

Making Law Work: the EU Environmental NGO (ENGO) Experience

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Talk Summary

- **First, why the title “Making law work?” and some basics about ENGOs and law**
- **Second, the basic sections of the report**
- **Third, some features from each report section that may be of special interest to China ENGOs as they use environmental law**

Making Law Work: Why the Title?

- It may be hard to make a law to protect the environment, but it is often much harder to make the law work

Modern governments are large and have many resources; but the environmental challenges they face are often larger

- ENGOs can use law to work with government to help make law work –and to make new and better laws

ENGOS and Law: Some Basics

- **ENGO resources are limited, so they need to know when and how law can be used, and what to do to use it**
- **Most ENGOS probably do not have lawyers on their staff; many never use courts; but they should know about the many ways in which law can help in their work**
- **ENGOS should know that: 1) they can use courts to make law work to protect the environment, but 2) much more often ENGOS make law work through other activities. For example, ENGOS participate in public hearings and provide government with ideas and information; monitor compliance with law, and work with government on experiments to implement law. (ACEF divides its law cases into litigation, mediation, and supervision)**

The Sections of the Report

- Section 1: introduction to EU environmental governance, and the role of ENGOs (橘生淮南则为橘，生于淮北则为枳)
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- Section 2 – EU ENGO models: organizational types, goals and strategies, staffing needs, and funding sources.
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- Section 3 --how do EU ENGO's use courts to make law work? what questions must they ask before they do so?
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- Section 4-- how do EU ENGOs use other tools to make law work? for example: environmental information, research, public education, working with government officials, participation in public hearings
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- Section 5 What are some 切入点 for EU ENGO experience in making law work to China today: Air pollution as a most important example

Section 1: the Big Picture: Law is core to EU environmental governance and EU ENGOS play core roles in making it work at all levels

- In the EU, environmental requirements are stated in EU wide, member state and local laws
- The Aarhus Convention provides the EU and its members with the pillars of environmental law—citizen participation, citizen right to know and citizen right to access to justice
- In the EU, as in China, perhaps the core challenge of environmental governance is the need to make many levels of government and many differing regions work together-where government has so many high priorities at each level and region.
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- EU ENGOS help address this governance problem by operating in networks that:
 - help government levels and regions coordinate the implementation of law
 - organize and share information so that government and citizens can learn about law and how it can be made to work
 - Help local ENGOS continually gain the benefit can gain the benefit of broad knowledge and expertise, and help EU and national NGOs gain knowledge of local concerns and successes
- For example: The Green Ten is composed of ten organizations, many of which (including WWF, Greenpeace, and Friends of Nature) themselves are made up of many ENGOS: in total Green Ten includes thousands of local NGOs with millions of members: Similarly, the European Environmental Bureau has 140 member organizations from 31 countries with 15 million members

Report Section 2: EU ENGOs provide many models for ENGO use of law expertise

- If a local ENGO wants to use law, what should it do? How can it continually learn how it may use law? Does it need to hire an “inhouse” lawyer? If has none, where does it find one if it needs one? EU ENGOs provide many models for the ways ENGO can get legal expertise. For example:
- Client Earth is a UK based ENGO that specializes in environmental law expertise; it over 60 lawyers on its staff. Client Earth lawyers develop legal strategies and work with other ENGOs that are focused on, for example, air or water pollution.
- Swedish Society for Nature Conservation is a Swedish ENGO with over 200,000 members in over 250 municipalities. Its members include many environmental experts. The central office has 2 lawyers who are available to provide central and local organizations with law expertise.
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- Justice and Environment (J and E) is a an EU “network” ENGO. Its members are themselves local ENGOs that have lawyers and focus on using law. J and E is a platform for the organization of law information that will help ENGOs use law-for example, summaries of cases, “toolkits” for local ENGOs to use, and policy papers on needed reforms.

Report Section 3: Using Court: EU ENGO experience provides many success models, also a checklist of questions ENGOS should ask before they use court

- Court cases are often time consuming, expensive, and, of course, the outcome is uncertain: what should ENGOS consider before going to court; for example:
 - How does an ENGO choose whether to use court or other tools?
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 - How does an ENGO choose which cases to take to court? (impact cases?)
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 - How much do court cases cost, and how can the ENGO get the money?
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 - What kind of legal and technical expertise is needed, and where can this be found (and at what cost?)
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 - What ethical problems should ENGOS consider before going to court?

Report Section 4: EU ENGOs provide many examples of how ENGOs successfully use law without going to court: to help government as partners and watchdogs

- ENGOs may work with local government in partnership to test new approaches to environmental problems—for example, the Sweden NGO SSNC worked with government on an experiment to gain public support to reduce traffic congestion and pollution
- ENGOs may work with government and business to develop information and labeling for food and product safety; for example, SSNC used law to test and provide public information on consumer product safety
- ENGOs may monitor pollution and call problems the government has not noted to government and public attention
- ENGOs may help government address issues by organizing expert evidence and participating in proceedings where decisions with an environmental impact are made

Report Section 5: How can EU ENGO experience help China ENGOs use law? Air pollution as an example of a point of entry (切入点)

- China has many environmental challenges, but resources to address them are limited; ENGOs must focus on most important challenges and use experience to focus effectively
- Air pollution is a critical challenge that, in comparison with other challenges, such as water pollution, has been the subject of limited China ENGO litigation (or other use of law)
- EU ENGOs provide important examples of successful use of courts, and other law tools, to address air pollution challenges.
- For example: In the EU, as in China, central government sets air pollution standards and targets which government plans must address. Perhaps surprisingly, air pollution is a big problem in many parts of the EU. The UK plan has fallen far short of meeting EU air pollution law NOX targets. Client Earth went to court to successfully seek and gain an order that the UK must do better to plan and meet the EU NOX target.

切入点： EU ENGOs provide models for China ENGO sharing of experiences to ensure expert and efficient focus on the most important issues

- China ENGOs are beginning to accumulate experience with the use of law. This includes using court, but also using other tools. Together these comprise a developing “case” experience that should be organized for common China ENGO use. Local ENGOs and governments should be able to quickly learn from shared nationwide experience, and central ENGOs and government should be able to quickly learn from countrywide local experiences?
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- For example:
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- what are the challenges for which China ENGOs use law, and are they the most important challenges? (for example, water and air pollution are both critical problems, but it appears that China ENGOs are more successful in using court for water pollution cases);
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- What are the ways in which law is used? For example, water pollution may be more successfully addressed in a court case, while other pollution problems may be best addressed by the use of other law tools?
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- What are models for success?.
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- EU ENGOs, such as Justice and Environment, provide models for ENGO organization and sharing of case information

Final thought: With the benefits of global ENGO experience, China ENGOs can build on China environmental law to make China use of law a model for world study

- China environmental law now provides for ENGO public interest standing, something lacking in the laws of many other countries (the US for example), and still developing in the EU
- By consequence, China ENGOs may be able to go to themselves go to court against polluters for public environmental damage—something available to ENGOs only on a limited basis in the EU (and likely in the US)
- Some key problems for ENGO use of courts in the EU are addressed by the the China Supreme Court's January 2015 Judicial Interpretation—for example, the problem of court costs for ENGOs