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翻译

TRANSLATIONS

Volume 1, Issue 3

The Legal Struggle for China's Maritime Power: Strategy, Sovereignty, and Enforcement

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The Legal Struggle for China's Maritime Power: Strategy, Sovereignty, and Enforcement

United States Naval War College
China Maritime Studies Institute
中国海事研究所

FROM THE DIRECTOR

The Legal Struggle for China's Maritime Power: Strategy, Sovereignty, and Enforcement contains a curated collection of open-source Chinese-language journal and newspaper articles originally published in the People's Republic of China (PRC). Translated by the China Maritime Studies Institute (CMSI) over the last thirteen years, the 20 articles contained in this volume are structured around how the PRC employs legal frameworks, strategies, and enforcement to safeguard its national maritime rights and interests. The volume progresses thematically from the highest level of legal authority to domestic legal strategy and concludes with practical enforcement.

- ***Part I: Foundations in International Maritime Law: China and UNCLOS*** establishes the historical context of China's participation in international law, focusing on the debates and compromises of UNCLOS III, where China consistently advocated positions favoring its sovereignty claims, such as the 12 nautical mile territorial sea and legal retention of the continental shelf.
- ***Part II: Domestic Legal System: The Pursuit of Comprehensive Maritime Law*** addresses the fragmentation of China's existing legal structure, arguing for the urgent formulation of a centralized Maritime Basic Law or Ocean Defense Law to legalize its strategic objectives and provide a constitutional basis for administrative actions.
- ***Part III: Sovereignty Claims, Legal Strategies, and Contestation*** then delves into the legal doctrines and diplomatic struggles related to disputed waters, examining the PRC's position on "historical rights" and the use of straight baselines for mid-ocean archipelagos like the Paracels and Spratly Islands, and the country's rejection of third-party arbitration, such as the China-Philippines case.

The remaining sections focus on the implementation of these legal and strategic policies.

- ***Part IV: Law Enforcement Agencies, Operations, and Civilian Mobilization*** details how China equips and organizes its forces, including the legal powers granted to the China Coast Guard Bureau (CCGB) through the draft Coast Guard Law, and the imperative to improve the legal basis for mobilizing civilian vessels and wharves for national defense and rights protection operations.
- ***Part V: Legal Analysis of Force, Self-Defense, and Jurisdiction*** rounds out this volume by analyzing specific legal ambiguities concerning the use of force in maritime military actions, distinguishing between prohibited military force and regulated law enforcement

force, and exploring jurisdictional issues related to overseas military bases and the role of the Maritime Militia in legal warfare.

This organizational approach demonstrates how China moves from international legal diplomacy to domestic legislation and, ultimately, to on-the-scene legal enforcement and strategic confrontation, all unified by the goal of safeguarding national interests and security.

About the China Maritime Studies Institute (CMSI) Translation Vault Series

Each volume in the series is loosely organized by theme, featuring articles that address strategic, operational, and tactical dimensions of the PRC's maritime military affairs. Selection of articles for inclusion in this volume was guided by operational or policy relevance at the time of translation, with some articles anticipating key shifts in Chinese policy or doctrine, and others offering rare glimpses into both official narratives and unofficial discourse.

Though historical in origin, many of these sources remain timely. Readers may uncover enduring patterns, early indicators of current trends, or fresh perspectives on the PRC's long-term military maritime ambitions. CMSI will continue publishing volumes in this series until its archive of previously translated materials is fully released.

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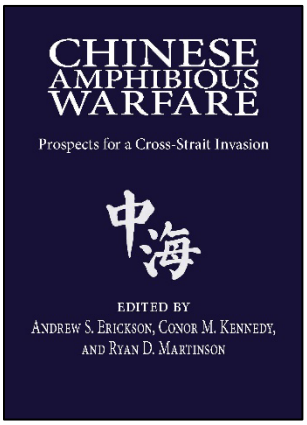

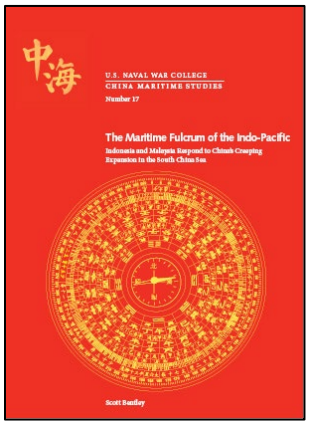

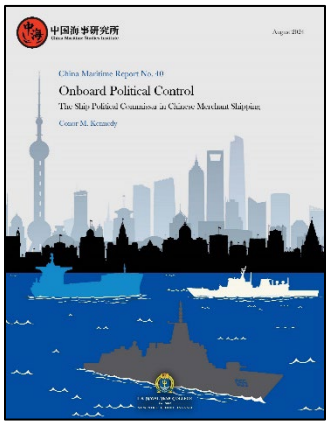

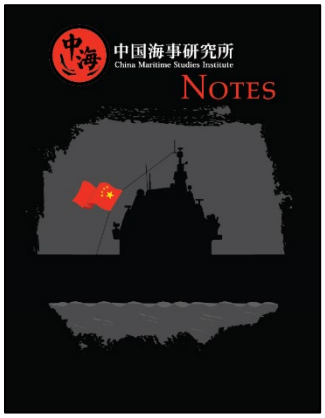

Part I: Foundations in International Maritime Law: China and UNCLOS

This section establishes the historical and doctrinal context by focusing on China's participation in and interpretation of the foundational global maritime legal framework, the United Nations Convention on the Law of the Sea (UNCLOS).

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From Yan'an to the United Nations: The Diplomatic Career of Ling Qing[1]

Ling Qing[2]

Chapter 7. The Third United Nations Convention on the Law of the Sea

The Third United Nations Convention on the Law of the Sea regulated the redistribution of member states' marine natural resources and established a new order over the world's oceans. We should note the progressiveness and complexity of the new law of the sea, and [consider] how the 200 nautical mile economic zone should be evaluated.

In 1973, I represented China at the United Nations General Assembly (UNGA). I attended the UNGA-elected Third United Nations Convention on the Law of the Sea (UNCLOS III) meeting of the governing bodies' members. As the deputy head of the Chinese delegation in 1974, I went to Caracas, Venezuela for UNCLOS III, where the first discussions on substantive issues related to the law of the sea took place. In 1976, I once again served as the head of the Chinese delegation at the summer conference held in New York. Thus I have altogether partaken in three UN conventions on the law of the sea.

When the 1973 United Nations Seabed Committee (the predecessor of UNCLOS) concluded, UNCLOS III officially began. UNCLOS III assembled for nine consecutive years until 1982, with two sessions meeting every year, one in New York and one in Geneva. During the period of the United Nations Seabed Committee and the long years that followed, the Ministry of Foreign Affairs directed a few comrades who were international law professionals from the Department of International Treaties and Law[3] (国际条法 司) and some comrades from the State Oceanic

[1] 凌青 [Ling Qing], 从延安到联合国：凌青外交生涯 [*From Yan'an to the United Nations: The Diplomatic Career of Ling Qing*], (Fuzhou: Fujian People's Press, 2008), 158-170.
[2] Ling Qing is a former PRC diplomat.
[3] Before the Cultural Revolution there was a department for international affairs and one for treaties and law. During the Cultural Revolution these were incorporated into the Department of American and European Affairs; after China regained its United Nations seat, elements of the Department of American and European Affairs were pulled out to form the Department of Treaties and Law. As work developed, it reverted to the Departments of International Affairs and Treaties and Law.

Administration to work on UNCLOS. I had a part-time cameo role in this project, not being involved in it from beginning to end.

China's participation in UNCLOS was historically significant, as it marked new China's [i.e., the PRC] first participation in international legislation. The United Nations has several major functions: one is to protect global peace and security; a second is to stimulate each country's economic and social development. A third responsibility is to enforce international legislation, certifying the new principle that all states must jointly respect international law and safeguard the stability of the international order. A fourth objective is to advance each nation's mutual understanding, camaraderie, and cooperation. Among the aforementioned major functions, international legislation is one that people frequently overlook. Yet it is extremely important, because in the event that a law is passed, all nations must equally comply with it by accepting moral responsibility and being subject to actual constraints. People often fixate on the spectacles of the United Nations Security Council, but fail to take note of the personnel who painstakingly and quietly work on international legislation. The UN Security Council is indeed a focal point for public opinion due to the host of hot-button international affairs that are sure to be reviewed there. The Security Council's resolutions, however, inevitably fall under the influence of great powers: if a resolution does not benefit them, they either argue for it not to pass, or allow it to pass but prevent it from being carried out. In general, drafted international legislative documents are first discussed at the sixth (international law) committee or at an ad-hoc committee meeting, then adopted at UNGA. UNGA has implemented a system in which each member state may cast one vote and the great powers lack veto power. If a draft has passed, they could opt not to sign it, although they would have to take public opinion and moral restraints into consideration. Were such a law to gain momentum, the dissenting great power would be hard-pressed to act alone. If, during discussions, a great power exerts pressure on a small power (something that is difficult to avoid), it not only costs time and energy, it does not even necessarily yield results. This is because developing countries tend to stick together as part of the Group of 77 (G-77), rather than acting alone. Doing so enables them to collectively withstand certain kinds of pressure. Consequently, the question of how to exert the influence of a country's foreign policy during international legislative proceedings is truly no small matter.

I find the law of the sea to be among the UN's essential legislative duties. When we initially entered the UN we were prudent about taking part in all activities. While participating in the major institutions, we would often keep our distance from the work of more general organizations. But in early 1972, China decided to join the UN Seabed Committee because it realized that this was not going to be a mere talk shop. Rather, it would involve the formulation of an international treaty affecting the interests of all states.

Why did the principles for regulating marine resources and other rights/interests gain importance? These concerns go hand in hand with changes in the situation around the world and the progress of science and technology. Over the course of mankind's evolution, we depleted large amounts of land-based resources, among which were a number of critical non-renewable

resources such as oil, natural gas, and several mineral resources. Take oil for example: in the 1950s and 1960s, a barrel of crude oil cost a few US dollars, yet after the Yom Kippur War in 1973[4] the Organization of the Petroleum Exporting Countries (OPEC) raised oil prices such that a barrel of crude cost a little over $11 USD. This modest price increase caused hardships for the developed economies of the West. Today the price of a barrel of crude has jumped up to almost $100 USD and may even rise again. Even though [it is true that] the US dollar has depreciated a lot, this still shows that there are limits to the use of non-renewable land-based resources.

As the population increases, development accelerates, resource consumption rises, and humanity must either seek alternatives or take on an unbearable burden. Daily exhaustion of land-based resources has led people to have no choice but to further set their sights on the seas. Advancements in science and technology also increase the possibilities of utilizing marine resources. Oceans cover two-thirds of the earth's total surface area; thus the richness of the resources they contain is unfathomable. At the same time, UNCLOS covers regimes for such things as straits and archipelagos, which are closely related to the strategic interests of great powers.

After World War II, maritime powers rushed to seize maritime resources. In September 1945, the US government made an announcement regarding its continental shelf in which it stated that the natural resources within the seabed of the continental shelf along its coast were for American use. Later it made a proclamation about fishing along the coast, declaring that the US had demarcated fishing zones it would control and administer in certain areas of the high seas. Subsequently, competition between states over marine resources intensified. From the 1950s through the 1970s, a succession of Latin American countries declared 200 nm territorial seas or patrimonial seas (承袭海) out to 200 nm. Disputes between states over the extent of territorial seas or maritime rights were increasingly put on the agenda in international fora

The UN held three UNCLOS meetings against this postwar backdrop. UNCLOS I took place in 1958, a time when only a few Asian and African nations had achieved independence, and only 80 countries participated. The maritime great powers dominated these meetings, passing four treaties: the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas, and the Convention on the Continental Shelf. Before this, maritime law chiefly comprised customary law, but these four treaties caused maritime law to shift towards statutory law.

Because these four treaties fundamentally represented the interests of the maritime great powers, the developing nations pushed for and succeeded in holding UNCLOS II in 1960 as an attempt to

[4] Author mistakenly calls this the Third Arab-Israeli War.

solve issues over the breadth of territorial seas and the boundaries of fishing zones. But this meeting did not manage to achieve a consensus.

In 1967, the motion "on the question of the peaceful use of the seabed beneath the waters beyond the limits of state jurisdiction, and the use of these waters and the resources therein for the benefit of humanity" was raised for the first time at the twenty-second assembly in Malta. The proposal called for the formulation of a treaty declaring that the resources within the seabed beneath waters outside of a state's jurisdiction are the common inheritance of mankind and should be used exclusively for peaceful purposes. Resource development would be supervised and managed internationally. Although the maritime great powers opposed the proposition, it garnered support from the majority of developing nations. The assembly finally passed a resolution to form the "Committee to Study the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction," or simply the "Seabed Committee". The Seabed Committee spent two years drafting an international legal system for the ocean floor, and secured its foundation at UNCLOS III.

The resolution was finally passed at the twenty-fifth assembly in 1970, and a decision was made to hold UNCLOS III in 1973. This was the legal basis on which UNCLOS III convened. UNCLOS III spent nine years determining the list of items to include and the wording of each clause. In December 1982, the United Nations Convention on the Law of the Sea was signed by 117 countries (including China) at a meeting of global diplomatic representatives in Caracas. The treaty went into effect in 1994, and China's National Standing Committee ratified it in 1996.

The average person not only has trouble comprehending legal matters, but is also reluctant to become involved in them. Yet in order to understand the content of the Convention on the Law of the Sea, it is necessary to explain some of the main topics covered in the meeting.

The system of maritime rights/interests established by this maritime law covered a few important issues:

Ownership Rights and a Regime for Developing Seabed Resources in International Waters

Prior to this meeting of UNCLOS, the major maritime powers advocated "freedom of the high seas." Or, in other words, whoever was able could exploit maritime resources. However, the new law of the sea conformed to the spirit of "peaceful use of the seabed and the ocean floor beneath the high seas beyond the limits of national jurisdiction, and the use of these resources as the common inheritance of mankind." The new law of the sea stipulated the creation of an international seabed authority to take up development work in certain special regions. It also stipulated that "all of the rights and privileges over resources within these areas belong to the entirety of humanity, the authorities will represent all of mankind in carrying out the law, and no country will claim or enact sovereignty or the right to sovereignty over any section of these zones or their resources." To a certain extent, these regulations restrained the maritime powers from monopolizing authority.

200 Nautical Mile Exclusive Economic Zone

The authorization of the exclusive economic zone (EEZ) was a pioneering creation of this session of UNCLOS, and it became a central theme of the meeting. Previous customary laws and UNCLOS I and II were missing this concept. It provided that a coastal state has the right to establish an EEZ that does not exceed 200 nautical miles from the baseline of its territorial seas; coastal states possess sovereign rights over the living and nonliving resources within their EEZs; within this zone, other states may enjoy the rights of navigation, overflight, and of laying electric cables and pipelines.

A few Latin American countries were the first to bring up the 200 nautical mile economic zone. This was to prevent the maritime powers from fishing in their near seas and to protect their own fishing industries. For example, Japan overfished tuna, catching up to several hundreds of thousands of tons annually and ranking as number one in global tuna fishing. At number two, the United States caught tens of thousands of tons. As a result of Japan and the US fishing in Latin America's near seas, some Latin American nations wanted to carve out a large sphere of sovereignty and jurisdiction over the seas. In the beginning they even suggested a 200 nautical mile mark for territorial seas, and it wasn't until after compromise on all sides that this became the concept of an economic zone. Once the economic zone idea was implemented, however, it was no longer just a problem for fishing rights, but also included all marine resources.

Breadth of Territorial Seas

The breadth of territorial seas has historically been a key point of contention in the law of the sea. Under customary law, the breadth of territorial seas was ordinarily three nautical miles. In that period, maritime powers dominated the customary law of the sea and were naturally unwilling to allow territorial seas to be too broad because it hindered their freedom of navigation as well as their ability to do as they pleased at sea. At UNCLOS II expansion of the breadth of territorial seas had already become a kind of trend, for although the meeting did not reach a consensus on this, support for a 12 nautical mile territorial seas predominated.

At this meeting, in order to get their way on the 200 nautical mile economic zones, developing countries consented to the proposal raised by maritime great powers that territorial seas could be 12 nautical miles, provided they allowed for the principle of freedom of passage through straits. The relevant question here is that of freedom of passage through straits. According to statistics, after territorial seas were expanded to 12 nautical miles, over 116 straits worldwide were not wide enough to reach 24 nautical miles and were located in the territorial seas of coastal states. Among these were over 30 straits regularly used in international navigation, such as the Straits of Malacca (8 nautical miles at its narrowest point), the Mandeb Strait (10 nautical miles at its narrowest point), and the Strait of Gibraltar (7.5 nautical miles at its narrowest point). Therefore,

freedom of passage through straits was not only of interest to the maritime great powers, but an issue of common concern for many states in the world. On the one hand, the treaty provided that "coastal states enact sovereignty and jurisdiction over all of their straits," but on the other it stated that "all shipping vessels and aircraft have the 'right of transit', [and] no exercise of this privilege may impede said right." This ruling looked after the interests of coastal states and other states, especially the interests of the maritime great powers.

Continental Shelf

The continental shelf is a geographical concept that broadly refers to the gently sloping area of the ocean floor that extends from the coast toward the sea until it reaches the periphery of the continental margin. It originated in 1945 when the US president made a declaration regarding the continental shelf. Before UNCLOS III, over 80 states published legal documents related to their continental shelves, commonly limiting the scope to waters out to a depth of 200 meters. There were two views regarding the continental shelf question. One was that of the countries that wanted to lengthen their continental shelves based on natural extensions, such that their continental shelves could stretch to the outer limits of the continental margin. If the continental margin's outer rim fell short of the 200 nautical mile mark, it could be extended to 200 nautical miles. Landlocked countries, states with unfavorable geographical conditions, and Japan asserted that the continental shelf concept should be abrogated because there was already a 200 nautical mile economic zone regime. In the end, the treaty confirmed the continental shelf principle; coastal nations' continental shelves included all of the natural extension supported by their land outside of their territorial seas, and included the seabed and ocean floor of the outer edge of the continental margin. If this did not reach 200 nautical miles, then it could be elongated to do so. There were further guidelines for developing the shared profits generated from the part of the continental shelf extending beyond 200 nautical miles.

China has a wide continental shelf, and therefore retention of the continental shelf regime was very much in China's interest. The Chinese delegation carried out a task of great importance in striving to uphold the continental shelf principle. Now the ideas of the economic zone and the continental shelf have merged, leaving us with some room to negotiate with neighboring countries. China is separated from Japan by less than 400 nautical miles, which means that our economic zones overlap. Japan maintains that a boundary should be drawn down the center, but China disagrees due to its continental shelf interests. We need to take all of these factors into consideration. This is the main context of Japan and China's present-day maritime disputes.

Archipelagos and the Island System

During the meetings, some archipelagic states including Indonesia and the Philippines proposed principles and concepts relevant to archipelagic states. These concepts held that archipelagic states would use islands and dry reefs connected to their borders to form a baseline for their territorial seas, special economic zones, and continental shelves. The waters that the baseline enclosed would be considered the archipelagic nation's waters, and the seabed and ocean floor

beneath these waters as well as the airspace above, along with the resources contained therein, would fall within the scope of the archipelagic country's sovereignty. Foreign shipping vessels would be permitted to pass through these waters without fear of being harmed. As a result, the archipelagic states' so-called "blue territory" (蓝色国土) would be vastly expanded. The Convention finally confirmed the "archipelago principle", and made a number of concrete provisions for drawing baselines.

Aside from the major concerns described above, other important provisions directly affecting the interests of participating states included the regime for managing the seabed in international waters, principles for demarcating economic zones and continental shelves between countries adjacent to and opposite from one another, and the creation of a regime to mediate disputes.

I was not mentally prepared to participate in UNCLOS because at the time I was not in charge of tasking within the department. In the summer of 1976, Qiao Guanhua sought me out to serve as the head of the Chinese delegation at that year's UNCLOS meeting. I said I was not fit for the job, for I was still a department-level cadre (司级干部) and I feared that I was ill-suited to take on the role of head of the delegation. Chen Guanhua immediately got in touch with Deputy Minister of Foreign Trade Chai Shufan (later the Minister of the First Department of Machine-Building) and appointed him head of the delegation. I was made deputy head of the delegation which of course meant that I took the lead on the substantive work. I had never before researched the law of the sea. By then China had participated in the Seabed Committee for two years. Our side had already submitted working papers with responses (对策) to each issue, and had already openly explained our positions in meetings and other fora. I just needed to do follow up work. Therefore when I accepted this duty I did not feel any pressure.

This meeting focused on the question of a 200 nautical mile territorial sea or economic zone. Around the time that the Chinese delegation participated in the Seabed Committee, the People's Daily published an editorial entitled "Support Latin American Countries' 200 Nautical Mile Maritime Rights, Oppose the Superpowers' Maritime Hegemony," which linked support for 200 nautical mile maritime rights to countering hegemony." My delegation's working papers also expressed a supportive stance, and I myself felt that backing this point was the correct move. As I recall, I had no reservations when these working papers were circulated among the department leaders and members. Additionally, China established diplomatic relations with Latin American countries at that time, with each side making clear its position on this subject. There was one instance when discussing a report on the founding of diplomatic ties with a Latin American country, someone in the department noted that the drafted document did not bring up this point, and the department leader said, "I want this statement [included]." We later incorporated it into the draft.

At the Caracas meeting, one of the smaller developing countries sent me information that described in detail the distribution of profits that each country would receive after the 200 nautical mile economic zones were instituted. Judging from these calculations, it was evident

that the countries to benefit the most were maritime great powers such as the United States, the USSR, Japan, the United Kingdom, Canada, and Australia, as well as a few developing nations with extensive coastlines. The small country in question was one with poor geographical conditions. Thus its purpose in providing me this information may perhaps have been to remind China not to unconditionally and fervently support the 200 nautical mile zone. It may also have aimed to encourage China to stand up and publicly oppose the 200 nautical mile zone. Both this information and the state of affairs at the meeting itself inspired me to begin reconsidering just what would be the most reasonable way for China to handle the 200 nautical mile stipulation.

In 1976, I once again was directed to serve as the head of the delegation at the Convention on the Law of the Sea held in New York. At this meeting I was thinking about whether or not I should express new thoughts on the 200 nautical mile provision and inquire about the suggestions of developing countries such as Algeria or Venezuela, both of which found the 200 nautical mile provision disadvantageous yet had no choice but to accept it if they wanted to ensure solidarity in the group of developing nations.

Afterward I revisited this issue in a discussion with the Chinese delegation. Of course, since we only had this conversation once, it was not possible to reach a conclusion. Some comrades thought it not unreasonable to raise this issue, but there were also others who believed I was wavering in my politics and not resolute in supporting the 200 nautical mile rule. After 1976, I left the frontline of the battle over the law of the sea, and gave this problem no further thought. In the 1980s the Convention on the Law of the Sea concluded, having reached agreement on a series of issues. Each state's government then needed to officially approve it. When that happened I once again took the liberty of reporting to the leadership about whether China might retain certain reservations regarding the 200 nautical mile economic zone, but by then this was a belated effort. China clearly could not suddenly change tack without preconditions (无条件) and after having given high profile support [for the 200 nm zone] for more than a decade. It would have been tough for any leader to make this kind of decision.

In retrospect, the new law of the sea opposed the maritime powers' practice of hegemony at sea, and this indeed was a positive result. For example, the provision that seabed resources in international waters are mankind's common inheritance can prevent maritime powers from possessing and exploiting the resources of the high seas at will. Moreover, the 200 nautical mile economic zone regulation can protect certain developing coastal states' natural marine resources from forceful seizure by maritime powers.

Furthermore, numerous other principles safeguarding the sovereignty of coastal states are in the interest of developing countries. It is a rare, seldom seen [example of a] maritime law formulated largely by small and midsize states. China was correct to take the policy of fully endorsing the new law of the sea.

The key point was our response to the 200 nautical mile economic zone. Because it was a move suggested by the Latin American developing countries, China offered general support, which I should also say was the proper thing to do. But our views differed, and the truth is we did not deeply consider the effect [of this regime] on China's own interests.

First of all, if one views the 200 nautical mile economic zone as representing the interests of all developing countries then nearly all third-world nations would be in favor of this policy, which does not mesh with reality. Likewise, [if we] regard support for a 200 nm economic zone as an integral plank in [our] opposition to superpower maritime hegemony, then it seems this would imply that setting up a 200 nm economic zone would absolutely not be in the interest of the superpowers, and therefore they would oppose it to the last. This does not comport with the facts either. The fact is that during UNCLOS the developing countries approached this issue with different interests at stake and therefore split into two major factions: those with long coastlines, especially the larger and mid-sized countries, which consistently supported the 200 nautical mile economic zone; and the opposing states that were landlocked or had unfavorable geographic conditions (e.g., a short coastline or one that did not project outward). The second faction drew developed countries with similar geographic endowments into their coalition and engaged in negotiation with the faction favoring the 200 nm economic zone. This is because if one were solely to rely on the principle that the high seas' resources were the common inheritance of mankind, then states theoretically have the right to share the resources within the high seas outside of the 12 nautical mile territorial seas. If the 200 nautical mile economic zone were to be established, then the resources outside of the 12 nautical mile mark and within the 200 nautical mile area would completely belong to coastal states alone, and the states that have unfavorable geographic conditions or are landlocked would get nothing. The two groups mentioned above formed a single coalition and negotiated with the coalition of coastal states, which included developed and developing countries. After a long period of negotiations, both sides made concessions, and on the condition that the landlocked and geographically disadvantaged countries accept the terms of the 200 nautical mile economic zone, the coastal states allowed them to make use of the "appropriate part of the surplus" of an economic zone's living resources. Here the provision was explicitly limited to living resources, and did not include the more significant resources of the seabed and ocean floor. Moreover, among these living resources, they were limited to take only an"appropriate part of the surplus." Obviously, even if you were to disregard the developed countries as a factor, the developing coastal states would still be taking advantage of landlocked states and states with unfavorable geographic conditions.

The 200 nautical mile zone is clearly not inimical to the interests of the superpowers. Data showed that with the founding of a 200 nautical mile economic zone, the United States' 200 nautical mile economic zone would be much larger than many other countries because the US is bounded by the ocean on three sides, has a very long coastline, and possesses Alaska, Hawaii, and Guam, which allow it to carve out large swaths of the seas on all sides to form its special economic zone. The USSR slightly differs from the United States, but its economic zone is also

sizeable. This is why at the Caracas conference the United States and the USSR did not oppose the 200 nautical mile economic zone, and why they placed the focus on features such as the system of exploring the ocean floor and the freedom of transit between straits.

Certainly, the superpowers have even more interest in freedom of the seas, which allows them to use their imposing strength to freely use the resources of the high seas. In this respect, the 200 nm economic zone did constrain them to some extent, but supporting the principle of the 200 nautical mile economic zone gives them numerous gains. Take for example another maritime power, Japan. Japan's territorial land surface area is only 370,000 square kilometers, but with its 200 nautical mile economic zone it gains 4,470,000 square kilometer of maritime space in addition to its land area. Its "territorial area" has increased to 4,840,000 square kilometers, with its so-called "blue territory" twelve times that of its land area. As a result, Japan entered the top ten[5], becoming a maritime state with a vast "national territory." Moreover, the majority of Japan's maritime zones are deep water zones, with the deepest parts reaching several thousand meters. The Japanese think that they are the fourth largest country in the world in terms of volume. As a result, the 200 nautical mile economic zone is not at all disadvantageous to the maritime great powers.

On the other hand, the 200 nautical mile economic zone could also possibly give rise to new international discord. For example, before the concept of the 200 nautical mile zone came into play, the reefs between adjacent countries were originally seen as insignificant. But with this new principle, these countries sought to integrate the reefs into their jurisdiction (e.g., by building man-made facilities on the reefs so that people could inhabit them in order to both follow the law of the sea and to extend the special economic zone), thereby increasing contradictions with their neighbors and making it more difficult to solve disputes.

Our stance only emphasized the aspect of the 200 nautical mile economic zone that related to opposing the superpowers' hegemony at sea. Because of this [we felt] we should support the motion. But there was another aspect that we neglected to point out: it represented a redistribution of ownership rights of marine resources. Our understanding of this was apparently not thorough enough.

Secondly, it seems that when we first started out we did not fully investigate how the 200 nautical mile economic zone affected China's own interests. China is partially closed off from the ocean, which is to say that it is a state with unfavorable geographic conditions. This is because while the South China Sea can be extended, the East China Sea and Yellow Sea are less than 400 nautical miles from neighboring countries and consequently cannot expand outward. At the same time, to expand China's continental shelf according to the 200 meter water depth figure, the continental shelf would reach as far as the Okinawa Trough by one estimate. The resources on the continental shelf actually come from the mainland's large alluvium-formed rivers, such as

[5] The author does not further define this "top ten" idea.

the Yellow River, Yangtze, etc. If there were no 200 nautical mile economic zone concept, and only that of the continental shelf, then the resources of the continental shelf would belong to China. This would be legally and factually indisputable. Now, however, these resources must be shared with neighboring countries, and finding a means for dividing them up has long been a challenge. We have made gains and suffered losses over the 200 nautical mile economic zone. It seems no one can accurately assess which has been greater.

Raising the 200 nautical mile economic zone issue actually presented China with two predicaments. If we supported it, this would harm our interests in the South and East China Seas. Moreover, it was not a very fair or reasonable plan: maritime great powers and strong states made out the best. If we did not support it, we would not only offend several developing countries, but also take on many economic losses which by today's estimates would be around 3,000,000 square kilometers of "blue territory" over which it would be difficult to exercise sovereignty. Of course there are still disagreements between China and our neighbors about a number of islands, and the area of these blue territories is still not commonly accepted under international protocol.

Finally, I'd like to point out some characteristics of this event in which countries from around the world worked through the United Nations to redistribute rights to maritime resources. This redistribution was not generally conducted on the basis of national strength, but rather on geographic position and the lengths of coastlines. A few coastal states with long coastlines, large land area, and a distance of over 400 nautical miles from countries facing them, as well as archipelagic states, made the greatest gains.

Landlocked states and those with poor geographical conditions made comparatively small or even minor acquisitions. The degree of economic development was also not a decisive criterion in the division, for a few developed landlocked states and geographically disadvantaged states unexpectedly ended up in the same camp as developing countries with the same [geographic] conditions. If we say that prior to WWII the Great Powers spent two to three hundred years plundering land-based resources through armed conquest, dividing up global territories and designating spheres of influence, this effort to divide up maritime territory (blue territory) and resources – which are as important as terrestrial territory and resources – did not involve war but instead used negotiation to arrive at a consensus and basic agreement. One wonders whether this is a historical miracle or a historical inevitability. People should also take into account that because modern exploration of marine resources requires large-scale investments, [this field] is still very underdeveloped. States have neglected to focus great attention on the exploration of marine resources. In the end, a state's possession and use of resources is still determined by its strength. Thus, whether or not the new law of the sea can sustain a peaceful maritime order in the long term or whether the new law of the sea regulations will ultimately spark substantial conflict between states are questions we must wait to delve into in future history. We can only hope for a win-win outcome.

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The UNCLOS Conferences and China's Safeguarding of Its Maritime Rights and Interests[1]

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In October 1971, New China recovered its legitimate seat at the United Nations. Soon afterwards, it became a part of the UN Seabed Commission and actively took part in the work of drafting and negotiating the United Nations Convention on the Law of the Sea (UNCLOS). Based on the materials I have seen, academic researchers have only produced narratives of the Chinese government's participation in the UNCLOS conferences.[3] There have not engaged in in-depth discussion of many of the issues. Taking another look at this history, one can see that on the questions of territorial seas, contiguous zones, continental shelves, and exclusive economic zones (EEZs), China's views and positions reflect a clear understanding of and support for the development trends of international maritime law. To a certain degree, China's views and positions were a crystallization of Chinese practice of maritime law. The actions of the Chinese government represented the desire of developing countries to expand their maritime rights and interests, and this had a positive impact on the final product of UNCLOS.

I. The Chinese Government's Position on the Question of the Territorial Sea

The territorial sea is one of the most basic regimes of international maritime law. The question of the width of the territorial sea has historically been a point of contention between states, and it was the focus of debate during the 1958 and 1960 UNCLOS conferences. After UNCLOS III opened, the chief matters of discussion were the width of the territorial sea and the issue of baselines. After a difficult struggle, developing countries finally undercut the 3nm territorial water positions of Great

[1] 郭渊 [Guo Yuan], 国际海洋法会议与中国对海洋权益的维护 ["The UNCLOS Conferences and China's Safeguarding of Its Maritime Rights and Interests"] 当代中国史研究 [*Contemporary China History Studies*], no. 1 (2012), pp. 104-113, 128.
[2] At the time he wrote this article, Guo Yuan was a faculty member at Heilongjiang University.
[3] See, for instance, ZHAO Lihai's *Theory and Practice of Contemporary Maritime Law* (1987), GAO Jianjun's *China and International Maritime Law* (2004), and CHEN Degong's *Modern International Maritime Law* (2009).

