

黄德林等 著

# 自然遗产保护法

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男,湖北省光化人,1959年10月出生。1982年1月毕业于湖北财经学院,获哲学学士学位。1987年毕业于华中师范大学,获法学硕士学位。1982年1月起在武汉地质学院任教。1997年任教授。1998至1999年在日本广岛大学法学部做高级访问学者。2000年至2002年任湖北省郧县人民政府副县长。2002年毕业于中国地质大学(武汉),获工学博士学位。学术兼职:中国环境资源法学研究会常务理事、湖北省行政法学研究会副会长。

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# 第 言

自然遗产是大自然遗留给人类的珍贵而不可再生的遗产。对自然遗产的保护是人类可持续发展的重要内容之一。近些年来,中国申报世界遗产的工作发展很快;全社会对世界遗产产生了很高的热情,我国目前已经被联合国教科文组织批准的世界遗产可能带来的经济利益,对于世界遗产保护与利用的关系理解错位,没有了。这些重开发、对于已批准的世界遗产开发过度,对于己批准的世界遗产的保护放在第一位,对于已批准的世界遗产开发过度,而保护力度不够。这些重开发、轻保护的现象,加上由于利益变形,严重威胁到自然遗产的保护和可持续发展。我国现在已有不少世界遗产因其开发过度,严重破坏了世界遗产地的生态,污染了该地区的环境而遭到联合国教科文组织的无法申报世界遗产的自然遗产则完全没有保护,这对于我国自然遗产的保护与可持续发展是很不利的。

本书的研究,正是在我国目前自然遗产保护现状机遇与挑战并存的背景下,出于对自然遗产加强保护的考虑,来对保护自然遗产涉及的各个方面法律展开研究,以期达到自然遗产保护与利用和谐共促的目的。该项目由具有地质学科背景、法律学科背景、管理学科背景组成的研究小组共同研究自然遗产保护的法律

制度建设问题,从可持续发展角度,研究永久保护珍贵的自然遗产所需要建设的法律制度的相关问题,为严格保护我国珍贵的自然遗产、有效打击破坏自然遗产的违法犯罪行为提供了依据。

通过本书的研究,可以为通过法律手段规范地方政府行为,切实保护自然遗产;同时为有力打击和防范破坏自然遗产的违法犯罪行为,提供有效的法律武器。本项目研究可以为制定保护珍贵的、不可再生的自然遗产法律提供立法理论依据和法律建议草案。因此本项目既有科学意义和学术价值,也具有社会价值。就国际上而言,目前有关保护世界遗产的公约是柔性的,既无国际法庭作后盾,也缺乏国家强制力作保障。本项目研究,可以为国际上保护世界遗产提供借鉴。

本书结合我国国情和自然遗产保护的实际情况,借鉴外国在自然遗产保护方面的相关理论和实践成果,选取了几个在我国自然遗产保护中比较重要的问题,进行了重点研究: 1. 保护自然遗产保护中比较重要的问题。目前我国的有关立法缺乏权威性和统一性,大多是地方立法,且各自为政。有必要研究制定统一的、权威的具有可行性的法律。2. 保护自然遗产法律制度的强制性问题。目前各地制定的有关法律中,虽然有一些被制度的强制性的规定,但是缺乏相应的惩罚措施做保障,因此效果不佳。应该研究加大惩罚力度的可能性与合理性。3. 国内立法与国际公约的衔接问题。联合国教科文组织通过了有关保护世界自然与文化遗产的问题。联合国教科文组织通过了有关保护世界自然遗产保护机构设置不合理,存在交叉、重叠与缺位现象。应该研究通过立法手段,合理设置机构的问题。

国内外围绕本项目所涉及的内容目前的研究不多,仅有少数 法学家、地质学家从事世界遗产保护研究。以 2004 年中国法学 会环境资源法学研究会年会为例,会议收到的三百多篇论文中, 仅有两篇研究这一问题。同时,国内外研究自然遗产保护法律的 文章不多,比较有影响的是侯富儒(2002)研究的《保护世界文 化与自然遗产公约》与中国世界遗产的持续发展问题。现有的相 关研究主要局限于对已经被评选为世界遗产的自然遗产的法律保 护问题,对于大量尚未人选世界遗产的自然遗产的法律保护问题 研究不多。2003年召开的中国•承德世界文化遗产国际论坛会议 上,有专家提出应制定国际法惩处毁灭世界遗产的犯罪行为,目 标主要针对大规模的战争等。从本书的思路进行相关研究的比较 少,对于增强自然遗产保护法律的权威性、统一性、威慑力研究 很不够。而本项目研究将对于保护自然遗产的法律体系进行系统 研究,回答保护自然遗产的对象问题、权威性问题、强制力问题、 统一性问题以及国际公约与国内法律的衔接问题。在一定程度上 来说,本书的研究在国内的相关研究领域是空白的。因此,本书 的研究对指导我国自然遗产保护工作,避免过度重视经济利益而 损害自然遗产保护的现象继续发展,有力打击和遏制破坏自然遗 产保护的违法犯罪现象具有较强的科学理论价值和现实指导意义。

