

Study on the Legal Practice of Maritime Cooperation between China and Neighboring States

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Abstract: China is adjacent to the East China Sea, the Yellow Sea and the South China Sea, which are the three marginal seas by the Pacific Ocean, and China's maritime cooperation with its adjacent states is also centered on these three seas respectively. In terms of legal practice, China's maritime cooperation with South Korea and Japan in the Yellow Sea and the East China Sea involves such a variety of fields such shipping, fisheries, environment, science and technology, and maritime delimitation, etc., and China and Southeast Asian states have also established maritime cooperation at the bilateral and multilateral levels. China's maritime cooperation with neighboring states should focus on strengthening the overall strength of maritime cooperation, expanding the fields of maritime cooperation, and attracting more subjects to join in maritime cooperation.

1. Introduction

From the reform and opening up to the "21st-Century Maritime Silk Road" proposed by China in 2013, China has strengthened its external ties through the sea to an ever-deeper extent, and the vision of maritime cooperation has been more and more profound. China is adjacent to the East China Sea, the Yellow Sea and the South China Sea, the three marginal seas by the Pacific Ocean, and China's maritime cooperation with adjacent states is centered on each of these three seas. Becoming a maritime strong power is the goal of China's maritime development, and to realize this goal, it is necessary to deepen maritime cooperation based on current practices.

In this light, focusing on these three major sea areas and from the perspective of states, the present article sorts out the legal facts on China's maritime cooperation with adjacent states, and comments on the current and future legal practice of China's maritime cooperation with neighboring states. This article discusses China's maritime cooperation with South Korea (Part 2), Japan (Part 3) and Southeast Asian countries (Part 4) in order. Having recalled these legal facts, this article makes an analysis of the current situation and makes insights in Part 5. Then a conclusion is reached in Part 6.

2. China-ROK maritime cooperation in the East China Sea and the South Yellow Sea

China and the Republic of Korea established diplomatic relations in 1992, and since 1997 have established a consultation mechanism on the law of the sea at the level of divisions and bureau,

exchanging views on a wide range of law of the sea issues. The maritime cooperation between China and the Republic of Korea encompasses many aspects.

2.1 Cooperation in marine fisheries

2.1.1 Signing of the China- ROK Fisheries Agreement

Both Chinese and Korean fisherman have historically fished in the South Yellow Sea, although their economies are at different stages of growth. Chinese fishermen are more reliant on the South Yellow Sea's fisheries than Korean fishermen are. A draft fishery agreement between the Republic of Korea and China was agreed upon following 20 rounds of consultation between 1993 and 1998. The Fisheries Agreement between the Governments of the People's Republic of China and the Republic of Korea (hereafter "the China-ROK Fisheries Agreement") was signed by the two countries on August 3, 2000, in Beijing, and it became effective on June 30, 2001. Prior to the delineation of the exclusive economic zones, it is a temporary arrangement on fisheries-related concerns.

2.1.2 Content of the China-ROK Fisheries Agreement

According to Article 1 of the Agreement, China's and the Republic of Korea's exclusive economic zones (EEZs) are covered by the waters. Fishing access is granted reciprocally between the two states under Articles 2 to 6.

The waters within the two states' exclusive economic zones designated for temporary measures are outlined in Article 7 of the Agreement. Within these waters, the two states are required to adopt joint conservation and quantitative management measures for the wise exploitation and conservation of marine living resources in accordance with the decision of the China-ROK Joint Commission on Fisheries.

As a temporary measure and outside of the territorial waters of the two States, Article 8 of the Agreement creates a transitional water region between China and the Republic of Korea on the eastern and western sides of the waters. The exclusive economic zone system will be gradually implemented over a period of four years within these two transitional waters. The two states with exclusive sovereign powers will finally shift to their exclusive economic zones after four years.

The Agreement also addresses the upkeep of law and order during maritime operations, the handling of maritime mishaps, rescue in the event of a marine mishap, and scientific study on the preservation and prudent use of marine life resources. The China-ROK Joint Committee on Fisheries is created by Article 13, which meets once a year.