Britain, the United States, Germany, Japan and other maritime powers, proposing that a coastal state have the right to determine the width of its own territorial sea, not to exceed 12nm. This proposal was ultimately accepted. The 12nm territorial sea provision was in harmony with the Chinese government's consistent position. In September 1958, the Chinese government promulgated its Statement on Territorial Waters, which declared the following: "The People's Republic of China's territorial sea is 12nm. This provision will be applied to all of the territories of the People's Republic of China, including Mainland China and its coastal islands, as well Taiwan and its nearby islands, including the Penghu Islands [the Pescadores], the Dongsha Islands, Xisha Islands, Zhongsha Islands, Nansha Islands and other islands belonging to China."[4]

At the UNCLOS conferences, the Chinese delegation maintained that each coastal state should have the right, given its specific situation, in consideration of its security and economic development needs, to reasonably determine the extent of its territorial waters. On 20 March 1973, at the Second Small Group Committee of the Seabed Commission, the Chinese delegation's Chief Representative, Zhuang Yan, pointed out the following in the course of a speech on territorial waters and EEZs: "The natural conditions of different regions of the world are distinct. Each coastal state has a different length of coastline, depth and steepness of coastal waters, and situation in terms of coastal resources, and different shared maritime domains have different maritime boundary situations… It is completely legitimate, legal, and irreproachable for a coastal state, on the basis of its natural conditions and specific situation, in consideration of the needs of the country's national economic development and state security, to rationally determine its territorial sea."[5] The Chinese delegation welcomed the draft provision put forth by eight countries (including the Philippines) on the territorial sea and strait transit passage, pointing out that this draft provision basically reflected the legitimate wishes of states along straits to protect their sovereignty within territorial waters. At the same time, it paid appropriate consideration to the convenience of international transit. Therefore, it was quite reasonable, and could serve as the basis of discussion for the second small group committee.[6]

After in-depth discussions, in 1973 the Chinese delegation put forth the "Working Document on the Maritime Domains Under State Jurisdiction," which comprehensively explained China's position on the question of the territorial sea. This document pointed out that coastal states have the right, in consideration of the geographic characteristics of their state, the needs of economic development and national security, and taking into account the legitimate interests of neighboring states and the

[4] This Statement was printed on page one of the 5 September 1958 edition of *People's Daily*.
[5] Author cites a 22 March 1973 *People's Daily* article, p 5.
[6] Author cites a 7 April 1973 *People's Daily* article, p 6

convenience of international transit, to reasonably determine the width and scope of their territorial seas. The document also pointed out that coastal states in the same region can conduct consultations on the basis of equality to determine a uniform width or demarcation for that region. The width and scope of the territorial sea determined by a coastal state, should, in principle, be applied to the islands under its sovereignty. Archipelagoes or island groups comprised of islands that are close together can be regarded as a single unit when drawing territorial waters.[7] The Chinese delegation provided explanations for the matters raised in this document, pointing out that when each state determines its territorial sea, it should both consider its geographic characteristics and national security needs, and it should look after the legitimate interests of neighboring states as well as the convenience of international transit. These are the basic principles for determining the width of the territorial sea. On this foundation, states in the same region can, in light of the commonality of natural conditions and state interests, engage in consultation on the basis of equality to determine a uniform width for the territorial sea. With respect to whether or not an internationally accepted maximum width for territorial waters need be set, this question should be settled by all states on the foundation of equality. On 2 July 1974, the Conference general assembly began a normal round of deliberation. The head of the Chinese delegation, Chai Shufan, once again explained the Chinese government's position on the territorial sea.[8] China's position had an important effect on the ultimate unanimity on the difficult question of the width of the territorial sea.

The question of transit through the territorial sea also became a point of contention at the Conference. In order to enable their navies to obtain ever greater freedom, maritime powers energetically maintained that all vessels, including both merchant ships and naval vessels, shall enjoy innocent passage; some other states, guided by their national interests, opposed the views of the maritime powers, believing that the innocent passage regime should not apply to naval vessels, and that when transiting through territorial seas foreign naval vessels must first inform or obtain permission from the coastal state. China and 20 other developing countries repeatedly put forward joint proposals, recommending the inclusion of provisions requiring that foreign naval vessels must first obtain permission or inform the coastal state before transiting through territorial waters. However, these suggestions were never accepted.[9] In the end, the provision in UNCLOS adopted a vague wording: "Ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea." This article can easily lead to disagreement and thus give rise to

[7] Author cites a book entitled *A Compilation of Documents on Maritime Law* (People's Press, 1974).
[8] Author cites a 3 July 1973 *People's Daily* Article, p 5.
[9] Author cites a book by GAO Jianjun entitled *China and International Maritime Law: Ten Years After UNLOS Went Effect* (2004)

international disputes. During the signing of UNCLOS, 20 states made statements on the question of innocent passage through the territorial sea. Among these, some states demanded that naval vessels first inform coastal states before transiting through the territorial sea, while others demanded prior approval from coastal states. China belonged to the second group. When China ratified UNCLOS in 1996 it reaffirmed the following: The UNCLOS article on innocent passage through the territorial sea does not in any way impede coastal states from requiring foreign naval vessels to either obtain prior permission or first inform coastal states, according to domestic laws and regulations."[10]

II. The Chinese Government's Positions With Respect to EEZs and Continental Shelves

At the UNCLOS Conference, questions involving the scope of EEZs and continental shelves were very controversial. After repeated consultations with each state, the Chair of the Coordination Group ultimately put together a compromise plan, which received the approval of the vast majority of states and was included in the UNCLOS draft and ultimately formed part of UNCLOS. From beginning to end, the Chinese representatives actively took part in conference discussions and outlined the Chinese government's position.

a. **EEZs**

EEZs are zones under state jurisdiction. Coastal states must possess the right to exclusive jurisdiction over the entire economic zone and various types of exclusive rights – otherwise it would be an empty notion. At the Conference, the Chinese representative gave many speeches supporting the position put forth by developing countries on establishing 200nm EEZs. On 21 July 1972 at a meeting of the 2nd Small Group Committee on the topic of oceanic fishing, Chinese representative Chen Zhifang gave a speech in which he pointed out the following: "Coastal states have the right, in accordance with their geographic conditions and in consideration of the needs of their national economic interests, to draw EEZs beyond their territorial sea, for the convenience of protecting their fishery resources." When states conduct fishing activities in the seas adjacent to other coastal states, "they should, with the precondition of not infringing upon the sovereignty of the coastal state, conduct negotiations to reach a reasonable resolution."[11] In a 5 April 1973 speech, Zhuang Yan pointed out that "developing countries demands that interests is completely

[10] Author cites a volume edited by WU Shicun entitled *A Compilation of Documents on the South China Sea Issue* (2001).

[11] Author cites a 25 July 1972 *People's Daily* article, p 6

legitimate."[12]

On the matter of coastal state rights in EEZs, the Chinese representative pointed out that whether or not coastal states have the right to draw an EEZ beyond the territorial sea is a controversy over principles. The "Working Paper on Maritime Zones Under State Jurisdiction" outlined China's specific suggestions regarding EEZs or Exclusive Fishing Zones: 1) Coastal states can, according to their particular geographic and geologic conditions, natural resource situations, and the needs of national economic development, reasonably draw an EEZ in the waters adjacent to their territorial seas. 2) All of the natural resources, including the biologic and non-biologic resources in the waters and on and beneath the seabed within the economic zone belong to the coastal state. 3) All normal navigation and over flight of other countries' vessels and aircraft within the economic zone should not be subject to impediment. All underwater cables and pipes that will pass through the coastal state's economic zones must first gain permission from that coastal state. 4) Coastal states can formulate necessary laws and regulations for the effective management of their economic zones. 5) The coastal state has the right to deal with infractions such as fishing, mining or other activity conducted within economic zones without authorization of the coastal state, or activities that have received the permission of the coastal state but break the relevant laws of the coastal state.[13] When this document was submitted, the Chinese delegation still strived to distinguish between EEZs and territorial seas: "The territorial sea and EEZ are both under state jurisdiction, but each has a different legal status. The territorial sea is a part of the coastal state's territory, and the coastal state exercises complete sovereignty. And in the EEZ, the coastal state chiefly enjoys rights over the economic resources within the EEZ, including rights to the biological resources and natural resources within the seabed.[14]

The nature of the EEZ is such that it both involves the coastal state's economic and security interests and involves the important question of opposing other countries' attempts to seek maritime hegemony. China resolutely maintained that "the EEZ is a zone under state jurisdiction and is not a part of the high seas." On 24 and 25 April 1975, the 2nd Committee of the UNCLOS Conference held an informal consultative meeting to discuss the nature of the EEZ and the question of the rights of coastal states with regard to the EEZ. In his speech, Chinese representative Ke Zaishuo pointed out the following: the purpose of establishing the economic zone is, first of all, is to safeguard the coastal state's sovereignty and resources, to avoid being subject to the predations,

[12]Author cites abovementioned 7 April 1973 *People's Daily* article, p 6.
[13] Author cites abovementioned *A Compilation of Documents on Maritime Law* (People's Press, 1974).
[14] Author cites ZHAO Lihai's Theory and Practice of Contemporary Maritime Law (1987)

incursions and disruptions of maritime hegemonic states. At the 25 April meeting, representative Zhang Bingxi rebuked the point made by certain countries that "economic zones are a part of the high seas," and that when coastal states exercise sovereignty within their economic zones they should take into consideration "the other legitimate uses of the high seas." Zhang pointed out that these views reflect intentions to make EEZs and the high seas equivalent, and distort the status and nature of EEZs. The aim is to continue to use the "freedom of the high seas" slogan as a pretext for continuing to operate at will in other countries' EEZs, and to legitimize certain types of illegal behavior.[15]

On 15 August 1976, representatives from several small- and middle-sized states resolutely opposed attempts to conceive EEZs as part of the high seas. In a speech, China's representative expressed completed support for these efforts, pointing out that the only way for EEZs to effectively ensure the legitimate rights of small- and middle-sized states within the 200nm zone, and to avoid suffering the continuing depredations and threats of maritime hegemons, is to explicitly state that EEZs have the status of falling under state jurisdiction. If EEZs remain part of the high seas, this would be a repudiation of coastal states' sovereign rights over resources and other exclusive jurisdictional rights within the economic zones, and this would not be congruent with the true meaning of EEZs. It would be logically unsound for the Conference to both recognize the sovereign rights and jurisdictional rights of coastal states and state that EEZs are a part of the high seas. Moreover, land-locked states and states with unfavorable geographic situations should enjoy reasonable rights in the EEZs of neighboring states.[16] Therefore, the Chinese representative believed that point 2 of article 46 (about EEZs being regarded as high seas) and article 47 (on the question of residual rights) of the 6 May 1976 "Corrected Unified Consultation Text" should be removed.

b. Continental Shelves

At the UNCLOS Conference, some countries maintained that coastal states should determine their continental shelves such that they do not exceed 200nm from the coast; that's to say, the concept of the continental shelf would be included within the EEZ, and the continental shelf concept would be discarded. The position of the Chinese government was very explicit: the continental shelf regime should be kept, the reason being that this concept had already taken root in customary international law and, in terms of content, it was different from the EEZ. According to the

[15] Author cites an 8 May 1975 *People's Daily* article, p 6.
[16] Author cites a 17 August 1976 People's Daily article, p 6.

law accepted at the time, each country already enjoyed vested interests within the entire continental shelf. "Given that countries have territorial seas of varying widths, some countries, according to specific conditions and the needs of national economic development, can, in the areas beyond the territorial sea, reasonable draw jurisdictional zones for economic resources (under such names as EEZs, continental shelves, patrimonial sea, fishery zones, etc.), and this belongs to a state's sovereign behavior."[17]

China's chief principled position regarding the continental shelf regime in the "Working Document on the Maritime Domains Under State Jurisdiction" includes the following: on the basis of the principle of the continental shelf being a natural territorial extension, the coastal state can, in the areas beyond its territorial sea and on the basis of specific geographic conditions, reasonably determine the scope of the continental shelf under its exclusive sovereignty in these areas, and the maximum extent shall be jointly decided; neighboring countries sharing a continental shelf or opposite from one another, when determining the scope of jurisdiction over a continental shelf, should work toward a joint determination by means of discussion on the basis of equality.[18] China stressed that the outer portion of the continental shelf should be determined based on geomorphological and geological standards. China accepted that coastal states can extend their continental shelves beyond 200nm, but opposed extending continental shelf claims beyond the natural territorial extension. In the Sixth Consultative Group of the UNCLOS Conference, China's representative pointed out that normally a continental shelf comprises three parts – a shelf, slope, and rise – but in some regions continental shelves don't have a rise and so not all continental shelves have all three parts. Therefore, provisions involving these matters should be a bit more flexible.[19]

At later UNCLOS conferences, the Chinese government consistently maintained this principled position. On 27 April 1979, at the 8th Meeting, China's representative pointed out in a speech that a state's continental shelf should be determined on the basis of the principle of the natural extension of continental territory, not by mechanically using some specific distance as a standard. On 25 August 1980, China's representative gave a speech in the latter part of the 9th meeting in which when explaining Article 76 of the "Comprehensive Consultation Document" (on the definition of continental shelf) he pointed out that the definition of a continental shelf "is founded on the principle of natural extension, and this accords with the scientific geographic and geologic concepts on

[17] Author cites abovementioned 22 March 1973 *People's Daily* article, p 5.
[18] Author cites abovementioned book entitled *A Compilation of Documents on Maritime Law* (People's Press, 1974), p 76.
[19] Author cites abovementioned ZHAO Lihai's *Theory and Practice of Contemporary Maritime Law* (1987), p 17.

continental shelves." Moreover, "If a country's continental shelf is not 200nm in width, it can be extended out to 200nm, as long as it does not impede the use of the natural extension principle." On 31 March 1982, at the 11th meeting, China's representative pointed out that the Chinese delegation has in the past proposed changing Article 76 (which defines the continental shelf) of the UNCLOS draft to the following: the continental shelf "includes the natural extension of continental territory, does not exceed the outer edge of the continental margin *and* the continental margin… normally comprises a shelf, slope, and rise." This alteration would make the continental shelf definition more scientific and precise. At the same time, China's representative pointed out that this proposition had already obtained the support of many states, and requested that the conference sincerely consider this proposal.[20]

During the period from when China signed to when it ratified UNCLOS, it repeatedly highlighted the validity of the UNCLOS provision regarding the natural extension of the continental shelf and the principle of "the continental shelf being a natural extension of the continental land" that emerged from the judgment of the International Court of Justice on the North Sea continental shelf case; continued to maintain that coastal states have sovereign rights and jurisdictional rights over a continental shelf (within a reasonable scope) and its natural resources; acknowledged that the outer extent of the continental shelf must be demarcated and that if geographic and geologic conditions permit, the continental shelf can extend beyond the 200nm economic zone; and did not oppose allowing states with continental shelves not reaching 200nm to extend their continental shelves to 200nm, as long as doing so did not impede the principle of natural extension.[21] The position of the Chinese government not only developed already existing principles of international maritime law; it also created a new international maritime order while simultaneously enabling the preservation of China's already existing rights.

c. **Maritime Boundary Demarcation**

Following the Chinese government's participation in UNCLOS conferences, on several occasions it explained its position on boundary demarcation for territorial seas, continental shelves, and EEZs. In March 1972, representative An Zhiyuan for the first time raised the principle of maritime boundary demarcation based on consultation on the basis of equality: "determining the extent of rights in the territorial sea falls within the sovereignty of each state. Each coastal state has the right to, on the

[20] Author cites CHEN Degong's *Modern International Maritime Law* (2009), pp 529-530.
[21] Author cites a book by YUAN Gujie called *The Theory and Practice of International Maritime Demarcation* (2001), pp 171-172.

basis of its geographic conditions, in consideration of its security needs and national economic interests, reasonably determine the scope of its territorial sea and jurisdictional rights, and must take into account [the fact that] the states bordering the same sea must demarcate the boundaries of territorial sea between them on the basis of equality and equity."[22] The "Working Document on the Maritime Domains Under State Jurisdiction" provided that coastal states in the same region shall engage in consultation on the basis of equality to determine a common width or limit for territorial seas in that region; coastal states that neighbor or are opposite each other should demarcate the scope of jurisdiction over the continental shelf on the basis of the principle of mutual respect for sovereignty and territorial integrity and equality/reciprocity; states that neighbor or are opposite each other and connected by a common continental shelf should jointly determine their common boundary through consultation on the basis of equality; coastal states that neighbor or are opposite each other should jointly demarcate EEZ boundaries through consultation on the basis of equality.[23]

At the UNCLOS conferences, the question of maritime boundary demarcation was a problem highlighted by many countries. In April 1978, when there was a controversy over whether the conference would use "the principle of equity" or the "midline principle" during demarcation of continental shelves and EEZs, the Chinese representative pointed out the following: "demarcating maritime boundaries between neighboring or states opposite each other involves the sovereignty and vital interests of states; therefore, both parties should consult and jointly determine a mutually satisfactory outcome on the basis of the principle of fairness and reasonableness, taking into account all relevant situations… The midline or equidistant line is just one method for drawing maritime boundaries. We should not state that this method must be adopted, and we certainly should not make this the principle for demarcation. The fundamental principle to be followed during maritime demarcation should be the principle of equity and reasonableness. In certain situations, if the midline or equidistant line method is adopted and a fair and reasonable boundary is demarcated, the relevant states can conclude an implement an agreement. However, China opposed one party unilaterally imposing the midline or equidistant line on another party when countries involved have not yet reached a boundary agreement.[24] [China's representative] emphasized that China's principled position on maritime boundary demarcation is [the concept of] fair and reasonable joint consultation. At the last UNCLOS meeting, the head of the Chinese delegation, Han Xu, pointed out the following:

[22] Author cites abovementioned book entitled *A Compilation of Documents on Maritime Law* (People's Press, 1974), p 17.
[23] . Author cites abovementioned book entitled *A Compilation of Documents on Maritime Law* (People's Press, 1974), pp 74-76
[24] Author cites CHEN Degong's *Modern International Maritime Law* (2009), pp 529-530.

"with respect to the definition of the continental shelf and the principles for demarcating maritime boundaries for continental shelves and EEZs between neighboring and states opposite each other, the relevant provisions in UNCLOS have their shortcomings. The Chinese delegation has in the past expressed its principled position on these matters."[25]

Most of the text ending up in UNLOS might have been much more clearly expressed, but in order to balance everybody's interests, the Conference ultimately adopted cumbersome, vague language and wording. UNLOS Articles 74 and 83 state that the delimitation of the exclusive economic zone and continental between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statue of the International Court of Justice, in order to achieve an equitable solution. This provision, a compromise between the two opposing views (i.e., "principle of equity" and "midline principle"), provided a means of peacefully resolving problems arising between states over delimiting EEZs and continental shelves. However, the provisions of UNLOS are sweeping, vague, and they offer no strict standards, to the point where it avoided addressing the matter of which principles to following during consultations over maritime boundaries. This led to different factions or interest groups coming to diametrically opposed conclusions when interpreting its language. As for how to "come to an agreement," it still requires the respective countries to consult and come to an agreement, in light of geographic and geologic conditions, oil reserves, fisheries and other undersea resources, as well as various other related law. In order to make each party maximally satisfied and achieve an equitable and reasonable outcome, states involved must engage in long term negotiations and arduous consultation, with some opting for adjudication by the International Court of Justice.[26] Therefore, differences and controversies still exist. As an American scholar has said, "UNLOS coming into force can only have an extremely limited effect on maritime boundary delimitation."[27]

III. The Chinese Government's Position on Marine Scientific Research

The Chinese government's basic position on the marine scientific research system began to take form as it took part in a series of meetings organized by the Seabed Commission. Starting from 19 March 1973, the 3rd Small Group of the Seabed Commission held a few meetings to discuss issues on marine scientific research. On 2 April, Chinese representative Shen Weiliang pointed out that the principle of respecting each country's sovereignty and the absolute equality between small and big countries is the foundation for reasonably resolving problems related to international marine scientific research.

[25] Author cites 11 December 1982 *People's Daily* article, p 2.
[26] Author cites a book by Wang Yizhou, entitled *Global Politics and Chinese Diplomacy* (2003), p 226.
[27] Author cites a Jonathan Charney article in the Vol. 89 of *American Journal of International Law* (1995), p 725

He explained the basic principles that each state should adhere to with respect to marine scientific research: 1) coastal states have complete sovereignty over their territorial seas. Without gaining the approval of coastal states, foreign vessels are not allowed to engage in any research in this zone. 2) Coastal states enjoy exclusive jurisdictional rights over zones of jurisdiction that connect with the territorial sea (e.g., EEZs, fishing zones, patrimonial seas, etc.). Foreigners that wish to conduct marine scientific research in these zones must gain prior approval from the coastal state, as well as strictly abide by the coastal state's related laws and regulations. 3) A coastal state has the right to participate in the scientific research conducted by other states within its territorial sea or maritime jurisdictional domains, as well as the right to obtain materials and specimens from that scientific research; publication of the research results must first gain approval of the coastal state. 4) The seabed beyond the jurisdictional waters of each state (and the resources within) in principle belong to the people of all the countries of the world.

Scientific research conducted here should be managed by an international organization. 5) Each state should, under the conditions of mutual respect for sovereignty and equality and mutual benefit, according to the spirit of a "Statement on Principles," promote international cooperation in the field of marine scientific research; international marine scientific research plans/proposals should be formulated on the strict basis of equality between nations.[28] This represented the basic position of the Chinese government.

On 19 July 1973, the Chinese delegation submitted to the 3rd Small Group of the Seabed Commission a document entitled "A Working Paper on Marine Scientific Research." The principles contained within this document were already described by Shen Weiliang in his 2 April speech. On 27 July, representative Wang Dezhao provided an explanation of this document: China has always maintained that a certain amount of management/control should be placed on maritime scientific research. Therefore, the first article of the working paper states the following: "States that seek to conduct marine scientific research within the jurisdictional waters of another state must first gain permission from that state, as well as adhere to its relevant laws and regulations." The second article points out that in international waters "marine scientific research must be subject to the control and management of relevant international systems and organizations."[29] The purpose of this management/control is not to impede marine scientific research or limit scientific activities, but to defend against scientific research becoming the monopoly of a few hegemonic states and to avoid the seabed resources from becoming illegally occupied by the superpowers. With respect to how to

[28] Author cites a 6 April 1973 *People's Daily* article, p 6.
[29] Author cites abovementioned *A Compilation of Documents on Maritime Law* (People's Press, 1974).

manage/control marine scientific research, China maintained that a distinction should be made between waters falling under state jurisdiction and waters not falling under state jurisdiction.

At the 4th meeting, on 9 April 1976, during discussion on articles pertaining to marine scientific research, many developing countries demanded explicit rules saying that all scientific research conducted in all of the waters under state jurisdiction (including economic zones and continental shelves) must be subject to the jurisdiction of the coastal states. The Chinese representative expressed complete support for this, pointing out that marine scientific research always involves the security, economic interests, and maritime resources of the coastal state, and it would be impossible to be able to make distinctions between research that "is related" and research that "is not related." If we distinguish between different types of marine scientific research, and implement a system whereby so-called "scientific research unrelated to resources" conducted within economic zones or continental shelves only has to inform the coastal state, this would lead to future problems for the broad majority of coastal states. Certain great powers would, claiming "research that is unrelated to resources," wantonly barge into water under the jurisdiction of coastal states and conduct illegal activities, as well as exploit the results of its scientific research for the service of its maritime hegemony.[30] In a 19 July speech, Luo Yuru once again explained China's position on maritime scientific research, pointing out that for the purposes of safeguarding state sovereignty and security, protecting national economic rights and interests and promoting legitimate international cooperation, China maintained that a certain degree of management and control should be exercised over marine scientific research, namely that research to take place in waters under the jurisdiction of another state must first gain approval from that state; that scientific research to be conducted in the waters beyond those under the jurisdiction of coastal states should submit to the management of a to-be-created international system or organization. The "Corrected Unified Consultation Text" puts forth an approval program on the basis of a comprehensive approval system. The U.S., Great Britain and other countries expressed strong opposition; however, with the establishment of the legal status of EEZs, the implementation of a scientific research approval system was inexorable.

Article 56 of UNCLOS gives coastal states three exclusive jurisdictional rights, among which is exclusive jurisdiction over marine scientific research. Article 246 of UNCLOS makes the following provisions regarding marine scientific research in EEZs and continental shelves: 1) coastal states, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf in accordance with the

[30]Author cites an 18 April 1976 *People's Daily* article, p 6.

relevant provisions of this Convention; 2) Marine scientific research in the EEZ and on the continental shelf shall be conducted with the consent of the coastal state; 3) coastal states shall, in normal circumstances, grant their consent for marine scientific research projects by other states or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. To this end, coastal states shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably.[31] However, states incessantly argued over whether or not activities with a military purpose should be regarded as within the scope of marine scientific research. Two views predominated: one view believed that provisions regarding military activities in EEZs should be made within the article under discussion and a second view believed that this matter should be taken up at international conference on arms control and denuclearization.[32] UNCLOS ultimately did not include an explicit provision regarding military activities in EEZs, instead addressed the related issues in the articles on peaceful use of the EEZ. Given that UNCLOS did not define "peaceful use," this resulted in a situation whereby as long as the military activity does not belong within the scope of Article 2, Provision 4 of the UN Charter then it can be explained as a marine scientific research activity. This provided an excuse for certain maritime powers to conduct certain activities in the waters of other states.

IV. **China's use of the international stage to defend state maritime rights and interests**

China has a vast continental shelf. In order to protect and amply exploit the resources of the continental shelf, China started to safeguard its continental shelf rights at UNCLOS conferences and other related international meetings. This was before the Law on the EEZ and Continental Shelf established a continental shelf regime. In March 1972, at the Seabed Commission Plenary Session, China's representative emphasized the following: "Taiwan province and all of its islands, including Diaoyu Dao, Huangwei Yu, Chiwei Yu, Nanxiao Dao, Beixiao Dao and other islands, are part of China's sacred territory. The resources in the waters around these islands all belong to China, and we absolutely will not tolerate any foreign invader to exploit the situation for its own benefit."[33] On 2 April 1974, at the 30th meeting of the UN Asia and Far East Economic Commission, during

[31] Author cites *Related Conventions on the Law of the Sea with a Chinese English Index* (2005), p92. **NOTE:** We own this

[32] Author cites a Chinese translation of a Japanese book entitled The EEZ Regime (1995), pp 102-3

[33] Author cites a 5 March 1972 *People's Daily* article, p 5.

discussion on the topic of exploration of resources within the near seas of Asia, Huang Mingda gave a speech in which he reaffirmed China's position that it owns the resources in the seabed of China's coastal waters and the waters of all Chinese islands: "China has complete ownership of the seabed resources in China's coastal waters and the waters adjacent to the islands that belong to China. Any wanton exploration or drilling in China's coastal waters (including the waters adjacent to Chinese islands) that ignores Chinese sovereignty is illegal."[34] On the matter of Japan and South Korea's signing, ratification and exchange of the Agreement on Joint Development of the Continental Shelf and their subsequent drilling explorations, China on several occasions released stern statements: according to the basic principle that the continental shelf is the natural extension of continental territory, China has inviolable sovereign rights over the continental shelf of the East China Sea. Where the East China Sea continental shelf involves parts of other countries, China should naturally delimit boundaries through consultation with the other countries. The Japanese government went behind China's back to sign an "agreement" with the South Korean government, one-sidedly delimiting a so-called "joint development zone." This behavior violates China's sovereignty."[35]

After the 1974 China-Vietnam Xisha Naval Battle, China utilized the setting of the International Maritime Conference to issue a series of statements on the sovereignty of the South China Sea, criticizing and rebuking South Vietnam's ambitions towards the sovereignty of the islands of the South China Sea. At a press conference in January 1974, President of the UN Security Council, Gonzalo Facio, said that he approved of South Vietnam's accusations, raised at the Security Council, regarding the Xisha Incident. Therefore, Zhuang Yan made a statement of opposition, pointing out that as the Security Council President, Facio should not express opinions. Zhuang Yan also reiterated China's position: the Xisha Islands are Chinese territory, and the measures it adopted there belong to China's internal affairs.[36] During a 26 February speech in Geneva, Bi Jilong severely rebuked the Saigon regime's representative for slandering China at the meeting, reiterating that the Xisha and Nansha Islands have historically been an inalienable part of Chinese territory, and that the Chinese government has the right to take whatever measures it needs to safeguard its sovereignty and territorial integrity.[37] On 30 March, at the 30th General Assembly Meeting of the UN Asia and Far East Economic Commission, the Saigon representative claimed "sovereignty" over the Xisha and Nansha territories, and attacked China. Bi Jilong gave a speech in which he reveal the facts, saying that not only had the Saigon regime included more than ten South China Seas island on the map of

[34] Author cites a 4 April 1974 *People's Daily* article, p 5
[35] The author cites six different *People's Daily* articles that cover this matter.
[36] The author cites a 4 February 1974 article in *Reference News* [*Cankao Xiaoxi*], p 3.
[37] The author cites a 4 March 1974 *People's Daily* article, p 6.

Vietnam, it also wantonly engaged in military provocation against China, using force to occupy Chinese territory. The Saigon regime attempts to use sophistry to conceal its invasive actions are futile.[38] UNCLOS III conducted general assembly deliberations on 2 July. Chai Shufan gave a speech in which he pointed out that points on Xisha and Nansha mentioned in the 28 June speech delivered by the representative from the Saigon regime were nothing but shameless and deliberate muddling of black and white.[39] At that meeting, the head of the North Korean delegation gave a speech in which he rebuked the unreasonable demands of the Saigon regime regarding the sovereignty over China's Xisha and Nansha Islands, emphasizing and pointing out that the Nansha and Xisha Islands have always been an inalienable part of Chinese territory.[40]

Facing a situation in which the resources of the islands of the South China Sea and the continental shelf are subject to the illegal exploration and exploitation of other countries, the Chinese government conducted a struggle to safeguard sovereignty. On 14 June 1976, Ministry of Foreign Affairs spokesman made a statement regarding the Philippines' oil/gas exploitation near the Reed Bank (Li le Tan): the Nansha Islands, just like the Xisha Islands, Zhongsha Islands and Dongsha Islands, have historically been an inalienable part of Chinese territory. China has indisputable sovereignty over these islands and territorial seas, and their resources belong to China. Any foreign country that sends military forces to occupy the Xisha Islands or exploit and develop oil and other resources is infringing upon Chinese sovereignty, and will not be permitted. The efforts of any foreign country to make sovereignty demands over the Nansha Islands are illegal and invalid.[41] On 27 February 1979, the UN Security Council met to debate the situation in Southeast Asia. At the meeting, Chinese representative Chen Chu rebuked the baseless attacks and calumniations of the Soviet and Vietnamese representatives: "The Vietnam and Soviet governments in the past always publicly admitted that the Xisha and Nansha Islands belong to China. The formal papers of Vietnamese Premier Pham Van Dong and the previously published maps and school textbooks also affirm this. It was only after 1974 that Vietnam ate its own words and openly presented China with territorial demands for the Xisha and Nansha Islands, and forcibly occupied some of the Nansha Islands, infringing China's territorial sovereignty, and increasing the tempo of national expansion."[42] On 21 July 1980, the Ministry of Foreign Affairs Spokesman made a statement regarding an agreement between Vietnam and the USSR to cooperate in exploitation and drilling for oil and

[38] The author cites a 1 April 1974 *People's Daily* article, p 5.
[39] The author cites the abovementioned 3 July 1974 *People's Daily* article, p 5.
[40] The author cites a 4 July 1974 *People's Daily* article, p 5.
[41] Author cites a 15 June 1976 *People's Daily* article, p 1.
[42] Author cites a 1 March 1979 *People's Daily* article, p 5.

natural gas in "Vietnam's Southern Continental Shelf:" the Xisha, Nansha, Dongsha, and Zhongsha Islands are all the same in that that historically they have all been a part of Chinese territory. The People's Republic of China has uncontestable sovereignty over these islands and their territorial seas.

The resources within these areas naturally belong to China. Any state that enters these regions to engage in activities such as exploration or development without prior Chinese permission is illegal. Any bilateral agreement signed between countries to engage in activities such as exploration or exploitation in these areas is invalid.[43] Regarding the issue of the Philippines declaring the scope of the "Kalayaan Islands" and informing the UN Secretary, on 12 June 1985 China sternly pointed out that the so called Kalayaan Islands are a part of China's Nansha Islands, and that China has indisputable sovereignty over the Nansha Islands, their adjacent waters and the resources within them.[44]

The Chinese government also rebuked the mistaken behavior of the international community, in order to defend China's rights and interests in the South China Sea. At a meeting of the 30th General Assembly of the UN Asia and Far East Economic Commission, Bi Jilong pointed out that the one of the meeting documents classified China's Xisha and Nansha Islands as within the South Vietnamese regime's near seas island zone and that "exploration and development agreements have been formulated for 30 areas of the South China Sea." With respect to this, the Chinese representative sternly stated the following: "the abovementioned document written by the Office of the Secretary General classified China's Xisha and Nansha Islands as part of the South Vietnam regime's near seas islands. This is a mistake. China's representative demands that the Office of the Secretary General take measures to correct this mistake and to pay attention in the future so that this situation does not happen again."[45] On 6 May, at a meeting of the UN Economic Commission, representative Wang Zichuan made a statement on "International Mapping Cooperation." "In the decisions of past meetings of the UN Asia and Far East Mapping Conference, an idea was broached to set up a so-called 'South China Sea Hydrographic Commission,' and to include China's Nansha Islands and their adjacent waters within the scope of that Commission's hydrographic plan. This type of approach is mistaken. The Chinese delegation demands that the relevant officials take measures to halt the so called 'South China Sea Hydrographic Commission' hydrographic plan, and pay attention to ensure that this situation does not happen again."[46]

[43] Author cites a 22 July 1980 *People's Daily* article, p 1.
[44] Author cites *Law of Sea Bulletin*, No. 6, October 1985, p 8.
[45] Author cites the abovementioned 1 April 1974 *People's Daily* article, p 5.
[46] Author cites 8 May 1974 *People's Daily* article, p 6.

China's positions at the UNCLOS Conference were chiefly based on the following considerations: 1) Safeguard national interest. Many of the questions discussed involved China's military, economic, political and other myriad interests, with safeguarding maritime rights and protecting coastal defense security being the main elements of consideration. Therefore, the Chinese government inevitably elected to actively participate, explain the country's position, and coordinate the positions of developing countries. After the Conference, in accordance with the letter and spirit of UNCLOS, the Chinese government formulated and promulgated various maritime laws and regulations. 2) China supported the request of the vast majority of developing countries, opposing the efforts of maritime hegemons to achieve their control of the sea by sacrificing the interests of other countries. China believed that the purpose of this Conference was "to completely change" the old maritime law, "establish a new maritime law that fits the needs of the current age, safeguards each state's sovereignty and national economic rights and interests, and is fair and reasonable." The new law "must get rid of the contents from past maritime law that safeguard the interests of superpower hegemony." At the same time establishing a new maritime law is "an important means for the vast majority of developing countries to safeguard national sovereignty, develop their national economies, and establish a new international economic order." In this struggle, "China is a developing socialist country, belonging to the Third World. The Chinese delegation will always," "continue to stand… with nations of the Third World."[47]

However, UNCLOS is after all a product of coordination and compromise between maritime powers and developing countries. Its provisions are ambiguous, causing parties to a dispute to be unable to rely on it to determine what is right or who should enjoy ownership rights. The common approach is for each state to interpret the provisions of UNCLOS in a manner most favorable to their interests. China's maritime disputes with its neighbors are complex. Despite the fact that the specific issues involved, nature of the disputes, and levels of complexity are different, each party, without exception, cites UNCLOS as one of the most important bases for its position. The inherent inadequacies of UNCLOS and the complexity of the East China Sea and South China Sea issues are inherently related. China should [therefore] be realistic as it defends its rights in the East China Sea and South China Sea.