在写作的过程中,根据有关国际法律、国内有关法律法规、惯例以及一些专家学者的意见,本书对自然遗产进行了分类,将 其细分为自然景观、动植物物种、湿地、地质遗产、古生物化石 五个类别,并对其进行专门论述和研究。

在本书的研究过程中,采用了文献研究法、比较研究法和实际调研法等方法。在国内选择了若干个已经被批准为世界遗产和一些尚未被批准为世界遗产的自然遗产保护地进行调研,以有效研究保护工作中遇到的法律问题、对立法工作的需求。实践证明,这些调研使我们的研究受益匪浅。

## 序 言

自然遗产的法律保护,是环境资源法研究的新领域。自然遗产作为自然环境的重要组成部分,对于保护生物多样性、维持生态平衡等具有重要的意义。随着世界遗产申报的兴盛,对自然遗产的保护日益受到人们的重视。但是,目前我国对自然遗产的法律保护研究不多,仅少数法学家、地质学家稍稍有所涉猎。相关研究重宣传呼吁,而轻实证调查,缺乏对自然遗产保护制度背后的深层次原因进行深刻的分析和探讨,这使得我国的自然遗产法律保护和管理的改进和优化一直缺乏环境资源法学理论的有力指导。

黄德林教授带领的研究团队,经过多年的研究,在自然遗产的法律保护方面做了很多工作,在自然遗产法律保护的诸多方面形成了自己独到的见解,在一定程度上填补了自然遗产保护法律制度研究的空白。他们的研究对我国的自然遗产保护有一定的理论意义和现实作用。

该书对保护自然遗产的法律体系进行了系统研究,阐明了保护自然遗产的对象问题、权威性问题、强制力问题、统一性问题,国际公约与国内法律的衔接问题,以及国内自然遗产保护机构的设立、职责及法律责任问题;较好地回答了"我国自然遗产保护存在问题的原因及如何通过新的立法和制

度改革来加强自然遗产的保护、如何通过完善自然遗产保护的相关法律制度,使自然遗产的各项功能发挥其最大的功效, 实现自然遗产保护和利用的平衡"等问题,其研究成果值得 肯定。

该书对自然遗产法律保护的理论研究和应用研究都有所创 新。在理论方面,该书阐明了与自然遗产法律保护有关的一系列 专门术语,对相关理论作了严格论证,分析了旧有理论的问题和 新提出理论的长处。该书从法学的角度重新界定了自然遗产的内 涵与外延,并对自然遗产进行纵向与横向分类,指出自然遗产的 特征为不可再生性、价值性、原真性与完整性,指出自然遗产具 有生态价值、科学价值、美学价值、经济价值。该书讨论了与自 然遗产相关的几个重要问题:第一,"自然遗产"的公共产权问 题,自然遗产与一般公共物品有何共性与个性? 第二,国家在 "自然遗产"保护中所负有的职责与责任。第三,保护世界遗产 的国际公约(比如《世界文化与自然遗产公约》等)在国内法上 的适用问题。该书对自然遗产法律保护中的各项权利义务关系梳 理得比较清晰,对自然遗产法律保护中应然的和实然的情况分析 得相当到位,它细化了环境资源法的研究领域和研究方法,开拓 了环境资源法学的新的研究方向,有利于促进我国自然遗产法律 保护研究的繁荣。在应用研究方面,该书具体讨论了我国自然遗 产管理制度的缺陷和优化问题,指出我国自然遗产保护所遇到的 问题的深层次的原因在于自然遗产法律体系,并就如何重新构建 我国的自然遗产保护法律体系和立法改革提出了若干建议。这些 研究切合我国自然遗产保护的立法和管理实践,对有力打击和遏 制破坏自然遗产保护的违法犯罪现象,加强自然遗产的保护和管 理,促进当地经济、社会和环境的可持续发展具有一定的指导 意义。

当然,该书还存在一些值得进一步深化和有待商榷的问题, 但是瑕不掩瑜。

欣闻此书即将出版,特此作序向学界推荐。

于 2006 年 9 月 10 日

#### **Abstract**

The natural heritage is the precious and non-renewable heritage was bequeathed to human by nature. The protection of natural heritage is one of the most contents for continuable development. In recent years, the work of declare world heritage in china develops quickly. All society give high enthusiasm about world heritage. China has 33 world heritages which have been confirmed by UNESCO (United Nations Educational, Scientific, and Cultural Organization). But in some places, the government just attaches importance to the economic benefit by declaring world heritage, has wrong understanding with the relation between protection and using about world heritage. The government does not put the protection of world heritage as first degree and exploits confirmed world heritage overly. This phenomenon of regard exploits and despises protection, in addition of destroying natural heritage because of advantage has threaten the protection of natural heritage and cotinuable development.

Our country now had many worlds inheritance because of it was developed overly. The UNESCO criticized that it destroyed the zoology of world heritage producing area and polluted the environment in that area. As for some people exclaimed 'World heritage died after be applied?' There is not any protection to that natural heritage which could not apply as world heritage. This is disadvantageous to our countries continuable development.

