

Major Issues of China's Marine Legislation and Its Improvement

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Abstract: In order to speed up the building of a strong ocean state and to identify and improve a series of major problems arising in China's ocean legislation, this paper starts from the concept of ocean legislation, takes the current situation of China's ocean legislation as the research object, studies and concludes that China's ocean legislation lacks a legislative concept, a basis for a superior law and a systemic nature, as well as the problem of weak operability of the legislation. Therefore, China should formulate a superior law on the oceans as soon as possible, take the concept of a community of maritime destiny as a guide, improve the new path of global ocean governance, continuously improve China's maritime legal system and realise the rule of law on the oceans.

1. Introduction

In 2022, 40 years after the birth of the United Nations Convention on the Law of the Sea (hereinafter referred to as “the Convention”), we should abide by the spirit of the Convention, improve domestic marine legislation, promote marine scientific research, strengthen marine ecological and environmental governance, and make a greater contribution to achieving a higher level of global ocean governance.

2. The Concept of Marine Legislation

Before examining the major issues of marine legislation in China, it is important to clarify the concept of marine legislation. The academic community understands legislation as the enactment, amendment and repeal of laws and normative documents by state organs in accordance with their authority, which is a specialised activity carried out in accordance with regulations. Under this definition, maritime legislation is the activity of the relevant bodies in our country, within the scope of their competence, to enact, amend and repeal maritime laws in accordance with the law and in accordance with the procedures.

In order to further understand the meaning of marine legislation, it is necessary to rationalise the relationship between “marine legislation”, “marine legal system” and “marine rule of law”. The construction of China's maritime legal system is a matter of the integrity of China's legal system and

an integral part of it. By combining the contents of the maritime domain with the law, our maritime law recognises the international conventions that are already in force and becomes the basic law that should be followed in the management of our oceans. Our maritime legal system includes regional regulations, comprehensive regulations, basic maritime laws, individual laws, sectoral laws and many other legal elements. The “rule of law for the ocean” is one of the four key elements of building a “strong ocean state” (ocean development, ocean security, ocean strategy and rule of law for the ocean).^[1]

Only to improve the existing maritime legal system, in order for China to build a strong maritime country I lay the legal foundation. Through the continuous improvement of China's marine legislation system; the perfect marine legal system is also an important component of the rule of law in the ocean. Through the improvement of the marine legal system, marine management functions in accordance with the law, strict regulation of the operation of marine management powers, not only for the Belt and Road to provide legal protection, but also for the construction of a strong marine state to open up a new situation.

3. Current Status of China's Marine Legislation

3.1 Basic Establishment of the Maritime Legal System

China has made remarkable achievements in the construction of its maritime legal system, with the adoption of a number of special maritime legislation and the initial formation of a maritime legal system. The framework of China's maritime legal system was formed under the socialist legal system with Chinese characteristics, and the current marine-related single-act laws are mainly public laws.

The first major category is the laws governing the management of maritime space. Among them, the basic laws include the Law on the Territorial Sea and Contiguous Zone and the Law on the Exclusive Economic Zone and Continental Shelf. These legislations set the boundaries of marine activities, especially in the absence of a basic marine law in China, and they have to a certain extent contributed to the formation of the marine legal system; in addition, the types of laws on marine resources and energy development activities are also very complete, including the Fisheries Law, the Mineral Resources Law Deep Sea Law, etc.; marine resources management category, mainly including the Law of the People's Republic of China on the Administration of Sea Area Use and its subsidiary regulations and rules, which establish the basic contents of sea area ownership management, paid use of sea area, maritime functional zoning, etc.; there is also the Maritime Traffic Safety Law for the regulation of maritime traffic activities, as well as the Waterway Law and the Port Law for the management of waterways and ports.