[47] Author cites abovementioned book by Wang Yizhou, entitled *Global Politics and Chinese Diplomacy* (2003), p 10.

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The Provisional Constitution of Seapower: China's Participation in UNCLOS Negotiations from Beginning to End[1]

SHAN Xu

In December 1982, the nine-year-long Third United Nations Conference on the Law of the Sea (UNCLOS III) concluded in Montego Bay, Jamaica. The world's longest ever international multi-lateral negotiation, UNLOS III resulted in a sizeable system of maritime law containing 17 parts, 320 articles, and 9 annexes – what people today refer to as the United Nations Convention on the Law of the Sea (UNCLOS).

People have become familiar with UNCLOS terms such as 12nm territorial waters, exclusive economic zones (EEZs), and continental shelves because of issues over maritime rights and interests in the South China Sea and the East China Sea. As Wang Shuguang, the former head of China State Oceanic Administration (SOA), once said, UNCLOS spawned the formation of a new international maritime order.

However, at the same time, "After UNCLOS was made public, each country began the process of drawing boundaries for territorial seas, contiguous zones, and EEZS. Each country sought out UNCLOS articles that benefitted its cause." Wang says that UNCLOS is continually giving rise new disputes around the world.

With respect to China, UNCLO SIII was China's first important international multilateral negotiation after regaining its seat in the UN. Looking back 30 years later in the context of China's recently stated aim of becoming a maritime power, it was perhaps one of the international negotiations with the most profound and long-lasting effect on China's fate.

Much has happened since then. Today, some believe China is seriously hampered by UNCLOS and therefore should leave the system. On the other hand, there are some Chinese scholars who hold the opposite view, believing that China should adhere to the spirit of UNCLOS: in

[1] Source: *Liaowang Dongfang Zhoukan* (English title: *Oriental Outlook*). A weekly current affairs magazine run by the state-owned Xinhua News Agency

disputes, it should resolve differences through negotiation. The mainstream view held within government and academic circles is that UNCLOS accords with China's development interests and remains viable.

One is mystified [by the fact] that there are experts holding different views [as a consequence of] having different understandings of the same UNCLOS articles.

What positions did China take and what roles did it play when, 30 years ago, it participated in the formulation of UNCLOS? What were the reasons behind China's decisions to at times compromise and at times insist on its positions? As for UNCLOS itself, in the last analysis what sort of document is it? And in what ways has China tried to solve disputes within the framework of international law, making international law work in China's favor?

To address these questions, *Oriental Outlook* interviewed two deputy representatives of China's delegation to UNLOS III: Chen Degong, former Deputy Director of the Strategic Research Institute of the State Ocean Administration, and Xu Guangjian, former head of the Legal Division of the Ministry of Foreign Affairs and a former Judge at the International Tribunal for the Law of the Sea.

12 Different Positions on the Breadth of Territorial Seas, Ranging from 3nm to 200nm

Prior to the opening of UNCLOS III, Chen Degong was an engineer at the Nanjing Marine Geology Research Institute. In 1972 he was transferred to the State Geographic Administration, for the purpose of preparing for this meeting. From that point on he switched fields to maritime law.

UNCLOS III was conducted over a total of 11 sessions. Chen Degong participated in sessions 2 through 10.

At that time, the global struggle over maritime rights and interests had reached a climax. The meetings took place in the following historical context: after WWII, the superpowers used their ability to conduct activities all over the globe in order to carve out spheres of influence in each major ocean.

For example, after WWII ended in 1945, the U.S. declared that the continental shelves off its shores were under its jurisdiction and control. The U.S. even set up fishing zones in the international waters off its coasts, extending the scope of the waters under its control and jurisdiction to maritime domains beyond its territorial waters.

It was countries in South America that first faced the American onslaught: American fishing vessels continuously entered South American coastal waters, and, given that their continental shelves were extremely narrow, these countries were unable to gain large jurisdictional zones.

Following the lead of Chile and Peru, the majority of Latin American countries declared 200nm territorial waters or declared sovereignty and jurisdiction over waters 200nm off their coasts.

In order to mitigate these conflicts, international maritime law meetings were held in 1958 and 1960, but neither achieved results satisfactory to developing countries.

Starting from the 1960s, a new type of seabed resource –manganese nodules – was widely discovered in the seabed. It contains over 30 different types of metallic elements, the majority of which are not easily extracted on land. This spurred the U.S. and the U.S.S.R, as well as large transnational business conglomerates, to seek development of the seabed. Hence, questions of seabed ownership became an issue.

Therefore, in 1970 the 25th Session of the UN General Assembly decided to start a new round of maritime law meetings. "The first purpose," says Cheng Degong, "was to resolve the deep water seabed issue, the second being to discuss various related questions, including territorial waters, continental shelves, high seas fishing and environmental protection, and scientific research."

When the meeting opened, participants had widely varying positions on matters as basic as territorial waters. In fact there were 12 different views on the breadth of territorial waters, ranging from 3nm to 200nm.

Chen Degong says that with respect to the definition of "territorial waters," the most profound matter and the issue most reflective of the differing attitudes towards maritime questions was the conflict between the sovereignty demands of coastal states and freedom of navigation.

The U.S. and U.S.S.R and other maritime powers had large fleets of merchant ships and fishing vessels, advanced navies and maritime research capabilities. Therefore, they energetically expanded the scope of freedom of navigation.

Developing countries, animated by national defense and protecting their rights and interests, universally campaigned for comparatively wide territorial waters. Confronted by the expansive tendencies of maritime powers, the number of countries backing 3nm territorial waters declined from 40 to 25 during the period from 1950 to 1973. Meanwhile, the number of countries supporting 12nm territorial waters increased from 3 to 56.

Xu Guangjian recalls that China's UNCLOS III delegation was led by a leader from the State Council and was composed of personnel from the Negotiation Leader Small Group, the Ministry of Foreign Affairs, the State Geographic Administration, and the State Oceanic Administration (which at that time fell under the State Geographic Administration).

The negotiations were conducted in New York City and Geneva, among other places. China's delegation heads were either China's UN representatives at these locations or provincial-level officials. The Director and Deputy Director of the State Oceanic Administration took turns attending the meetings. Personnel from the State Geographic Administration were chiefly involved in dealing with resource issues. The Ministry of Foreign Affairs sent personnel from

the Legal Division and provided interpreters/translators.

Several of the delegation members would later become eminent diplomats. For example, Wang Guangya, who at that time was a member of China's UN mission, took part.

A few of China's delegation heads have already passed away, including Han Xu, Vice Minister of the Ministry of Foreign Affairs, who ultimately signed UNCLOS for China. Chai Shufan, who was the Deputy Minister of the Ministry of Foreign Trade and was later was regarded as the founder of China's maritime industry (because of his outstanding achievements at the China State Shipbuilding Corporation and its predecessor the No. 6 Mechanical Industry Department), has since passed away.

Another famous diplomat, Ling Qing, died in 2010. His memoir devotes significant space to his participation in UNCLOS III.

The South China Sea Had Not Yet Become a Hot Topic, China and Japan Crossed Swords Over Continental Shelf Demarcation

In 1973, China's maritime industry's most important task was to work with Japan to complete surveying for an undersea cable.

This was China's first international undersea cable.

In June of that year, two surveying vessels built by Shanghai Hudong Shipbuilding Company were completed. This class of 2000-ton surveying vessel was probably China's best surveying vessel at the time.

The following year, the U.S. built the 35,000-ton deep sea drillship platform Glomar Explorer to extract manganese nodules from the ocean floor.

In fact, it wasn't until the beginning of the fifth session of UNCLOS III in 1977 that the question of seabed development was taken up for discussion. After all, until questions about territorial waters and other basic matters were resolved, questions of seabed exploitation could not be put on the agenda.

The first UNCLOS III session began in December 1973. The chief issues were organization, procedures and procedural rules.

Xu Guangjian recalls that the U.S. and the U.S.S.R. demanded unanimity on substantive questions; in fact, what they were after was veto rights. After heated debate, a 2/3 majority standard was agreed upon.

"The rules of procedure were a product of compromise, but they created conditions for the Third World to use their advantages to carry on the struggle," Xu Guangjian says.

During the nearly 10 years of negotiations, "compromise" became a key word, and it had a huge impact on the ultimate agreement and implementation of UNCLOS.

The statements made at meetings were extremely serious and strident. At the second session in 1974, Chai Shufan refuted South Vietnam's statements on the Spratley Islands and Paracel Islands, [referring to them] as "utter and shameless obfuscation of the truth."

However, according to Chen Degong's recollection, the South China Sea question did not become an issue until the third session.

"Regarding the 'nine dashed line' question, many people believe that it conflicts with UNCLOS. But in fact at that time no country ever raised this question, and nobody expressed opposition. In fact there were even some Southeast Asian countries that voiced support," recalls Chen Degong.

Another question that involved China was the East China Sea issue. During the discussion on continental shelf demarcation, China and Japan were fiercely at odds.

"During the meetings, some countries would explicitly refer to disputes to which they were a party, but most of the time everybody kept discussion to the articles at hand, without mentioning any particular dispute," Chen Degong recalls.

The whole meeting was divided into two camps, with the U.S. and the U.S.S.R on one side and developing countries on the other. But there were differences between members of each camp. For example, the U.S.S.R. did not, like the U.S., have a very long coastline. Therefore, it was keener on limiting the rights of coastal states.

Within the developing country camp, there were differences between coastal states, landlocked states, archipelago states, and states with short coastlines.

"The situation was extremely complex. In order to look after each party's position, the UNCLOS draft could not help becoming a product of compromise," says Xu Guangjian.

Each Party Taking a Different Interpretation on "Innocent Passage"

"We resolutely stood with the other developing countries," recalls Chen Degong.

In his memoirs, Ling Qing writes that support for maritime rights out to 200nm was closely associated with anti-hegemonism. At the time when China and Latin American countries established diplomatic relations they both made clear pronouncements on this issue. "I myself felt that supporting [maritime rights out to 200nm] was the just thing to do."

China itself faced hegemonic challenges. In 1958 China declared 12nm territorial seas, but its territorial seas and airspace were still subject to foreign encroachment. In response, China issues hundreds of warnings.

At that time China's only means of resisting the encroachments of foreign aircraft was land-

based anti-aircraft units. Air force units and warships would have had a hard time setting up an anti-aircraft perimeter in more distant maritime zones, and would have had a hard time expelling foreign vessels entering more distant maritime zones.

Ultimately, UNCLOS III compromised by establishing 200nm EEZs, which are different from territorial waters. It also established the concept of the contiguous zone.

This was a special zone set up to protect the interests of coastal states. Coastal states enjoy necessary jurisdictional rights within contiguous zones. They can punish illegal activities. But, the scope of jurisdiction within the contiguous zones does not include the seabed and airspace. This is a big difference from territorial waters.

The negotiations then moved on to a new focus of discussion: the regime for navigation of territorial waters.

In earlier international treaties, all vessels had the right of "innocent" passage through other countries' territorial waters. The focus of this topic became, would military vessels be allowed "innocent passage" no different than merchant ships or would they need to gain permission from coastal states?

The maritime powers resolutely supported this system [of innocent passage for naval vessels]. Although the U.S.S.R. had passed laws requiring that foreign naval vessels obtain permission prior to passing through its territorial waters, at UNCLOS III its position was that naval vessels should be allowed "innocent passage."

In 1958 China declared that foreign aircraft and naval vessels could not enter China's territorial waters and airspace without prior permission. From the start of the 7th session, some countries, including China, made repeated joint proposals that would require foreign naval vessels to gain permission prior to transiting through territorial waters.

30 countries supported this position, with 20 countries opposing.

But throughout negotiations, "innocent passage" was never removed from the draft. At the 11th session in 1982, a total of nearly 30 countries (including China) made their final push, demanding that coastal states be allowed to formulate their own laws and regulations in order to manage vessels making innocent passage through their territorial waters.

At this point 46 countries supported this revision, with 30 countries opposing. This disagreement nearly caused UNCLOS to miscarry.

According to procedure, if "unanimity" could not be achieved, then a vote would be taken. The maritime powers would likely lose this vote, and then would refuse to sign UNCLOS. In order to avoid this outcome, the Chair of UNCLOS III asked participants not to go ahead with the vote, and personally invited China and other revision advocates to parley with the representatives of

the U.S. and U.S.S.R.

The final result was that not only did UNCLOS not require that foreign naval vessels inform or obtain permission from coastal states before passing through their territorial waters, it did not forbid coastal states from formulating laws for management of territorial waters. In other words, countries could do as they chose.

In the years since UNCLOS III, countries have handled this question in various ways: some require prior notification, some require prior approval, some require that ships with nuclear power plants and other dangerous equipage gain prior approval, some changed "approval" to "notification," and some placed limitations on [vessel] numbers. But in general, more and more countries required either prior notification or prior approval.

Since 1982, freedom of navigation been America's basic proposition underpinning its global operations, and it has a means for it to insinuate itself into regional disputes.

In July 2012, U.S. Secretary of State Hillary Clinton said that the South China Sea issue involved America's fundamental rights and interests, the first of which is the right of freedom of navigation.

In October 2012, U.S. nuclear-powered aircraft carrier *George Washington* arrived in the Philippines for a visit. While there, the ship's commanding officer, Captain Fenton, stated that the purpose of American aircraft carriers in Asian waters was to ensure freedom of navigation.

Another vaguely defined area of compromise was navigation of international straits. UNCLOS both says that states bordering international straits have sovereignty and jurisdiction and that all vessels and aircraft enjoy the right of transit passage.

The Dilemma of 200nm

If seen from the perspective of destroying the old maritime order and protecting the rights of developing countries, a great victory was achieved on the question of 200nm EEZs.

China was a resolute supporter of 200nm EEZs, especially with respect to protection of fisheries. The Chinese delegation's position was that UNCLOS should explicitly state that coastal states have the right to manage and control foreign military activities and installations in their EEZs, thereby ensuring the security of fisheries and seabed exploration activities.

In its 1986 Fisheries Law, Law on EEZs and Continental Shelves, and other related laws, the Chinese government highlighted its attitude towards protecting fishery resources in its EEZs. At the same time it expressed the rights of other countries within its EEZs.

"At that time, China's fishing industry was incapable of exploiting fisheries resources within the

Near Seas," says Chen Degong, who played an important role in formulating these laws. It was not until years later that Chinese fishermen engaged in large scale distant seas fishing.

Contention over EEZs stemmed from the maritime powers' belief that EEZs should be regarded as part of the high seas, and their hope to use their "prerogative" to supplant the "sovereign rights" of developing coastal states within EEZs.

In his memoir, Ling Qing mentions that at one point a small [unnamed] country from the developed world gave him a document that calculated in great detail the distribution of benefits by country under a 200nm EEZ regime. The countries set to gain the most were maritime powers such as the U.S., U.S.S.R., Japan, and Great Britain as well as developing countries with long coastlines. Perhaps that country "wanted to remind China not to so unconditionally and strongly support 200nm EEZs."

Ling Qing says that this document and the developments at the meetings gave him inspiration to reconsider "what in the last analysis is the most reasonable approach."

In 1976, Ling Qing became the Chinese delegation head. He made inquiries into the views of Algeria, Venezuela and other developing countries, all of which stated that 200nm was not in their interest, but said that they "had no choice but to accept" for the sake of solidarity among developing countries.

This question had already engendered discussion within the Chinese delegation. [Writes Ling Qing in his memoir,] "I once again reported to the leadership, [asking] whether or not we could express certain reservations about 200nm EEZs. But at this time it was already too late." He [the unnamed leader] said, China could not suddenly change its position after unconditionally and explicitly supporting 200nm EEZs for 10-plus years. "Any leader would have a hard time making that kind of decision," writes Ling.

"Ultimately, 200nm EEZs were certainly not contrary to the interests of the maritime powers," writes Ling Qing. For example, Japan's territory only had an area of 370,000 square kilometers, but the area of its EEZs was several million square kilometers.

He believed that on the question of 200nm EEZs, China only saw the "opposition to superpower hegemony" aspect, but "it also involved a redistribution of ownership of maritime resources. Our understanding of this was clearly not comprehensive enough."

Off its east coast, China is a state with semi-enclosed seas. That is, it is a geographically disadvantaged state. The resources of the continental shelf in fact trace their source to Mainland Rivers such as the Yangtze River and the Yellow River. If the concept of the 200nm EEZ did not exist, leaving only the principle of the continental shelf, the resources of the continental shelf would inevitably belong to China. "In terms of law and fact, this is not debatable; however, now China must share these resources with its neighbor, and the question of how to draw the boundary has always been problematic," writes Ling Qing.

"On the question of 200nm EEZs, there were both gains and losses. As for how to assess the ratio of gains to losses, I'm afraid nobody can say for sure." Ling Qing believed that China faced a dilemma on this question. If it supported [200nm EEZs], it meant a loss to China's interests in the East China Sea and the Yellow Sea. If it did not, it would not only offend many developing countries; it would also damage many of its economic interests.

Whose Continental Shelf

UNCLOS III also recognized the concept of the continental shelf. However, "the standards for determining EEZ boundary lines between coastal states and the limits of continental shelves were not explicitly resolved." Chen Degong says, when the distance between two coastal states is less than 400nm, this would inevitably lead to problems in determining boundaries between EEZs.

There were two camps on this question: at total of 23 states, including Japan and Indonesia, proposed the principle of the "midline." This [principle] was used in the older continental shelf agreement. All told, 30 countries expressed support for this view.

A total of 29 countries, including China, advanced a proposal adopting the "principle of equitability." This camp believed that [approaches using] the midline or the equidistant line were just demarcation methods, [and that demarcation issues should be resolved] chiefly through agreements based on principles of equitability. A total of 50 states expressed support for this position.

China supported the principle of the extended continental shelf. On the question of continental shelves, China's position was that the extent of continental shelves should not be assigned a fixed number; rather that it should be determined by standards based on land features and geology.

At that time the Chinese delegation suggested that the specific composition of the continental shelf should be more flexible, that the text should be changed from "the continental margins include the continental shelf, slope and rise" to "the continental margins usually include the continental shelf, slope and rise."

"This suggestion received the praise of some states, but could not be amply discussed," Xu Guangjian recalls.

Differing geological situations led to opposing views. The "midline" camp was largely composed of countries with less than desirable continental shelf extensions.

At the end of the 9th session and the early part of the 17th session (in 1981), the two camps each selected a group of 10 countries to represent their respective positions in a debate on this issue.

"Just like all UN meetings, debate ran throughout the entire session. Aside from gaining a few

neutral states, neither side could convince the other. And the attitudes of neutral countries were largely determined by their own interests," Chen Degong recalled.

UNCLOS III once again faced the threat of breakdown. Ultimately, a new compromise proposal was made: the final text didn't mention the midline or equidistant line and "on the principle of equitability" was replaced with "in order to achieve an equitable solution."

However, regulations pertaining to foreign military activities in EEZs and continental shelves were not included in UNCLOS.
In 2002, *USNS Bowditch* collided with a Chinese fishing vessel in the Yellow Sea. At the time Pentagon officials admitted that the *USNS Bowditch* was indeed operating within China's EEZ. However, they stated, "We have a right to be there, just as they have a right to conduct verification of our ships!"

It is this disagreement over military activities in EEZs and continental shelves that explains the differing and unyielding views held by the U.S. and China on the various ship and aircraft incidents that have taken place since 2000.

On various core issues, UCNLOS wording is awkward and vague. In practice, parties to a dispute frequently draw interpretations beneficial to their interests. "UNCLOS created a framework, but due to various reasons, it handled many key issues with great vagueness," says Cheng Gongwei.

Cheng believes that this is provides China with a chance to use UNCLOS to defend its interests. [In his words,] China "should flexibly use UNCLOS."

China Did Not Agree to the Jurisdiction of the International Tribunal for the Law of the Sea

Due to the fact that UNCLOS is severely restrictive, the U.S. government has still not ratified it.

As Chen Degong recalls, at the last minute prior to the passing of UNCLOS in 1982, the U.S. replaced its delegation head and suddenly declared that it had major reservations about UNCLOS.

The parts that the U.S. opposed largely involved questions pertaining to deep sea minerals, and included a demand for veto rights on the newly created International Seabed Authority. Meanwhile, the U.S. contrived with Great Britain, France, West Germany and other countries to draft another convention as a counterbalance [to UNCLOS].

In spring 2012, U.S. Secretary of Defense Panetta attempted another effort to persuade the U.S. Senate to ratify UNCLOS. This vote may take place in 2013.

In the U.S., there are differing attitudes towards UNCLOS. For example, with regard to the U.S. Navy's intelligence collection in Asia, some people believe UNCLOS does not give America

this right, and therefore ratifying it will mean restrictions on activities. But Panetta thinks that ratifying UNCLOS will in fact ensure America's navigational freedom in these waters and its right to use the airspace above these waters.
Enjoying rights and not being subject to restriction – this sort of expectation allows some states to derive explanations of UNCLOS that redound to their benefit. And, due to the vagueness resulting from the need for compromise, UNCLOS provides the flexibility to do this.

UNCLOS created organizations such as the International Tribunal for the Law of the Sea to handle disputes. Moreover, countries can pursue arbitration proceedings at the International Court of Justice in order to force settlement of a dispute.

On this question, China has maintained a consistent approach. In Chinese diplomacy, disputes between two countries should be settled on the basis of mutual respect for sovereignty and territorial integrity and on the foundation of equality, and should not be determined by the ruling of a third party organization or involvement of another state.

As early as 1972, when China regained its seat at the UN, China did not state that it accepted the jurisdiction of the International Court of Justice as "compulsory ipso facto."

In a 1976 speech, the Chinese delegate to the UN said the following: disputes that take place in territorial waters, EEZs and continental shelves belong within the scope of sovereignty and jurisdiction of the coastal state; they should be handled according to the laws and regulations of the coastal state, and should not use UNCLOS dispute resolution mechanisms.

Ultimately, UNCLOS III once again sought compromise, placing the sections on resolving disputes into an optional protocol and allowing each country to sign on a voluntary basis. China did not sign these documents.

"Some coastal states of the South China Sea seek at every turn to take China to the International Tribunal for the Law of the Sea – this has absolutely no significance. We've never accepted its jurisdiction," says Chen Degong.

UNCLOS III concluded on December 10, 1982. At the very last meeting, the head of the Chinese delegation, Han Xu, once again declared, "With respect to the definition of continental shelves and principles for demarcating EEZs and the extent of continental shelves between two coastal states, the relevant articles in UNCLOS are flawed. The Chinese delegation has in the past expressed its principled positions on these matters."

The momentum of China's "Going Out" policy has clearly increased, and it appears that UNCLOS "has placed more and more restrictions on us." For example, China's fisheries resources in the Near Seas are decreasing, and so China will be forced to sign agreements with other countries for fishing in distant waters.

However, UNCLOS III and UNCLOS itself have in any case partially changed the theories of seapower that have obtained since the Age of Discovery. UNCLOS aspires to create a peaceful

framework for deliberation and adjudication – rather than naval shipbuilding contests and naval battles – to resolve maritime disputes.

As Ling Qing writes [in his memoir], prior to WWII great powers resorted to war to divide up terrestrial resources, while the division of maritime resources [embodied in UNCLOS] "surprisingly did not involve war, but rather involved negotiation to achieve consensus, and to basically reach agreement."

At the same time, consensus was also reached on matters such as environmental protection – which have no place in classical seapower theory. This is another aspect of UNCLOS that to date has yielded a positive effect.

"Looking at the actual outcomes of UNCLOS III and UNCLOS itself, [once can conclude] that the most basic impetus for resolving maritime disputes is still a country's national power," Chen Degong says.

UNCLOS is a product of compromise. Therefore it is difficult to use it to achieve explicit and complete resolution of complex maritime disputes. It is the national power of the countries involved and their analyses of costs vs. benefits that determine what methods are used to resolve disputes.

Part II: Domestic Legal System:

The Pursuit of Comprehensive Maritime Law

This section addresses the perceived fragmentation and inadequacies in China's domestic maritime legal structure and the high-level policy push to create an overarching legal framework, such as a Maritime Basic Law or Ocean Defense Law.

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Accelerate the Formulation of a National Maritime Strategy and Maritime Basic Law*

By WANG Hanlin†

After the 18th Party Congress Work Report proposed the strategy of transforming China into a maritime power, formulating a national maritime strategy and maritime basic law were put on the national agenda. This initiative was further promoted by General Secretary Xi Jinping's proposal to jointly build the 21st Century Maritime Silk Road and the "Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law" promulgated by the Fourth Plenary Session of the 18th Central Committee of the CPC. The government work reports delivered by Premier Li Keqiang during the Fourth Session of the 12th National People's Congress on 5 March 2016 mentioned "strengthening top-down design of a maritime strategy and the formulation of a maritime basic law." Thus, this is an urgent task.

Accelerate the Formulation of a National Maritime Strategy to Drive the Implementation of the Maritime Power Strategy.

Strategically managing the oceans (*jinglüe haiyang*) is key to completing the construction of a moderately well-off society and achieving the dream of being a strong and prosperous country. Without a strong maritime force and the revitalization of Chinese sea power, there can be no revival of the Chinese nation. However, many of China's islands and reefs in the East China Sea and South China Sea are still occupied by foreign countries, and maritime disputes with neighboring countries have been used by extra-regional countries as a means of containing China. Historically, China has had many opportunities to retake occupied islands and reefs and develop its maritime forces, yet it did not seize upon them. One important reason for this

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situation is that China long held [the mentality] that the land outweighed the sea (*zhonglu qinghai*). It did not have a long-term and stable maritime strategy.

For a long time, China lacked top-down design in national maritime strategic issues. Having only departmental and partial (*jubu*) strategies caused contradictions amongst departments and contradictions between the part and the whole (*quanju*). Relevant maritime issues were approached through the lens of each maritime department's mandates. China lacked effective coordination between and overall planning for the partial maritime strategies of relevant departments, and it was unable to form a coherent national maritime strategy. Due to a lack of integration across the nation's maritime forces and the absence of unified guidance in national maritime strategy, various aspects of hard and soft power couldn't translate into strong national comprehensive maritime power. This doesn't suit a complex maritime environment. Thus, intensifying efforts to formulate a national maritime strategy and implement the maritime power strategy as proposed by the 18th Party Congress not only safeguards China's maritime rights but also affects the big picture of long-term and stable national development.

National maritime strategy involves many aspects and levels of important issues. In general, it primarily includes maritime security and development. Limiting discussion to maritime development strategy and ignoring maritime security strategy makes for an incomplete national maritime strategy. A sound national maritime strategy is one that stabilizes coastal border regions and protects national maritime rights and interests. It is a unified national strategy for realizing peaceful development of cross-strait relations and territorial integrity. It is a strategy for the development of the marine economy and science and technology, and for the expansion of new economic growth poles, international domains, and overseas interests. It is a maritime culture strategy that blends traditional Chinese culture with modern civilization. It is a modern strategy for maritime management that governs the ocean scientifically and in accordance with the law. [Lastly], it is a strategy for promoting the peaceful, cooperative and joint development of international seas. Only by creating a top-level maritime strategy can China have the guidelines needed for handling maritime disputes and other maritime issues. Only by formulating a maritime strategy as quickly as possible can China improve its construction of the 21st Century Maritime Silk Road.

Accelerate Formulation of a Maritime Basic Law, Protect Maritime Rights and Interests, Develop the Marine Economy, and Become a Maritime Power.

1. The Importance, Necessity, and Urgency to Formulate a Maritime Basic Law

Formulating a maritime basic law would establish a solid legal foundation for the maritime power strategy. It is a key pathway for China to become a maritime power. At the 18th Party Congress, Chinese leaders proposed a strategy of transforming China into a maritime power strategy and regarded maritime security as something worthy of the greatest attention. However, they didn't clarify how this would be done. National legislation is required to legalize (*falühua*) and put [the strategy] into effect. To some degree, the formulation of a maritime basic law is a strategic prepositioning (*zhanlüe yuzhi*) and a key guarantee for avoiding or reducing strategic risk during the process of becoming a maritime power. Using legislation to define the rights and responsibilities of relevant departments and their leaders, including their responsibilities in implementing the maritime power strategy, helps prevent functional overlap and conflicts of interests between departments. Additionally, establishing principals and measures to handle and solve international maritime disputes is beneficial for consolidating and improving China's relations with concerned countries. Maritime basic law legalizes the will of the CCP to build China into a maritime power as outlined in the 18th Party Congress Work Report, and turn it into the will of people across the country. It raises the people's maritime consciousness and mobilizes the people to strive for building China into a maritime power.

Formulating a maritime basic law can supplement insufficient maritime-related provisions in China's constitution and laws. China's constitution doesn't contain any clear provisions addressing the ocean, causing some maritime-related legislation to lack constitutional basis. China's constitution provides for the construction of a prosperous, democratic, and civilized country. A maritime basic law can contribute to the constitution's strategic objective of making China a powerful country (*qiangguo*). It can legalize the strategic objective of turning China into a maritime power and thoroughly implement the relevant constitutional provisions. Existing maritime legislation doesn't regulate or poorly regulates many things. For example, the constitution has no clear provisions for issues regarding the relationship between the ocean and the state. Individual laws also have no such provisions. Additional examples are issues of

development and preservation of marine resources, or the dynamics of developing the marine economy and national security. These issues cannot be expressed in particular maritime legislation. With respect to basic institutional issues, e.g., maritime law enforcement system, relations between departments have not been sorted out and this has resulted in functional overlap and conflict.

The saying that "China's maritime legal system is basically formed" itself reveals that the system is still unsound. China has close to 20 maritime laws, but some fundamental institutions go unregulated and some issues are intractable. Formulating a maritime basic law can mitigate these deficiencies.

Formulating a maritime basic law is an important measure for the thorough implementation of the UN Convention on the Law of the Sea (UNCLOS) and other rights and obligations of international law. China is a party to a number of international conventions concerning the ocean, including UNCLOS. These conventions endow China with many international legal rights and obligations. However [these conventions] must be translated into domestic law and implemented through domestic mechanisms; otherwise the relevant rights and obligations imparted by international law would be difficult to carry out. For example, after UNCLOS [went into effect], a series of international documents were passed that specified the principles and institutions for ecosystem-based management (*shengtai xitong fangshi guanli*) and human activities concerning the sea. [They regulated] resources and environmental protection and exploitation in waters beyond state jurisdiction, as well as on jurisdiction over relevant matters. China's current maritime legislation is far from complete. It can fix these gaps and defects by instituting the relevant legal principles and institutions of international conventions in China's domestic legislation in the form of a maritime basic law. Gradual development and improvement can happen later. This is absolutely necessary.

Formulating a maritime basic law is the only way to effectively deal with maritime disputes, feasibly protect national maritime rights and interests, and eliminate international misgivings through increased policy transparency. China faces complicated and serious territorial sovereignty and maritime boundary disputes. This urgently requires the institution of an

appropriate legal system that includes legal principals and methods to deal with and resolve maritime disputes.

With respect to safeguarding China's maritime rights and interests, a maritime basic law would provide a legal form with which to specify China's principled position vis-à-vis its maritime disputes. It would increase policy transparency and help remove certain misgivings abroad. In this respect, the 1958 PRC Statement on the Territorial Sea is a very good example. At the time, there were some people in China who worried that formulating this law would lead to conflict with the US. This was because the law was chiefly aimed at American ships and aircraft, which frequently harassed China's southeastern coastal areas. For its part, the US was also worried. The US president convened a meeting to discuss the matter. Mao Zedong chose to act decisively. The result shows that China's use of legislation to explicitly declare a 12 nm territorial sea helped defend China's territorial sovereignty and safeguard peace. The US believed that this law "avoided a war between the US and China." The theory that China is a threat [i.e., the "China Threat Thesis"] is not based on anything China has done legislatively. Rather, through legislation this theory might be eliminated. If China's maritime basic law is based on UNCLOS and other international law, China would be upholding rights and obligations conferred by international law. It would mold a positive image of China as a state that follows the rule of law and create a peripheral environment [conducive to China's] peaceful development.

Formulating a maritime basic law would promote the construction of the 21st Century Maritime Silk Road. A maritime basic law would involve the marine management system, protection of the marine ecological environment, maritime trade, and international maritime cooperation, among other important issues. Establishing the basic legal system will no doubt forcefully promote the construction of the 21st Century Maritime Silk Road. Today, relevant departments in the Party Central Committee and relevant provinces and cities are energetically engaged in planning and construction for the Maritime Silk Road. But it appears that they have placed inadequate emphasis on legislation and system construction. If China lacks a sound maritime legal system, large-scale Maritime Silk Road construction will encounter various types of legal bottlenecks and shortcomings.

Formulating a maritime basic law would be a major effort to implement the strategy of governing China under the rule of law. Due to China's lack of a maritime basic law, some important basic maritime legal systems have yet to be established. Maritime legislative and law enforcement work has long been a shortcoming in national rule of law construction. Many maritime-related departments have done things their own way (*gezi weizheng*). Pieces of legislation have contradicted each other, and law enforcement has been ineffective or hard to conduct. The 4th Plenary Session of the 18th Party Congress put forth the idea of governing China under law, which was to be implemented in all different domains, including the maritime domain. As such, formulating a maritime basic law, creating and improving maritime legislation and law enforcement, and governing the sea under the law have become important and urgent tasks.