This book based on the opportunity and challenge existing together background of domestic protection on natural heritage. Starts from the consideration of enhance the protection and doing research on each aspect of natural heritage protection in order to let the aim of natural heritage could protect and using exists harmoniously come true. This project has been research on the law constitute problem on the protection of natural heritage by the research group which has been provided with geognosy, jurisprudence and management background. It offers basis to protect precious natural heritage strictly and shock crime of destroy natural heritage effectively.

Through the research of this book, we could use law means to control governmental behavior in order to protect natural heritage availably. At the same time, it offers effective law means to shock and keep away crime of destroy natural heritage. The research of this item could offers lawmaking theory and law advice draft to make the law on protection of precious and non-reproducible natural heritage. So this item is not only have science meaning but also have t society importance. The convention concerning the protection of world heritage is flexible, it not only do not have the international court of justice to be the supporter but also lacks of national power to be the safeguard. This item re-

search could bring reference to international world heritage protection.

Abstract

This book combines the situation of China and realistic circs, use foreign theory and production on the protection of natural heritage, then choose some important problems about natural heritage in China to research on:

- 1. The authoritative and unitive problem on protection of natural heritage law system. In recent years, our country's lawmaking about protection of natural heritage lack of authority and oneness. The situation is lawmaking in every place and governs by every place.
- 2. The obligatory problem on protection of natural heritage law system. Though there are some restrictive and inhibitive rule protections natural heritage law system compulsory question in today's relative law work out by some place. But the thing of natural heritage was destroyed has always happened, for lack of relevant punish measure to be the guarantee. This book researches the feasibility and rationality of enhance punish power.
- 3. The joint problem between national lawmaking and international convention. UNESCO passed the convention concerning protection of world natural and cultural heritage. The problem of how to make the international convention has law effectiveness in state to treaty.
- 4. The problem of unified domestic natural heritage protection agencies. Now, the agency of the natural heritage's setting is not reasonable, cross-existing duplicated and blank areas exist. We should study some legislative means and the rational es-

tablishment of the institutions.

At present, there is not so much research on the contents this book involved in our nation and foreign countries. It only have minority of legist and rocksy deal with world heritage protection research. Take the environment resource law seminar annual meeting 2004 for example, it only had two articles to study on this question in the more than 300 articles received by the meeting. At the same time, the domestic and foreign article which researched on the natural heritage protection is not so many. Hou Furu researched the «Convention concerning the protection of world culture and nature heritage and China world heritage's cotinuable develop problem have some influentially. Recently the related research main about the protection of world heritage those had been selected already, but the research on the law problem about the protection of natural heritage those has not been confirmed is not have so much. In 2003 China Chen De World Cultural Heritage International Forum Meeting, Some experts put forward should establish law of nations to punish the criminous action of destroy world heritage, the aim is main to large-scale war etc. t is very few that do the research as the thinking of this book and lack of research on enhance authority, oneness and overawe force of natural heritage protection law. But this item will research the law system on protection of natural heritage. It answered the object question, authority question, the compelling force question, oneness question and joint question between international convention and national law about natural heritage protection; Said in the certain degree that, this

book's research is blank in domestic relative field. Therefore, this book's has strong scientific theory importance and realistic guidance meaning to instruct the protection of natural heritage work in our country, avoid attach importance to economic benefit excessively and damage the phenomenon of natural heritage protection developed and keep within limits the criminous phenomenon of destroy natural heritage protection strongly.

In the writing process, according to related international law, national related law and statute, tradition and some experts' suggestion. This book divided the natural heritage to natural landscape, propagation species, everglade, geological relic, ancient extinct fossils. And the author did the special discuss and research shout them. This had alimined in the special discuss and research shout them. This had alimined in the special discuss and research shout them.

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method and so on. We chooses some confirmed world natural heritage and non-confirmed world natural heritage to investigate in order to research the law problem and the demand of lawmaking in protection work efficiently. The practice proved that, these investigations give more benefit to us. This book tries to put forward some innovative points in some aspects in order to resolve the problems which unfathomed problems:

- 1. The authoritative and unitive problem on protection of natural heritage law system. In recent years, our country's lawmaking about protection of natural heritage lack of authority and oneness. The situation is lawmaking in every place and governs by every place. This book demonstrates the natural heritage lawmaking system.
- 2. The obligatory problem on protection of natural heritage law system. Though there are some restrictive and inhibitive rule protections natural heritage law system compulsory question in today's relative law work out by some place. But the thing of natural heritage was destroyed has always happened, for lack of relevant punish measure to be the guarantee. This book researches the feasibility and rationality of enhance punish power and put forward relative suggestions on enforce duty and punish to destroy natural heritage action.
- 3. The joint problem between national lawmaking and international convention. UNESCO passed the convention concerning protection of world natural and cultural heritage. This convention is rather said belong to moral credendum than said belong to law category. Because it neither has clear the compelling rule nor