The second major category is the different types of laws that safeguard the public interests of the sea. The main expression is the protection of the marine ecological environment, including the Marine Environmental Protection Law of the People's Republic of China and its subsidiary regulations and rules, the Regulations on the Administration of Marine Dumping and the Law on the Protection of Sea Islands, thus providing the greatest possible positive protection for the existing environment and marine ecology in order to improve the sustainable The regulations on marine oil exploration and exploitation, the regulations on marine nature reserve management and the Law on the Protection of Sea Islands, etc., thus maximize the possibility of actively protecting the existing environment and marine ecology in order to improve the sustainable use of marine resources.

In addition, there is the category of management of foreign-related marine activities, including the Regulations on the Administration of Foreign-Related Marine Scientific Research and the Regulations on the Administration of the Laying of Submarine Cable Pipelines. In addition to substantive laws, China also has basic procedural laws that should be followed, including the

Regulations of the People's Republic of China on Administrative Penalties, the Measures for the Implementation of Marine Administrative Penalties, and the Law of the People's Republic of China on Marine Police, which performs maritime rights enforcement.

All of the above laws set out clear requirements for China's marine management and resource use, as well as laying the foundation for environmental protection and marine environmental protection enforcement.^[2] But at the same time, there is also an imperfect legal system, fragmented management and ineffective enforcement.

3.2 Growing Interest in the Amendment and Repeal of Marine Laws

Firstly, China has responded positively to the call of the Convention by continuously establishing and improving the maritime legal system. For example, the Convention stipulates the responsibility of States parties to ensure the activities of relevant subjects in the international seabed area. China actively participates in the activities in the international seabed area. the Deep Sea Law, which was enacted and implemented in 2016, is to regulate the conduct of our citizens, legal persons, and other social organisations engaged in the exploitation of marine resources and exploration of marine resources in China. By infringing on domestic marine protection laws, it can effectively improve the efficiency of the use of existing domestic marine resources and build a strong maritime nation. The Marine Police Act, which will come into force in 2021, aims to redefine the duties and scope of practitioners in order to protect the legitimate rights and interests of relevant stakeholders.

Secondly, the enactment of the new law has been accompanied by amendments to some of our legislation. For example, the Maritime Traffic Safety Law, adopted in 1983, is an important law regulating the safe conduct of maritime traffic, and since its implementation in 1984, some of its provisions have not fully met the needs of reality. in 2016, China first amended Article 12 of the Law on the entry and exit of domestic vessels of this nationality from and to ports, and in 2021, from optimising the conditions of maritime traffic, regulating the conduct of maritime traffic, regulating administrative and law enforcement actions, and In 2021, the law was amended in terms of optimising maritime traffic conditions, regulating the conduct of maritime traffic, regulating administrative and law enforcement actions, and improving the maritime search and rescue mechanism.

Finally, China also carries out regular clean-ups by repealing relevant norms, and in recent years has particularly stepped up efforts to clean up some departmental regulations. For example, by the end of 2021, the Ministry of Natural Resources had published three batches of Decisions on Departmental Regulations to be Abolished and Amended, repealing regulations such as the Provisions on Administrative Penalties for Surveying and Mapping, and has also notified and published the lapsed announcements and documents. All in all, the systematization of marine-related regulatory documents has been achieved through a combination of approaches.

3.3 Increasing Harmonization and Application of Maritime Law

We attach great importance to the harmonisation and application of the many maritime laws. On the one hand, China's law of the sea is unique and also interconnected with other sectoral laws. For example, in 2020, the Standing Committee of the National People's Congress adopted amendments to the Law on the People's Armed Police, providing support for the introduction of the Marine Police Law; the provisions of the Civil Code on the ownership system and liability for environmental pollution and ecological damage, which will be implemented in 2021, provide guarantees for the further improvement of the management of natural resources, including marine resources, in China; in addition, the Regulations on Nature Reserves are equally applicable to marine Nature Reserves are equally applicable, and the Wildlife Protection Law is also applicable to

the protection of endangered aquatic wildlife.