2. China is in a Good Position to Formulate a Maritime Basic Law

The idea of formulating a maritime basic law has been around for nearly 30 years. The government has made effort and attempts, but due to various reasons it has still not succeeded. In recent years, maritime disputes between China and neighboring states have intensified. China has increased the vigor of its participation in polar affairs. China's maritime power has rapidly developed, with events such as Gulf of Aden escorts and evacuations of Chinese citizens from Libya and Yemen frequently in the news. The number of people paying attention to maritime issues in China is increasing, and the Chinese people's maritime consciousness is on the rise. Also, China has reorganized the State Oceanic Administration and established the China Coast Guard, thereby improving the maritime law enforcement system. It also created the State Oceanic Commission. All of these things have created unprecedented conditions for China to formulate a maritime strategy and maritime basic law.

3. Key Components of a Maritime Basic Law

The key components of a maritime basic law should reflect policy and strategy, as well as the marine policy management system, the maritime law enforcement system, etc. On questions of maritime strategy, elements that are set in stone (*jiding de*) and can be made public should be included in the law. If a strategy is internal or apt to change, then it should not be included. The maritime basic law can make corresponding provisions for some of China's principled positions

on resolving maritime disputes. Legislation can include both substantive and superficial content (*xushi jiehe*), placing emphasis on key points. The rights and responsibilities of relevant departments must be substantive, while provisions with respect to relevant maritime policies and strategies can be presented as principles.

Maritime Strategy and Maritime Basic Law are Complementary and Mutually Reinforcing

Maritime strategy is an overall approach (*fanglue*) for ensuring maritime security and guiding the development of the marine sector. It is the maritime manifestation of national strategy. A maritime basic law provides the basic legal system for relevant maritime issues. It reflects the fundamental norms (*guifan*) by which the state handles maritime affairs. Maritime strategy and maritime basic law are not contradictory. They are complementary and mutually reinforcing. Together, they safeguard maritime rights and interests and promote the development of the marine sector. Many states with a well-developed marine sector—for example the US, Canada, Australia, and Japan—all have sound maritime strategies, policies, and laws. Their supporting measures are also fairly complete. They offer good points of reference.

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Drawing up a Maritime Basic Law/ Protecting Maritime Rights and Interests in Accordance with the Law[1]

Liu Huirong[2]

Becoming a maritime power was a major strategic policy decision at the 18th National Congress of the Communist Party of China, as well as at the Third Plenum. It is an important, formative part of the undertaking of socialism with Chinese characteristics, and is the necessary course to take in achieving the great rejuvenation (*fuxing*) of the Chinese nation.

China needs to grow from being a large maritime power to becoming a strong one. It must use legal systems to thoroughly plan development, utilization, and protection of the ocean. China must also protect national maritime rights and interests, and ensure security at sea. Under current international and domestic conditions, it is extremely urgent to expedite the legislative process of establishing a maritime basic law.

Maritime Basic Law's Place in China's Legal System

Maritime legal systems are comprehensive, technical, and international in nature. The problems with China's current maritime legal system and the [lesson drawn from] experiences of other fields prove that China should accelerate the legislative procedure of establishing a maritime basic law.

Maritime legislation is an important, formative part of the legal system under socialism with Chinese characteristics. China made a qualitative leap from possessing no maritime rules and regulations to having laws rich with content involving issues such as maritime rights and interests, resources, the environment, transportation security at sea, and scientific marine research, among others. Additionally, China proactively ratified the United Nations Convention on the Law of the Sea (UNCLOS), enjoying the rights accorded by the treaty and accepting the corresponding responsibilities. The fundamental principles of UNCLOS and other international treaties China has agreed to also comprise China's maritime legal system. At present the vast majority of the relevant maritime laws and regulations that China has already formulated are

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separated by domain, task, and industry, such that a single factor is considered when revisions are made. Therefore, a problem definitely exists within the maritime legal system, particularly the lack of a maritime basic law to attend to the big picture. In order to improve the legal system, [China must] strongly govern the seas according to the law, and urgently needs to establish a maritime basic law.

From the perspective of systematizing the law, a legal department's structure is generally made up of national fundamental law (*genben fa*), basic law, specialized law, and other relevant statutes (*danxing fagui*). This kind of structural system is made up of distinct levels and is both orderly and efficient. Its basic principles persist throughout, and it helps to guarantee the systematization and standardization of laws pertaining to the sea, as well as to prevent the law itself from coming into conflict with its application.

Aside from having the characteristics of other legal systems (i.e., standardization and a multilayered nature), maritime legal systems are unique because of qualities particular to maritime activity.

First of all, maritime law regulates the complex, intertwined maritime-societal relationship that people have based on the ocean. The 21st century is the maritime century. This has already become the consensus within international society today. Humanity has turned to the ocean more and more to extract resources and to engage in complex, diverse marine activities. Thus the areas that maritime law regulates are continuously expanding to include ocean transport, maritime commerce, development and utilization of the ocean, marine environmental protection, marine scientific research, etc. If [China] cannot form laws for each maritime field, it is possible that this will influence achievement of the goal of becoming a maritime power. As a result, maritime law must be comprehensive.

Secondly, ocean activities carry high levels of risk and complication. Thus corresponding laws—especially those regarding systems for damage compensation—must be considerably technical. In the Bohai Sea area's "Tasman Sea" case and the ConocoPhillips oil spill incident, the losses during clean-up and the scope of the damage compensation affirm (along with the chosen method of emergency relief) that the way these legal issues were handled was highly reliant on technical standards and norms. This reflects maritime law's high degree of technicality.

Furthermore, because the seas connect different countries and regions, activities at sea will cause other countries and areas to form relations and even to have conflicts. Therefore, maritime law must include features that have to do with foreign affairs.

Based on the three points above, the maritime legal system requires balanced planning and formation of an organic whole. Maritime basic law's rational position within the legal system should fall under the constitution and above statutes. It should guide all maritime affairs.

In China's system of enacting legislation, civil and criminal law departments adopt the structure of basic law, such as *General Rules of Civil Law* and *Criminal Law*. However, not all

legal departments have the need to establish a basic law. Does China's maritime law department need to institute a basic law? The author thinks that it is not only necessary, but also that [China] must create a maritime basic law with haste. Aside from the needs stemming from the maritime legal system's three unique characteristics (i.e., it is comprehensive, technical, and international in nature), [China] should move quickly to establish a maritime basic law because of problems with China's current legal system for handling foreign affairs and because of [lessons learned from] experiences outside of the field.

Although China has already passed dozens of laws pertaining to the sea, several problems remain: the legislative basis of the constitution is insufficient; there is an imbalance of the legislated resource allocation that concerns each maritime field; there is an abundance of legislation on the management of ocean resources but a dearth of legislation on sovereignty and national maritime security; among legislation on marine resources there are plenty of laws and departmental regulations for administration and management, yet little legislation covers empowerment of authority, and the National People's Congress has legislated little; the laws are of unequal status; central government and local government legislation lacks coordinated planning; having been influenced by the legislative concepts of "valuing land and ignoring the sea" and "using the land to demarcate the sea," many legislated rules are not scientific enough. These issues limit maritime development.

From the end of the last century, each major maritime state successively established its own maritime basic law and accompanying laws. In 1996 Canada promulgated the Law of the Sea, making it the first country in the world to execute integrated maritime legislation. To complement the passage of the Law of the Sea, [Canada] also passed Canada's Oceans Strategy (2002), Canada's Oceans Action Plan (2005), and Canada's Federal Marine Protected Areas Strategy (2005). In 2009 the United Kingdom passed the Law of the Sea, both specifying the national maritime strategy and including a number of clauses that could be put into operation. In 2000 the United States promulgated the Oceans Act, forming the United States Commission on Ocean Policy for this purpose. In 2004 the U.S. passed the U.S. Ocean Action Plan. Of the countries surrounding China, Japan passed its Maritime Basic Law in 2007, South Korea promulgated The Ocean Charter in 2005, and Vietnam passed the Law of the Sea in 2012. Current international maritime development makes it clear that China should quickly establish a maritime basic law to adapt to the required objective of becoming a maritime power.

Maritime basic law should result in state ownership (*suoyouquan*) over the ocean and mutual coordination of between statutes. It should address missing content in laws from each maritime department. It should additionally establish a basis for safeguarding maritime rights, and use the law to govern, manage, and utilize the ocean.

What Should the Norms Be? Which Systems Should Be Established? Which Problems Should Be Solved?

Maritime basic law should carry on the constitution's fundamental understanding of the ocean and establish a system that facilitates China's basic goal of transforming from a large maritime country to a strong maritime power.

As the cornerstone of China's maritime legal system, maritime basic law's contents should reflect China's entire maritime strategy.

The legal significance of the ocean contains multifaceted connotations that include sovereignty and resources.

Judging from the meaning of sovereignty, maritime basic law should clearly stipulate a country's sphere of jurisdiction over the ocean, ensuring and protecting that country's sovereignty. UNCLOS, other norms of international law, and international customary law serve as its major legislative bases. Within the purview of international law, maritime rights are freedoms that a country can act upon in a maritime space. The narrow definition of maritime rights endowed by international law is the jurisdiction and control a country has over its territorial waters, contiguous zones, exclusive economic zone, continental shelf, and the airspace over its oceans. [Under this definition if a country is the victim of] another country's armed attack [or] deliberate invasion and occupation, it has the right to protect itself and the right to adjudicate another country's violations of both domestic and international law. The broad [definition of] maritime rights, aside from a state's possession of jurisdiction and control over its territory, also includes freedom of navigation through the state's high seas and international seabed area, along with the right to develop and use [resources].

Viewing the definition of natural resources from the maritime perspective, maritime basic law should clearly define the rights of states with ownership over the sea (*haiyang suoyouquan*) to explore, use, and protect [resources found in] the ocean; and stipulate a system for ocean management and for usage rights pertaining to the party using the ocean. Basic law serves as a basis for laws on other uses of the ocean, in order to ensure coordination between units responsible for maritime development/use and protection.

Maritime basic law should carry on the constitution's fundamental understanding of the ocean, and establish a system that facilitates China's basic goal of transforming itself from a large maritime country to a strong maritime power. The Chinese constitution's regulations on the ocean are currently embodied in the constitution's ninth clause, which states the system of ownership over the country's natural resources. Among these, clear definitions for [resources from] "rivers and streams" are listed, yet there are still no regulations for those from the "ocean". In the civil affairs field's property ownership system, the basic standards of China's Property Law states in clause 46 that "mineral, water, and maritime space [resources] belong to China." Judging from this, the Property Law's separation of "streams and rivers" and "maritime space"

illustrates the difference between the two. The fundamental law has still not clarified a definition of the ocean and maritime space. This shortcoming must be remedied in a maritime basic law.

As the cornerstone of China's maritime legal system, maritime basic law should reflect China's overall maritime strategy. It should manifest the country's strategic steps and policies for developing, using, and protecting the ocean, and a general plan for protecting maritime rights and interests. It should provide basic legal protections for implementing the goal of becoming a maritime power. Maritime basic law should, like basic laws in other fields, take into account the big picture (*quanjuxing*), serve as a guiding document (*tongshuaixing*), and be comprehensive (*zhengtixing*). It should draw from the style of Japan's Maritime Basic Law and Canada's Oceans Act, among other foreign maritime legislation. [The maritime basic law should] stipulate the following:

1) [China should] explicitly define the scope of its ocean territory (*haiyang guotu*), systematically stipulate the range and boundaries of China's jurisdiction over its maritime space, and counter other countries' efforts to pin down(*qianzhi*) China, providing safeguards for China's maritime rights and interests. Other than the territorial waters, exclusive economic zone, and continental shelf stemming from the coast of the mainland, [China] must still establish territorial seas, EEZs, continental shelves for islands that qualify under UNCLOS.

2) [China should] establish a national maritime basic policy (*jiben zhengce*), clarify the objectives of becoming a maritime power, transform China's maritime strategy into a basic law backed up by legal force, and establish order over individual maritime statutes. Basic maritime policies include protecting the nation's maritime rights and interests and coastal defense security, developing and using marine resources, utilizing the maritime space, protecting the marine environment, safeguarding islands, dealing with maritime affairs, responding to maritime disasters and emergencies, demarcating maritime boundaries with neighboring countries, [engaging in] marine scientific research, and [performing] marine public services (*haiyang gonggong fuwu*). Through these straightforward basic policies, [China should] come to a comprehensive determination of boundaries for its maritime rights and interests, [in doing so] clearly identifying its rights.

3) [China should] write China's maritime plans into the maritime basic law; construct a maritime planning system; put forth a mid-to-long-term plan development plan for use of the sea and specific steps for implementation; clearly define a maritime plan and establish rules as well as the force of law. Set a definite period within which China will undertake the task of developing the ocean; construct a land-sea planning system; define the boundaries between the land and the sea, and coordinate land-sea relations; and establish cooperation mechanisms for ocean development and use and protection of the ecological environment. The purpose of the above measures is to resolve the lack of both order and comprehensive planning in ocean development, use, and protection to spur the balanced development of the sea.

4) [China should] engage in top-level planning for a national ocean management system; establish a comprehensive ocean management system, ameliorating the situation from becoming one in which many dragons are stirring up the seas; clearly define the focus and authority of the ocean management system; clearly define the makeup of management and law enforcement; clearly define ocean users' qualifications for access and conditions for utilization; and implement a separation between "ocean management" and "ocean use."

5) [China should] define a "legal representative" for China's maritime rights and interests in international affairs; [ensure that] there are laws on which the protection of maritime rights and interests can be based; clearly define China Coast Guard's qualifications to enforce the law and limits to its authority in the maritime space over which China has jurisdiction; designate the management and law enforcement structures for China's representatives in Arctic affairs, international seabed areas, and ocean affairs, and fully draw upon the experiences/lessons of other countries, especially its neighboring countries' legislative experiences with maritime rights; and fully enact the rights vested in it through UNCLOS.

6) [China should] establish a system for promoting ocean education and implement it into the national education plan to improve citizens' understanding of the ocean.

7) [China should] establish a system for promoting marine science and technology; vigorously advocate for technological shifts in ocean development, use, and protection; strengthen the work of ocean surveying and monitoring; expand the maritime space; revitalize marine industries; and strengthen international competitive abilities.

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Thoughts on Advancing Ocean Defense Construction Work in the New Situation*

CAPT Wu Jianhong, CAPT Huang Chunyu, and LT COL Liu Changlong†

As Chairman Xi Jinping has pointed out, border and ocean defense (*haifang*)[T] work is a major undertaking for bringing peace and stability to the country. It involves both national security and development. After the founding of the New China [i.e., the PRC], the Party center, State Council, and Central Military Commission placed great emphasis on ocean defense construction, regarding it as the strategic foundation for national peace and vitality. All levels of military and civilian departments and the broad masses continue the struggle to build a more stable ocean defense system. They have played an important supporting role in national economic and social development and stability.

I. Challenges in Ocean Defense in the New Situation.

The international system has entered a period of accelerating evolution and deep adjustment. It faces major turbulence, revision, polarization, and integration, with intense struggle over power and the redistribution of interests by various international forces. The Asia-Pacific region is gradually becoming the world's geostrategic center of gravity, the stage for international

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*吴建红[WU Jianhong], 黄春宇[HUANG Chunyu], 刘昌龙[LIU Changlong], "新形势下推进海防建设工作的思考"[Thoughts on Advancing Ocean Defense Construction Work in the New Situation], 国防 [*National Defense*], No. 12, 2015, pp. 70-73.

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T Translators' note: *haifang* (海防) has also been translated as "coastal defense." However, due to the concept's evolution to include defense of jurisdictional waters hundreds of miles from the Chinese coast it is now best translated as "ocean defense."

strategic competition, and a place prone to many contradictions and friction. China's geostrategic environment is extremely complex, it faces security pressure from many directions, and there exist a fair number of sensitive issues along its periphery. The security situation is highly integrated, complex and volatile.

Traditional security threats in ocean defense are unrelenting. First, American and Japanese containment of China is mounting. In recent years, the US has fully implemented its "Asia-Pacific Rebalance" strategy. [America's] substantive intervention (*jieru*) in maritime disputes on China's periphery continues to deepen, and it meddles in sovereignty disputes between China and [other] relevant countries. The US is expanding the scope of containment and is squeezing China's strategic space. It continues to encourage China's neighbors to stir up trouble, leading to an increase in challenges and risks on China's periphery. Japan has had difficulties getting used to China's strong development and sees China as its main strategic adversary. [Japanese] rightist tendencies continue to develop. The pace of constitutional revision and military expansion has accelerated. Japan has broadened the "scope of defense" to Taiwan and the South China Sea. It adheres to a stubborn position on the Diaoyu [i.e., Senkaku] Island issue and spouts nonsense about China's designation of an East China Sea Air Defense Identification Zone (ADIZ). Second, island sovereignty disputes are increasingly prominent. There exists the very grave possibility of a conflict occurring over island sovereignty in the East China Sea. Disputes in the South China Sea over island and reef control, resource development and exploitation, and maritime demarcation are intensifying. Some countries are launching multifaceted competition and contestation with China in the areas of politics, economics, military, diplomacy, and law. They wantonly purchase advanced sea and air armaments with the intent of using force to compete with China for sovereign rights over islands. With the growth in domestic nationalist sentiment in these countries, it is less likely they will make concessions on the South China Sea issue. Policy risk and radicalism are becoming increasingly evident. Third, the situation in the Taiwan Strait remains in flux. The cross-strait situation has had some positive changes since the KMT came to power; however, there is trouble hidden in these changes (*huanzhongcanghuan*). "Taiwanese Independence" separatist forces still exist. The Democratic Progressive Party stubbornly adheres to a position of "Taiwanese Independence" and spares no effort in seeking Taiwan's secession from China. The root cause affecting cross-strait stability has not been eliminated. The US will not lightly give up its strategy of "using Taiwan to contain China" (*yitai*

zhihua). The struggle to resolve the Taiwan issue will be long, complicated, and arduous. Any sudden changes in the cross-strait situation would seriously undermine national security.

Non-traditional security threats in ocean defense continue to emerge. New security issues are emerging with the rapid progress of science and technology and the deepening developments of political multipolarity and economic globalization. This has prompted the expansion of traditional national security and development interests into broader and deeper domains. First, the maritime rights protection struggle is very complex. Demarcation disputes with neighboring countries exist in about half of the areas over which China claims jurisdiction. A large amount of the resources within these maritime areas have been plundered.

The Yellow Sea, East China Sea, Taiwan Strait, and South China Sea are connected and the linkages between them are growing more apparent. Regardless of where a future problem occurs, other countries are likely to seize opportunities to cause trouble in order to profit and seize the initiative. Second, the task of administrative control (*guankong*) in ocean defense is increasingly arduous. Expanding foreign trade dealings and deepening dependence on foreign trade to sustain China's rapid economic development result in a pessimistic outlook for the security of China's strategic maritime routes. Reforms have entered a critical stage, societal contradictions are becoming more prominent, and the ideological struggle in the coastal region is intensifying. The human, material, and information flows along the coast are increasing and various security issues—e.g., public security, trade, customs, and environmental health—have clearly grown in number, bringing great pressure to the security and stability of ocean defense along China's coast.

Contradictions and issues that restrict ocean defense development are continually appearing. Due to historical and practical reasons, current capabilities in ocean defense management are still not measuring up to the mission requirements of ocean defense in the new situation. This has restricted the ability of departments involved in ocean defense to carry out their duties and limited the pace of development in ocean defense construction. First, the institutional mechanisms of ocean defense are not streamlined. China's current ocean defense system was built on the original defense system centered on the PLA coastal defense forces (*haifang budui*). Situational developments and security needs gradually [led to] overlapping

administrative law enforcement and management functions, forming a many-layered hybrid type of system. After reform and opening up, the coastal regions rapidly transformed from military forward sentry posts into an open frontier. The missions of ocean defense also transformed from defense into both defense and management (*fangguanbingzhong*). Given the rapid pace of change, China could not conduct an overall assessment of its needs or integrate existing systems. Relevant departments separately established law enforcement and regulatory agencies for ocean defense. This caused major issues for the ocean defense management system, such as the separation of defense and management, many layers of management, fragmentation, redundancies, and laxity. Although the central government set up a border defense leading small group and a border and ocean defense committee—which increased efforts at "unity" —each level of border and ocean defense committee were just consultative and coordinating bodies. They lack leadership authority. Aside from inadequate planning, coordination and joint management and control mechanisms, the overall function of ocean defense was weakened by a dispersion of limited human, material, and financial resources. Systemic issues in ocean defense have become the primary "bottleneck" constraining China's ocean defense development. Second is an unsound ocean defense legal system. The rights protection and administrative control struggles feature intensive involvement in foreign affairs, are confrontational, and are highly time-sensitive. They require a thorough basis in laws and regulations. In recent years, state and military authorities formulated a series of ocean defense legislation. Local governments also introduced corresponding supporting policies. However, due to the state's implementation of an ocean defense management model that charges functional departments with responsibility for law enforcement and has multiple agencies involved in rights protection law enforcement,[*] China lacks overall planning and design for building an ocean defense legal system. As a result of great difficulties and delays in coordination, China has not created an authoritative, foundational ocean defense law that represents the country's overall interests. In the absence of the guidance and empowerment of a general law, specific regulations (*zhuanxiang fagui*) suffer from unclear responsibilities, weakness, irregular standards, redundancies and gaps. These contradictions are difficult to mitigate and correct in a timely manner and impact the thoroughness and precision of rights protection law enforcement. Of particular note is the long-

[*] Translators' note: "Rights protection law enforcement" (*weiquan zhifa*) refers to the use of maritime law enforcement forces to defend and advance China's position in its maritime disputes.

term absence of fundamental laws on standards and guidance for ocean defense activities. This not only harms China's international image of ruling the sea according to the law (*yifazhihai*); the lack of national legal authority supporting the ocean defense struggle also places China in a passive position. Third, China has an imperfect force structure and imperfect systems (*peixi*). In recent years the state has continued to perfect a force system with the military as the mainstay, coordination between various maritime forces, and the widespread participation of the militia, reserves and masses on the coast. It has also strengthened construction of ocean defense infrastructure and raised the level of administrative control over the borders and ocean, boosting coastal economic construction and social stability. However, on the whole ocean defense forces tend to be dispersed, difficult to coordinate, and lack adequate advanced armaments and systems. The army's ocean defense force was the PLA's early warfighting force organized for near-coast defense (*jin'an fangyu*). It primarily took on the missions of resisting enemy landings and guarding fortifications. With the changing developments in ocean defense security, this force is [positioned] farther and farther away from the frontlines of ocean defense. Law enforcement forces such as the coast guard lack large cutters, medium-to-long-range aircraft, and armaments. Law enforcement vessels are under-sized, have poor seakeeping, and lack range. Maritime militia forces are weak, their equipment is outdated, and there are more men than boats (*youbingwuchuan*). The construction of service roads, docks, helipads, command and communications, and reconnaissance and monitoring systems is still not complete. The fixed underwater acoustic detection equipment in coastal waters and important harbors urgently need strengthening, and China has comparatively few undersea early warning and detection equipment. To a certain extent, these issues have restricted the enhancement of ocean defense.

II. New Requirements for Ocean Defense Capabilities in the New Situation

The new situation presents new challenges for ocean defense and it puts forward new requirements for the construction of ocean defense capabilities.

[We] should be capable of dealing with various levels of ocean defense security threats. Different principles and measures to deal with the varying degrees of threats to ocean defense security should be established in order to correctly implement the strategy for ocean defense

struggle and [gain] effective administrative control over maritime borders. This should be done in accordance with the requirements of the new situation. We must categorize threats to ocean defense security according to four types of interrelated security states – **peace**, **crisis**, **conflict**, and **war**. We should be capable of dealing with varying levels of threats to ocean defense security. In **peace**, we should proactively create a favorable situation, and focus on preventing and containing crises and enhancing the initiative [in our] ocean defense. In a state of **crisis**, [we should] be capable of rapidly dispatching forces to resolve or handle the crisis, and set up a rapid response mechanism and procedures. In **conflict**, [we should] be capable of responding rapidly and flexibly to control the situation. [We should] be able to rationally determine mission objectives, precisely time our operations, flexibly select the mode of operations, and avoid having an ocean defense conflict escalate into a war. We should adhere to the principles of deterring war (*yishezhizhan*), conducting small strikes in order to control the situation (*xiaodakongju*), and only attacking military [targets] (*dajun bu damin*). In a state of **war**, [we should] be able to mobilize all available resources and forces to actively react to and cooperate with each theater's defensive operations. [We should] be able to win an informatized maritime local war that involves the intervention of a powerful enemy (*qiangdi ganyu*).

[We] should be capable of overall planning for achieving administrative control in each sea area. [We] should focus on improving our ability to conduct overall planning for administrative control in each sea area, based on the degree of threat. [We] should continue to consolidate and further the achievements we have made in the preparation for military struggle in the Taiwan Strait, and possess the means to counter the balancing actions (*zhiheng shouduan*) of Western powers.

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[We should] fully use China's existing conditions in the South China Sea to continue strengthening our development of actual administrative control over this sea area. [We] should strengthen effective monitoring of the sensitive and disputed areas of the Yellow Sea. [We should] maintain a favorable posture and flexibly respond to crises to prevent situations from escalating and ensure they are stable and controlled. [We] should maintain a regular presence on the front lines of the sensitive waters adjacent to the East China Sea oil and gas fields and

Diaoyu Island. Prepared to respond to the most dire scenario, [we should] focus on the rights protection struggle over Diaoyu Island, effectively checking Japanese occupation of Diaoyu Island and its expansionary activities and violations of [our] maritime rights.

[We] should be capable of classifying the focal points of ocean defense administrative control. First, in the southeast coastal region, [we should] earnestly implement the central guidelines for Taiwan affairs. We should be able to track and be aware of the status of the Taiwan Strait and Taiwanese-held islands, and improve the management of ships and personnel transiting the strait. Second, we should increase the intensity of our rights protection law enforcement in disputed waters. [We should] have the ability to use multiple means (*duoshoubingju*) and comprehensive measures (*zongheshice*) in order to strengthen China's effective control over Chinese-controlled sea areas (and islands and reefs), intensify our physical presence in China's claimed jurisdictional waters, consolidate and maintain a favorable situation, and ensure that the maritime situation remains generally stable. Third, in sea areas with rampant hostile force activities, we should have the ability to leverage joint management and joint defense activities of the military, police [i.e., coast guard], and militia in order to jointly attack various types of illegal activity, take strict precautions and resolutely crack down on hostile forces and the infiltration and sabotage activities of foreign intelligence agencies, and safeguard maritime security and stability. Fourth, in coastal regions and along international strategic passages for marine transport, energy and information, we should be able use a variety of measures to maintain close cooperation with other countries and jointly protect the security and unimpeded flow along China's strategic lifelines.

III. Basic Concept for Advancing Construction of Ocean Defense in the New Situation

At the 5th National Border and Ocean Defense Work Meeting on 27 June 2014, Chairman Xi Jinping explicitly pointed out that China must "strive to build a powerful, solid, and modern border and ocean defense." To advance the comprehensive development of ocean defense work under the new situation, we must focus on realizing the Chinese dream of national rejuvenation, implement Chairman Xi Jinping's series of directives with respect to border and ocean defense work, conduct overall planning for both international and domestic affairs, and correctly handle

the relationships between security and development and rights protection (*weiquan*) and stability maintenance (*weiwen*). We must also continue to engage in strategic thinking, dialectical thinking, and bottom-line (*dixian*)[†] thinking; conduct scientific planning and comprehensive strategizing; and continue to develop with vigor and in depth.

Focus on building a "powerful, solid, and modern border and ocean defense." In the context of pursuing the "two hundred-year" objectives[‡], China should focus on the strategic requirements associated with border and ocean defense-related security threats and the expansion of national interests. In accordance with the strategic steps in which the state and military comprehensively deepen reform, China should strive to build a powerful, solid, and modern ocean defense congruent with national development; achieve effective defense and control (*fangkong*) and harmonious development; and provide a reliable security guarantee for the building of a wealthy and powerful, democratic, civilized, harmonious, and modern socialist state. China should create an authoritative and highly efficient management system, a unified and exceedingly capable force structure for achieving administrative control, an advanced and suitable armaments system, an integrated personnel system, and a distinctive theoretical research system. Defense management capacity should improve significantly. Resources in a particular domain should be merged and shared; projects should be pushed forward on the basis of overall planning; and the political, economic, and societal foundations of ocean defense should be solid. The mechanisms for cooperation and mutual benefit with China's neighbors should be improved, cooperation in the domain of ocean defense should be normalized, and the consciousness for jointly defending against security risks should be strengthened. China's strategic posture in disputed waters should improve significantly. The expansion of national strategic interests should be smooth. China should be able to effectively prevent crises and conflicts and prevent great power intervention (*ezhi daguo ganyu*). It should achieve effective administrative control over the entire area of ocean defense, a secure and stable ocean defense, and harmonious development. China should create a fairly secure and stable peripheral environment for the purposes of building a relatively well-off society.

[†] Translators' note: In this context, "bottom-line" means the limit beyond which China feels it must act, e.g., in the case of a foreign encroachment.

[‡] Translators' note: This refers to national objectives to to become a "moderately well-off" society by 2021, the 100th anniversary of the founding of the CCP, and become a "socialist country that is prosperous, strong, democratic, civilized, and harmonious" by 2049, the 100th anniversary of the founding of the PRC

Focus on improving "five types of capabilities." China should fixate on the new requirements for ocean defense construction that have resulted from the new situation and realize the objective of developing a "powerful, solid, and modern ocean defense." National ocean defense system construction should have the following five capabilities. The first is the ability to organize, command, and coordinate. China's ocean defense management system should be authoritative and highly efficient. It should be able to organize and manage ocean defense work and construction for the whole nation, implement unified command of ocean defense management operations, and effectively coordinate the ocean defense activities of the state, military, and relevant departments. The second is early warning and notification ability. China's ocean defense reconnaissance and early warning command system should be well-functioning. It should achieve monitoring of all ocean defense areas and continuous monitoring of key areas and targets. It should be able to fuse and share information with other reconnaissance and early warning systems operated by military and civilian entities. Third is the ability for rapid response. Crisis response mobile forces for ocean defense should be capable and adequate. China should be able to respond rapidly to sudden ocean defense situations and should be able to operate jointly with other emergency response forces. Fourth is the ability to garrison islands and control the sea (*konghai*). Ocean defense deployments should be scientific and rational. They should be able to garrison and control important islands and reefs and key locations for ocean defense, and patrol and administer coastal areas and jurisdictional waters. Fifth is infrastructure support capacity. Various types of ocean defense infrastructure should be improved. They should be able to satisfy state needs with respect to managing and using the ocean. China should significantly improve the operational efficiency of ocean defense forces.

Establish the guidelines of "active defense, effective administrative control" (*jiji fangwei, youxiao guankong*). China should raise high the banner of socialism with Chinese characteristics; be guided by Deng Xiaoping theory, the "Three Represents," and the scientific development concept; fully implement the spirit of the 18th Party Congress; profoundly understand Chairman Xi's strategic thought that "to govern the country we must first govern the periphery" (*zhiguo xian zhibian*) and his series of instructions with respect to ocean defense work; and regard safeguarding ocean defense security and stability as strategic starting points. **Active defense** (*fangwei*) means implementing the strategic guidelines of "active defense" (*jiji fangyu*); continuing to use peaceful negotiations to resolve disputes involving territory, sovereignty, and

rights/interests; pursuing cooperation for joint development; maintaining strategic resolve (*zhanlue dingli*); and continuing to implement the policy of striking only after the adversary strikes first (*houfa zhiren*). China should comprehensively use various types of forces, combining the military, maritime law enforcement, and militia into a trinity. It must move swiftly to make preparations for military struggle, push out the strategic center of gravity, strengthen forward presence, push forward defense deployments, expand strategic operational space, create an externally-oriented battlespace force disposition, and accelerate systems construction. **Effective administrative control** means using the strategic and tactical ideas of "people's war;" amply leveraging the political advantages of the socialist system with Chinese characteristics; building a situation of control that brings together the "five elements" (i.e., the party, government, military, police, and people); comprehensively using political,

military, economic, diplomatic, cultural, and other means; and flexibly grasping the strategy for struggle, viz. "stick to the bottom line, resolutely struggle, focus on the big picture, control risk, contend with the adversary over the long term, and proactively deal with the situation." China should use many approaches simultaneously, comprehensively implement policy, unify forces, and stabilize and control the ocean border.

IV. Building Ocean Defense in the New Situation

To effectively deal with the new changes in the ocean defense security situation, we must have big ideas and take the initiative; deepen reform; boldly innovate; build a modern ocean defense system that is congruent with China's international status and appropriate to meet the needs of the situation; create a political, economic, and societal foundation for ocean defense; strengthen foreign intercourse and cooperation in the domain of ocean defense; and accelerate the pace of modernization of the ocean defense system and ocean defense capabilities.

Accelerate the construction of battlespace infrastructure and armaments. According to the requirements of unified planning, a unified system, and unified standards, China should build an ocean defense infrastructure system that is rational, complete, and highly functional, and which

shares resources. China should exploit the fruits of advances in informatization achieved by the state and military; strengthen the construction of information infrastructure; expand, to the maximum extent possible, to the front lines of ocean defense and offshore islands/reefs; and build an ocean defense informatized command and control system that is vertically- and horizontally-connected and shares information. It should set up integrated ground, air, surface, and sub-surface sensor, monitoring, and obstruction (*lanzu*) installations; form a sensitive and highly efficient system of protection and warning installations that are linked to reconnaissance/early warning and command/control systems; accelerate construction of roads, harbors, airports, helicopter parking aprons and extend them, to the maximum extent possible, to forward islands/reefs, forming a three dimensional transportation support network. China should build forward bases (*qianjin jidi*) and support bases (*baozhang jidi*) on islands/reefs in important geographic locations, and it should build a comprehensive supply system for large vessels and aircraft carrying out ocean defense tasks. At the same time, China should focus on effectively implementing the functional management needs of ocean defense. It should, according to the needs of professionalization, serialization, and informatization, strengthen the assessment of requirements, complete resource integration, raise scientific/technological content, and gradually form an armaments system that is advanced and adequate, has mutually supporting functionality, is system supported, and has ocean defense characteristics. China should, according to the characteristics of the ocean defense work and the mission requirements, incorporate ocean defense armaments construction into military armaments construction planning and scientifically conduct planning for the construction and development of ocean defense armaments. China should accelerate the speed of efforts to adjust and supplement equipment. It should take armaments from the army, navy, and air force that are still functional but which are incapable of being used in the conflicts of the future and transfer them to ocean defense forces in order to meet current ocean defense requirements. As national ocean defense management forces are integrated and unified, China should accelerate the pace of purchases and research and development of new types of specialized, serialized, and informatized armaments, thereby promoting the modernization of ocean defense armaments.

