>14</sup> The causing company was already put on the national “blacklist” for environmental polluters (a list to publish repeated environmental pollution offenders). Eventually they were punished by the local EPB several times post-2002, but the punishment was too insignificant to show any effect. Especially as the measures for sewage cleaning were probably exceeding the costs of the fees, which was and is a significant problem of the pre-2014 Environmental Protection law. Finally, the company continued with its pollution of the lake regardless the effects on environment and local population.<sup>15</sup> This incident is said to be the direct cause for the creation of the Kunming Municipal Security Bureau Environmental Protection Branch. As local EPB inspectors were either unwilling or unable to carry out effective enforcement or supervision<sup>16</sup>, it gave rise to the need to develop an enforcement mechanism to answer the incapability. This led to a cooperation of the EPB and the PSB which was founded in the form of the Kunming EP. Together they work out feasible solutions for environmental monitoring and environmental law enforcement. The EPs main duty is to support the work of the EPB and to enhance its possibilities for routine inspections as well as in environmental emergencies.<sup>17</sup> Until then, the Kunming EP handled 96 environmental cases and supported the local EPB with its enforcement more than 400 times (until 2012).<sup>18</sup> Despite these numbers, the truth behind them is more or less sobering: Among the 96

<sup>13</sup> Zhang Bo; Cao Cong; Gu Junzhan; Liu Ting “A New Environmental Protection Law, Many Old Problems? Challenges to Environmental Governance in China” *Oxford Journal of Environmental Law*, 2016, 28, 325–335

<sup>14</sup> Zhao Yuhong “Innovative measures to improve environmental law enforcement in China” *China-EU School of Law*, Hong Kong, 2014

<sup>15</sup> Long Yuqin, Wang Dianxue 龙玉琴 王殿学 “Will Environmental Police Tackle the Problem of Weak Enforcement”, *Southern Metropolitan Daily* 2013 <http://roll.sohu.com/20130624/n379628156.shtml> accessed: 20.09.2017

<sup>16</sup> Van Rooij, Benjamin “Implementation of Chinese Environmental Law: Regular Enforcement and Political Campaigns”, 2006, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/12533/artdandcFinalPubversion.pdf?sequence=1> accessed: 30.08.2017

<sup>17</sup> Zhao Yuhong, 2014

<sup>18</sup> Long Yuqin, Wang Dianxue 龙玉琴 王殿学 2013

environmental cases solved, there are only 6 significant ones with criminal law enforcement. According to Protection Bureau Director Wang Likun 王丽昆, most cases the Kunming EP handled are law and order cases, such as noise nuisance. He also states, that the underlying problem is a legal one as environmental pollution can be legally pursued and fined, but in order for environmental pollution to be considered an offense in criminal law sense, it must fulfil high conditions like significant environmental damages or harmed health of citizens.<sup>19</sup> To conclude, the statistics appear impressive, but the real efficiency of the EP in Kunming is questionable. Despite this, any solved environmental case might be improving the environmental condition and suits as a deterrent for further polluters.

In Shandong, the local environmental law enforcement model is following another organizational scheme: It is mandatory for the EPB and PSB to inspect the monitoring equipment, waste treatment and the emittance of emissions once in half a year in a huge joint operation to catch polluters.<sup>20</sup> This might have an insignificant effect on polluters as the date of the control is officially announced and the companies can prepare beforehand, but their goal might be recognized by the Chinese public as institutions that are fighting the environmental polluters with the often advertised “iron fist”<sup>21</sup> – thus maintaining political stability. Finally, the EP has emerged as a political tool to soothe the high tendency of environmental pollution related protests. Although opinions about the success of local solutions for EPs diverge, the cases show the potential of a centralized EP.

### 2.3 Need for an EP

The exemplary cases described before indicate the need of a nationwide implementation of EPs. As stated in prior research, the understaffed local EPBs are unable to carry out effective environmental protection. Their abilities suffice neither for environmental supervision nor for environmental law enforcement.<sup>22</sup> Environmental law enforcement has gained a new significance as the Chinese Supreme Court issued a new judicial interpretation in December 2016: Environmental pollution and obstruction of environmental surveillance are now punished with serious consequences thus elevating the environmental law enforcement and environmental monitoring to a much higher significance. The report cited the case of employees of the local EPB who were tampering with environmental surveillance devices in order to prevail the detection of emissions exceeding the regulatory limit.<sup>23</sup> This new event supports the argument of establishing an EP - to act independently from but supplementing to