On the other hand, in specific legislation, China has actively fulfilled its obligations as a party to the Convention and focused on the domestic application of international treaties. For example, the Law on Territorial Sea and Contiguous Zone, the Law on Exclusive Economic Zone and Continental Shelf and the Deep Sea Law are essentially domestic laws transformed from the Convention; one of the reasons for the revision of the Maritime Traffic Safety Law is that China has acceded to a number of international conventions on maritime traffic safety to provide for maritime traffic safety; in addition, the adoption of the International Ship and Port Facility Security Code has prompted China to formulate the Port Facility Security The Code.

3.4 Marine Ecological and Environmental Protection Work is Highly Valued

China specifically enacted the Marine Environmental Protection Law in 1982, the year the Convention was adopted, to regulate the management of major marine pollution sources such as coastal engineering construction projects, construction projects, land-based pollutants, marine dumping waste, ships and related operational activities, and environmental impact assessment, while it was subsequently amended in 1999 and in 2013, 2016 and 2017 amendments were made in 2013, 2016 and 2017 respectively.

In 2022, the Ministry of Ecology and Environment and six other departments jointly issued the 14th Five-Year Plan for Marine Ecological and Environmental Protection, which sets out clear requirements for the protection of China's marine ecology and provides an overall strategic plan for building a strong marine state, further increasing the enthusiasm of all parties to participate in global marine governance, which is important for building a community of human destiny. This has an important role in building a community of human destiny.

4. Major Problems of China's Marine Legislation

The formation of China's maritime legal system was relatively passive and backward, and was built as the international community continued to develop and China was forced by situational and environmental pressures to do so. Initially, the maritime laws established in China were based on unequal hegemonic treaties, closely linked to various clauses signed by the inaction of the Chinese Qing government, which made the maritime laws enacted at the time detrimental to the long-term management and development of China's marine resources. Subsequently, the existing maritime laws were reorganised and reformulated, and many of the existing maritime laws are international treaties recognised after the end of the Second World War. In turn, these international treaties are an important part of our maritime legal system. As the times have evolved and developed, the regulations and constraints relating to the oceans and seas have been reorganised and revised in order to further adapt to the international law of the sea.

However, in the process of sorting out and summarising the existing laws, the author found that many of the existing laws lack Chinese characteristics and are basically directly translated from existing international treaties, and their implementation can hardly play a real guiding role in the protection of China's marine resources. The existing laws are not detailed enough, too framework, lack of legislative philosophy and the basis of the higher law, some marine laws are missing, and the legislation is poorly operable.^[3]

4.1 Lack of Legislative Concept

The laws and regulations introduced in China play a pivotal role in the development and management of all areas of the ocean. However, there are still many shortcomings in the

construction of China's marine legal system. The fundamental reason for this is the lack of an effective concept to guide marine legislation, which makes it difficult to connect marine laws and regulations.

China's marine legislation is too reactive and lacks a comprehensive plan and arrangement. Most of the existing laws are hastily enacted in order to settle international disputes or territorial minutes. This makes the interface between the various laws problematic and the overall legislative work lacks a unified guideline. For example, China's existing legislation on maritime rights and interests is more of a law enacted to protect domestic sovereignty and territorial integrity and to make sovereignty declarations, and does not fundamentally consider the long-term construction and development of the sea. The Exclusive Economic Zone and Continental Shelf Law, for example, clearly defines the spatial scope of the mainland and the exclusive economy, and the corresponding countries and regions enjoy the rights and interests to use the sea. But this law, as enacted in our country, is only meant to declare sovereignty, not to support ocean management, and it is hardly a law that will help build our country into a maritime power.

Many existing laws have been drafted in a short period of time in order to swear sovereignty in the short term, or out of political necessity. Such laws are extremely blind and hardly help our country to build a maritime legislative system with a guiding role. In the long run, these laws will lead to a dilemma for China in defending its maritime rights.