Adjust and improve the tasks, disposition, and structure of ocean defense forces. Given the development and changes in the ocean defense situation, we can basically eliminate the possibility that the enemy will conduct a large-scale amphibious landing operation. The common

threats faced in ocean defense zones are behaviors such as the infringements of foreign fishing and criminal activities, and infiltration and sabotage. At present, ocean defense forces primarily comprise artillery units with old equipment. They lack the ability to handle these types of security threats. The abilities that they do possess are not useful. Thus, the time has come to expand their missions, adjust their deployments, improve their structure, and strengthen their capabilities. Given the realistic security threats that China faces, it should give new missions to ocean defense forces. Focusing on all-area defense without leaving any blind spots, China should change the situation whereby it is "heavy in the rear and light in the front" (*houzhong qianqing*). It should appropriately reduce garrisons of land forces, and garrison forces according to the following concept: "strong point" (*zhichengdian*) islands/reefs should have garrisons of troops, islands/reefs that are inhabited should have militia, and key uninhabited islands/reefs should be monitored.

Issue, as quickly as possible, accompanying ocean defense policies and regulations. The rights protection struggle for control requires significant interaction with foreigners, is inherently confrontational, and is time-sensitive. Thus, Chinese actions require complete legal and regulatory bases. In recent years, relevant departments within the state and military have formulated a series of ocean defense laws (*fagui*). Local governments have also issued accompanying policies. However, China lacks comprehensive law. Some maritime management domains have no laws whatsoever. In some laws, there are very few articles that relate to foreign matters. Their operability is weak. For example, the PRC Law on the Territorial Sea and Contiguous Zone and the PRC Law on the EEZ and Continental Shelf do not make clear which departments are responsible for their implementation. Moreover, with respect to punishing foreigners who illegally fish in Chinese waters and violate Chinese rights, they lack effective deterrent means because there are no explicit judicial procedures (*sifa shenpan chengxu*). In practice, the issue that military and civilian ocean defense departments lament the most is the fact that they lack policy and regulatory bases. China should, as quickly as possible, issue an Ocean Defense Law and other such comprehensive laws, focusing on resolving problems associated with responsibilities and tasks, bases for behavior, and comprehensive support. China should also research and formulate laws that are congruent with relevant international laws. In particular, China should move swiftly to formulate specialized laws for handling sudden incidents and foreign infringements. It should make clear what can/cannot be done and specify

requirements for handling different types of infringements, thereby providing a legal assurance for rights protection and administrative control activities.

Strive to push forward in-depth development of ocean defense civil-military integration. Ocean defense construction, especially construction of infrastructure, is an important domain in which civil and military groups are involved in joint construction and development. It is also a domain in which much can be done (*da ke youwei*). With respect to construction of ocean defense infrastructure, the key to implementing the strategic ideas on in-depth development of civil-military integration is to strengthen overall thinking, break through vested interests (*liyi baolei*), improve integration mechanisms, unify maritime strategy and ocean defense strategy, integrate economic development with preparation for military struggle, integrate the forces and resources of all the military and civilian departments that have responsibilities that touch on the ocean, and truly achieve the objectives of overall planning, advancing in lockstep, and joint use. China's peaceful development strategy particularly requires strengthening of civil-military integration. In ocean defense zones, completing major combat readiness construction projects such as airports, harbors, wharfs, etc. are extremely sensitive and the focus of much attention. If economic construction conscientiously implements military requirements, and if we are successful in achieving the goals of "civilians first, and the military follows" (*minjin bingsui*), "using civilians to conceal the military" (*yimin yanbing*), and "using civilians to strengthen the military" (*yimin qiangbing*), then we can effectively reduce evidence that can be used against us in the "China Threat Theory"[§] and avoid political and diplomatic risk.

[§] Translators' note: The "China Threat Theory" refers to the erroneous (in Chinese eyes) view that some foreigners have that China poses a threat to other states.

Part III: Sovereignty Claims, Legal Strategies, and Contestation

This section focuses on the doctrinal legal arguments (such as historical rights and baselines) that China uses to assert its claims in key maritime disputes (South China Sea and East China Sea) and its reaction to international arbitration.

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New Thinking on Joint Development and Freedom of Navigation in the South China Sea: Paths for Resolving the South China Sea Dispute Based on International Law[1]

Luo Guoqiang[2]

China is currently facing a grave situation with respect to disputes in the South China Sea. Joint development and freedom of navigation are two important issues: joint development has been the consistent position of the Chinese government for many years, while freedom of navigation has historically been a focus of interest for countries in the region. The clarification and settlement of these two issues directly impact China's maritime rights and interests, as well as the future legal order of the South China Sea. Currently, the policy of "putting disputes aside, engaging in joint development" has seen slow progress in the South China Sea. It has evolved into a situation whereby China puts aside disputes and other countries commence unilateral development. Also, in recent years there have been suspicions that China's position on having "historical rights" in the South China Sea is a threat to freedom of navigation. Clearly, this confusion does not accord with China's national interests in the South China Sea. The purpose of this paper is to analyze and discuss these two issues.

An Evaluation of "Joint Development" in the Resolution of the South China Sea Disputes

"Joint development" is a legal concept that has not yet been fully defined. It usually refers to parties involved in a maritime dispute temporarily setting aside the dispute and, in the spirit of pragmatism, adopting a cooperative attitude for the purpose of engaging in joint or separate economic development in the disputed area. Setting aside controversies over sovereignty, avoiding political disputes, working towards economic development and pursuing the most basic cooperation (or, at the very least, not impeding each other) are the most salient features of "joint development." However, fundamentally

[1] 罗国强 [Luo Guoqiang], 理解南海共同开发与航行自由问题的新思路：基于国际法视角看南海争端的解决路径 ["New Thinking on Joint Development and Freedom of Navigation in the South China Sea: Paths for Resolving the South China Sea Dispute Based on International Law"], 中国外交 [*China's Foreign Affairs*], (September 2012), pp. 47-54.

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speaking, joint development cannot be considered a true means to resolving disputes. It is only an expedient.

China has called for "putting disputes aside, engaging in joint development" as a policy for handling disputes involving the maritime boundaries of the South China Sea. In the last 30 years, the Chinese government has consistently strived to take positive steps to implement this position. However, if the goal truly is to pragmatically and effectively promote joint development in the South China Sea, then one must be clear about the level of acceptance and effectiveness of this approach internationally, as well as understand the strengths/weaknesses and scope of use of this approach. After that, one can analyze and appraise how this approach might fare in the South China Sea disputes.

First, there exists no broad international acceptance of the joint development approach, and it has had very mixed results in practice. According to statistics, the establishment of the new order of maritime law resulted in roughly 420 maritime boundaries worldwide that required defining, among which 160 have been fully or partially defined. The remaining 260 are the subject of controversy. Among these 260 boundaries that require defining, only 25 – representing just 9.2 percent of the total – have come under joint development agreements. This implies that the vast majority of disputed boundaries have not realized arrangements for joint development. Looking at the 25 that have opted for joint development, only half of these have achieved normal implementation. The remainder have either had no success, or been abrogated. Some simply were never implemented, while others were fundamentally incapable of being implemented. Moreover, the principal of joint development has only been used in a bilateral context; it has never been implemented in a multi-lateral context. In situations where the dispute involved one or more islands, if there was progress toward a boundary agreement or legal adjudication or other true means of dispute resolution, then the approach often ended with a fruitless outcome. Second, although the joint development arrangement is easier to achieve than a boundary agreement, it is very temporary. It also lacks effective legal assurances. In practice, not only are parties involved in the dispute uninterested in joint development, countries that do ultimately engage in joint development are less than enthusiastic about it. By contrast, many parties to a dispute are much keener on gaining actual control over islands, declaring sovereign rights, and employing other tactics that have legal ramifications for ultimate sovereignty. It is this type of behavior that is particularly prevalent among disputants in the South China Sea.

China has already taken positive actions to promote joint development in the South China Sea, and these actions have borne some fruit. However, these results are still some distance from actual realization of

joint development. First, the "Declaration on the Conduct of Parties in the South China Sea" represents a positive effort by China to work multilaterally to solve or ameliorate disputes in the South China Sea. In the process of negotiating the Declaration, China showed great sincerity and it invested great hope in "putting disputes aside, engaging in joint development." However, the developments subsequent to the signing have been quite disappointing. The Declaration didn't yield the desired outcomes, and China's good intentions didn't receive a positive response from other countries. The section about "maintaining self-control, don't take actions to make the dispute more complex or larger, or influence peace and stability" has proven to be essentially meaningless. After the signing, the behavior of parties to the Declaration was entirely at odds with the promises it embodied. In my view, the overall approach, the choice of parties as well as specific methods in the Declaration were all problematic. Therefore, it did not achieve its intended legal outcome. Second, the agreement between the Chinese, Philippines and Vietnam oil companies was merely a commercial contract, and thus incapable of meeting the needs of an agreement for joint development between two states. Joint development is an arrangement of international law; it is not something that can be dictated by civil law. The agreement between Chinese, Philippine and Vietnamese oil companies does not have the force of a system for joint development of the disputed maritime domains.

As is known to all, there has not been any substantive progress in joint development in the main sections of the South China Sea. But there has been a successful case of joint development in the Gulf of Thailand. Recently, scholars have sought to analyze how the experiences of joint development between the countries of Southeast Asia might serve as a frame of reference for joint development in the South China Sea, putting forward models for joint-development of gas and oil resources with China in the South China Sea. In my view, this is an extremely meaningful project: it not only can create a legal framework for future joint development between parties in the South China Sea; it can also help China better understand the experience of system design used by Southeast Asian countries in joint development, redounding to the benefit of future joint development endeavors. However, the true value of this discussion hinges on a pre-condition, and that is the possibility of reaching an agreement on joint development for the major sections of the South China Sea. If there is no possibility of this, then the above research has only theoretical value.

We need to face the facts that the usefulness of the joint development approach in the South China Sea is fairly low, for the following reasons.

First, the South China Sea dispute involves many different parties. As mentioned above, historically, the joint development approach has only succeeded when it has involved just two countries. Therefore, it would be extremely difficult to succeed in reaching a joint development agreement in the South China Sea. Even in the Gulf of Thailand, where joint development has shown signs of success, reaching a multilateral agreement between members of ASEAN remains elusive. This does not bode well for the prospect of reaching a multilateral joint development agreement involving China in the South China Sea. Even if bilateral agreements are first reached, it is very likely that they would lead to protests and perhaps interference from other parties in the South China Sea, which in turn would likely have a negative effect on future discussions towards multilateral boundary agreements.

Second, the South China Sea disputes involve reefs that some countries claim as islands. As mentioned above, whenever talking about joint development of islands, if there is no process to transition towards boundary agreements, legal adjudication or some other framework for solving the disputes, then the results tend to be disappointing. It is obvious then that the large numbers of islands in the South China Sea will impede joint development. Their existence will not only cause reservations about joint development among parties to the disputes; even if an agreement is reached the existence of so many islands will affect the willingness of these parties to implement the agreements.

Next, the focus of disputes in the South China Sea is not just about natural resources. To a large extent, it involves contention over sovereignty over the islands and their strategic significance. For all of the disputants, the South China Sea dispute is not merely an economic issue. It has already grown in importance to involve military strategy, political posturing and national dignity. To a certain degree, these other factors have gotten out of hand for some countries involved. Therefore, joint development is no longer enough to satisfy the deeper needs of the disputants.

Lastly, from a theoretical perspective, despite the fact that the approach of "setting aside disputes, engaging in joint development" agrees with the concept of "harmony" that China advocates, the countries with which China disputes sovereignty in the South China Sea do not yet have a correct understanding and acceptance of what this concept means and therefore have not put it into practice.

Although being familiar with the successes of the countries in the Gulf of Thailand is important for China as it strives to make political and legal preparations for an agreement for joint development in the main section of the South China Sea, there is a huge difference between the two cases. Therefore, we need to reevaluate the effectiveness of our joint development strategy to solve disputes in the South China Sea.

That is, taking the long view, joint development should not be regarded as the optimal choice and chief means to solve the disputes in the South China Sea. Rather, we should regard a boundary agreement or legal adjudication as the chief means to solve the disputes, subordinating joint development to an ancillary role. Even if joint development is used as a short-term expedient for dealing with the South China Sea disputes, China should also begin discussions with other disputants individually (not through ASEAN) on resolving the disputes, reach discrete agreements with other disputants and focus on creating a reasonable mechanism for joint development.

The Legal Aspects of the Waters of the South China Sea and Freedom of Navigation

1. Freedom of navigation in different maritime zones

Fundamentally speaking, whether or not, and to what extent, freedom of navigation in the South China Seas should be tolerated does not depend on whether or not China and other disputants claim sovereignty over the region. Rather it depends on the legal characteristics of different maritime zones. On the basis of the UN Convention on the Law of the Seas (UNCLOS), different types of maritime zones have different levels of acceptance for freedom of navigation.

First, freedom of navigation is most circumscribed in internal waters. This is because internal waters comprise inalienable parts of a state. States regard internal waters as no different from any other piece of territory: they enforce complete and exclusive sovereignty. Foreign vessels must gain permission to navigate these waters.

Second, for territorial waters, freedom of navigation is also quite circumscribed. Territorial waters are subject to the imperatives of state sovereignty. Theoretically speaking, enforcing sovereignty in territorial waters is no different than enforcing sovereignty in sovereign territory. But given that maritime domains and territory are distinct, exercise of sovereignty in these two domains is different. Although foreign vessels do not have freedom of navigation in territorial waters, they are accorded the right of "innocent passage," meaning that the foreign vessel has the right to pass unimpeded as long as it does not harm the peace, security and good order of the coastal state. However, this so-called "innocent passage" is subject to numerous restrictions.

Third, is the contiguous zone, where freedom of navigation is fairly low. The contiguous zone is not considered territorial waters: therefore, the coastal state can only enforce certain specific rights, it cannot enforce complete sovereignty, and its jurisdiction does not include airspace. As a consequence, foreign

vessels can in general enjoy freedom of navigation in contiguous zones, but they must be subject to the coastal state's laws & regulations governing customs, fiscal matters, immigration and sanitation.

Fourth is archipelagic waters and straits used in international navigation. They embody a high level of acceptance of freedom of navigation. Archipelagic waters represent a new system created by UNCLOS. The waters within the baselines of the archipelago are regarded as neither internal waters nor territorial waters. Therefore, all foreign vessels and airplanes receive the right of passage, called the "right to archipelagic sea lanes passage." It is clear then that this right is no different from the right to "innocent passage" with respect to the level of respect for freedom of navigation, except that the scope of the "right to archipelagic sea lanes passage" is only slightly broader: it includes all foreign vessels and aircraft, whereas innocent passage does not include military vessels. Therefore, the "right to archipelagic sea lanes passage" can be only regarded as moderately permissive of freedom of navigation. A special system is used for straits that are international sea lanes. It is called "right of transit passage." "Right of transit passage" is a bit broader a concept than "innocent passage." Military aircraft and vessels are permitted to pass through the strait. "Right of transit passage" is somewhat more permissive than "innocent passage" and "archipelagic sea lanes passage" with respect to degree of freedom of navigation allowed: i.e., vessels involved in "innocent passage" can be temporary stopped or their passage terminated by the coastal state, while vessels using the "right of transit passage" should not be impeded by the coastal state. Of course, the "right of transit passage" is subject to a certain degree of restriction.

Fifth, exclusive economic zones (EEZs) are quite permissive of freedom of navigation. Despite the fact that EEZs are a kind of extension of sovereignty (*zhuquan*, 主权), they are different from territorial waters. Therefore, the coastal state can only rely on international law to enjoy a certain number of exclusive rights, but these exclusive rights are not jurisdictional; rather they are economic rights or developmental rights. All states, whether coastal or land-locked, can enjoy freedom of navigation and over flight in EEZs. Thus, there is a comparatively low level of restriction on freedom of navigation in EEZs.

Sixth, high seas offer the highest level of freedom of navigation. Freedom of the high seas is a core principal of maritime law. UNCLOS elaborates on the principal of freedom in the high seas. It has determined that the high seas are open to all states, whether a coastal state or a land-locked state; no state has the right to claim sovereignty of any part of the high seas. Despite the fact that in name freedom of the high seas is still subject to the restrictions of articles 87 and 88 of UNCLOS, in reality the terms

"peaceful purposes" and "due regard for the interests of other states" are fairly vague and thus hard to put into practice. Therefore, free passage on the high seas is entirely permitted, as long as it doesn't violate other international law.

2. The waters of the South China Sea and their degrees of freedom of navigation

Beyond the 200 nautical miles of territorial waters and EEZs in the South China Sea, we need to focus on two sections. The first is the more than 230 islands, reefs and other land features and the second is the waters that surround them. The physical properties of the South China Sea are such that the surface area of these land features is small, and therefore whether or not they constitute "islands" in the UNCLOS sense – and therefore can claim territorial seas and EEZs – is a big question. Even for the land features that can be defined as "islands," their area is still quite small, and therefore it is necessary to point out that the smaller the area of an island the weaker the legal case. Despite the fact that in principle these islands have legal basis to claim territorial seas, given that they cannot meet the requirements of UNCLOS article 121, paragraph 3 (i.e., on the need to "sustain human habitation or economic life") they cannot claim EEZs. When we also consider the fact that there are controversies between coastal states over sovereignty of these land features, they will often only have a minimal role, if any, in determination of maritime boundaries in the South China Sea.

Based on UNCLOS and other contemporary maritime law, as most land features of the South China Sea do not constitute "islands," at most they will only have territorial waters and a contiguous zone – and this encompasses an extremely small portion of the total area of the South China Sea. Except for the few island that perhaps have EEZs, as well as the Malacca Straits (a portion of which falls under the "right of transit passage" provisions under UNCLOS), the biggest portion of the South China Sea is not within an EEZ of coastal states, and thus does not come under the jurisdiction of coastal states. This implies that if you just look at the South China Sea from the perspective of UNCLOS, the majority of the South China Sea is high seas and therefore should be open to freedom of navigation.

Obviously, for the most part South China Sea disputants disagree with the above assessment, but each for different reasons.

First, China has long taken the position of the U-shaped dashed line as a boundary, claiming "historical rights" in the South China Sea. What deserves our attention is that this claim came about before UNCLOS and other contemporary maritime law regimes and is quite different from UNCLOS, which comprises a system of differing classifications of rights extending from the coast. Without a doubt,

"historical rights" are not to be found in UNCLOS, but that does not by any means imply that the notion of "historical rights" has been superseded or negated by UNCLOS. Although UNCLOS is a representative document in modern maritime law, it certainly does not cover all questions of maritime law. In fact, UNCLOS overtly avoids but indirectly recognizes the notion of "historical rights." Thus, one cannot regard this as a question of UNCLOS being superior and therefore invalidating older principals like "historical rights." An inevitable conclusion, therefore, is that China's "historical rights" to the South China Sea cannot be resolved by relying on the framework of UNCLOS. Despite the fact that Chinese state legal documents have never explicitly defined the implications of the dashed line and therefore there is a degree of vagueness surrounding the notion of "historical rights," there are two things that are clear: 1) the Chinese government has never demanded sovereignty over the full area within the dashed line; the waters within the dashed line have never been regarded as China's internal waters; the Chinese government has never regarded waters within the dashed line to be China's territorial waters; the Chinese government has only regarded the islands and other land features (and the waters immediately surrounding them) within the dashed line as falling within its sovereignty – not the entire maritime space within the dashed lines. 2) The concept of "historical waters" is far less exclusionary than the EEZ concept, and therefore leaves far more room for the interests of other states. China's "historical rights" proposition by no means discounts the vested interests of other countries within the U-shaped dashed line.

From this we can see that the "historical rights" that China maintains are not, as certain Western scholars claim, akin to "territorial sovereignty" or "quasi-territorial rights." Rather, China simply demands sovereignty over the islands and geographical features within the dashed line as well as the waters (mostly territorial waters) that surround them, and to have jurisdiction over the maritime resources within the dashed line. Due to the fact that "historical rights" is a concept that came before UNCLOS and is not mentioned in UNCLOS, China's South China Sea claims cannot find a satisfactory categorization within the framework of UNCLOS. This gives some states with ulterior motives the chance to get involved, and to claim, unreasonably, that China seeks, on the basis of its "historical rights," to turn the South China Sea into its internal waters or territorial waters. This is nothing more than a reflection of ignorance, and confused and mechanical thinking.

Based on the above discussion, China's stance regarding its "historical rights" in the South China Sea has multiple implications for freedom of navigation. In the territorial waters surrounding the islands and other land features within the dashed line, foreign merchant ships have the right to innocent passage, while foreign military vessels and foreign aircraft must gain permission to pass. In the contiguous zones surrounding these islands and geographic features, foreign vessels can normally pass freely, so long as

they adhere to Chinese laws, while foreign aircraft must gain permission to pass through. In the EEZs surrounding these islands, foreign vessels and aircraft can pass freely as long as they show due consideration for China's rights and the legal articles of UNCLOS that pertain to EEZs. Because the concept of China's "historical rights" does not involve claims of internal waters or archipelagic waters, the majority of the maritime space in the South China Sea will enjoy the freedom of navigation of high seas. That's to say, as long as international law is not broken, the vessels and aircraft of any country can enjoy full freedom of navigation.

In fact, China has never taken a stance that would impede freedom of navigation in the South China Sea. Just the opposite, China has long held that its rights in the South China Sea "don't affect the freedom and security of foreign vessels and aircraft that seek transit through the South China as long as it is in line with international law." In China's view, this freedom should not be subject to interference from the disputes of the South China Sea. The record also shows that freedom of navigation has not been affected by recent frictions in in the South China Sea.

Second, the rights that other countries have claimed in the South China Sea have utilized and even exploited the articles in UNCLOS, for the purposes of carving up and controlling the maritime space in the South China Sea, containing China's sea power, and taking the maritime resources in the South China Sea for their own. The reason that for many years these countries did not take issue with China's "historical rights" in the South China Sea is because in the past the strategic importance and value of the resources of the South China Sea were not known, and the maritime regimes of the coastal states had not been developed. Sometime in the middle part of the 20th century, the strategic value and resources of the South China Sea started to become known, and international norms regarding EEZs and continental shelves emerged. These countries then gradually started to take an interest in the South China Sea. With the passage of UNCLOS in 1982, these international norms became codified as international treaty law. Then states in Southeast Asia recognized the potential benefits to be found and started making claims on the basis of UNCLOS. Given the importance of land as a determinant of maritime rights embodied in UNCLOS, these countries went wild snatching up islands and other land features in the South China Sea, and on this basis began claiming surrounding waters as internal waters, territorial waters, contiguous zones, EEZs, continental shelves and even archipelagic waters.

These claims generally did not meet the requirements of UNCLOS article 121, paragraph 3 (i.e., rocks that cannot sustain human life are ineligible for an EEZ), and they certainly did not accord with the conditions governing archipelagic waters in UNCLOS article 46. They represented an infringement of

the long-established right to freedom of navigation in the South China Seas. According to the logic of these states, as soon as they occupied a land feature they could draw a baseline, as a precursor to defining internal waters, territorial waters, contiguous zones and EEZs. Their claims, if heeded, imply that a significant section of the South China Sea would not be open to freedom of navigation, or would only be open to "innocent passage," and an even bigger section of the South China Sea would require vessels to adhere to the laws of the coastal state; or these states would regard the islands as a collection and claim archipelagic waters. This then suggests that a large section of the South China Sea would be carved up and controlled by these states, and not open to freedom of navigation to the rest of the world, or only be open to "innocent passage" or "right to archipelagic sea lanes passage." Of course, this was not the first time these countries have taken actions that do not consider the history and needs of world navigation, harm the freedom of navigation of other countries, and connive to exploit the new developments and regulations of international law to carve up and control the sea lanes through the South China Sea.

From the above discussion we can see that China's "historical rights" in the South China Sea have certainly not been nullified by the later development in maritime law. These rights cannot be interpreted within the framework of UNCLOS, and do not create problems with freedom of navigation in the South China Sea. Rather, it is the other countries that, in their efforts to exploit UNCLOS to carve up and control the maritime space of the South China Sea, have done far more to restrict freedom of navigation in the South China Sea. By comparison, China's claims much more closely accord with the particular circumstances of the South China Sea in the modern context of international maritime law.
Based on the above, the clarification and consideration of joint development and freedom of navigation in the South China Sea directly involves China's maritime rights and interests as well as the future legal order of the South China Sea. Given the fact that joint development is not widely accepted, and its results are very mixed, it is not the best option for handling the South China Sea disputes. Therefore, we should reassess the use of the joint development approach to resolve our disputes in the South China Sea. Taking the long view, joint development is not the best option or chief means for resolving the disputes in the South China Sea. If in the short term China uses joint development as a stopgap measure, we should set up a reasonable mechanism for joint-development. China's "historical rights" in the South China Sea have not been rendered obsolete by UNCLOS or other recent maritime law. These rights cannot be understood from within the context of UNCLOS, and they do not create problems for freedom of navigation in the South China Seas. With respect to China's territorial waters within the South China Sea, foreign vessels enjoy the right of innocent passage, foreign warships and aircraft must get permission from the Chinese government before passing through; with respect to China's contiguous zones in the South China Sea, foreign merchant vessels can usually freely transit, while transiting foreign aircraft must

gain permission from the Chinese government prior; with regard to China's EEZs in the South China Sea, as long as foreign vessels and aircrafts give due consideration to China's rights, they can transit freely. Rather, it is other countries' exploitation of UNCLOS that has led to carving up and control of the South China Sea and impairment of freedom of navigation. By comparison, China's claims much more closely accord with the particular circumstances of the South China Sea in the modern context of international maritime law.

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Philippines Violates Declaration on the Conduct of Parties in the South China Sea[1]

Feng Liang[2]

The Philippines has ignored China's reasonable position and suggestions, going against the spirit of the Declaration on the Conduct of Parties in the South China Sea along with the basic requirement of "exhausting all possible means" before submitting a case to arbitration. They have unilaterally pushed for arbitration and challenged the bottom line of China's rights and interests in the South China Sea. The Philippines will have to suffer the consequences of its actions as they have forced China to retaliate.

The Philippines unilaterally started the arbitration process last year, and this March they have once more pushed for international arbitration. They have continually overhyped internationalization of the South China Sea disputes to cater to the strategic demands of major countries outside of the region. Their objective is to attempt to achieve "legal" status to develop the resources within China's nine-dash line area in the South China Sea. The Philippines has ignored the Chinese side's reasonable position and suggestions, violating the spirit of the Declaration on the Conduct of Parties in the South China Sea along with the basic requirement of "exhausting all possible means" before submitting a case to arbitration. They have unilaterally pushed for arbitration and challenged the bottom line of China's rights and interests in the South China Sea. The Philippines will have to suffer the consequences of their actions as they have forced China to retaliate.

Everyone knows that in 1955 the Philippines submitted a statement on territorial waters to the International Law Commission of the United Nations. In 1961 they promulgated Republic Act 3046 ("An Act to Define the Baselines of the Territorial Sea of the Philippines"), and in 1968 they promulgated Act 5446. Both laws fail to include Scarborough Shoal in the scope of their South China Sea island claims. Furthermore, when the Philippines ratified the United Nations Convention on the Law of the Sea (UNCLOS), they also made exclusionary statements regarding its territorial claims. At present the Philippines is trying to challenge the international law principle of "estoppel" to lay claim to their alleged rights and privileges in the South China Sea.

In 1997, China and the ASEAN countries arrived at a consensus, "to consent in accordance with recognized international law, including the United Nations Convention on the Law of the Sea passed in

[1] 冯 梁 [Feng Liang], 菲律宾违背《南海各方行为宣言》["Philippines Violates Declaration on the Conduct of Parties in the South China Sea"], 中国海洋报 [*China Ocean News*], 12 June 2014, https://www.chinanews.com.cn/mil/2014/06-12/6272489_2.shtml.
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1982, to resolve the South China Sea disputes through friendly cooperation and negotiation." Guided by this spirit, China and ASEAN's relevant foreign ministers and representatives of foreign ministers signed the Declaration on the Conduct of Parties in the South China Sea. The text of this declaration's fourth article stipulates that the relevant South China Sea "territorial and jurisdictional disputes [would be resolved] by peaceful means… through friendly consultations and negotiations by sovereign states directly concerned." The phrase regarding resolution of disputes "by sovereign states directly concerned" clearly excludes the interference of a third party (including arbitration). Therefore the Declaration on the Conduct of Parties in the South China Sea adheres to the agreement in UNCLOS article 281, paragraph 1 to "exclude any other procedure."

In recent years, China has actively made great efforts to sign legally binding "Standards of Conduct for Parties in the South China Sea" based on the Declaration on the Conduct of Parties in the South China Sea. However, the Philippines have continuously and unilaterally adopted extreme actions. They have unceasingly set up barriers to advancing consultations, to the point of submitting the South China Sea problem to international arbitration. The Philippines' action of bringing this issue to arbitration not only violates the essential nature of the Declaration on the Conduct of Parties in the South China Sea, but also obviously transgresses UNCLOS' instructions on exhausting all peaceful means of dispute resolution possible before starting compulsory procedures.

According to international law, disputes among arbitrating countries at the International Court of Arbitration have to meet the condition of the involved states accepting a dispute resolution clause or arbitration clause in a pact or an international treaty. It is evident that the Philippines' submission for arbitration does not satisfy this condition, but is instead purely unilateral behavior. The court of arbitration under the International Tribunal for the Law of the Sea is a permanent specialized institution established in accordance with Annex VI of UNCLOS. The laws and processes of its use of arbitration, as well as the scope of cases it deals with, should use the rules of UNCLOS and UNCLOS' Annex VII as their standard. According to Article 298 of UNCLOS, states that sign a treaty may make claims to the United Nations Secretary-General to exclude enforced use of the arbitration process regarding disagreements over territorial ownership, division of the seas, historical possession, military interests, etc. China already made exclusionary claims in 2006. The core issue behind why the Philippines have proposed international arbitration this time is the question of sovereignty over the islands within China's nine-dash line. International courts of arbitration do not have the right to adjudicate on this topic.

In actuality, the Philippines' push for arbitration has not only encountered Chinese opposition, but has also been called into question by relevant ASEAN countries. At the beginning of this year, the author got a sense of this at an international forum on freedom of navigation in the South China Sea. One participant said [he] did not know whether the Philippines was incurring this risk for the sake of their own interests or for the interests of Americans, but that at the very least it harmed the common security of the South China Sea area and gave China an "opportunity" because the Philippines' risky behavior would compel China to respond in kind. The author thinks that China, as a responsible major country, can initiate an Asian security concept of the continent's common, integrated, cooperative, and sustainable security. China will firmly take the path of peaceful development, and unswervingly promote the South China Sea becoming a sea of harmony and mutual benefit.

At the same time, China is shouldering the responsibilities a great power must in dealing with the risk-takers who are destroying regional security. In pushing for arbitration of the South China Sea [disputes], the Philippines are causing the international atmosphere regarding the South China Sea

problem to deteriorate, because the Philippines are pushing the South China Sea disputes outside of the scope of the two countries [involved] and outside of a legal framework so that they become a chess piece in the game played in the Asia-Pacific region between China and certain major countries outside of the region. The Philippines plans on using its ten-year Defense Cooperation Agreement with the United States to intimidate China [lit. to "use a tiger skin as a flag."] It is little known that a few major countries outside of the region incited the Philippines to abandon the Declaration on the Conduct of Parties in the South China Sea, precisely to serve maximization of their own interests. At the very least, the Philippines are a pawn on these major countries' chessboard. More important, the Chinese government will absolutely not allow other states to willfully violate the country's core interests (核心利益). The use of non-peaceful methods to protect South China Sea rights and interests is an important option in dealing with malicious provocations.

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Summary of the Workshop on "The Current Legal Struggle for Rights and Interests in the South China Sea

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On 8 June 2015, the Collaborative Innovation Center of South China Sea Studies, Tsinghua University School of Law, and the State Oceanic Administration's (SOA) Chinese Institute for Marine Affairs (CIMA) jointly held a workshop at Nanjing University on "The Current Legal Struggle for Rights and Interests in the South China Sea." Over 20 people attended the workshop, [including] executive director ZHU Feng and deputy director SHEN Guchao of the Collaborative Innovation Center of South China Sea Studies, Dean WANG Zhenmin and professor JIA Bingbing of Tsinghua University's School of Law, CIMA director Judge GAO Zhiguo, and Nanjing University School of Law professor FAN Jian. Director ZHU Feng presided over the workshop. The workshop delved into the current issues and emerging trends of China's construction on islands and reefs, the China-Philippines Arbitration Case, the nine dashed line (*duanxuxian*) and historic rights, cross-strait cooperation on South China Sea issues, and the regional security situation in the South China Sea. The main content and viewpoints [at the workshop] are as follows:

I. Issues Related to China's Land Reclamation in the South China Sea

The workshop discussed China's current land reclamation activities in the South China Sea on three levels. **First, China's land reclamation activities in the South China Sea are legitimate and have received recognition within international legal circles.** Experts pointed out that

*孙建中[SUN Jianzhong], "当前南海权益斗争与法理交锋研讨会" 综述 [Summary of the Workshop on "the Current Legal Struggle for the Rights and Interests in the South China Sea"], 亚太安全与海洋研究 [Asia-Pacific Security and Maritime Affairs], July, 2015, No. 2, pp. 117-123.

current international legal circles, including international law experts of Southeast Asian countries and Western countries such as the US, have reached two general understandings on the issue of China's land reclamation in the South China Sea: 1) China's land reclamation activities in the Spratly Island Group do not violate international law, because there are no clauses in the United Nations Convention on the Law of the Sea (UNCLOS) that prohibit the carrying out of land reclamation activities on one's own islands and reefs and; 2) land reclamation activities do not alter the original legal status of [those] islands and reefs. **Second, China should place more emphasis on the development of soft power with its construction of islands and reefs in the South China Sea.** Some experts suggest that although South China Sea island and reef construction could push forward China's strategic front lines by 1,700 kilometers and provide China's Navy with better conditions for sailing beyond the First Island Chain, the purpose of island and reef construction should be to increase efforts at developing soft power: 1), China should expand the proportion of South China Sea island and reef construction used for civilian infrastructure, thereby enabling the islands and reefs in the South China Sea to become a forward platform for resolving fisheries disputes with other South China Sea countries and striving to create a mechanism [for such resolutions] 2) China should focus on the function of South China Sea islands and reefs in providing public security products. Just building lighthouses to provide navigational services for passing ships is far from enough, since lighthouses are also a symbol of China's sovereignty, [which] is essentially a category of hard power.