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<sup>19</sup> Long Yuqin, Wang Dianxue 龙玉琴 王殿学 2013

<sup>20</sup> Long Yuqin, Wang Dianxue 龙玉琴 王殿学 2013

<sup>21</sup> He Zhen 贺震, 2017

<sup>22</sup> Kostka, Genia “Barriers to the Implementation of Environmental Policies at the Local Level in China”, World Bank, 2014, 22f

<sup>23</sup> Davies Paul, Westgate Andrew „China focuses on Criminal Enforcement of Environmental Laws” <http://www.latham.london/2017/01/china-focuses-on-criminal-enforcement-of-environmental-laws/> accessed 19.08.2017

the EPBs and PSBs. Another important reason for EPs is its meaning for the public audience. Reducing environmental pollution by enacting more effective law enforcement is a qualified method. But instead of just improving supervised law enforcement, the EP offers the possibility to remind polluters that there is an effective persecution instance operating, and thus possibly lowering the eventuality of environmental crimes. Yet there are more arguments to support the establishment of an independent environmental law enforcement unit. The quite sophisticated environmental law - as revised 2014 - hasn't been effectively implemented at local level yet. One reason is the prior stated insufficient capacity of the EPBs but another factor is the unwillingness of companies' management to comply with the environmental law. The deterrent effect of the likeliness of a punishment or the coverage of official supervision is not sufficient. A more powerful, independent and nationwide acting instance is needed. How such an institution can be set up and organized is described in the following.

### 3. IMPLEMENTATION OF CENTRALIZED EP

#### 3.1 Organizational Structure

Similarly to the many different organizational structures of the local EPs, also different organization types for a central EP are being discussed. Referring to the Environmental Article, there are two proposed modes of operation for the EP: integrated (入驻式) and independent (独立警种).<sup>24</sup> The integrated mode proposes a joint-local PSB and EP Bureau by setting up a shared office and having police officers monitor environmental supervision equipment and proceeding the environmental law enforcement. The staff will be consisting of police officers from the local PSB with special training. Legally, the new EP isn't a new police department but an addition to existing PSB departments. The Hebei province Anping county EP is an example for the integrated department. Founded already in March 2006, it is the first Chinese EP being implemented in a local-PSB department. The second mode is the establishment of a new EP department as a "special police".<sup>25</sup> This way specialized police officers can focus on criminal and environmental law enforcement in tight cooperation with the environmental courts and the local EPBs. A source cited, that a collaboration between the EP and the local PSB can be just a temporary solution and it is necessary to build up an independent police bureau like the "forestry police" and "traffic police".<sup>26</sup> However, Wei Rujiu 魏汝久 argued that it is unnecessary to further complicate the Chinese police system. Following the implementation of more specialized security departments, it is likely that other governmental offices will request specialized police bureaus as well, duplicating the administrative separation and making cooperation less-likely.<sup>27</sup> The first independent EP was established in November 2011 as the

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<sup>24</sup> Unknown "Two law enforcement modes for the environmental police 环保警察的两种执法模式" *Legaldaily 法制日报*, 2015 <http://legal.people.com.cn/n/2015/0102/c188502-26312399.html> accessed: 21.08.2017

<sup>25</sup> Ibid.

<sup>26</sup> He Zhen 贺震, 2017

<sup>27</sup> Long Yuqin, Wang Dianxue 龙玉琴, 王殿学, 2013



“Kunming Public Environmental Protection Police Department” in Yunnan Province. Referring to the already made evaluation, there were slightly more advantages regarding this department, thus most of the disadvantages were caused by legal lags, which were addressed in the 2014 environmental law reform. While a cooperation between EP and PSB could be implemented in short time by using the available resources, the effectivity strongly depends on the used monitoring and investigating equipment as well as on the expertise of the polices’ officers in dealing with environmental cases. Nevertheless, it is questionable that a cooperation between both institutions can be implemented in short time as the local governments have a huge influence in environmental cases and might be reluctant to establish a high responsive system in order to remain in control.<sup>28</sup> Despite punishing environmental targets gains in importance and the performance based evaluation on meeting environmental targets is adding up pressure, pursuing personal interests and relations still poses a serious threat. Nevertheless, the above-mentioned modes of operation hold possibilities as the EP could ease the EPBs monitoring and enforcement responsibility and thus make the surveillance of heavy polluters more efficient. The cooperation with the local PSB itself might enable the EP to use already existing infrastructure and personnel to perform a quick start into operation.