4.2 Lack of Superior Law Basis

On the one hand, there is a lack of constitutional basis, as the largest constitutional amendment in 1982 explained the attribution of natural resources and added the corresponding relevance to the development, use and protection of natural resources. However, the terminology used is not sufficiently precise, for example, the use of natural resources instead of other terrestrial resources, although it increases the competence and scope for interpretation of the law. However, there is a bit of confusion regarding the classification of marine resources, which makes the original concept somewhat vague. In article 9 of our constitution it is clearly stated that natural resources such as grassland, wasteland, mineral deposits, water flows, forests, mountains and mudflats are owned by the state. Only this article may be relevant to marine resources. The mineral resources referred to in the Constitution can be understood as marine resources or coastal mudflats, so that the existing marine resources can be protected. The term natural resources, on the other hand, can also encompass existing marine resources. However, there is very little in the constitution that deals with marine resources, which shows that the importance given to marine resources in our legislative process is inadequate. As the problems of marine legislation continue to be revealed, there have been many experts and scholars suggesting the inclusion of a clause on the protection of marine resources in the constitution, in order to raise the status of the sea in the law and at the same time provide a legal basis and support for the protection of marine resources. On the other hand, there is a lack of a basic marine law. Canada has adopted a comprehensive approach to marine legislation, enacting the world's first comprehensive marine law in 1996; in 2007, Japan enacted a basic marine law; and in 2012, Vietnam enacted its own basic marine law. In contrast, as one of the leading international maritime powers, China has not established a basic law on the oceans. Among other things, in terms of legislation, China has always adhered to a decentralised approach to legislation, with each marine-related department having a certain amount of legislative power. These departments can legislate separately on the basis of a particular aspect of ocean management, which makes the existing laws cross and contradict each other, resulting in a constant lack of systematic guidance for our ocean legislation.

4.3 Deficiencies in the Content of Legislation

According to the jurisdiction of China's maritime laws, China's maritime laws can be divided into five categories: the first category is comprehensive maritime laws, the second category is maritime environmental protection, the third category is maritime resources, the fourth category is maritime transportation, and the fifth category is marine scientific research aspects. Although it has been divided into five categories, the following problems still exist for China's maritime legal system:

Firstly, there are too few laws on marine economy. With the continuous development of China's reform and opening up, the status of marine resources in the process of China's economic development is becoming more and more prominent. At present, China's marine legislation focuses on maintaining the safety of marine resources and overemphasises the protection of marine resources, while paying less attention to the development and efficiency of the use of marine resources, and there are few laws such as the Fisheries Law of the People's Republic of China that deal with the use of marine resources and the marine economy. In order to rapidly develop the domestic marine economy, it must be guaranteed at the legal level, and through the establishment of a sound legal system, the development of marine resources must be guided in an orderly manner.

Secondly, marine resources lack new industrial laws. China is lagging behind in the development of new marine industries. At present, in the development of marine-related industries, marine mining, marine salt industry and marine oil and gas industry have all been developed significantly. However, there are no clear provisions for the development of these industries in our existing marine laws. These areas in Canada, on the other hand, have enacted the Canada Oil and Gas Act, the Oil, Gas and Conservation Act and the Petroleum Resources Act.

In addition, many marine plants and aquatic organisms play an important role in the pharmaceutical industry. As raw materials the actual use of marine biological resources is, however, very inefficient. Although quantitatively speaking, there are many normative documents dealing with islands in China, only two actually play a legal role. Therefore, China needs to strengthen legislation in this area to provide guidance for the protection and development of China's island resources.

Thirdly, China's existing marine resources legislation lacks substance. Its attention to ecological aspects is insufficient. At present, there are many problems with our legislative staff. The scope of marine ecosystem safety is actually greater than that of marine environmental safety, which refers to the neatness of the environment, while ecosystem safety includes not only this part, but also refers to the normal cycle of marine plant and animal ecology. At present, the structural, root and trend pressure on China's marine ecological protection has not yet been fundamentally alleviated, and the problems of marine environmental pollution and ecological degradation are still prominent, and marine ecological protection and comprehensive management need to be strengthened.

Fourthly, the marine law enforcement as well as supervision system is not well set up. Although the Marine Police Law has re-integrated and reorganised the existing law enforcement resources, the responsibility of maritime rights maintenance and law enforcement is all undertaken by the marine police agencies of the People's Armed Police, but there is no corresponding law enforcement supervision agency.