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Third, China [should not] rush to resolve the difficult issues of the South China Sea, for it currently has many more important things to do. Some scholars pointed out that China is actually faced with choosing from two kinds of opportunity costs: 1) resolve the South China Sea issue now, but pay a greater price or 2) resolve the South China Sea issue when the opportunity ripens, thereby paying a comparatively smaller price. Suppose China focused on its development for another 20-30 years, thereby postponing resolution of the South China Sea issues for 20-30 years. At that point the circumstances would be more favorable for China, since China by then would have much greater international influence than it does in 2015. China's gap with the US would be much smaller and its regional advantage more pronounced. [By then] China would have more methods by which to resolve the South China Sea issue. Therefore, the

most important thing for China to do is to develop itself and continuously grow stronger. There are also experts who believe that the South China Sea issue is an unavoidable strategic threshold that China must pass through: 1) Since China has already established the strategic goal of becoming a "maritime power," this objective will drive China to take many corresponding measures [to achieve it]; the South China Sea then is an important area in which to turn [itself] into a "maritime power" and 2) The US and the South China Sea claimant states may not let China maintain its vague position on the nine dashed line for so long, since they know time is on the side of an increasingly powerful China's side. Prolonging the South China Sea issue is of no benefit to them.

II. New Progress in the China-Philippines Legal Struggle with Respect to the South China Sea Issue

Participants found that the China-Philippines legal struggle (*fali douzheng*) with respect to the South China Sea issue reflects a direct contradiction and head-on collision between history and international law. [It] reflects the different understanding by the South China Sea countries of the South China Sea issue, expressed specifically as follows. For China, history hasn't ended. The nine dashed line is an inheritance from and continuation of Chinese history; for other South China Sea countries, history has already ended. International law has replaced history to become the present fundamental framework for solving the international community's various issues. It's worth noting that because China hasn't revealed enough historical evidence, the international community lacks understanding of China's historical narrative. This has led to an even more severe situation for the protection of China's rights and interests in the South China Sea. On 14 March 2015, the Philippine's attorney submitted supplemental arguments to the arbitration tribunal. They emphasized that historic rights and UNCLOS cannot overlap, asserting that UNCLOS has fully assimilated (*xishou*) the concept of historic rights. This is actually tantamount to saying that UNCLOS has completely expelled historic rights from the arena of history. On this point, experts attending the workshop pointed out that historic rights have not been fully assimilated by UNCLOS, because UNCLOS hasn't explicitly denied the validity of

such rights. However, what's critical is whether China's historic rights to fish and navigate cover all the sea areas inside the nine dashed line.

Expert participants found that there are two new trends in the present China-Philippines South China Sea arbitration case. **First, the arbitration tribunal decided in July 2015 to break the arbitration case into two parts, namely separate hearings on jurisdiction and the case itself.** This approach makes clear that China has achieved at least a preliminary victory in its contest with the Philippines over the arbitration case. It must be noted that although a combined hearing of jurisdiction and the case itself can show that the court possesses jurisdiction, having separate hearings at least demonstrates that the court is first making a judgment over whether it has jurisdiction. However, separate hearings may also be understood as the court believing that it possesses jurisdiction and that having separate hearings is only an empty gesture.

In this case, the implied meaning would be that regardless of whether the hearings are separate or combined, the arbitration tribunal finds that it possesses jurisdiction over the case. This is different than the 1986 case of "*The Republic of Nicaragua v. The United States*." In fact, that case proceeded strictly according to separate protocols. **Second, the arbitrators of the tribunal not only visited Taiwan but also demanded an on-site inspection of Taiping Island (Itu Aba Island).** Normally, tribunal judges or arbitrators can reach agreements with the disputants to conduct on-site inspections of disputed islands and reefs, determining the attributes of the disputed [features] according to the standards established under UNCLOS. Due to China not participating in the China-Philippines Arbitration Case, China is unlikely to allow the arbitrators to conduct on-site inspections of the islands and reefs that [China] controls. However, the arbitrators did not make contact with the relevant Taiwanese departments and personnel [before] visiting Taiwan. Some of them came with ill intent (*laizhe bu shan*). Perhaps it was to seek evidence and define all the disputed South China Sea islands and reefs involved in the case, definitions that may contradict and conflict with Mainland China's definition of these disputed [features]. This is a trend we should be highly concerned about. Furthermore, the participants [of the workshop] also expressed concern over the China-Philippines Arbitration Case creating a bad example with respect to China's South China Sea island and reef construction. Since island and

reef construction could possibly cause harm to South China Sea ecological and fishery resources as well as environmental pollution, [the arbitration case] could potentially [ignite] lawsuits and complications in the South China Sea, bringing about a series of lawsuits aimed against China.

III. The China-US-Taiwan Tripartite Contest over the South China Sea Nine Dashed Line

Participants pointed out that the report released by the US State Department "*Limits in the Seas: China's Maritime Claims in the South China Sea*" on 5 December 2014 sent two important messages to China: **The first involves the nine dashed line in the South China Sea that the US can accept.** If China defines the dashed line as being a boundary of island sovereignty, with the sovereignty of any islands within that line belonging to China, and if the maritime rights extending from each island also conform to the regulations in UNCLOS, this is something that the US can accept. [This is] because it knows China does not hold many islands and reefs in the South China Sea, and most of the islands and reefs are under occupation by the states of Vietnam, Philippines, and Malaysia. It's not possible for China to drive them off of these islands and reefs. **The second message involves the nine dashed line in the South China Sea that the US cannot accept.** If the nine dashed line claimed by China is in line with historic rights, then sovereignty over most of the over 3.5 million square kilometers of the South China Sea would belong to China. The US opposes such a nine dashed line as defined by China, and proposes that China's claim on the South China Sea should be on equal standing with the claims of its neighbors, and should reach a "fair" outcome for each party within the UNCLOS framework. Participants raised several views in response to this issue: 1) In 1947 the government of the Republic of China declared that the nature of the nine dashed line is that of a maritime boundary line (*haishang jiangyuxian*). The vast majority of the sea areas within the South China Sea belong to China. China not only has historic fishing and navigation rights within the dashed line, but also enjoys newly derived rights to develop its resources. 2) Historic rights can overlap with UNCLOS without negating each other. 3) In regards to China in the South China Sea, without historic rights there is no maritime delimitation issue, as historic rights are an important prerequisite for maritime delimitation. 4) Historic rights contain two implications: one is historic

sovereignty, namely ownership of islands and reefs; the other is historic rights apart from sovereignty, including fishing and navigation rights.

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Other participants asserted that historic sovereignty (*lishixing zhuquan*) mainly refers to the nine dashed line, and historic rights mainly refers to other non-sovereign rights within the nine dashed line. 5) There is a clear difference between the exclusive economic zone under historic rights and of that under UNCLOS. 6) UNCLOS cannot become the sole "constitution" for solving global maritime issues. Since 167 countries joined UNCLOS and there are 193 member countries in the United Nations, this means there are still 26 countries that haven't joined UNCLOS, including the major fishery powers of the US and Peru.

Experts at the workshop pointed out that the basic position of international law experts in Taiwan's Green Camp is that the nine dashed line refers to island sovereignty. This implies that the Democratic Progressive Party (DPP) may abandon its claim to the nine dashed line once it is in power. During DPP Chairwoman Tsai Ing-wen's 12 day visit to the US (from late May to early June of 2015), she signaled to the US that Taiwan would not abandon its position on the sovereignty over the Diaoyu Islands (Senkaku Islands), but deliberately kept a vague attitude on the South China Sea issue. [This] allowed leeway for determining [the administration's] South China Sea policy after the election. If the US supports Tsai Ing-wen, once in power she may likely repay the Americans by abandoning [Taiwan's] nine dashed line claim and depart from the mainland on the South China Sea issue. This is what the Americans would like to see her do, in order to apply greater pressure on China over issues in the South China Sea. If this occurs then the Mainland will fall into a very awkward position, since the nine dashed line in the South China Sea was a product announced by the government of the Republic of China. [If Taiwan] is now going to get rid of the nine dashed line, it could potentially be very difficult legally for the Mainland to continue adhering to this position. [Participants] suggested that Mainland scholars and experts closely track and study this potential problem and craft countermeasures. At the same time high importance must be attached to contact and communications with Taiwan's Green Camp at the Taiwan Affairs Office level. Such work can prevent to the greatest extent possible a retreat from [Taiwan's] stance on the South China Sea issue after the DPP election. At

the very least [China] can strive for the DPP to maintain silence or a neutral position on the South China Sea issue after coming to power, so that there doesn't appear to be a contradiction between its claim in the South China Sea and that of the Mainland. Other participants proposed that if Taiwan's Green Camp abandons the nine dashed line in the South China Sea after it comes to power, regardless of the degree of abandonment, Mainland China should make a legal response. The Republic of China government was the legitimate government of China in 1947. The nine dashed line, then, is a state asset (*guojia zichan*). Therefore, as a state asset, only the legitimate government truly representing China, regardless of which time period, has the right to handle [the claim]. In other words, after the founding of the People's Republic of China (PRC) in 1949, the right of handling the nine dashed line in the South China Sea was inherited by the PRC and no longer belongs to the authorities on Taiwan, who no longer represent China.

IV. On Cooperation between Mainland China and Taiwan on the South China Sea Issue

Taiwan has very few experts on international or maritime law. There are probably 20 such experts in Taiwan, among which the Blue Camp has 10+ and the Green Camp has 3-5. Each camp has established its own association of international law. Participants in this workshop pointed out that on the question of cooperation between the Mainland and Taiwan there are three new trends that are worth paying attention to. **First, Taiwan has recently made plans to publish both English and Chinese versions of materials from the 2014 "Conference on Historical Sources on the Southern Frontier," which was organized by Taiwan's Ministry of Foreign Affairs and its National Security Council. These materials also include many precious images that show how China has historically exercised sovereignty in the South China Sea.** This would be the first time Taiwan has made available materials that combine historical data with images showing China's exercise of sovereignty in the South China Sea. It is possible Taiwan will submit these materials to the Permanent Court of Arbitration, which is deciding the China-Philippine South China Sea case. Government departments and experts on the Mainland should pay attention to news about this publication. They should extract its historical and practical value. But more importantly, they should exploit this publication to better safeguard China's sovereign rights and interests in the South China Sea and step up [China's]

influence on the Court. Moreover, we must take this opportunity to discuss the possibility of expanding and deepening cross-strait cooperation on the South China Sea issue, especially the matters of safeguarding sovereignty and the legal struggle. At the same time, the two sides should do their utmost to reduce or dispel obstacles to further cooperation, thereby creating a fairly relaxed environment for cross strait cooperation on the South China Sea issue. **Second, at the "2015 Asia-Pacific Research Forum of the World Association of International Law and the American Society of International Law" held in Taiwan on 25 May, [Taiwanese President] Ma Yingjiu proposed the concept of the "South China Sea Peace Initiative." With this, Ma hopes to jointly develop resources in the South China Sea with other parties on the foundation of the principles of "sovereignty belongs to China, shelve the disputes, peace and reciprocity, and engage in joint development." He also hopes to use mechanisms of dialog and cooperation to peacefully resolve the disputes and jointly safeguard peace and development in the South China Sea.** Ma Yingjiu believes that relations across the Taiwan Strait are not relations between two states, but instead are a type of special relationship. The "1992 Consensus" and "mutual non-recognition of sovereignty, mutual non-denial of the right to rule" are the best means to safeguard peace and prosperity across the Taiwan Strait. Participants in this workshop believe that the event in Taiwan constituted an international setting provided by the Americans for Ma Yingjiu to propose his "South China Sea Peace Initiative." The American aim was to use Ma Yingjiu to check the Mainland's island building and reclamation activities in the South China Sea, because the timing of that initiative was no coincidence. It took place when things really started to heat up between China and the U.S. over the South China Sea. It shows that neither its behind-the-scenes efforts to promote the China-Philippines arbitration nor its efforts to encourage the JMSDF and the USN to jointly patrol the South China Sea could stop China's island building and reclamation operations. Participants in this workshop pointed out that Taiwan's international legal experts privately admit that Ma Yingjiu's peace initiative was an American idea. The peace initiative chiefly represents American views on the South China Sea issue, it catered to American demands, and its purpose was to warn the Mainland not to unilaterally adopt extreme behavior, that it should immediately stop its island building and reclamation operations in the South China Sea. Participants in the workshop suggested that the Mainland should respond to Ma Yingjiu's "South China Sea Peace Initiative," that is, they should not just ignore it. **Third, with respect to Taiwan's 2016 election, many people from**

the Blue Camp who in the past had actively sought to safeguard sovereignty in the South China Sea have moderated their positions out of fear of a Green Camp victory in the election. This has made cross-strait cooperation on the South China Sea issue more problematic. As the election draws near, the situation is becoming clearer. The Democratic Progressive Party (DPP) selected Tsai Ing-wen as a presidential candidate. The member of the Nationalist Party best positioned to challenge Tsai is the Party's Chairperson Eric Chu (Chu Li-luan). But Chu does not want to run. Thus the Nationalist Party has no choice but to select Hung Hsiu-chu as its candidate. This shows that many people within the Nationalist Party have a pessimistic attitude about the election. It is extremely likely, then, that the Nationalist Party will be unseated. In this context, Taiwan's public officials, college professors, and other intellectuals have put the brakes on discussions about cross-strait cooperation. Various types of misgivings have increased. Articles that they want to write and things that they want to do have been put on hold for now. They are waiting and watching, fearful that after the DPP regains power it will carry out reprisals against them.

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V. On the Current Situation and Trends with Respect to Military Security in the South China Sea

Some scholars pointed out that the Western media's intentional and malicious hyping of China's island building in the Spratly Islands has truly had a certain negative impact [on China], and this has caused the military security situation in the South China Sea to exhibit some new characteristics. **First, it appears that the US wants to rush to the front lines and confront China.** America's close-in surveillance activities directed at the Chinese islands currently under construction have received warnings on several occasions. Senior American officials have uttered some hard words, suggesting that they will send military surveillance vessels to conduct "super close-in surveillance" within 12 nautical miles of China's Spratly Islands. At the same time, they have publicly welcomed the JMSDF and the Australian Navy to conduct patrols in the South China Sea, an intentional provocation directed against China. **Second, at the same time that America is improving its ability to use the South China Sea as a means to balance against China, Japan is mimicking America and building a balance of power mechanism**

(*junshi jizhi*) to exploit the South China Sea issue to check China in the East China Sea and undermine China's advantages in the contest to achieve dominance in the Asia-Pacific. America's efforts to exploit the South China Sea issue to build a balance of power mechanism aimed at China is a product of its strategy to "Rebalance to the Asia-Pacific," the objective of which is to safeguard and consolidate its status as hegemon in the Asia-Pacific and the boss (*laoda*) of the world. Japan's use of the South China Sea issue to create a balance of power mechanism aimed at China is chiefly predicated on its desire to regain its leadership position in Asia. Even if it cannot realize this objective, it still wants to strive to make China become a "lonely and unwelcome emerging power." **Third, there is increasingly close military cooperation between the Philippines, Vietnam, and other South China Sea claimants and America and Japan. Overall, this has created a situation in which there is mutual cooperation between claimants at the same time that the claimants strengthen military cooperation with America and Japan. Moreover, there is evolution in the direction of overall cooperation between all parties.** With respect to arms sales, America has sold advanced E-2D early warning aircraft to Japan, and Japan has transferred submarine technology to Australia and plans to sell its stealthy Soryu-class submarines. At the same time, America and Japan have sold weapons systems to the Philippines and Vietnam. Additionally, American-led military exercises are taking place all the time in the South China Sea. Their themes are increasingly related to issues associated with the disputes and are increasingly realistic. Japanese, Australian, and Philippine militaries are increasingly involved in these exercises. The US military even wants to get the Taiwanese military involved. Objectively speaking, these efforts have promoted an arms race and military confrontation in the Asia-Pacific region.

For a period of time going forward, the military security situation in the South China Sea is likely to develop in the following four ways. **First, the South China Sea issue will likely become one of the primary arenas for strategic contention between great powers.** Right now this includes the US and Japan. Whether or not India will get involved and engage in strategic contention with China in the South China Sea in large part will depend on the extent to which China gets involved in Indian Ocean affairs. At present, this is an unknown quantity. If one day Sino-Russian relations take a turn for the worse (this is extremely unlikely, but the possibility remains), Russia could become a formidable adversary in the South China Sea. All this means that the South China Sea issue will be very difficult to resolve in the short term and is very likely

to accompany China throughout the whole process of its peaceful rise. **Second, close-in surveillance of China's Spratly Islands by American ships and aircraft will not stop. Nor will frequent, large-scale military exercises in the South China Sea. But the probability of a direct conflict with China is extremely small.** The USN will not only monitor the Chinese military's activities in the South China Sea at all times; it will also maintain its deterrence posture against the Chinese military and regard the South China Sea as a naval battlefield. Although in theory there exists the possibility of a conflict being set off by accident (*caqiang zouhuo*), in reality the likelihood of this is extremely small. This is because both China and America have learned the lessons of past encounters such as the EP-3 incident [of 2001] and the *Impeccable* Incident [of 2009]. Moreover, they've signed the Code for Unplanned Encounters at Sea (CUES). Thus, the probability of a conflict between front line American and Chinese forces is extremely low and the possibility of war is even smaller. On 4 June 2015, China's ambassador to the US, Cui Tiankai, gave an interview on CNN during which he talked about the notion that "China and the US will inevitably go to war over the South China Sea." He said, "I don't believe that China and the US will come to conflict and confrontation over this issue." **Third, China's construction activities in the Spratly Islands will not continue forever, but they won't immediately stop either. This may cause other states in the South China Sea to mimic China's moves, because everybody wants to finish their island construction before a Code of Conduct is signed.** Since each party is conducting activities on features that they control, and they are not interfering with each other, a conflict is very unlikely. At most there may be a war of words. However, mainstream Western media may continue to hype this issue. **Fourth, the situation with the islands in the South China Sea will likely persist over the long term.** There are four factors that lead to this conclusion. 1) Nobody will electively leave islands that they currently control; 2) negotiations are unlikely to change the situation and China is unlikely to be able to use negotiations alone to get its lost islands back; 3) legal means are an effective approach to peacefully change the situation, but by as early as 2006 China already eliminated this possibility; and 4) although war is an effective approach to changing the situation, the negative side effects of war are too great; no side can bear the negative outcomes that would come with war. Therefore, the final result of the South China Sea issue will likely be similar to the approach used by Latin American countries to resolve disputes. That is, whoever controls territory ultimately becomes owner of that territory. This implies that the current situation in the

South China Sea is unlikely to experience too much of a change in the future, but sovereignty disputes will continue to exist.

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A Maritime Legal Contest[1]

Han Yong

Soon after National Day in 2012, the Rule of Law Office of the State Council organized a meeting of the maritime-related departments. Renowned maritime law expert LIU Nanlai was one of three scholars invited to the meeting.

The chief purpose of this meeting was to pass along a directive: in all future maritime disputes, China will arm itself with the law.

The China-Japan Diaoyu dispute was then still in a state of ferment. Unlike in the past, China's counterattack was multi-pronged, and the entire course of events involved the law.

Legal Confrontation

Let's first recount how this conflict unfolded:

10 September, the Japanese government declared that it would "purchase" Diaoyu Island and its associated islets; later on that day, the Chinese government declared the baselines for the Diaoyu Islands.

11 September, Japan signed the "purchase agreement" for the Diaoyu Islands. China printed and distributed the Measures for Determining the Scope and Protecting the Territorial Sea Baseline Points (领海基点保护范围选划与保护办法); China Marine Surveillance (CMS) vessels patrol the waters of the Diaoyu Islands; State Oceanic Weather Station starts reporting weather forecasts for the Diaoyu Islands.

12 September, Japan declares completion of "Registration Procedures for Nationalizing Territory."

13 September, China deposits with the United Nations (UN) coordinates and maps for baselines for the Diaoyu Islands.

15 September, China makes public the geographic coordinates of the Diaoyu Islands.

[1] 韩永 [Han Yong], **海洋"斗法"** ["A Maritime Legal Contest"], **中国新**闻周刊 [*China Newsweek*], no. 43 (November 26, 2012), pp. 29-33.

16 September, the Chinese government decides to submit a case for an extended continental shelf in the East China Sea to the Commission on the Limits of the Continental Shelf.

25 September, China publishes a white paper entitled *The Diaoyu Islands are China's Inherent Territory*.

In an interview with *China Newsweek*, LI Guoqiang, Deputy Director of the China Academy of Social Science Borderland History and Geography Research Center, gave his analysis that the China's legal behavior throughout this time can be divided into several levels: first was enacting laws, as seen with the promulgation of the Statement on Territorial Sea Baselines; second was formulating implementation measures, as seen with the Measures for Determining the Scope and Protecting the Territorial Sea Baseline Points; third was law enforcement, as seen with CMS vessels patrolling the waters of the Diaoyu Islands; and fourth was pursuing international validity (国际效力), as seen with filing the coordinates and maps with the UN, and deciding to submit a case for an extended continental shelf.

In an interview with *China Newsweek*, a retired official from the State Oceanic Administration (SOA) analyzed the relational logic of these different types of legal behavior: declaring the territorial sea baselines and determining the extent of the territorial sea gives a "red line" to the other party and provides a legitimate reason (师出有名) to dispatch law enforcement vessels. According to the PRC Law of the Territorial Sea and Contiguous Zone foreign military vessels that enter China's territorial sea must first gain the approval of the Chinese government.

On this basis, making public the coordinates of the islands, reporting weather forecasts, and drawing up maritime charts are expressions of China's administrative jurisdiction.

The abovementioned behaviors are all regarded by UNCLOS as having legal significance. After China deposited its coordinates and charts with the UN, the spokesperson of the UN Secretary General made a statement indicating that it had received the Chinese government's appeal. Soon afterwards, the UN presented on its website the territorial sea baseline charts submitted by China. For the sake of fairness, the UN website also presented the "rebuttal" document written by the Japanese government. This process allowed the international community to see the reality of there being a sovereignty dispute over the Diaoyu Islands. Previously, the Japanese government, which exercised actual control over the islands, denied the existence of a territorial dispute.

In this way, China's claim to the Diaoyu Islands took another step forward: not only did it clarify its rights and interests with respect to the islands; it also allowed for normalization (常态化) of Chinese maritime law enforcement patrols of the Diaoyu waters. Japan's so-called actual control over the islands is currently facing an unprecedented challenge.

And once Japan's actual control is undermined [lit. diluted], the situation between China and Japan will change. For a long time, the situation was one in which China could show historic jurisdiction over the Diaoyu Islands while Japan had actual control over the Islands, such that "China 'had reason on its side but did not have the upper hand,' while Japan 'had the upper hand but didn't have reason on its side.'"

Rights Protection Chain

LI Guoqiang says that the legal rights protection chain that China demonstrated in the Diaoyu Islands dispute can serve as a frame of reference in handling similar events in the future.

This chain can be summarized as follows: first, legislate in a timely manner; second, the legislation needs to come to fruition (落地); third, law enforcement and administration need to keep pace; finally, pursue international validity (国际效力).

China's sovereignty over disputed waters already finds support in the law. In 1958, the Chinese government released the Statement of the People's Republic of China on the Territorial Sea. This was new China's earliest legal document on the territorial sea. This short, four article statement stated that the scope of its applicability was "Taiwan and its adjacent islands… the Nansha Archipelago and other islands that belong to China." Aside from Nansha Islands being explicitly identified, experts believe that since the Diaoyu Islands are affiliated with Taiwan they are included in the scope of the Statement.

The 1992 Law of the People's Republic of China on the Territorial Sea and Contiguous Zone was more explicit in terms of sovereignty over disputed islands. Article 2 states "The territory of the People's Republic of China comprises … Taiwan and its affiliated islands including the Diaoyu Islands…the Nansha Archipelago as well as all other islands belonging to the People's Republic of China."

The 1992 move to include the Diaoyu Islands into the law was a process fraught with complications. XU Senan, former Deputy Director of the SOA Policy Research Office, took part in the legislative process and he tells *China Newsweek* that the department(s) involved feared eliciting pushback from relevant countries and therefore opposed bringing the Diaoyu Islands into the law and strived energetically to remove this content. At the National People's Congress (NPC) discussion session, the debate was quite intense. Later on, it was only through the gumption of the NPC Commission on Legal Work that this content remained in the law.

If we exclude the 1958 Statement on the Territorial Sea, which was not the result of formal legislative processes, China's territorial sea legislation came later than neighboring countries. Vietnam and the Philippines territorial sea legislation was formulated in the 1970s. At that time, the UNCLOS meetings had begun. Some neighboring states took advantage of this opportunity to use legal means to snatch contested waters in order to create a fait accompli. During this period China was preoccupied with the Cultural Revolution and busy with reconstruction. It didn't have time to attend to these matters. XUE Guifang, Director of the Maritime Law Research Institute at the Ocean University of China, tells *China Newsweek* that the tardiness of China's claim will affect its validity.

The two abovementioned laws only represent big picture principles for the disputed islands. They are all about declaring sovereignty. To get to practical operational matters, there needs to be a process from principles to specifics. This process involves relevant departments formulating administrative regulations and departmental rules. In the most recent Diaoyu conflict, the State Council formulated the Statement on the Territorial Sea Baselines of Diaoyu Island and its Affiliated Islands, then SOA formulated the Measures for Determining the Scope

and Protecting the Territorial Sea Baseline Points. The first is a manifestation of the Law of the Territorial Sea and Contiguous Zone being put into practice, and the second is a manifestation of the first being put into practice.

Now the territorial sea baselines for the Diaoyu Islands have already been drawn, but the baselines for the Nansha Archipelago have not. Unlike the Diaoyu Islands, the Nansha Islands are very numerous, the distance between them is rather small, there's lots of overlap between the territorial waters, and there are many parties to the disputes. Therefore, it is certain to be a very difficult process (一件颇费周折的事情).

But some countries have already reaped the rewards of drawing baselines. In February 2009 the Philippines legislature passed The Law of the Territorial Sea Baselines, unilaterally declaring a section of the Nansha Archipelago and Huangyan Island as Philippines territory.

LI Guoqiang tells *China Newsweek* that promulgation of territorial sea baselines involves a question of timing. "If you declare baselines then you have to protect them. Right now some islands are occupied by other states. Once you declare the baselines you must take responsibility for them (一宣布就给包进来了). Do you or don't you dare to fulfil that responsibility?"

In April of this year [2012], the Philippines military harassed Chinese fisherman at Huangyan Island, giving rise to a two month long standoff between the two countries. Foreign commentary pointed out that the Philippines had declared baselines but they did not have the power to protect them.

Insufficient Presence

To get the "upper hand," you need to strengthen presence. This includes both military and administrative presence as well as nongovernmental presence. All three types of presence have the possibility of serving as evidence in international law.

In the Diaoyu Island conflict, the Chinese government has shown abundant forms of administrative jurisdiction: it promulgated the geographic coordinates of Diaoyu Island, broadcast maritime environmental forecasts, and conducted regular patrols with CMS and Fisheries Law Enforcement vessels. Before this, during the Huangyan Island conflict, China broadcast weather forecasts for the disputed waters.

In the middle of October [2012], seven vessels from the PLA Navy North Seas Fleet passed through the waters adjacent to the Diaoyu Islands while returning from the far seas. The vessels steamed along an arc around the southern coast of Diaoyu island. Integrated military, administrative and nongovernmental presence constitutes a mutually reinforcing chain of presence (存在链条).

But looking at the big picture, China is still just declaring sovereignty over the Diaoyu Islands. Sending the CMS or Fisheries Law Enforcement still only conveys the message "I can do this," not "You can't come here." Moreover, China (and Japan too for that matter) very carefully avoids crossing the 12nm "red line" for too long. People in the field call it "presence outside the inner circle" (核心圈外的存在).

In the Nansha Islands, China's presence is even more one dimensional. Aside from raising fish in the Mischief Reef lagoon, China's practical control over the other six islands remains only military in nature. Slightly better than before, as CMS and Fisheries Law Enforcement have rapidly developed in recent years, Chinese administrative patrols in the Nansha Archipelago are on the rise, providing more timely protection to Chinese fisherman who have travelled all that way to get there and ensuring a nongovernmental presence in these waters.

But the presence of other countries in the Nansha Archipelago has already advanced quite a ways. From the military occupation of the 1970s, it has developed into today's administrative divisions, civilian facilities, societal systems, and human migration. LIU Feng, Deputy Director of the Marine Science Research Institute at the South China Sea Research Academy, tells *China Newsweek* that some migrants have already lived there for generations. He says that this deeply-rooted human presence has a persuasiveness that is extremely difficult to overcome in international law.

In the past, due to certain diplomatic reservations, China passed up on opportunities to strengthen its presence. XU Senan says that in the early 1990s China planned on building an airstrip on Mischief Reef. The Philippines responded with more than a month of harassment. Finally, that planned was discontinued for being more trouble than it was worth.

Now, in the Nansha Archipelago Vietnam and the Philippines both have their own airstrips. China is the only country that does not. XU Senan says that if there were an airstrip in the Nansha Archipelago, China's situation would be much different. He says that Mischief Reef has two superb natural runways.

In island disputes, international decisions show an increasingly obvious trend: the validity of actual control is greater than historical evidence. In 2008, Singapore and Malaysia went to court over ownership of Pedra Branca. Ultimately, this islet which was first discovered and named by Malaysia was given to the country that exercised actual control over it – Singapore.

The establishment of Sansha City gave people great hope. One [unnamed] scholar who we interviewed said that the significance of creating administrative zones is that it provides performance incentives for government departments, therefore freeing up departmental resources which when integrated with the resources of Nansha itself can give rise to a vibrant presence.

After the establishment of Sansha City, lots of people looked for opportunities for personal development on Sansha. But for normal citizens, it is still an arduous journey to get to Sansha. The relevant departments are still seeking a balance between diplomacy, ecology, and development.

Proficient at Using International Law

In this latest Senkaku Island conflict, the frequent interaction between China and the UN has been regarded as a new look for China in solving territorial disputes. During this May's Huangyan Island conflict, China ruled out the possibility of accepting international adjudication to resolve the South China Sea problem.

An [unnamed] retired SOA official tells *China Newsweek* that in terms of using international law the South China Sea and the Diaoyu problems are different: Japan exercises actual control over the Diaoyu Islands, and Japan has always denied the existence of a territorial dispute. What China needs to do is present evidence for the world to see the existence of a dispute. However, with the South China Sea none of the parties deny the existence of a dispute. The crux of the problem is how to resolve the issue in a manner most advantageous to oneself.

Of all types of channels for resolving territorial disputes, China has in the past preferred bilateral negotiations and not wanted to go to the International Court of Justice. Whenever XUE Guifang, Director of the Maritime Law Research Institute at the Ocean University of China, attends international conferences she will encounter foreign scholars who are confused about this. She usually responds with the adage "Asian people dislike lawsuits." But she herself understands that the reality is not nearly that simple.

XU Chongli, Dean of Xiamen University Law School references the gap between China's soft and hard power to explain the reasoning behind China's decision [not to accept international arbitration]. He says that recent growth in military, economic and other forms of China's hard power will be put to best use in bilateral negotiations (which are interest-oriented). But China's weak position in terms of [political] system and other forms of soft power would be thoroughly revealed in values-oriented international arbitration. The vast majority of judges in the ICJ come from Western countries. In case law the subjectivity of judges is very important, so it would be very difficult to prevent ideology from influencing the outcome.

But the reality of Nansha and Diaoyu disputes not being resolved after several decades shows that with territorial disputes where great interests are involved the effectiveness of bilateral negotiations is poor. In this situation, there are only two choices to resolve the dispute: unilateral action or international arbitration.

Some of China's current territorial disputes originated from the unilateral actions of one state: the occupation of Nansha islands by Vietnam and the Philippines mostly involved military occupation; China also used force to recover the Xisha Islands.

But given that it is a very costly means of resolution, unilateral action is more and more subject to limitations. Some scholars suggest that under the precondition of not renouncing unilateral action, international arbitration would be a more viable option for policymakers – at least it could serve as an alternative for rights protection.

In the practice of international law, some countries end up on the losing side in international arbitration because they don't understand the rules of international law. China should learn from these examples. In the abovementioned case between Singapore and Malaysia, the big reason why Malaysia lost was because it failed to make a legally valid response to Singapore's evidence of actual control (e.g., investigating sunken vessels, a military flag on the island, an installed transceiver, land reclamation, etc.). Malaysia's silence on these matters was ultimately regarded as tacit acceptance of Singapore's actual occupation.

For China, in the case of Diaoyu Island and some of the islands of the Nansha Archipelago, they are all under the actual control of other states. The only countermeasure China can take is to

make statements of opposition. These statements, which the uninitiated might regard as dry and uninteresting, in the eyes of XUE Guifang all have specific legal connotations and show that China is adroitly using international law.

One [unnamed] scholar interviewed by *China Newsweek* has noticed that China is taking countermeasures of unprecedented strength on issues involving disputed islands of which it has lost actual control. At the same time that it is taking defensive measures, it is vigorously contending (力争) for a bit of actual control: after Vietnam passed its Maritime Law, China established Sansha City; after Japan "purchased" the Diaoyu Islands, China declared territorial sea baselines, and normalized patrols of administrative vessels. Some have summarized this method as "You take one step forward, and I take two steps forward," ultimately leading to a challenge against the other party's actual control.