2.1.3 Implementation of the China-ROK Fisheries Agreement

The China-ROK Joint Fisheries Committee holds yearly meetings to encourage the implementation of the Fisheries Agreement upon its coming into effect. The 21st Annual Meeting took place in November 2021, during which the two parties arranged the third joint stocking and releasing as well as high-level fishery talks, resource expert group meetings, law enforcement talks, and two rounds of preparation talks. On November 11, 2022, the 22nd annual meeting took place. The two sides engaged in extensive consultations on crucial issues, such as plans for the other side to enter the fisheries in the management waters of the exclusive economic zones of the two states in 2023, upholding the lawfulness of marine operations, and conserving fishery resources, and ultimately came to an agreement and signed the minutes of the meeting.

2.2 Marine environmental cooperation

The Yellow Sea is one of the most polluted sea basins in the world, and China and the Republic of Korea have started working together to address the issue of marine environmental pollution. The Agreement on Environmental Cooperation between the Governments of the People's Republic of China and the Republic of Korea (hereafter "the China-ROK Environmental Cooperation Agreement") was signed by the two countries in 1993. Since then, the two countries have established the China-ROK Joint Committee on Environmental collaboration, which serves as the major forum for collaboration and technological advancement between them. Meetings of the Committee have been conducted yearly in both countries since 1994.

During their cooperation, the two states' main priority has been the control of transboundary pollution. The pollution of the Yellow Sea's waters was the focus of the 1997 China-ROK Seminar on Environmental Issues, which was convened by the two countries. As part of a 1998 agreement on collaborative research on the Yellow Sea environment, the State Environmental Protection Agency of China (SEPA) and the Ministry of Maritime Affairs and Fisheries of Korea also agreed to jointly survey the Yellow Sea's water quality that year.

2.3 Maritime delimitation negotiations

2.3.1 Claims to maritime jurisdiction by China and the Republic of Korea

China's maritime jurisdiction claims. China's 12-nautical-mile territorial sea is defined by the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, which was established in 1992. The Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf was adopted by China in 1998. It stipulates China's exclusive economic zone and continental shelf. China made a submission regarding the outer limits of the continental shelf beyond 200 nautical miles in a portion of the East China Sea to the Commission on the Limits of the Continental Shelf (CLCS) in 2012.

Korea's maritime jurisdiction claims. A 12-nautical-mile territorial sea system has been established by the Republic of Korea, with special provisions for specific areas that can be made by presidential decree, such as ROK's claim to only a 3-nautical-mile territorial sea in the Korea Strait. The Territorial Sea Act was first passed in 1977, later changed to the Territorial Sea and Contiguous Zone Act in 1995, and then again amended in 2017. The Exclusive Economic Zone Act, which established a 200-nautical-mile EEZ, was passed in 1996. In order to clarify Korea's continental shelf rights, the Seabed Mineral Resources Exploitation Act was passed in 1970, and the same year, Presidential Decree No. 5020 was also issued.

Conflict of maritime jurisdiction claims between China and Korea. Since China and the Republic of Korea's claims to the exclusive economic zone and the continental shelf overlap due to the proximity of the Yellow Sea and the East China Sea, which is less than 400 nautical miles apart, determining the maritime boundaries between the two countries is a challenging task.

China supports the use of the equitable principle in the delineation of the EEZ, whereas Korea supports the use of the equidistance concept. China supports the use of the equitable and natural prolongation principles in the delimitation of the continental shelf, and it does not employ a single line to separate the continental shelf from the exclusive economic zone. The Republic of Korea advocates the application of the equidistance principle in most parts of the Yellow Sea and the East China Sea, and the application of the natural prolongation principle in the direction of Okinawa^[1].