### 3.2 Concerning Employees and Public Participation

Following the discussion about the organization mode of the EPs, another important question has to be considered: Are environmental inspectors EP employees and will they therefore get better means of enforcement? A big problem of today’s environmental inspectors is the evidence collection obstruction imposed by local industries and other unknown players.<sup>29</sup> Investigators, mostly EPB inspectors get criminally offended and their equipment is being tampered with. The purpose of these actions is to hinder the collection of evidences and to obstruct the prosecution of environmental crimes. As the collection of evidences in environmental cases is very time sensitive and quick action is required to collect sensible sources, even a small delay can cause the entire case to be dropped at court due to lack of evidence.<sup>30</sup> This interference indicates that the work carried out by the EPB inspectors is insufficiently protected by law. Environmental inspectors do not have the right to enforce necessary steps to detain criminals or to close polluting factories directly. They need the authority from the local governments and the help of the PSB to enact punishment. An EP would need the necessary authority to quickly intervene in issues, to start an investigation and to set up management detention to accelerate the jurisdictional process. According to the Chinese police law, the EP would be authorized to investigate and enforce environmental cases independently if there is suspicion. By accelerating the process and having the possibility to use the investigation methods of an acknowledged police (such as suspect detention and

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<sup>28</sup> Ran Ran (2013) Perverse Incentive Structure and Policy Implementation Gap in China’s local environmental politics” *Journal of Environmental Policy & Planning*, 2013, Taylor & Francis, p18

<sup>29</sup> He Zhen 贺震, 2017

<sup>30</sup> He Zhen 贺震, 2017

compulsory seizure), time and money could be saved as well as the direct risk for a polluter to get caught is much more feasible.

Following the new law, the EPBs or EPs can act not only if they detect an environmental polluter. They can get more direct help from other parties. The 2014 revised environmental law provides more parties, such as ENGOs (if preconditions are met), with the possibility to open environmental law suits and public litigation suits.<sup>31</sup> For a case to be accepted at an environmental court it is necessary to collect evidences which again would profit greatly from an accelerated response time of the EP. Another method of public participation is to address the local administration with letters. This tool, usually used by residents, is a vent for larger public participation and they give residents a claim for compensation for their loss of life quality due to environmental pollution caused by factories.<sup>32</sup> The letters usually don't require a trial but ask for a mediator and direct indemnity. But as the number of environmental related protest in China is rising, a more effective tool of participation for the broader public would be beneficial.<sup>33</sup> By establishing a national and regional EP this tool of participation would be created. By permitting residents to file cases against polluters, investigators could act fast to secure the evidence thus accelerating the general progress of an environmental trial.<sup>34</sup> There might be some intervention from local governments in the beginning, but finally the legitimacy of the Communist Party is closely linked to the success of its programs. And contrary to economics growth or energy consumption it is easier for every citizen to verify the grade of environmental pollution. Just recently a report stated that an entire school suffered under the illegal dumping of highly toxic chemical waste in a nearby area in Changzhou. Parents of the children needed to get a 3<sup>rd</sup> party investigation team to collect and analyse samples.<sup>35</sup> This example states that the national investigation teams were too slow and reluctant to react to this incident.

### 3.3 Environmental Ethics

The rising number of major Chinese environmental protests already shows that the public awareness for environmental protection has seen a rise, mostly due to the signs of the deterrent present condition of natural resources such as air and water quality. There is a large pool of academic papers analysing the state of Chinese natural resources available.<sup>36</sup> While the results

<sup>31</sup> Zhang Bo, Cao Cong, Gu Junzhan, Liu Ting, 2016

<sup>32</sup> Zhang Shijun "The Non-litigation Approach to Environmental Disputes in China" in *Environmental Policy and Governance in China*, Springer Japan, 2017

<sup>33</sup> Upton John "Pollution spurs more Chinese Protests than any other issue" 2013, <http://grist.org/news/pollution-spurs-more-chinese-protests-than-any-other-issue/> access: 01.09.2017

<sup>34</sup> He Zhen 贺震, 2017

<sup>35</sup> Zhang, Chun "Changzhou pollution scandal highlights holes in China's environmental Enforcement", <https://www.thethirdpole.net/2016/05/05/changzhou-pollution-scandal-highlights-holes-in-chinas-environmental-enforcement/>, accessed 13.09.2017