In addition, rulings in international cases have also raised questions about the manner in which China collects evidence: given China's rich historical materials, it has been accustomed to finding evidence from history. But in international arbitration, the validity of historical evidence is much weaker than real world evidence (现实证据).

Given the fact that international arbitration relies on case law, the process of adjudication is in effect a process of legislation. China's participation in adjudication and constant application of its influence is in itself [tantamount to] participation in the legislation process. Currently, China has one judge in the ICJ. It has 4 arbitrators at the Permanent Court of Arbitration in The Hague; China Academy of Social Science (CASS) Honorary Academician LIU Nanlai is one of the four.

The Problem of Making it Work

LIU Nanlai says that if you take a big picture look at China's maritime law – that is, how to safeguard China's overall maritime rights and interests, and not just limited to disputed islands – China still has lots of work to do.

He believes that according to the principles of international law, China's maritime rights and interests don't just include rights and interests in territorial waters, economic zones, and continental shelves; they also include rights and interests in international waters and even in other states' territorial seas. But China's maritime legislation only covers China's maritime domains, saying nothing about waters beyond them.

This may affect China's protection of rights and interests beyond its own waters. If a Chinese vessel is encroached upon in international waters – for example, the 1993 "Yinhe Incident" – China faces a situation where it has no law to rely on: who should it send, how should it safeguard its rights, what are the limits of its rights? These questions all need to be clarified in domestic law.

This involves the issue of converting international law into domestic law. LIU Nanlai says that state law enforcement organs can only enforce domestic laws. International law cannot directly serve as the basis for law enforcement. Therefore states need to convert international law into

domestic law. There are two ways that this may happen: one is to transform through legislation and the other is to directly adopt [the international law]. The first way involves using the principles of international law to formulate domestic legislation. The second involves directly declaring through constitutional means that international law is a part of domestic law. The U.S. uses this second way. China, because it has reservations about some articles and because of considerations over the domestic context, mostly uses the first way.

China's legislation on matters involving its maritime domains also has issues. XUE Guifang says that the Law of the PRC on the Territorial Sea and Contiguous Zone only contains enunciations of principles. Without corresponding administrative regulations/statutes or departmental regulations to accompany it, it is very difficult to implement. China currently lacks these accompanying regulations.

LIU Nanlai was one of two drafters of the Law of the PRC on the Territorial Sea and Contiguous Zone. He tells *China Newsweek* that in the early period when the law was being formulated there were some specific regulations, but later on during the deliberation phase these parts were removed. The department in charge gave the following reasoning: the purpose for formulating the law was only to declare to foreign states that we established a territorial sea system, and not to establish an operational system.

This has brought difficulties for rights protection in China's maritime domains. For instance, the Law of the PRC on the Territorial Sea and Contiguous Zone mentions a "right of innocent passage," meaning that non-military vessels have the right of innocent passage through China's territorial waters but that military vessels wishing to pass through China's territorial waters must first gain China's approval. But questions such as which department would accept these requests for permission and which procedures should be followed when considering these requests were not dealt with in the law.

There's also a "right of hot pursuit." If a foreign vessel breaks the law in Chinese waters China can pursue that vessel until it enters the territorial waters of another state. But should a law enforcement vessel or a naval vessel conduct the pursuit? How should the two services coordinate? These questions have not been dealt with in the law. LIU Nanlai says that if China had made the law more specific, not only would it have been useful in rights protection vis-à-vis other states it would have been useful in management of internal waters (内海).

But here there is also the opportunity to "turn loss into profit" (扭亏为盈). XUE Guifang says that formulating laws that are enunciations of principles leaves lots of room for interpretation. In a time of ever-changing territorial disputes, China can release a set of explanatory articles (解释细则), in which it outlines its positions.

This requires a consideration of the overall situation. XUE Guifang says that the significance of this type of consideration is that all of China's maritime issues can be placed on the table and then [lawmakers can] decide what sort of law they want to pass and incorporate them accordingly for the benefit of forcefully supporting China's position. This proposition has been mentioned by lots of people in the field, including XUE Guifang, and at the moment it is undergoing formal consideration.

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On the Legality of Applying Straight Baselines to China's Mid-Ocean Archipelagos

A Perspective from Customary International Law †

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When a state determines the baselines of its territorial seas, the issue of whether or not it can apply straight baselines to mid-ocean archipelagos (*yangzhong qundao*) or outlying archipelagos (*yuanyang qundao*)[1] is always controversial. Due to its unique historical

background, the Third United Nations Conference on the Law of the Sea (UNCLOS III) only resolved the issue of straight baselines for mid-ocean archipelagos in the case of archipelagic states. Provisions in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) proved inadequate on the issue of whether straight baselines can be applied to mid-ocean archipelagos[2] remote from a state's continental territory.[3] In practice, the US will always raise

† 张华[Zhang Hua], 中国洋中群岛适用直线基线的合法性：国际习惯法的视角["On the Legality of Applying Straight Baselines to China's Mid-Ocean Archipelagos: A Perspective from Customary International Law"], 外交评论 [*Foreign Affairs Review*], 2014, No. 2, pp. 129-143.

[1] Archipelagos can be divided into "coastal archipelagos" (*yan'an qundao*) and "mid-ocean archipelagoes" based on their distance from the coast of the mainland. "Coastal archipelagos" refer to those coastal islands that are located near a continent, can be seen as a part of the coast, and constitute the starting point for measuring territorial seas. "Mid-ocean archipelagos" refer to groups of islands in the ocean relatively far from the coast. There is different understanding in the international community about standards for the distance between the archipelago and the continental coast. It is generally understood that a group of islands constitute outlying archipelagos when the distance between that group of islands and the continental coast surpasses two times the width of the territorial sea, otherwise they are coastal archipelagos. Therefore, the standard of distance for coastal archipelagos should be 24 nautical miles as the width of the territorial sea is 12 nautical miles. See also the UN Office for Ocean Affairs and the Law of the Sea, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, UN Publication, 1989, p. 22.

[2] "Mid-ocean archipelagos" include two types. One type is a mid-ocean archipelago that constitutes a part of an archipelagic state. The other is a mid-ocean archipelago affiliated with a state. Since the issue of straight baselines for the first type of mid-ocean archipelago was resolved through article 47 of UNCLOS, use of "mid-ocean archipelagos" in this paper, for convenience of reading unless otherwise specified, all refer to mid-ocean archipelagos far away from its affiliated states.

objections whenever another state extends the application of straight baselines to mid-ocean archipelagos far from its territories.[4] China has already applied straight baselines to the Paracels Archipelago and the Diaoyu Islands, doing so in 1996 and 2012, respectively. It has not ruled out the possibility applying straight baselines to other archipelagos in the South China Sea. This paper focuses on proving the legitimacy of applying straight baselines to China's mid-ocean archipelagos from the perspective of customary international law. Specifically, I will explore the following aspects. What is the current practice of states applying straight baselines to mid-ocean archipelagos? Are these practices sufficient to form international customary legal rules (*guoji xiguanfa guize*)? What restrictions should be observed when straight baselines are applied to mid-ocean archipelagos? Does the application of straight baselines to China's Paracels Archipelago and Diaoyu Islands adhere to the rules of customary international law? Through an in-depth exploration of these questions, this paper intends to provide a solid legal basis for the application of straight baselines to China's mid-ocean archipelagos.

I. Typical State Practice in the Application of Straight Baselines to Mid-Ocean Archipelagos

Even though UNCLOS has no explicit provisions for the delimitation of territorial sea in mid-ocean archipelagos, many states in possession of mid-ocean archipelagos did not cease their practice of applying straight baselines in territorial sea delimitation, regardless of whether it was prior to UNCLOS III or after the passing of UNCLOS. The typical practices of these states are as follows.

A. Denmark

An overseas self-governing territory of Denmark, the Faroe Islands are geographically located in between the Norwegian Sea and the Northern Atlantic Ocean. The Faroe Islands have a land area of 1399 square kilometers and are composed of 17 inhabited islands and several uninhabited islands. Denmark made its first archipelagic claim for the Faroe Islands in 1903, declaring a

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[3] For a historical discussion on issues of straight baselines for mid-ocean archipelagos, refer to Chen Degong: *Contemporary International Law of the Sea*, Beijing: Ocean Publishing House, 2009, P. 117; Ed. Zhang Haiwen: *Interpretations of the United Nations Convention on the Law of the Sea*, Beijing: Ocean Publishing House, 2006, P. 83.

[4] US objections are collected in a series of reports compiled in "Limits in the Sea" by the US State Department. See also J. Ashley Roach and Robert W. Smith, *United States Responses to Excessive Maritime Claims*, 2nd edition, The Hague: Martinus Nijhoof Publishers, 1996, pp. 112-122.

three nautical mile exclusive fishing zone around the islands.[5] In 1963, the Government of Denmark issued a decree applying straight baselines to the Faroe Islands. On 21 December 1976, Denmark promulgated Ordinance No. 599, clarifying the specific coordinates of straight baselines

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around the Faroe Islands.[6] According to the ordinance, the territorial baseline of the Faroe Islands comprised ten straight baselines, the two longest of which were 61 and 41 nautical miles respectively. Waters inside of this baseline are internal waters.

B. Ecuador

The Galapagos Islands are positioned on the equator in the eastern Pacific Ocean, 1100 kilometers from territorial Ecuador. They consist of 19 islands and sub-islands and rocks. They have a total land area of 7994 square kilometers spread across approximately 59500 square kilometers of ocean. Ecuador defined territorial baselines for the Galapagos as a unit (*zhengti*) as early as 1934 for the purpose of protecting fisheries resources. However, Ecuador's national legislation did not clarify the manner of applying straight baselines until 1971, stipulating that waters within the Galapagos archipelago's baselines were internal waters.[7] A US State Department research report nevertheless questioned [the decree] since Darwin Island and Wolf Island are too far from the main island, making the two longest baselines in the archipelago 124 and 95 nautical miles respectively. Perhaps ignoring these two islands would make these archipelagic straight baselines more reasonable.[8]

C. Norway

Svalbard is located in the Arctic region and is composed of 11 islands. On 25 September 1970, Norway issued an ordinance applying straight baselines for the southern and western regions of Svalbard, and separate straight baselines for the distant Bjornoya and Hopen Islands. A US State Department research report found that given the existence of a string of islands on the western

[5] Denmark Order No. 29 of 27 February 1903 respecting the supervision of Fisheries in the Sea surrounding the Faroe Islands and Iceland outside the Danish Territorial Sea, UN Doc. ST/LEG/SER. B/6.

[6] Ordinance No. 599 of 21 December 1976 on the Delimitation of the Territorial Sea around the Faroe Islands.

[7] Supreme Decree No. 959-A of 28 June 1971 prescribing straight baselines for the measurement of the Territorial Sea.

[8] US Department of State, "Straight Baselines: Ecuador," *Limits in the Seas*, No. 42, p. 7.

coast of Svalbard Norway's application of straight baselines in this area adhered to article 4 of the *Convention on the Territorial Sea and the Contiguous Zone*.[9] Norway promulgated a new decree on 1 June 2001,[10] repealing the 1970 ordinance. The new ordinance applied straight baselines to the entire Svalbard archipelago. However, the slightly distant Bjornoya, Hopen, Kvitoya, and King Charles Land islands were not connected with a straight baseline to the archipelago. Instead, Norway applied straight baselines separately. In practice, Norway clearly considers these waters to be its internal waters, despite no clarification from the 2001 ordinance on the legal standing of waters on the landward side of these baselines.

D. United Kingdom

The United Kingdom's Falkland Islands, claimed by Argentina as the Islas Malvinas, are located in the Southern Atlantic Ocean. With a total land area of 12173 square kilometers, they include the main islands of East Falkland and West Falkland as well as its surrounding 778 islets. The United Kingdom applied the straight baseline system to the Falkland Islands based on its 1989 territorial sea order.[11] The territorial baseline of the Falkland Islands is composed of 21 straight baselines, totaling 362 nautical miles in length.

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The two longest straight baselines are 41 and 35 nautical miles long. The Turks and Caicos Islands are located in the Southeastern Bahamas of Central America. They are comprised of over 30 islands with a land area of 430 square kilometers. The United Kingdom issued a territorial sea order in 1989,[12] [stating] that the low tide line and straight baselines would simultaneously be used in surveying the Turks and Caicos Islands. Specifically, the northern coast of the archipelago would use a low tide line and the southern coast's baseline would consist of straight baselines connecting several basepoints, of which the two longest straight baselines were 29.8 and 26.6 nautical miles long.

[9] US Department of State, "Straight Baselines: Svalbard," *Limits in the Seas*, No. 39, p. 5.

[10] Regulations relating to the limits of the Norwegian territorial sea around Svalbard, Royal Decree of 1 June 2001.

[11] The Falkland Islands (Territorial Sea) Order 1989, UK Statutory Instruments, No. 1993.

[12] The Turks and Caicos Islands (Territorial Sea) Order of 1989, UK Statutory Instruments, No. 1996.

E. France

The Kerguelen Islands are located in the South Indian Ocean. The main island has a land area of 6675 square miles and is surrounded by over 200 islets, with a total area of 7215 square kilometers. A French decree in 1978 applied straight baselines to the islands. Its baseline comprised 31 straight baselines connecting the main island and its associated islets, the longest of which is 19.7 nautical miles. Guadeloupe is located in the center of the Lesser Antilles in the eastern Caribbean and has a land area of 1630 square kilometers. In 1991, France issued Decree No. 324,[13] specifying the application of straight baselines to the Guadeloupe archipelago. The Loyalty Islands are a group of limestone coral islands of the overseas French territory New Caledonia in the Southwest Pacific Ocean. France issued Decree No. 827 on 3 May 2002,[14] specifying straight baselines for New Caledonia, among which straight baselines in the Loyalty Islands were comprised of 14 straight lines. The longest straight baselines were 35.96 and 35.84 nautical miles.

F. Australia

The Furneaux Group is located in the eastern end of the Bass Strait, to the northeast of the island of Tasmania. From north to south it stretches approximately 110 kilometers, with a land area of 2670 square kilometers and encompassing 52 islands. Australia released the territorial sea baseline for the Furneaux Group in 1983, applying a straight baseline to its southeastern section.[15] The Houtman Abrolhos are comprised of 122 coral islands, rocks and reefs located 60 kilometers off the west coast of Australia. These islands and reefs are divided into three groups, the Wallabi Group, the Easter Group, and the Pelsaert Group. Australia issued its territorial sea baselines on 4 February 1983,[16] applying straight baselines in the delimitation of territorial sea for the Houtman Abrolhos. The reefs are in close proximity to each other. Its total baseline length is 81 nautical miles, of which the two longest straight baselines are 17.7 and 13.5 nautical miles long.

[13] Decree 99-324 of 21 April 1999 Saint-Martin, Saint Barthelemy, Guadeloupe and Martinique.

[14] Decree No. 2002-827 of 3 May 2002 defining the straight baselines and closing lines of bays used to determine the baselines from which the breadth of French territorial waters adjacent to New Caledonia is measured.

[15] Proclamation of the inner limits (the baseline) of 4 February 1983, pursuant to section 7 of the Seas and Submerged Lands Act 1973.

[16] *Ibid.*

G. Spain

The Canary Islands are made up of seven volcanic islands located off the northwestern coast of Africa. Spain passed a decree in 1977 to apply straight baselines to the Canary Islands.[17] It must be noted that the islands of Gran Canaria, Tenerife, La Palma, and El Hierro each apply straight baselines to delineate a portion of their territorial baselines, while the territorial baselines of the other islands are connected by nine straight baselines, of which the longest two segments are 43.4 and 23 nautical miles long.[18] The Balearic Islands are located on the west Mediterranean Sea and mainly comprise the islands of Mallorca, Minorca, Ibiza, Formentera, and Cabrera. Spain issued a decree on 5 August 1977 specifying the application of straight baselines in the delineation of [their] territorial seas.[19] However, Spain never drew baselines for the Balearic Islands as a whole, and instead delineated the islands in groups. Specifically, apart from Minorca Island applying its own straight baseline, a portion of Mallorca and Cabreza islands' baselines are made up of four straight baselines, of which the two longest are 39 and 18.9 nautical miles long. A part of Ibiza and Formentera islands' baselines comprise six straight baselines, of which the two longest are 22.4 and 16 nautical miles long.

H. Portugal

The Archipelago of the Azores is located in the middle of the northern Atlantic Ocean and has a land area of 2247 square kilometers. The archipelago is composed of nine main islands, including Sao Miguel, Santa Maria, Faial, Pico, Sao Jorge, Terceira, Graciosa, Flores, and Corvo. About 1000 kilometers southwest of Lisbon and 600 kilometers from the Moroccan coastline, the Madeira Islands are comprised of Madeira Island, Porto Santo Island, and two smaller uninhabited islands.

[17] Royal Decree No. 2510/1977 of 5 August 1977, p. 7.

[18] It is worth noting that since the 1970s, Spain has been discussing whether to apply straight baselines to the Canary archipelago as a whole. For the latest debates in a series of cases and internal meetings from the Supreme Court of Spain, refer to Sophia Kopela, *Dependent Archipelagos in the Law of the Sea*, Boston: Martinus Nijhoff Publishers, 2013, pp. 247-252.

[19] Royal Decree No. 2510/1977 of 5 August 1977, p. 5.

Portugal issued Decree-Law No. 495[20] on 29 November 1985 stipulating that the Azores and the Madeira Islands would apply the straight baseline system. The Azores are divided into three parts, the eastern, central, and western groups. These island groups do not use straight baselines to connect together, instead applying straight baselines in three separate parts. The baseline of the eastern part is comprised of four straight baselines connecting Sao Miguel, Santa Maria, and the Formigas. The baseline of the central group is also divided into three groups. The first group connects Graciosa and two nearby cays with three straight baselines. The second group has a straight baseline connecting Terceira Island with its nearby cays. The third group has a straight baseline connecting Faial, Pico, and Sao Jorge islands. These groups use comparatively long straight baselines, with lengths of 19.8, 15.75, and 16.56 nautical miles, respectively. The straight baselines of the western part connect Flores and Corvo islands, the longest segment at 13.8 nautical miles. The territorial baselines of the Madeira Islands are split into two parts. The first is the territorial baseline of Madeira Island and De Ceras Island, connected by six straight

baselines, the longest two being 36 and 10 nautical miles long. The second is the territorial baseline of Porto Santo and its surrounding islets. In practice, Portugal likely regards these as internal waters despite never clarifying the legal status of waters inside straight baselines.

I. Myanmar

Myanmar passed a bill in 2008[21] amending the 1977 *Territorial Sea and Maritime Zones Law*. In the bill, two island groups, the Preparis Islands and the Co Co Islands, applied the system of straight baselines. The longest straight baseline in the Preparis Islands, made up of its main island and several surrounding islets, is only 5.9 nautical miles long. Comprised of four islands in the Andaman Sea, the longest straight baseline in the Co Co Islands is 13.15 nautical miles.

J. India

India's *The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act* stipulated in 1976 that groups of islands should be demarcated as a whole. In 2009,

[20] Decree-Law No. 495/85 of 29 November 1985, pp. 3-6.

[21] The Law amending the Territorial Sea and Maritime Zones Law (The State and Peace and Development Council Law No. 8/2008), December 5, 2008.

India announced straight baselines in the Andaman, Nicobar, and the Lakshadweep Islands.[22] The Lakshadweep Islands are located in the Laccadive Sea and comprise 36 islands, including twelve atolls, three reefs, and five hidden shoals. The straight baselines of this archipelago are connected by 13 basepoints totaling 560 nautical miles in length, the longest two segments reaching 113.7 and 109 nautical miles. India announced again in 2009 straight baselines on the western side of the Andaman and Nicobar Islands, of which the longest segment is 84.7 nautical miles long. As for straight baselines on the eastern side of [the islands], India has indicated that they will be announced later.[23]

These archipelagos can be roughly classified into two categories based on geographical features. The first category of archipelagos consists of one or several large islands and the series of islands on their periphery. Typical examples would be Svalbard, the Falkland Islands/Malvinas Islands, the Kerguelen Islands, Guadeloupe, and the Furneaux Group. Others belong to the second category of archipelagos made up of several fair-sized (*mianji xiangdang*), relatively dispersed islands. The US Department of State maintains a relatively tolerant attitude towards the application of straight baselines for the first category of archipelago.[24] However, they often criticize the second category of archipelago because an individual straight baseline is too long or the water to land area ratio does not adhere to restrictions on when straight baselines can be applied to archipelagos.[25] Prior to the passing of UNCLOS, the US often cited the metrics contained in article 4 of the 1958 *Convention on the Territorial Sea and the Contiguous Zone* (the predecessor to article 7 in UNCLOS).

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After UNCLOS was passed, the US preferred to invoke the straight baselines contained in article 47. The question becomes, can the US, without express treaty provisions, just simply apply

[22] "Indian Notification of the Ministry of External Affairs of 11 May 2009 concerning the Baseline System," *Law of the Sea Bulletin*, No. 71, 2010, p. 26-31.

[23] "Indian Notification of the Ministry of External Affairs of 11 May 2009 concerning the Baseline System (Corrigendum)," *Law of the Sea Bulletin*, No. 72, 2010, p. 80.

[24] The US maintains a tolerant stance towards applying straight baselines for the first category of archipelago largely because these types of straight baselines encircle smaller areas of water, leaving no impact US navigation.

[25] Currently, the only example of the US Department of State's suspicions of the legality of another state's application of straight baselines for mid-ocean archipelagos on the basis of the sea to land area ratio is limited to China's Xisha Archipelago and the Diaoyu Islands. Refer to analysis contained in section four of this paper.

articles 7 and 47 of UNCLOS in an analogous way (*leitui shiyong*) to determine the legality of straight baselines in a mid-ocean archipelago?

In international law, a precondition for the use of analogy is acknowledgement of the existence of legal loopholes. If interpretation of the treaty can clarify the relevant rules in the absence of clear treaty provisions, then it should not be regarded as a legal loophole. Even if treaty interpretation cannot bring about results, the use of analogy is unnecessary if [we] recognize the existence of other sources of international law, such as customary international law.[26] Looking back at the UNCLOS negotiations, the concept of straight baselines for archipelagic states was a product of strong support by a "bloc of archipelagic states," apparently excluding mid-ocean archipelagos. Therefore, articles 7 and 47 of UNCLOS can hardly be construed as a legal basis for the application of straight baselines in mid-ocean archipelagos, which would otherwise run contrary to the intent of states party to the convention. The direct application of straight baselines in archipelagic states through the use of analogy would present an awkward situation: since geographical characteristics vary, mid-ocean archipelagos seldom satisfy the sea to land area ratio and length of baseline restrictions for applying archipelagic straight baselines.[27] After all, these restrictions were largely put in place according to the geographical characteristics of a "bloc of archipelagic states."[28] Therefore, there are obvious limitations in any attempt to find a legal basis for the application of straight baselines to mid-ocean archipelagos through treaty interpretation or the use of analogy. Greater persuasiveness can only be achieved through demonstrating the existence of customary international law.

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[26] Silja Voeneky, "Analogy in International Law", *Max Planck Encyclopedia of Public International Law*, 2012, paras. 4-5.

[27] Article 47 of UNCLOS stipulates, archipelagic states applying straight baselines should adhere to certain conditions: (1) the archipelago's baselines should include the main islands; (2) the ratio of water to land area within the archipelago's baselines should be between 1 to 1 and 9 to 1; (3) the length of an archipelago's baseline "shall not exceed 100 nautical miles, except that up to 3 percent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles"; (4) the demarcation of an archipelago's baselines "shall not depart to any appreciable extent from the general configuration of the archipelago"; (5) an archipelago's system of baselines shall not "cut off from the high seas or the exclusive economic zone the territorial sea of another state."

[28] In the early days of the Third United Nations Conference on the Law of the Sea, the United Kingdom proposed a negotiation plan that set the sea to land area ratio for archipelagic states between 1 to 1 and 5 to 1, with the length of straight baselines not to exceed 48 nautical miles. Through the hard work of the "bloc of archipelagic states" (including the Philippines, Indonesia, Fiji, and Mauritius), the final outcome of the negotiations was basically in line with their geographical features.

II. Applying Straight Baselines to Mid-Ocean Archipelagos: Evolving Customary International law?

Based on the practice of states applying straight baselines to their mid-ocean archipelagos, one scholar has pointed out, "Although the issue of the mid-ocean archipelago for a continental state was not resolved in UNCLOS III, the abundant experience of these countries has provided a new developmental direction for the international legal concept of an archipelago."[29] So does this signify the emergence of new rules in customary international law? Customary international law consists of international usage (*guoji guanli*) [*sic*] and *opinio juris*.[30] Ian Brownlie asserts that state practice (*guojia shijian*) constituting international usage should be uniform,

enduring, and universal. At the same time, they should continue over a certain period of time.[31] In common parlance, this so-called "opinio juris" refers to state compliance with international usage as if it were law. In other words, the motivation for states complying with international usage is not drawn from courtesy or international ethics, but rather from regarding it as legally binding rules. The following will examine relevant state practice in applying straight baselines to mid-ocean archipelagos in terms of these two aspects [of customary international law].

A. International Usage

As can be seen from the previous section, since the 1960s the states of Denmark, Ecuador, Norway, the UK, France, Australia, Spain, Portugal, Myanmar, and India have successively issued domestic decrees applying straight baselines to mid-ocean archipelagos. To a certain extent, these practices conform to the requirements of uniformity, endurance, and universality.[32]

In terms of uniformity and endurance, the countries described above have all applied the straight baseline system to mid-ocean archipelagos that met the required conditions. It should be noted that the state practice of applying straight baselines is largely determined by the geological

[29] Mohamed Munavvar, *Ocean States: Archipelagic Regimes in the Law of the Sea*, Boston: Martinus Nijhoff Publishers, 1995, p. 97.

[30] Translator's Note: The standard definition of customary international law says that it comprises two key elements, viz. state practice and opinio juris.

[31] Ian Brownlie, *Principles of Public International Law*, 7th edition, Oxford: Oxford University Press, 2008, pp. 7-8.

[32] There are also practices or trends of applying straight baselines to mid-ocean archipelagos in the countries of Ethiopia, Eritrea, Sudan, Iran, Syria, and the United Arab Emirates. See: Sophia Kopela, *Dependent Archipelagos in the Law of the Sea*

features of a given archipelago. Therefore, countries such as England and France, [whose] mid-ocean archipelagos are made up of extremely dispersed islands, did not apply straight baselines to the archipelago as a whole. Instead they applied straight baselines to each island separately, or just to portions of individual islands. However, this does not affect the state practice of uniformity and endurance. After all, the previously mentioned states with archipelagos that are in close proximity to each other and tightly linked still insist on the straight baseline system, despite their different forms of expression.

In terms of universality, there are over 200 countries in the international community, yet only a small number possess mid-ocean archipelagos. Of course, the states catalogued in this paper appear limited in number due to the usual difficulty in finding officially released ocean maps and legislative provisions. But they are all representatives of national oceanic practice and thus often become a reference for the practice of other states. Hence, the universality of state practice is not ruled out.

Temporally, the application of straight baselines to mid-ocean archipelagos has varied country by country. The earliest laws from Denmark and Ecuador were in 1903 and 1934 respectively, for the purpose of managing the Faroe Islands and Islas Galapagos as a whole to protect fisheries and natural resources. Strictly speaking, the countries mentioned in this article mainly began using domestic law to clarify the application of a straight baseline system to regulate mid-ocean archipelagos in the 1960s. This has occurred in the past 50 years or so. Although international law has not stipulated a clear deadline for the formation of international customary legal rules, approximately 50 years is sufficient to prove the existence of an international customary legal rule.[33]

B. Opinio Juris

As Brownlie points out, there are diverse sources that can prove the existence of customary international law. These include diplomatic correspondence, policy statements

[33] The formation of an international customary legal rule does not necessarily mean it must undergo a very long period of time. In fact, some customary legal rules are formed within a short period of time. A classic [example] is customary legal rules relating to outer space and the continental shelf.

media reports, the opinions of official legal advisors, official handbooks on related legal questions, comments on draft provisions sent by states to international committees, national legislation, international and national judicial decisions, the prefaces to treaties and other international documents, the practice of international institutions, the decisions of the UN General Assembly, among others.[34] Therefore, opinio juris for a state should also be sought in these types of documents.

First, states have passed and promulgated specialized domestic laws and regulations, specifying that mid-ocean archipelago delimitation should apply straight baselines, while also specifying the geographic coordinates of straight baselines and issuing ocean charts. Moreover, states like Denmark and Ecuador have formulated a succession of laws and regulations in order to clarify their straight baselines. Such documents amply demonstrate that these states' insistence on the application of straight baselines to mid-ocean archipelagos should be regarded as a type of legal rule (*falü guize*).

Second, during UNCLOS III, many states—such as Norway, India, Ecuador, and others—proposed that mid-ocean archipelagos should apply straight baselines.[35] Moreover, after UNCLOS went into effect, these states continued to insist on this practice.

It is especially important to point out that after the US raised protests on the straight baseline issue, the official responses and opinions of relevant states directly showed these states' opinio juris. For example, when in 1986 the US protested Portugal's use of straight baselines around the Azores and Madeira Islands, Portugal responded as follows: "The geographic coordinates in the attachment to the statute show that the procedures used to determine the territorial sea baselines for the Azores and Madeira Islands were not based on Part 4 of UNCLOS, but were based on article 121."[36] Although Portugal's citing of UNCLOS article 121 was not necessarily accurate, at the very least it showed that it continued to believe that there existed a legal basis for using straight baselines.

[34] Ian Brownlie, *Principles of Public International Law*, p. 6.

[35] See UNCLOS III Off. Rec., Vol. III, Doc. A/CONF.62/L. 4, pp. 82-83. See also UNCLOS III Off. Rec., Vol. XVII, 187th Meeting, pp. 37-38, para. 8, as well as 190th Meeting, para. 100, 196.

[36] J.A. Roach and R.W. Smith, *US Responses to Excessive Maritime Claims*, pp. 112-113.

C. The Impact of the US as a "Persistent Objector"

Given that there are many members in international society, it was unavoidable that the formation of customary international law would face opposition from certain states. The US has an instinctual attitude of opposition towards straight baselines. Any time a state uses straight baselines to draw territorial sea baselines, the US Department of State will protest. According to the statistics of the US Department of State Legal Counsellor, by the year 2000 the US had issued 32 diplomatic protests against straight baselines and had conducted "operational assertions" against 22 states.[37] America's protests are particularly strong when directed against states that use straight baselines around mid-ocean archipelagos. Since the beginning of the 1970s, the US Department of State

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has issued commentaries on the straight baselines of specific states.[38] Additionally, the US has always used low-tide lines (*dichaoxian*) for its mid-ocean archipelagos. The Hawaiian Islands once proposed a claim similar to straight baselines, but after Hawaii became America's 50th state it had no choice but to conform to the diplomatic position of the federal government.

Will America's consistent opposition "derail" the formation of international customary legal rules? In the formation of customary international law, states that always express opposition can become "persistent objectors."[39] In fact, aside from the US, international society has adopted a silent attitude toward the use of straight baselines for mid-ocean archipelagos. Thus, America is a "persistent objector" to the formation of customary international law. Its protests do not impede the formation of the international customary legal rules that "straight baselines can be applied to mid-ocean archipelagos."

In conclusion, based on the representative practice of relevant states in using straight baselines for mid-ocean archipelagos, the use of straight baselines has already become an international customary legal rule in the case of mid-ocean archipelagos with islands that are close together

[37] See J. Ashley Roach and Robert W. Smith, "Straight Baselines: The Need for a Universally Applied Norm," Ocean Development and International Law," Vol. 31, Issue 1-2, 2000, p. 48.

[38] See US Department of State, Limits in the Seas (No. 1-132)

[39] James Crawford, Brownlie's Principles of Public International Law, 8th Edition, Oxford: Oxford University Press, 2012, p. 28.

and well-connected.[40] However, straight baselines for mid-ocean archipelagos are not the traditional common straight baselines, much less the straight baselines of an archipelagic state. Rather, they constitute a "sui generis" straight baseline. This is the case because proceeding from the premises of common straight baselines from UNCLOS article 7 basically removes the possibility of applying straight baselines to mid-ocean archipelagos.[41] Moreover, if one attempts to conflate them with archipelagic straight baselines, then it is hard to satisfy the limitations in UNCLOS article 47 on the ratio of the area of the water to the area of the land and the maximum length of a baseline. In practice, when straight baselines are applied to mid-ocean archipelagos either the area of the islands is larger than that of water or the length of certain baselines approaches or exceeds 100 nautical miles. Citing these two articles is the "weapon" that America uses to criticize the practice of other states. Given that UNCLOS lacks provisions on the matter of straight baselines for mid-ocean archipelagos, judging the legality of this type of straight baseline naturally cannot resort to the provisions of UNCLOS.

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III. Conditions Limiting the Use of Straight Baselines for Mid-Ocean Archipelagos

The legal basis for applying straight baselines to mid-ocean archipelagos originates from customary international law, and is "sui generis." However, considering that a large area of ocean within straight baselines will become internal waters, states that apply straight baselines to mid-ocean archipelagos should abide by certain conditions in order to avoid causing excessive harm to the maritime rights and interests of other states. Based on representative practice within international society, while also appropriately referencing the general rules (*yibanxing guilü*) of UNCLOS articles 7 and 47, this paper argues that these limiting conditions should have two components: 1) the preconditions for applying straight baselines to mid-ocean archipelagos and 2) the conditions that should be appropriately complied with when applying straight baselines to mid-ocean archipelagos.

[40] See Zhang Jie, "A Cursory Examination of the Use of the Archipelagic System and Boundary Delimitation in the South China Sea," *China Law of the Sea Review*, 2010, No. 1, p. 163.

[41] Michael Reisman and Gayl S. Westerman, Straight Baselines in Maritime Boundaries, Basingstoke: St. Martin's Press, 1992, pp. 102-103, 154-156.