Fifth, there are anachronistic problems in terms of the objects and contents of adjustment. The existing laws have many limitations in solving the current problems of the sea. The content and objects of adjustment are mostly land-based, and there is a lack of targeted adjustment for members of the sea, and no combination of marine activities, their own special characteristics to develop the law. This makes the existing laws extremely limited in the process of marine practice can play a role.

Sixth, in many areas such as the exploitation of biological resources on the high seas, China has a lack of legislation.

4.4 Poor Operability of Legislation

Although China has introduced many laws and regulations in the maritime area, most of them are specific implementation strategies formulated for a certain issue and lack guidance and operability in the construction of the legal system. On the one hand, China's existing laws are basically declarations made to proclaim territorial sovereignty and do not have a strong guiding role in law enforcement. For example, China has introduced the Exclusive Economic Zone and Continental Shelf Act, which describes the spatial extent of the continental shelf and the scope of the exclusive economic zone, but has not been implementing supporting norms. Similar problems can lead to our existing laws having a weak guiding role in their concrete implementation, facing more obstacles and having poorly operational content and provisions. The arbitrary and ambiguous nature of the legislation in this area has also led to a significant weakening of the role of the law in regulating and guiding the actors.

In addition, the crossover and conflict of functions and powers and responsibilities of various marine-related government departments inevitably leads to poor operability of the legislation. Numerous individual marine laws have been enacted by individual departments, and the inevitable lack of effective communication between departments when enacting laws makes it possible for the laws established by each department to be conflicting and then incompatible. Conflicting legal provisions create de-battling difficulties for the protection and development of marine resources. For example, the legal norms established by the Ministry of Environmental Protection and the State Oceanic Administration under the Marine Environmental Protection Law are based on the existing division of powers, responsibilities and functions. However, in practice, there must be overlap and cross-work between these two departments, and the lack of regulation of the system can lead to inefficiency in their work.

5. The Path of Improving China's Marine Legislation

Faced with many problems such as the lack of Chinese characteristics in the current marine legislation, the lack of a legislative concept and a basis in the higher law, poor implementation, lack of detailed provisions, legal deficiencies and poor operability, we need to formulate a higher law on the oceans as soon as possible and find a new path to improve global ocean governance.

5.1 Formulate the Superior Law as Soon as Possible

In order to have a superior law in place as soon as possible, we can do this by incorporating the sea-related provisions into the constitutional provisions, in addition to which the introduction of a basic law on the sea is crucial.

5.1.1 Incorporation of the Sea into the Constitution

In countries around the world where the sea is constitutionalised, the constitution has explicit provisions relating to the sea, which contain both the rights a country has over its maritime areas. The other part includes a specific description of the sea area. In the case of maritime legislation, we can take a leaf out of Portugal's book and adopt the model of enabling legal provisions. This model allows the State to make a number of regulations on the activities carried out in its maritime areas. Our constitution has always been characterised by integrated considerations and framework development when it was established, and with the depth of the maritime situation, there are

disputes and outstanding problems in many maritime areas. Our country can sort out the discrepancies in the maritime areas in the constitution and combine it with the model of authorising legal provisions to improve the law's guidance in solving real problems and greatly avoid the strife that may be caused by the lagging law. In terms of maritime rights, China can learn from the Honduran approach of establishing a layered system of maritime rights. In taking the oath of sovereignty, the provisions of our laws are observed. However, when exercising maritime power, it is done in accordance with the relevant norms of international law. This will maintain the authoritative status of our national laws and will also help our country to win wide support in the international community. At the same time, in order to further enhance the status of maritime law, clear guidance on the protection and development of marine resources needs to be provided in our constitution in order to achieve better results.^[4]