<sup>36</sup> Qu Jiuhui, Fan Maohong, "The Current State of Water Quality and Technology Development for Water Pollution Control in China" <http://dx.doi.org/10.1080/10643380802451953> accessed: 21.09.2017

of the economic development can be seen, there is still a huge demand to expand the environmental ethics. Environmental ethics refer to the sum of moral norms and the relationship between human and nature and therefore are observed in the way of how humans understand the effect of their actions on the environment. Environmental ethics are a key content of the Chinese policy to form an ecological civilization. But furthermore, the public education could be strongly promoted by the EP as it would strengthen the negative meaning of environmental pollution.<sup>37</sup> Another problem mentioned is the low scale of perception for environmental damages. Tang states, that most citizens are just concerned about the environmental damages as they see themselves endangered by the air pollution in their surroundings. This raises the question of how aware the citizens are of the present condition of the Chinese air, water and soil resources and whether the protests would decline after the causes for the air pollution have been banned from the larger urban areas.

### 3.4 Problems of the post 2014 EPL

Publications analysing the revised Chinese Environmental Protection law of 2014 have shown clearly that the new design possesses serious gaps which might hinder the successful implementation of the new law. Bo Zhang, Cong Cao, Junzhan Gu and Ting Liu name in their paper five key problems. These are as follows: the insufficient status of the EPL (Environment Protection Law) compared with competing laws of same legal relevance, the fragmented and overlapping structure of Chinese environmental governance, the prone-to-intervention law enforcements as local EPBs report to the local governments, the failure to pronounce and acknowledge environmental rights of a citizen, and the power over penalties is not fully delegated as EPBs must get the local governmental approval for penalty enforcement. In the following, these problems are discussed in more detail and the possibilities, the EP offers to bridge them, are described. The power of the Environment Protection Law is limited by competing specific laws. These are for example the agriculture law, the forestry law and other laws concerning the usage and protection of natural resources.<sup>38</sup> Any judgement of the environmental court based on the environmental law, could be objected if there are other standards defined in the specific law. To avoid this situation, it is necessary to give the environmental protection the status of a basic environmental protection legislation [as done by many other developed countries]. Another way would be to educate EP officers in the standards of all specified legal standards. This way they could apply their knowledge when investigating and supervising environmental cases and avoid acting in overlapping legal areas. Still, despite the possibility an EP would offer, the problem of the competing laws would remain. It would offer violators to operate in the competing “grey zones” to outplay the environmental law with the specific law and vice versa. Thus, rendering legal enforcement and punishment ineffective. The second gap is the enforcement gap of the overlapping structure of Chinese environmental governance. The cooperation and supervision between the central Ministry of Environmental

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<sup>37</sup> 2-13 Tang Shujian 唐书剑, 2015

<sup>38</sup> 4-11 Zhang Bo, Cao Cong, 2015

Protection (MEP) and the local EPBs is limited to the administrative structure of the PRC and the corresponding ministries in environmental protection. For example, the Carbon Tax is supervised by the Chinese NDRC – the National Development and Reform Commission. This complicates the structured implementation of the environmental law. The EP is a powerful tool to fight environmental law violations and for quick response to local environmental crisis. But unfortunately, there is no clear possibility for the EP to change the political and administrative layout of the PRC. These are best addressed by policy making in the National People's Congress and its standing committee. Despite this situation, a chance for intervention for EPs might be to combine the EPB authority together with the responsibilities of the NDRC. For example, using the newly established Emissions Trade System, where the EP could support emissions' law enforcement and punish violators. The third shortcoming of the Chinese EPL in comparison with other country's EPL is the lack to acknowledge the basic right for every citizen of a "fit for life" environment.<sup>39</sup> The drawback is that under the 2014 EPL citizens and environmental Non-Governmental-Organizations (ENGO) have the right to see detailed environment monitoring information, published by the EPB<sup>40</sup> but just some ENGOs, that met the preconditions, are permitted to bring lawsuits against the government (for lack of air or water quality). This issue can't be addressed by the establishment of the EP directly. Nevertheless, the EP might improve the general situation as citizen would have an institution, which they can address directly when discovering possible violations of environmental law and seeing their health endangered. This could serve as a possibility of broader public participation and give citizens a mean to address their questions and leads. These in turn, can help to solve present investigation cases. The fourth issue mentioned was the lack of capacities and possibilities in enforcement and implementation of the EPL.<sup>41</sup> The main purpose of the EP would be the enforcement of the environmental law. After the local EPB has determined the means of local EPL implementation, the EP can monitor the compliance, start investigation on bad performers, and therefore release pressure from the EPB.