2.3.2 China-ROK Maritime Boundary Delimitation Negotiations

Since 1996, China and the Republic of Korea have had negotiations on the topic of maritime delimitation. The China-ROK maritime delimitation negotiations were officially launched in July 2014. The China-South Korea Maritime Boundary Delimitation Delegation held its first round of official negotiations in Seoul in December 2015. The second round of negotiations between the two states took place in Beijing in July 2019, confirming the pertinent agreement established since the negotiations began. There has not yet been a third round of negotiations between the two states.

3. China-Japan maritime cooperation in the East China Sea

3.1 Cooperation in marine fisheries

3.1.1 Signing of the China-Japan Fisheries Agreement

The two countries have long cooperated in the fishing industry. China and Japan first signed a civil fisheries agreement on April 15, 1955. Later, on August 15, 1975, following the normalization of diplomatic ties between the two countries, the two states signed an intergovernmental fisheries agreement. Japan took the initiative to suggest negotiations with China on the delimitation of the exclusive economic zone and make adjustments to the two states' fisheries relations in 1996, after the United Nations Convention on the Law of the Sea became operative for China and Japan.

Due to the differences between the two states on the delimitation issue and the sovereignty of the Diaoyu Islands, both sides agreed to shift the focus of the negotiation to the fishery issue^[2]. The Fisheries Agreement between the People's Republic of China and the State of Japan (hereafter the "China-Japan Fisheries Agreement") was signed by China and Japan in 1997 to establish a temporary agreement before delimitation following four years of negotiations.

3.1.2 Content of the China-Japan Fisheries Agreement

The Exclusive Economic Zones of the two States are covered by Article 1 of the Agreement, while Articles 2 through 6 outline the provisions for reciprocal access to fisheries between the two States. Article 7 of the Fisheries Agreement between China and Japan establishes interim measures in waters under the control of the flag State, much like the Fisheries Agreement between China and the Republic of Korea. The China-Japan Joint Commission on Fisheries was established by the two states in accordance with Article 11 and convenes once a year. Similar provisions are included in the Agreement for safety of operation and navigation, upholding maritime law and order, responding to maritime mishaps, rescuing mariners in need, and conducting scientific study on fisheries and the preservation of marine life.

3.1.3 Implementation of the China-Japan Fisheries Agreement

The China-Japan Joint Commission on Fisheries has had regular meetings since the China-Japan Fisheries Agreement went into effect and has since formed the China-Japan Marine Living Resources Expert Group and the China-Japan Fisheries Law Enforcement Working Talks Mechanism.

3.2 Marine environmental cooperation

A Japanese environmental delegation's visit to China in the 1970s marked the beginning of environmental cooperation between China and Japan. The Agreement on Cooperation in

Environmental Protection was signed by the governments of the People's Republic of China and Japan in Beijing in 1994. It established a China-Japan Joint Committee on Environmental Protection. The Committee met for the first time in December of 1994 and since then, various sessions have taken place to discuss water contamination. The Joint Communiqué on Environmental Cooperation between the Governments of the People's Republic of China and Japan for the 21st Century was signed by the two countries on November 26, 1998. The Joint Statement on Further Environmental Cooperation was released by the two states in 2007. Since 2016, the governments of China and Japan have committed to conduct joint research on marine litter.

3.3 Maritime Delimitation Consultations

3.3.1 Conflict of maritime jurisdiction claims between China and Japan

East China Sea maritime sovereignty was asserted by Japan. Japan passed Law No. 30, the Territorial Sea Law, on May 2, 1977. On June 14, 1996, Law No. 73 revised the law and changed the name to the Territorial Sea and Contiguous Zone Law. The Exclusive Economic Zone and Continental Shelf Law was passed on June 14, 1996 and it states that in the event that Japan and its neighboring states' exclusive economic zones or continental shelves overlap, Japan favors delimitation by a median line rather than the 200-nautical-mile line or the naturally occurring extension of the continental shelf. Japan filed its "Submission on the Outer Limits of the Continental Shelf in Seven Areas in Southern and Southeastern Japan beyond 200 Nautical Miles" to the CLCS on November 12, 2008, using Okinotori-no-Mori Reef as the delineation's starting point.