5.1.2 Formulation and Introduction of the Basic Law on Oceans

The Delegates' Motion referred to the Foreign Affairs Committee by the Bureau of the Fourth Session of the Eleventh National People's Congress in March 2011 proposed that the Basic Law of the People's Republic of China on Oceans (hereinafter referred to as the Basic Law on Oceans) be enacted as soon as possible, but after a decade of gestation and development, it has never really received a response to date. From 2014 to 2018, the National People's Congress (NPC) was actively promoting the legislative work, but it would always achieve practical results. The enactment of the Basic Law on Oceans in China can achieve comprehensive guidance and top-level design for China's marine legislation and maximise the systematic nature of marine legislation. In addition to this, the Basic Law on Oceans can make clear provisions on international affairs of the oceans, maritime law enforcement, marine management and the sea area system, and provide comprehensive and systematic provisions for the construction of a strong marine state. The legislative framework includes jurisdictional issues of the sea area, marine resource management issues, strategic development plans for the sea, maritime security and activities. It specifically contains the purpose, the overarching status, the division of legal responsibilities, and the settlement of disputes.^[5] The construction of the basic law of the ocean is directly related to whether the overall task of building a strong ocean state in China can be accomplished. Through the establishment of the basic law of the ocean, it is possible to coordinate various marine resources and provide clear provisions in marine legislation. The basic law of the sea can promote the high-quality development of domestic marine resources construction, and at the same time provide a guarantee force for the maintenance of marine resources, the protection of marine safety, and the development of marine culture and economy. Only in this way can the existing marine laws be fully integrated and developed in a coordinated manner, and continuously improve China's marine legal system, laying a solid foundation for the construction of a strong marine state.^[6]

5.2 A New Path to Improve Global Ocean Governance

Modernisation of the national ocean governance system and governance capacity is a prerequisite to support China's deep participation in global ocean governance. China's participation in global ocean governance should start from the following five aspects.

First, to safeguard the existing maritime rights and interests. Accelerate the formulation of marine-related and foreign-related laws and regulations, and do a good job of cleaning, integrating and codifying marine-related laws and regulations; gradually improve the capacity of maritime law enforcement and rights and interests maintenance; and promote the convergence and transformation of domestic maritime laws with international maritime laws. Secondly, deepen international cooperation in the ocean, and continue to promote benign changes in the global marine ecological

and environmental governance system by taking a point-by-point approach. For example, using the “Belt and Road” initiative as a platform, explore the establishment of a “Belt and Road” marine ecological and environmental cooperation organisation, organise relevant countries to establish a “Belt and Road” marine ecological and environmental governance system. For example, we will use the “One Belt, One Road” initiative as a platform to explore the establishment of a “One Belt, One Road” marine ecology and environment cooperation organisation, organise relevant countries to establish new norms for the “One Belt, One Road” marine ecology and environment governance system, compile global marine ecology and environment governance norms and standards, and develop and revise technical standards in the field of marine information. Third, organise comprehensive translations to strengthen the translation of documents and standards on marine ecology and environment. In-depth research on new concepts, ideas and strategies for China's deep involvement in global marine ecological and environmental governance will provide theoretical guidance for practice. Fourth, cultivate marine social organisations and enhance their ability to propose issues and draft contracts in marine ecological and environmental governance. In due course, we will summarise our domestic experience in marine ecological and environmental governance and lead our country's oceans to a more glorious future, and drive our country's new marine products, technologies and services to “go global”. Fifth, accelerate the training of foreign-related marine rule of law talents. We should build a team of high-quality marine rule of law talents who are proficient in foreign languages, well versed in international rules and new to international negotiations, establish a number of refined training bases, and promote domestic marine rule of law talents to serve in global or regional marine ecological and environmental organizations. ^[7]

6. Conclusion

In conclusion, in the 40 years since the adoption of the Convention, China has actively exercised the rights granted by the Convention, conscientiously fulfilled the obligations set by the Convention and promoted the rule of law in the oceans with maritime legislation. The future introduction of the Basic Law on Oceans, the enactment of legislation on polar activities and the supporting rules for the implementation of related legislation will further realise the goal of promoting global ocean governance through domestic ocean legislation. As one of the largest countries in the world, China has vast marine resources. Only by improving the efficiency of its own use of marine resources can it promote the sustainable development of global marine resources and ultimately fulfil its goal of building a strong ocean state.

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