### 3.5 Establishment of a legal foundation

Although the idea of the EP being a police institution has been discussed before, there is no legal basis in the police law of the People's Republic of China to support the nationwide establishment of an EP yet. An addition for protecting the environment and to ensure the enforcement of the environmental law should be added to Article 6 of the Chinese police law. Just after this modification, the EP would have the same status as, for example the maritime police. This would establish the legal basis for the building of an EP and equip it with the same tools and legal possibilities as any Chinese police bureau under the Chinese police law.<sup>42</sup> After

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<sup>39</sup> Zhang Bo, Cao Cong, 2015

<sup>40</sup> Zhang Bo, Cao Cong, Gu Junzhan, Liu Ting, 2016

<sup>41</sup> Zhang Bo, Cao Cong, 2015

<sup>42</sup> Database of laws and regulations "People's Police Law of the People's Republic of China"  
[http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383708.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383708.htm) accessed:27.08.2017

the legal foundation is established, it will be necessary to implement the EP in the existing police infrastructure and to procure necessary equipment. Therefore, the Jiangsu provincial EPB made five proposals<sup>43</sup>:

First: Establishing educational facilities for environmental protection supervision and law enforcement and to train the new personnel. One of the main contents of this measure is the education training of environmental officers in environmental and resource protection law, environmental science, ecology and other general knowledge to improve the EP officers' professionalism and law enforcement capabilities. Additional to these specific skill, an EP inspector is required to be experienced in general police' business skills.<sup>44</sup> This training is the general foundation of the EP building proposal. Second, the EP should collaborate with institutions with environment-related areas of competence, such as for land, housing construction, water conservancy (agriculture), forestry, transportation, and others.<sup>45</sup> This way the EP would dispose of diverse connections, which will ease the treating of emergency cases and lower the response and handling time. As stated before, a quick response time is necessary to prevail and reduce negative effects on environment and residents. Third, EPBs and their monitoring capabilities and environmental monitoring agencies are requested to promote the work of the EP with the establishment of a technical support mechanism for EP work.<sup>46</sup> A joint execution of data collection can help the EP by planning work measure more effectively and enabling it to use a broader network of supporting tools in data collection. An important point to establish the law enforcement capabilities of the EP mentioned the fourth demand. It will be necessary to build a specialized unit for prosecution environmental crimes but also, to incorporate public interest litigation mechanisms, while securing the citizen's basic rights. Finally, the EP should be an independent police unit to prevent the environmental regulatory authorities from a strong influence on the PSB and to focus their work on the environmental field.

Another proposal has been made by Tang Shujian 唐书剑: He supports the idea, that an additional EP would complicate the responsibilities of the Chinese special polices and provide additional obstacles to legal enforcement in correlating special environmental laws. Tang proposes the creation of a unified law enforcement bureau for all special laws. This way enforcement efforts could be organized and the rivalries of the special polices could be cancelled. This idea seems reasonable but its feasibility is strongly linked to the Chinese legislation. As long as there are special laws with each determining own environmental standards, it still would be possible to unite the enforcement departments but the general condition of the conflicting laws on equal levels would still consist.

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<sup>43</sup> He Zhen 贺震, 2017

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

### 3.6 Solutions outside of China

China is not the only country which needs to deal with environmental pollution and polluters. Three exemplary setups, once the Russian Moscow EP, US EP, and Brazilian EP, are shortly depicted in the following to get a broader view of the perspectives of an EP. In general, each country's quite unique policy and political layout makes it hard to draw direct comparison with other nation's environmental enforcement systems.

Zhang Bin 张彬 stated in his publication, that the Russian EP indicates a local, yet broader approach.<sup>47</sup> In 1996 the Moscow city government and the Russian Interior Ministry decided to use municipal governments' funds to pay for the establishment of the Russian EP. They allocated 40 Million Rubles to build the 1100 officer strong Moscow City EP which has to fulfil a broad list of competences. Despite the three main functions, prevention of environmental and administrative crimes, provision of security to environmental protection staff during their normal activities and supervision of urban and other natural reserves, they also have to supervise garbage disposal, check environmental protection measures during construction and dismantling, as well as factories and their mandatory environmental protection equipment for functionality as well as check markets and shops for food hygiene. To strengthen the deterrent effect on polluters, they have a broad media presence in newspapers and TV-reports. Moreover, they have an educational program in schools. Compared with the 2017 established Beijing EP, the Moscow solution is shifting tasks of the Chinese EPB to the EP and strengthening the EP to be able to carry out effective measures to protect the environment and guarantee citizens health.