In the East China Sea, China and Japan's maritime jurisdictions overlap in certain locations, and like China and the Republic of Korea, China and Japan have different marine boundaries. Japan favors application of the equidistance principle and delimitation with a single border when defining the exclusive economic zone and continental shelf. The Okinawa Trough, rather than the median line, should be used as the boundary between the continental shelves of China and Japan. The exclusive economic zone and continental shelf should be delineated independently. China advocates delimitation in accordance with equitable principles and natural prolongation.

3.3.2 China-Japan Consultation on Maritime Delimitation

Since 1980, China and Japan have held a number of intergovernmental expert-level talks or consultations on the issue of the continental shelf and joint development in the East China Sea, but no substantive results have been achieved^[3]. The "China-Japan Consensus of Principles on the East China Sea" was not achieved until June 18, 2008. There are three sections to the Consensus. In the first section, "Cooperation between China and Japan in the East China Sea," the two countries decided to work together without regard to their respective legal positions during the interim period before the establishment of a demarcation line. The second section is titled "China-Japan Understanding on Joint Development in the East China Sea," and it stipulates that the two nations will define a joint development zone, choose joint development sites within the zone, and maintain consultations in order to realize joint development in other East China Sea regions. The third section is titled "Understanding on the Participation of Japanese Legal Entities in the Development of the Chunxiao Oil and Gas Fields in Compliance with Chinese Laws," and it outlines how Japanese corporations will contribute to the expansion of the current Chunxiao oil and gas field in compliance with Chinese laws governing cooperation in the international exploitation of marine petroleum resources.

4. China's maritime cooperation with Southeast Asian states and ASEAN in the South China Sea

Vietnam, the Philippines, Malaysia, Brunei, and other nations have all made territorial claims to the Spratly Islands in the South China Sea since the 1970s. Vietnam, the Philippines, Malaysia, Brunei, and other nations have all made maritime jurisdictional claims as well. As a result, there are several interrelated issues in the South China Sea including marine delimitation, island and reef status, and territorial sovereignty. Conflicts at sea and maritime cooperation between China and its neighbors have become entangled. China collaborates maritimately on a bilateral and multilateral basis with neighboring Southeast Asian nations in the South China Sea.

4.1 Bilateral level

4.1.1 China-Vietnam maritime cooperation

4.1.1.1 Maritime delimitation in the Gulf of Tonkin and cooperation in the Gulf of Tonkin

The agreement between the People's Republic of China and the Socialist Republic of Viet Nam on the delimitation of the territorial sea, the exclusive economic zone, and the continental shelf of the two states in the Gulf of Tonkin (hereafter "the Gulf of Tonkin Delimitation Agreement") was signed in 2000 and came into effect in 2004. According to the Agreement, China and Vietnam's territorial sea, exclusive economic zone, and continental shelf in the Gulf of Tonkin will be divided into 21 boundary points and 20 straight lines. The two states will also gain roughly the same amount of sea, resulting in a delimitation that is fair to both parties. This is the first and so far the only maritime boundary between China and its neighboring states.

In accordance with the delimitation agreement, the two countries simultaneously signed the Agreement on Fisheries Cooperation in the Gulf of Tonkin, which governs fisheries cooperation between them. The two countries held discussions in December 2021 about negotiating and signing a new agreement on fisheries cooperation in the Gulf of Tonkin.

On the issue of hydrocarbons, the two states initiated cooperation in the exploration and exploitation of transboundary oil and gas formations in the Gulf of Tonkin in 2005, and the oil companies of the two states signed the Agreement on Cooperation in Oil and Gas in the Gulf of Tonkin.