Brazil, another member of the BRICs-States, started in 2008 to blacklist municipalities, that have a high rate of illegal deforestation as "Priority Municipalities"<sup>48</sup>. This procedure allows the "Brazilian Institute for the Environment and Renewable Resources" to prioritize these blacklisted municipalities in the supervision and enforcement activities of the national environmental police and law enforcement authority. By focusing their work on the bad performers, the deforestation of the Amazonas rainforest was lowered by 35% between 2008 and 2011. Despite this success, Assunção and Rocha stated that the policy had no negative impact on other economic activities. Meanwhile Daniel Araujo Miranda and Daniel Russo showed, that Inteligeo – a web system to gather and contain data for forensic analysis, supports the Brazilian EP forensic teams and simplifies data access. The system is using an online map and is displaying areas which have related information highlighted. This way, an investigation

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<sup>47</sup> Zhang Bin 张彬, "Russian Environmental Police (俄罗斯环境警察)", *China Academic Journal Electronic Publishing House*, Volume 9/2017

<sup>48</sup> Assunção, Juliano; Rocha, Romero "Getting Greener by Going Black: The Priority Municipalities in Brazil" <http://climatepolicyinitiative.org/wp-content/uploads/2014/08/Getting-Greener-by-Going-Black-Executive-Summary-English.pdf> accessed 31.10.2017

teams might check the present area for prior environmental cases and access data related to emissions prevention.<sup>49</sup>

The most famous Environmental Enforcement Unit is the US-EP. It was established in 1982 by the US Department of Justice to form a special task force to fight environmental crimes and to sanction environmental pollution. After the Congress granted this task force full enforcement powers in 1988 the US-EP was charged with tasks containing but not limited to: implementing pollution control measures, to investigate civil and criminal environmental crimes such as the illegal handling of hazardous substances. At present, the OCEFT has 200 full time federal environment law enforcement officers. Beneath the Federal EPA, some states have established their own specialized EP, such as New York in 1983. The New York EP is investigating 400 complaints every year, of which 500 involve environmental crime. In 2002 New York opened its first EP-Academy where students are required to undergo a 31-week comprehensive training. An important feature of the federal EP are the professionally trained environmental law enforcement officers as well as the broad team of professionals (scientists, forensic specialists) to support the work of the EP.<sup>50</sup>

#### 4. CONCLUSION

To conclude, an EP might be a good solution to address environmental pollution and corporate misbehavior. Moreover, it would offer a chance to bridge some gaps the 2014 EPL left and meanwhile strengthen the party's legitimacy. The deterrent effect on the public caused by police prosecution would spill over to polluters raising the suspicion that they might get caught and the high penalty rates, introduced by the new EPL might find broad application. The first impression of the Beijing EP raises the question whether the banning of street food and investigation in minor environmental offenders as in the Kunming EP holds any fruits. Despite the advantages, the success of the EP strongly depends on its implementation and whether the according legal framework has been modified to authorize it as legal special police of the PRC. Furthermore, it is necessary to elevate the EPL to avoid conflicts with more specialized environmental laws. The establishment of another specialized environmental police bureau might be an advantage to enforce the EPL but for the environmental situation to be improved in long term, it will be necessary to modify the EPL and to close its implementation gaps by investing more resources in its enforcement and compliance. To our mind, even the prosecution of insignificant environmental polluters can raise the public awareness for environmental protection and thus enhance the pressure on other polluters. On a large scale, this can only be done by introducing a nationwide concept instead of fractured local solutions. Before a country as huge and geographically diverted as China could be completely controlled by an EP, it will

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<sup>49</sup> Miranda, Daniel Araujo; Russo, Daniel "Geographical Information Systems –A Working Example in the Brazilian Federal Police for Fighting Environmental Crime" *Soil in Criminal and Environmental Forensics* by Springer International Publishing Switzerland 2016

<sup>50</sup> China - ASEAN Shanghai Cooperation Team "Whats the design of the US Environmental Police? - 美国环境警察什么样?" *China Environmental News* 23.03.2017 Version 003

be necessary to raise public awareness for environmental pollution as well as to permit more public actors to participate in the environmental protection. The high amount of yearly environmental protests shows already a raised public awareness and permitting specific ENGOs to file law litigation suits was already a good start to enhance the fight against environmental pollution.

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