4.1.1.2 Signing of the Agreement on Basic Principles Guiding the Resolution of Maritime Issues between China and Viet Nam

The Agreement on Basic Principles Guiding the Resolution of Maritime Issues between China and Viet Nam was signed in 2011. The two parties decided to settle maritime disputes gradually and methodically, tackling the less complicated concerns first. While actively discussing the cooperative development of the area, steady progress will be made in the discussions on the delimitation of the marine area outside the mouth of the Gulf of Tonkin. Both parties will vigorously develop collaboration in less delicate maritime fields such as catastrophe mitigation and prevention, marine environmental protection, marine scientific research, and maritime search and rescue. The goal is to increase confidence between parties and establish the right circumstances for dealing with more complicated problems. In March 2015, the China-Vietnam Maritime Joint Development Working Group held in-depth consultations in Da Nang, Vietnam, on the important consensus between the two leaders and the Agreement on Basic Principles Guiding the Resolution of Maritime Issues between China and Vietnam.

4.1.2 China-Philippines maritime cooperation

Relations between the two countries were at a standstill when the Philippines unilaterally filed the arbitration lawsuit involving the South China Sea. After Duterte took office in June 2016, ties between China and the Philippines improved. A bilateral consultation mechanism on the South China Sea was established in January 2017 by China and the Philippines, reaffirming that territorial and jurisdictional disputes should be settled peacefully. The mechanism includes three working groups on political and security issues, fisheries issues, and marine scientific research and environmental protection, as well as six rounds of negotiations that must take place by 2021. In November 2018, the two states signed a Memorandum of Understanding on Cooperation in Oil and Gas Development, and in August 2019, they set up an Intergovernmental Joint Steering Committee on Oil and Gas Cooperation and an Inter-enterprise Working Group.

4.1.3 China-Malaysia Marine Cooperation

China and Malaysia's collaboration in the marine transportation sector is well-established thanks to Malaysia's highly developed maritime transportation sector. The Maritime Transport Agreement between the Governments of the People's Republic of China and Malaysia was signed on September 9, 1987, and it provides that each party shall accord most-favored-nation treatment to the crews and cargoes of the other party.

The Agreement on collaboration in Marine Science and Technology between the Governments of the People's Republic of China and Malaysia was signed in 2009 as a means of fostering collaboration in this area, which covers a wide range of areas such as marine policy, marine management, marine ecological and environmental protection, marine scientific research and investigation, marine disaster prevention and mitigation, and exchange of marine information.

4.2 Multilateral level

The platform of ASEAN is primarily used by China for its multilateral maritime cooperation in the South China Sea. China fully renewed or established diplomatic ties with ASEAN in the 1990s. The Partnership of Good Neighborliness and Mutual Trust for the 21st Century was founded by the two parties in 1997. Following that, the ASEAN Regional Forum was primarily used by the two parties as a forum for cooperation. The Declaration on the Conduct of Parties in the South China Sea (DOC), the first political agreement between China and ASEAN governments regarding the South China Sea problem, was signed in 2002 by China and ASEAN. The South China Sea dispute is handled by all parties in accordance with the fundamental guidelines and accepted standards established by DOC. The "2+7" framework of cooperation was developed by China and ASEAN in 2013, during the 16th China-ASEAN Leaders' Summit, and marine cooperation was one of the seven major areas of collaboration. The Framework Plan for International Cooperation in the South China Sea and its Surroundings (2016-2020) was published in 2016 by the State Oceanic Administration of China. This strategy hasn't been changed yet.

5. Analysis of the current situation and insights

On the whole, China has established a legal mechanism for maritime cooperation with neighbouring states, which is characterized by a large number of states, a wide range of fields and the full use of both the bilateral and multilateral dimensions.

First, it covers a large number of states. China attaches great importance to friendly and cooperative relations with its neighbours, and pursues a policy of "keeping good relations with neighbours and keeping neighbours as companions" in its peripheral diplomacy; the implementation

of the policy of "good-neighbourliness, peace and prosperity" is one of the main focuses of China's diplomacy^[4]. China has basically established maritime cooperation relations with all neighboring states and achieved fruitful results in legal practice. Secondly, it covers a wide range of fields, and the objects of China's maritime cooperation with neighboring states involve many fields such as economy, science and technology, culture, resources, maritime rights and interests, dispute settlement, etc., so as to promote the development of the maritime cause of China and its cooperating states in an all-round way. Thirdly, it makes full use of both the bilateral and multilateral levels, not only establishing characteristic bilateral cooperative relations in accordance with the national conditions of different states, but also giving full play to the role of multilateral cooperation mechanisms and promoting intra-regional maritime cooperation.

However, there are also obstacles and challenges to China's maritime cooperation with neighboring states. The fact that there are maritime jurisdiction disputes or territorial sovereignty disputes between China and its neighboring states in different maritime areas has hindered mutual trust among states, and the existing maritime cooperation in the periphery rarely involves disputed areas, making it difficult to put into effect the principle of "setting aside disputes and jointly developing", which has been advocated for many years by the Chinese side^[5]. There is a lack of substantive arrangements for cooperation in less sensitive areas, and some cooperation mechanisms are stagnant and not functioning as they should. In the face of this problem, China should, first, make further substantive arrangements in those areas of maritime cooperation in which it is already involved and for which it has an institutional basis, and secondly, it can involve more subjects, such as public bodies and private organizations, in maritime cooperation and mobilize the forces of civil society and the community.

In the Yellow Sea and the East China Sea, China, the Republic of Korea and China and Japan have accumulated some practical experience in maritime cooperation, and multilateral cooperation among the three states has been under way for a long time. In view of the close geographic proximity of China, Japan and the Republic of Korea, the similarity of maritime issues and the need for cooperation in the governance of the Yellow Sea and the East China Sea, China, Japan and the Republic of Korea should strengthen the overall strength of maritime cooperation. The three states should construct a diversified mechanism for maritime cooperation and establish a consultative platform in the maritime field^[6].

In the field of the South China Sea, China and ASEAN should accelerate the construction of maritime connectivity and reasonably expand the field of maritime cooperation, for example, China and ASEAN states should strengthen cooperation in maritime tourism at a time when restrictions on the entry and exit of citizens have been completely abolished. In terms of the main body of maritime cooperation, large maritime provinces should be vigorously supported to participate in maritime cooperation according to the advantages of maritime resources and maritime industries in different provinces^[7].

6. Conclusion

China's maritime cooperation with adjacent states has yielded fruitful results. It covers a large number of states, a wide range of fields and it makes full use of both the bilateral and multilateral levels. China's maritime cooperation faces obstacles and challenges as well. It can cope with these challenges by making further substantive arrangements, involving more subjects and accelerating the construction of maritime connectivity.

References

- [1] Li Jun, Wang Chuanjian, "Research on China-ROK Neighboring Maritime Rights and Interests", in *Pacific Journal*, No. 12, 2010, p. 77.
- [2] Pan Peng, Cheng Jiahua, Li Yan, "An overview of the China-Japan fisheries agreement", in *Chinese Fisheries Economics*, Vol. 6, No. 1, 2015, p. 18.
- [3] Yao Ying, "Exploration of the Judicial Path for the Settlement of the East China Sea Dispute between China and Japan", in *Contemporary Law Review*, No. 3, 2011, p. 26.
- [4] Xu Heyun, "Achievements and Prospects of China's Marine International Cooperation in the 40 Years of Reform and Opening Up," in *Journal of Boundary and Ocean Studies*, No. 3, 2018, p. 21.
- [5] Xu Heyun, "Achievements and Prospects of China's Marine International Cooperation in the 40 Years of Reform and Opening Up," in *Journal of Boundary and Ocean Studies*, Vol. 3, No. 3, 2018, p. 24.
- [6] Wang Lu, "China-Japan-South Korea Ocean Cooperation under the New Situation of Global Ocean Governance: Opportunities, Challenges and Paths", in *Journal of Ocean University of China (Social Sciences)*, Vol. 6, No. 8, 2022.
- [7] Ning Ling et al. *Research on China-ASEAN Maritime Cooperation Toward the 21st Century Maritime Silk Road*, China Economic Press, 2019 edition, pp. 249-250.