A. The Preconditions for Applying Straight Baselines to Mid-Ocean Archipelagos

Examining the history of UNCLOS negotiations and representative state practice, the reason why some claim that the archipelagic straight baselines in UNCLOS article 47 should be expanded to apply to mid-ocean archipelagos is in essence because mid-ocean archipelagos and archipelagic states have the same interests (*liyi suqiu*) in terms of geography, history, economics, politics, environment, ecology, and other respects.[42] Therefore, if a mid-ocean archipelago has islands that are located close to each other and are closely-connected, or if historically they have been seen as a unit (*zhengti*), then a state has reason to apply straight baselines to territorial sea delimitation for a mid-ocean archipelago. In fact, the "unitary standard" used in maritime law compilation meetings held from the end of the 19th century to 1982 was the premise used by international law experts and state diplomatic representatives for maintaining that mid-ocean archipelagos should apply straight baselines.[43] For example, at the first UN Convention on the Law of the Sea in 1958, Norwegian legal expert Jens Evensen pointed out the following: "The only natural and realistic approach for resolving this issue is to regard mid-ocean archipelagos as a unit, and use straight baselines to draw territorial seas…Whether a mid-ocean archipelago should delimit the territorial sea according to a certain method, is to a large extent determined by the geographic characteristics of the archipelago itself."[44] Thus, when determining whether or not a group of islands can constitute a legal archipelago and therefore apply straight baselines, the key is whether or not it is a "unit."

B. The Conditions that Should be Complied with When Applying Straight Baselines to Mid-Ocean Archipelagos

Straight baselines for mid-ocean archipelagos are sui generis. Legally speaking, however, in certain respects it is undoubtedly more advantageous to

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[42] C.F. Amerasinghe, "The Problem of Archipelagoes in the International Law of the Sea," *International and Comparative Law Quarterly*, Vol. 23, Issue 3, 1974, pp. 557-559.

[43] On the question of "whether or not a mid-ocean archipelago constitutes a unit" see Zhang Haiwen's edited volume *An Interpretation of UNCLOS*, pp. 83-88.

[44] Jens Evensen, "Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagos," UNCLOS I Off. Rec., Vol. 1, Doc A/CONF. 13/18, pp. 301-302.

appropriately reference the general law for applying common straight baselines and archipelagic straight baselines.[45] Looking at the practice of representative states applying straight baselines to mid-ocean archipelagos, this paper argues that mid-ocean archipelagos that satisfy the preconditions for straight baselines must at least abide by the following limiting conditions when baselines are drawn: 1) straight baselines should include the main islands and reflect the contours of the mid-ocean archipelago; 2) as much as possible, the longest of any straight baseline should be kept to a reasonable length;[46] 3) states should do their best to avoid a "cut-off effect" (*geduan xiaoying*). In fact, the practice of the states discussed above shows that applying straight baselines may cause one baseline segment to be too long, or the area of the water space enclosed to become too large. In these situations, the relevant states tend to apply straight baselines to island groups or individual islands within the archipelago. Typical examples include France's Guadeloupe Islands, Spain's Canary Islands and Balearic Islands, and Portugal's Azores and Madeira Islands. By applying straight baselines to island groups or individual islands within the archipelago, the straight baselines for mid-ocean archipelagos have basically been kept less than 60 nautical miles in length. The two longest baseline segments for Denmark's Faroe Islands are 61 nautical miles and 41 nautical miles. The two longest straight baseline segments for Ecuador's Galapagos Islands are 124 nautical miles and 95 nautical miles. Both of these cases have elicited American criticism.[47]

To a large extent, limitations to the use of straight baselines for mid-ocean archipelagos fundamentally depend on the extent of other states' concern for traditional rights that they enjoy in waters within the baselines. Based on the practice of representative states mentioned above and the reactions of the US Department of State, when the land area is larger than the water area the use of straight baselines for mid-ocean archipelagos will not cause significant controversy. When the ratio of water to land is between 1:1 and 9:1, the US frequently cites the limits on the length of straight baselines as a reason for criticism. When this ratio is larger than 9:1, the US will cite the ratio of water and land area as a reason for criticism. In the last analysis, however, disputes stemming from the ratio of water and land area are only a surface issue (*biaomian*

[45] See UNCLOS article 7.

[46] See Jens Evensen, "Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagos," p. 302.

[47] US Department of State, "Straight Baselines: Faeroes," Limits in the Seas, No. 13, 1970, p. 4; US Department of State, "Straight Baselines: Ecuador," p. 7.

wenti). The real issue is that applying straight baselines to mid-ocean archipelagos might possibly restrict America's maritime rights and interests. Thus, it does not matter whether one regards the waters within straight baselines applied to mid-ocean archipelagos as internal waters or if one defines these waters as something akin to "naturally forming waters" of archipelagic waters. As long as the maritime rights that other states have enjoyed in these waters in the past are respected to a certain extent,[48] then the leeway for applying straight baselines to mid-ocean archipelagos becomes greater and as a result the rationale for [other states']

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limiting conditions will become looser (*kuansong*).

IV. Testing the Legality of China's Application of Straight Baselines to Its Mid-Ocean Archipelagos

The question of whether or not straight baselines can be applied to China's mid-ocean archipelagos has great real significance. As early as the 1973 Seabed Commission Meeting, the Chinese delegation stated the following: "archipelagos (*qundao*) or island groups (*liedao*) that are fairly close together can be seen as a unit (*zhengti*), and a territorial sea can be drawn [based on this assumption]."[49] China has already applied straight baselines to the Paracel Islands and Diaoyu Island and its associated islets. Moreover, it is possible that China will apply straight baselines to other archipelagos in the South China Sea. The problem is that both cases of China's past practice have been challenged (*zhiyi*) by the US. Thus, it is necessary to test the legality of China's use of straight baselines for its mid-ocean archipelagos in light of the foregoing discussion.

China issued the Statement of the PRC Government on Territorial Sea Baselines on 15 May 1996. It was based on the 1992 PRC Law on the Territorial Sea and Contiguous Zone. This statement applied straight baselines both to the Mainland coast and the Paracel Islands. In response, the US State Department asserted that the Paracels lacked the prerequisites in UNCLOS article 7 for using straight baselines. For instance, China had baseline segments of

[48] Jens Evensen, "Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagos," p. 302.

[49] See UN Document A/ AC. 138/SC. II/L. 27.

75.8 nautical miles and 78.8 nautical miles. Moreover, if archipelagic straight baselines are cited as a basis, then China's baselines could not satisfy the water to land ratio (26.1:1).[50]

On 10 September 2012, China issued territorial sea baselines for Diaoyu Island and its associated islets. The baselines were divided into two groups. The first baseline group connected Diaoyu Island, Huangwei Island, Nanxiao Island, Beixiao Island, Nan Island, Bei Island, and Fei Island. Second, straight baselines were drawn around Chiwei Island. The US Department of State Legal Advisor asserted that these straight baselines could not find a basis in UNCLOS article 7 or archipelagic straight baselines (the water to land area ratio was 27.1:1). Base point 4 (Diaoyu Island) to basepoint 5 (Haitun Island) and base point 9 (Haigui Island) to base point 10 (Changlong Island) represented the two largest baseline segments: 16.22 nautical miles and 14.06 nautical miles, respectively.[51]

America's challenge was based on content from UNCLOS articles 7 and 47 on normal straight baselines and archipelagic straight baselines. But as discussed in the above analysis, the notion that "straight baselines can be applied to mid-ocean archipelagos" already constitutes customary international law. Moreover, this type of straight baseline is "sui generis," and naturally cannot be compared with normal straight baselines and archipelagic straight baselines. For a long period of time, the [Chinese] academic world has had a vague understanding of the

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issues, believing that using analogy (*leitui*) with respect to archipelagic baselines can prove the legality of applying straight baselines to the archipelagos of the South China Sea. They did not realize that this simplified understanding actually falls into the "legal trap" set by the US. That is to say, even if the length of a baseline does not exceed 100 nautical miles, outsiders will not be convinced that the water to land area ratio for the archipelagos of the South China Sea is under 9:1.[52] Therefore, on the issue of judging the legality of the territorial sea baselines of the Paracels and Diaoyu Island and its associate islets the key is to examine whether or not they meet the "standard of being a unit" (*zhengtixing biaozhun*) and whether or not they abide by the limiting

[50] US Department of State, "Straight Baseline Claim: China" Limits in the Seas, No. 117, p. 8.

[51] J. Ashley Roach, "China's Straight Baseline Claim: Diaoyu Islands," ASIL Insights, Vol. 17, Issue 7, February 13, 2013.

[52] Mark J. Valencia, et al., eds., *Sharing the Resources of the South China Sea*, The Hague: Martinus Nijhoof Publishers, 1997, p. 46.

conditions for their use. One should not start with archipelagic straight baselines, which are a very different thing.

Without a doubt, the Paracel Islands constitute a unit. This is true from the perspective of geography, history, economics, politics, environment and other aspects. Similar to the representative cases discussed above in which straight baselines are applied to outlying archipelagos, the Paracels' straight baselines include the primary islands and are consistent with the overall contours of the archipelago. Among 27 segments of the straight baselines, 21 have lengths between 0.2-2.0 nautical miles. One segment is 3.9 nautical miles. Three segments are fairly long, with lengths of 28, 26.3, and 41.5 nautical miles, respectively. The two longest segments have lengths of 75.8 nautical miles and 78.8 nautical miles, respectively.[53] When compared with the practice of other states such as Denmark with the Faroe Islands and Ecuador with the Galapagos Islands, the length of the Paracels straight baselines is certainly not an issue.

Similarly, the application of straight baselines to Diaoyu Island and its associate islets is legal under international law. The Diaoyu Islands have been a unit since ancient times. Especially worth mentioning, in order to avoid having an ocean area that was too large when drawing baselines around a unit, China drew separate baselines around Chiwei Island, which is rather far away from Diaoyu Island. In doing so, it kept the two largest baseline segments to just 16.22 nautical miles and 14.06 nautical miles, respectively.[54] This reflected China's respect for the maritime rights and interests of other states and its well-meaning adherence to international law.

Based on the above reasons, the US State Department's challenges [to Chinese baseline practice] are untenable. The baselines for mid-ocean archipelagos are "sui generis," and the legal basis for continental states' application of straight baselines to outlying archipelagos is customary international law, not UNCLOS articles 7 and 47. Any state that challenges the legality of straight baselines for the Paracels or the Diaoyu Islands based on UNCLOS provisions obviously overlooks the facts and historical reasons behind the lack of provisions on this issue within UNCLOS. China's practice of applying straight baselines to these two archipelagos accords with international customary legal rules and represents the direction in which international law is developing.

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[53] US Department of State, "Straight Baseline Claim: China" p. 17

[54] J. Ashley Roach, "China's Straight Baseline Claim: Diaoyu Islands," p. 5.

V. Conclusion

In the context of UNCLOS, the issue of straight baselines for mid-ocean archipelagos is one of the "questions passed down from history." Based on the practice of international society, the notion that "straight baselines can be applied to mid-ocean archipelagos" has already become an international customary legal rule, and this type of straight baseline is "sui generis." Thus, there are three types of straight baselines that may be applied when delimiting territorial seas: normal straight baselines, archipelagic straight baselines, and straight baselines for mid-ocean archipelagos. Moreover, when deciding whether a baseline is legal or not one should proceed from the corresponding legal basis and avoid confusion. Unlike with normal straight baselines and archipelagic straight baselines, there exist no explicit provisions to be followed when applying straight baselines to mid-ocean archipelagos. But from representative state practice, as well as the general laws from UNCLOS articles 7 and 47, this paper argues that the precondition for applying straight baselines to mid-ocean archipelagos should be that a group of islands must constitute a unit in the legal sense. Moreover, when applying straight baselines, a state should adhere to at least three conditions. Of course, when applying straight baselines, if a state can respect the interests of international society to a certain extent, then other states are bound to be more understanding.

From the perspective of customary international law, there is ample international legal basis for the application of straight baselines to China's Paracel Islands and the Diaoyu Islands. The challenges made by the US Department of State appear to be reasonable, but in fact the State Department confuses the legal bases and conditions for using archipelagic straight baselines with those that should be applied to straight baselines for mid-ocean archipelagos. Given representative state practice and the limiting conditions outlined in this article, the straight baselines applied to China's Paracel Islands and Diaoyu Islands completely accord with international law. In the future, China has a legal basis to apply straight baselines when drawing a territorial sea for other archipelagos in the South China Sea. However, based on the patterns revealed by the typical practice of international society, using straight baselines around groups of islands is easier for the international community to accept when the archipelago in question comprises small islands located far apart from each other.

Part IV: Law Enforcement Agencies, Operations, and Civilian Mobilization

This section focuses on the specific organizational and legislative measures put in place to enforce China's maritime claims, including the powers of its law enforcement bodies and the strategy of integrating civilian forces.

PRC Coast Guard Law (Draft)[1]

[1] 中华人民共和国海警法（草案）[People's Republic of China Coast Guard Law (DRAFT)] Issued by the Standing Committee of the National People's Congress (NPC) on November 4, 2020; the NPC will accept public feedback on the law until December 3, 2020, www.npc.gov.cn/flcaw/flca/ff80808175265dd4017590ca6b00587c/attachment.pdf.

Section 1. General Principles

Article 1: This law was formulated in order to regulate and ensure that coast guard organizations (*haijing jigou*) and their staff members perform their duties in accordance with the law; safeguard national sovereignty, security, and maritime rights and interests; and protect the legitimate rights and interests of citizens, legal persons, and other organizations.

Article 2: Coast guard organizations are important maritime armed forces and state administrative law enforcement forces.

Article 3: Coast guard organizations engaged in maritime rights protection law enforcement in the jurisdictional waters of the People's Republic of China (hereafter, simplified to China's jurisdictional waters) and the air space above should use this law.

Article 4: Coast guard organizations carrying out maritime rights protection law enforcement work adhere to the leadership of the Chinese Communist Party; implement the holistic national security concept; and follow the principles of lawful management, comprehensive governance, standardization and efficiency, and justice and civility.

Article 5: The basic tasks for coast guard organizations carrying out maritime rights protection law enforcement[2] work are to safeguard public order at sea; perform maritime security (*anquan baowei*); combat maritime smuggling; supervise, inspect, and punish, within the limits of their authority, the development and exploitation of marine resources, protection of the marine ecological environment, and the production and operation of marine fisheries; and prevent, suppress, and punish criminal activities at sea.

Article 6: Coast guard organizations and their staff shall be protected by the law while performing their duties, and no organization or individual shall unlawfully interfere with, refuse, or obstruct them.

Article 7: The staff of coast guard organizations shall abide by the constitution and the law, abide by public morals, abide by professional ethics, uphold honor, be loyal to their duty, show integrity and honesty, and be upright and clean [from corruption].

Article 8: Individuals and organizations that have made outstanding contributions while engaged in maritime rights protection law enforcement shall be commended and rewarded in accordance with provisions of the relevant laws and regulations.

[2] **Translator's Note:** Before the China Coast Guard Bureau was incorporated into the People's Armed Police, the term "maritime rights protection law enforcement" (海上维权执法) narrowly referred to suppression of foreign "violations" of China's claimed maritime rights (especially in disputed maritime space). This law expands that definition to include a whole range of other maritime law enforcement functions.

Section 2. Organization and Responsibilities

Article 9. The China Coast Guard Bureau (*zhongguo haijingju*) performs unified maritime rights protection law enforcement duties.

In coastal areas, the state shall establish, according to administrative divisions and missions areas, China Coast Guard Bureau maritime regional branch bureaus and directly subordinate bureaus, provincial-level coast guard bureaus, municipal-level coast guard bureaus, and coast guard work stations, which are responsible for maritime rights protection law enforcement work in areas within their respective jurisdictions.

Article 10. The jurisdictional areas of the coast guard organizations under the China Coast Guard Bureau shall be rationally delineated and adjusted according to the needs of maritime rights protection law enforcement, and may not be restricted by administrative boundaries.

The delimitation and adjustment of the jurisdictional areas of the coast guard organizations under the China Coast Guard Bureau should be announced to the public with notification sent to relevant departments.

Article 11. Coast guard organizations preform the following duties in accordance with the law:

1. Responsible for carrying out patrols and security [operations] (*jingjie*); guarding key islands and reefs; managing and protecting maritime boundary lines; preventing, suppressing, and removing behavior that endangers national sovereignty, security, and maritime rights and interests.

2. Responsible for security of important maritime targets and major activities, taking the necessary measures to protect the security of key islands/reefs as well as artificial islands/reefs, facilities, and structures in the exclusive economic zone and continental shelf.

3. Responsible for maritime security management work, investigating and handling violations of law and regulations related to security management and management of border entry/exit, preventing and handling terrorist activities at sea, and maintaining public order at sea.

4. Responsible for inspecting the means of transport, goods, and articles suspected of being smuggled by sea and investigating smuggling offenses at sea.

5. Responsible for supervising and inspecting within the limits of its authority matters such as the use of maritime space, island protection and the development and use of uninhabited islands, exploration and development of marine mineral resources, the laying and protection of submarine cables and pipelines, marine surveys, basic ocean mapping, and foreign-related marine scientific research.

6. Responsible for supervising and inspecting within the limits of its authority marine construction projects, marine dumping activities that pollute and damage the ocean, and the protection and utilization of the seaward side of marine nature reserves; investigating and punishing illegal behavior; and participating in the emergency response and investigation of marine environmental pollution accidents, according to prescribed authority.

7. Responsible for supervising and inspecting fishery production activities and protection of marine wildlife in the waters outside of the no-fishing line for bottom trawling by motorized fishing vessels and fishing grounds with specifically-designated fisheries resources; investigating and handling violations of the law; and organizing or participating in the investigation and handling of marine fishery production safety accidents and fishery production disputes, in accordance with the law.

8. Prevent, suppress, and investigate criminal activities at sea.

9. Handle maritime emergencies and participate in maritime emergency rescues in accordance with the state's relevant division of responsibilities.

10. Carry out fisheries regulatory and other law enforcement tasks in areas outside China's jurisdictional waters, in accordance with [domestic] laws and regulations and with the international treaties concluded by China and to which it is a party.

11. Other duties specified by the state.

    The division of responsibilities between coast guard organizations and the responsible departments of public security, natural resources, ecology and environment, transport, fisheries and fisheries enforcement, and customs shall be carried out in accordance with the relevant national regulations.

Article 12. The relevant departments of the central state organs shall, in accordance with the relevant provisions of the state, implement operational guidance for maritime rights protection law enforcement.

The China Coast Guard Bureau and its authorized branch bureaus shall, in accordance with the relevant provisions of the state, coordinate and guide the maritime law enforcement contingents (*duiwu*) of local people's governments located along the coast to conduct related law enforcement work, to include use of ocean space, island protection and development, marine ecological and environmental protection, and marine fisheries management, and it shall supervise their law enforcement work.

Based on the needs of maritime rights protection work, the China Coast Guard and its authorized branch bureaus can exercise unified coordination and organization of the vessels and personnel of the maritime law enforcement contingents of local people's governments located along the coast to participate in major maritime rights protection law enforcement operations.

Section 3. Maritime Security

Article 13. In order to safeguard maritime security and order, coast guard organizations have the authority to identify and verify foreign vessels navigating, anchoring, and operating in China's jurisdictional waters, and to determine the vessels' basic information and their basic navigating and operating situations. Coast guard organizations may follow and monitor foreign vessels suspected of violating the law.

Article 14. For foreign vessels illegally entering China's internal waters and territorial sea, coast guard organizations have the authority to order them to leave immediately or take measures such as detention (*kouliu*), forcible eviction, and forcible towing [away].

Article 15. If needed to perform maritime security tasks, the staff of coast guard organizations may board and inspect vessels that are navigating, anchoring, and operating in China's jurisdictional waters. When boarding and inspecting these vessels in accordance with the law, they shall request the vessel under inspection to stop for inspection by giving a clear order. The vessel under inspection shall stop for inspection in accordance with the order of the coast guard organization and provide necessary conveniences; if the vessel refuses to cooperate with the inspection, the coast guard organization may compel inspection; if the vessels flees from the scene, the coast guard organization may take necessary measures to intercept and pursue the vessel.

When coast guard organization law enforcement personnel inspect vessels, they have the authority to check the certificates and documents for the vessel and production operation permits and personnel identity information in accordance with the law, inspect the vessel's internal structure, and the cargoes and articles they are carrying and to investigate and collect evidence concerning unlawful acts.

When coast guard organizations board, inspect, and pursue foreign vessels they shall comply with the relevant provisions of the international treaties to which China is a party.

Article 16. In the case of urgent need when handling maritime emergencies, coast guard organizations can adopt the following measures:

1. Order the vessel to stop and cease operations;

2. Order the vessel to change its course or proceed to a designated location;

3. Order the disembarkation of persons from the vessel or restrict or prohibit persons from boarding or disembarking from the vessel;

4. Order the vessel to unload its cargo or restrict or prohibit the vessel from unloading cargo;

5. Other measures stipulated by laws and regulations.

Article 17. For foreign organizations or individuals constructing buildings or structures or installing various types of fixed or floating installations in Chinese jurisdictional waters or

islands/reefs without the approval of China's competent authorities, coast guard organizations have the authority to order the cessation of illegal behavior or make rectifications within a time period; in the case of refusal to cease illegal behavior or refusal to rectify within a time limit, coast guard organizations may, when necessary, forcibly dismantle [the structures] in accordance with the law.

Article 18. In the case of behavior by foreign military vessels and foreign government vessels used for non-commercial purposes that violates Chinese law and regulations in Chinese jurisdictional waters, coast guard organizations have the authority to take necessary security (*jingjie*) and control (*guanzhi*) measures to stop them and order them to immediately leave the relevant waters; if they refuse to leave and cause serious harm or threats, coast guard organizations have the authority to take measures such as forcible eviction or forcible towing [away].

Article 19. When the sovereignty, sovereign rights, and jurisdictional rights of the state are being unlawfully infringed by a foreign organization or individual or face imminent danger of unlawful infringement, coast guard organizations have the authority, on the basis of this law and other relevant laws and regulations, to take all necessary measures including the use of weapons (*shiyong wuqi*) to stop the infringement and remove the danger on the scene.

Section 4. Maritime Administrative Law Enforcement

Article 20. In the case of individuals and organizations that violate public security, customs, marine resource development and exploitation, marine ecological and environmental protection, marine fisheries management, and other relevant administrative management laws and regulations, coast guard organizations can in accordance with the law implement coercive administrative measures, administrative punishments, or legal and regulatory measures.

Coast guard organizations can carry out supervision and inspection of marine production and operation sites in accordance with the provisions of relevant administrative management laws and regulations such as [those involving] marine resource development and exploitation, marine ecological and environmental protection, and marine fisheries management.

If needed for the investigation of illegal behavior at sea, coast guard organizations have the authority to collect and obtain evidence from individuals and organizations concerned. The individuals and organizations concerned should provide evidence in a truthful manner.

While on the scene, coast guard organizations may, in accordance with the provisions of the People's Police Law of the PRC, interrogate, inspect, or continue to interrogate persons suspected of committing crimes, in order to safeguard law and order at sea.

Article 21. If necessary for the staff of the coast guard organization to board, inspect, or pursue the vessel concerned in order to perform administrative law enforcement, they shall do so in accordance with the provisions of article 15 of this law.

Article 22. In one of the following circumstances, coast guard organizations at the provincial-level coast guard or higher can designate a temporary maritime security zone (*jingjiequ*) within China's jurisdictional waters, limiting or prohibiting the passage or stopping of ships and personnel.

1. Necessary for the performance of maritime security tasks
2. Necessary for suppressing criminal activities at sea
3. Necessary for handling a maritime emergency
4. Necessary for protecting marine resources and the ecological environment
5. Other circumstances that require the establishment of a temporary security zone.

When a coast guard organization designates a temporary maritime security zone, it shall specify the area, duration of the security, management measures, and other matters related to the maritime security zone, and it shall make a public announcement. In cases that could impact marine traffic safety, [the coast guard organization] shall solicit the views of maritime administration organizations prior to making the designation and shall, in accordance with relevant regulations, apply to maritime administration organizations for the issuance of navigation notices or navigation warnings; when [a security zone] involves military's use of the sea or could impact the safety and use of maritime military facilities, [the coast guard organization] shall obtain the consent of the relevant departments of the military.

When the passage or stopping of ships and personnel no longer need be restricted or prohibited, the coast guard organization shall promptly lift the temporary maritime security zone.

Article 23. In the case of a vessel suspected of legal violations and currently being investigated and dealt with by a coast guard organization, the coast guard organization can order the vessel to stop its voyage or operations, anchor at a designated place, or prohibit it from leaving port. When necessary, coast guard organizations can forcibly escort the suspect vessel to a designated location to undergo investigation.

Article 24. Coast guard organizations shall exercise supervision in accordance with the law over the vessels of international organizations, foreign organizations or individuals that have received permission to engage in marine scientific research, the laying of submarine cables and pipelines, fishing activities, and other operational activities such as natural resource exploration and development in China's jurisdictional waters. When necessary, coast guard organizations may send law enforcement personnel along with the vessel to conduct supervision.

Article 25. In order to prevent and punish behavior occurring within China's land territory, internal waters, or territorial sea that violates laws and regulations related to security, customs, finances, health, or entry/exit management, coast guard organizations have the authority to exercise the right of control (*guanzhiquan*) in the contiguous zone and take

coercive administrative measures in accordance with the law or take other measures prescribed by laws and regulations.

Article 26. If proof of illegal behavior is conclusive and one of the following conditions pertains, law enforcement personnel from the coast guard organization can impose penalties on the scene:

1. A fine or warning not more than 500 yuan for an individual or a fine or warning not more than 5,000 yuan for an organization.

2. In cases where it would be difficult to enforce a penalty if not done at sea where the violation occurred.

Article 27. For cases where a penalty is not applied on the spot but the facts are clear and those involved have voluntarily admitted fault and there is no objection to the facts of the violation and the application of the law, coast guard organizations can use a simplified method of collecting evidence and performing measures such as audit and approval and other measures for rapid processing.

For maritime administrative cases that meet the conditions for rapid processing, the involved party admits the violation, acknowledges fault, and recognizes the punishment in a self-written document or in an interrogation statement, and the audio and video records, electronic data, inspection records, and other key evidence can corroborate each other, then coast guard organizations need not perform further investigations or evidence collection work.

The use of equipment such as law enforcement recorders to make audio and video recordings of the interrogation process can replace the written transcript of the interrogation. When necessary, the key contents of the audio-video materials and the corresponding time period shall be explained in writing.

For administrative cases that receive rapid processing, the coast guard organization shall render a decision within 48 hours after the arrival of the case (*dao'an*) of the party involved.

Article 28. Rapid processing cannot be applied to maritime administrative cases under the following circumstances:

1. The parties involved are blind, deaf, mute, minors, or suspected of mental illness

2. Where hearing procedures should be applied in accordance with the law

3. Where the punishment of administrative detention of more than ten days may be imposed

4. Where there are major societal implications

5. Where the person may be suspected of committing a crime

6. Other circumstances inappropriate for rapid processing

Article 29. Before implementing coercive administrative measures, the coast guard organization shall report to the head of the unit to obtain approval. In emergency situations, when a law enforcement officer of the coast guard organization must implement coercive administrative measures on the scene at sea, he or she shall report to the person in charge of the unit within 24 hours and promptly complete the approval procedures after arriving ashore. In the case of force majeure and it is impossible to report to the person in charge of the unit within 24 hours, it shall be reported to the person in charge of the unit within 24 hours after the cause of the force majeure has been dispelled. If the person in charge at the coast guard organization believes that coercive administrative measures should not be taken then they should immediately be rescinded.

Article 30. In the event that the person involved fails to comply with the penalty decision of the coast guard organization, the coast guard organization making the penalty decision may, in accordance with the law, take the following measures:

1. If the fine is not paid by the due date, a fine of three percent of the fine amount shall be imposed daily.

2. Auction off, dispose of according to the law, or transfer frozen deposits and remittances to pay the fines.

For issues in which this law or other laws do not provide that the coast guard organization may implement coercive administrative enforcement, application should be made to the People's Court for coercive enforcement.

Article 31. The China Coast Guard Bureau shall determine the jurisdiction of coast guard organizations over maritime administrative cases.

Where there is a dispute between the coast guard organization and other organs about the jurisdiction of a case, the coast guard organization shall consult with other organs in accordance with the principle of facilitating the collection of evidence and the handling of the case.

Article 32. When a coast guard organization handles a maritime administrative case, if there is evidence to prove that the person concerned committed an act of intentional destruction of evidence at sea, causing difficulties for the coast guard organization to prove the case, the standard of proof may be lowered as appropriate or the person concerned may bear the burden of proving contrary facts.

Article 33. Procedures for coast guard organizations to carry out maritime administrative law enforcement are not provided in this law. The provisions of the Administrative Punishment Law of the PRC, the Administrative Coercion Law of the PRC, the Public Security Administration Punishments Law of the PRC and other relevant laws shall be applied.

Section 5. Maritime Criminal Investigation

Article 34. In handling criminal cases that occur at sea, coast guard organizations shall exercise their investigative powers, implementing investigative and criminal coercive measures in accordance with the Criminal Procedure Law of the PRC and the relevant provisions of this law.

Article 35. After a case has been filed, and in cases of crimes endangering national security, terrorist activities, organized crime, major drug-related crimes, or other crimes seriously endangering society, coast guard organizations can take technical investigative measures and hand matters over to the relevant organs for implementation in accordance with the regulations, doing so in accordance with the Criminal Procedure Law of the PRC and relevant regulations and after completing strict approval procedures.

After receiving approval, [the coast guard organization] may take the technical investigative measures needed for the pursuit of fugitive suspects or accused persons who are wanted or where a decision has been made for their arrest.

Article 36. If a criminal suspect who should be arrested is at large, coast guard organizations at all levels may within the scope of their corresponding administrative boundaries issue a wanted notice and take effective measures to pursue and arrest the suspect.

If a coast guard organization issues a wanted notice for a criminal suspect, it may consult with public security organs for assistance in the pursuit and arrest of the suspect.

Article 37. If it is necessary for the staff of the coast guard organization to board, inspect, or pursue the concerned vessel in order to handle a criminal case, they shall do so in accordance with article 15 of this law.

Article 38. If a coast guard organization, People's Procuratorate, or People's Court decides, in accordance with the law, to release a criminal suspect or defendant in a maritime criminal case on bail pending trial, the decision shall be executed by the coast guard organization in the place of residence of the person released on bail pending trial. If there is no coast guard organization in the place of residence of the person released on bail pending trial, the public security organ at the place of residence of the person being released on bail pending trial shall execute the decision. When necessary, the coast guard organization in charge of the case shall assist in its execution.

Article 39. If the coast guard organization, People's Procuratorate, or People's Court decides, in accordance with the law, to place a criminal suspect or defendant in a maritime criminal case under residential surveillance, the coast guard organization at the residence of the person under residential surveillance shall execute the decision. If the person under residential surveillance has no fixed residence at the city or county of the coast guard organization responsible for handling the case then [the residential surveillance] can be executed at a designated residence. If a person is suspected of committing a crime against national security or a crime of terrorism, and executing [residential surveillance] at this person's place of residence might hinder the investigation, then [residential surveillance]

can be implemented at a designated residence with the approval of the coast guard organization one level above. However, [residential surveillance] may not be executed at a detention facility (*jiya changsuo*) or a designated place for handling cases.

Article 40. Coast guard work stations are responsible for investigating criminal cases occurring within their respective jurisdictions.

Coast guard bureaus at the municipal level and higher are responsible for investigating cases of major crimes harming national security, crimes of terrorism, crimes involving foreigners, economic crimes, cases of organized crime, as well as other major criminal cases.

If the higher coast guard organization deems it necessary, it may investigate criminal cases within the jurisdiction of subordinate coast guard organizations. If a subordinate coast guard organization believes that the circumstances of the case are serious enough to warrant investigation by a higher coast guard organization, it may submit the case to the jurisdiction of the higher coast guard organization.

Article 41. Where a criminal case is being handled by a coast guard organization that requires authorization for arrest or transfer of prosecution, the request shall be made or transferred to the corresponding People's Procuratorate where [the organization] is located.

Section 6. Use of Police Implements and Weaponry

Article 42. The use of police implements and weaponry by coast guard organization personnel, not specified in this law, shall be implemented in accordance with the rules on the use of police implements and weaponry of the People's Police and other relevant laws and regulations.

Article 43. If warnings are ineffective, coast guard organization personnel can use hand-held weapons in one of the following situations:

1. There is evidence a vessel is carrying criminal suspects or illegally carrying weapons, ammunition, state secrets, drugs and other items and refuses to obey the instructions of coast guard organization personnel to stop, and attempt to escape;

2. Foreign vessels enter PRC jurisdictional waters to illegally engage in production activities, and refuse to obey the instruction of coast guard organization personnel to stop or refuse to accept boarding and inspection by other means, and the use of other measures is insufficient to stop the illegal activities.

Article 44. Coast guard organization personnel may also use shipborne or airborne weaponry in addition to hand-held weapons in any of the following situations:

1. Carrying out maritime counterterrorism missions;

2. Handling serious incidents of violence at sea;

3. Coast guard organization law enforcement ships and aircraft come under attack by weapons or other dangerous methods.

Article 45. Coast guard organization personnel may immediately use weaponry in accordance with the law if there is not enough time to provide warning or the situation may cause more serious harm after a warning was provided.

Article 46. Coast guard organization personnel shall reasonably judge the necessary limits of the use of weaponry based on the nature, degree, and urgency of the threat posed by the illegal criminal activity and the perpetrators, and shall try to avoid or reduce casualties and property damage. They shall do their utmost to avoid firing at sections below the waterline when using weaponry against vessels.

Article 47. Coast guard organization personnel may use police implements or other equipment and tools on site in any of the following situations:

1. Boarding, inspection, interception, and pursuit to compel vessels to stop;

2. Lawful forced expulsion or towing away of a vessel;

3. Coast guard organization personnel encountering obstruction or hindrance during the course of performing their duties according to law;

4. Other situations where illegal and criminal acts need to be immediately stopped.

Section 7. Support and Coordination

Article 48. The state will establish a funding support mechanism that coordinates with the rights protection law enforcement missions and construction and development undertaken by coast guard organizations and is compatible with economic and social development. The required funds are included in the budget in accordance with relevant state regulations.

Article 49. The construction of sites and facilities for law enforcement, case handling, duty, training, and living necessary for coast guard organizations to carry out maritime rights protection law enforcement work are each included in capital construction plans and urban and rural master plans, supported in accordance with relevant national regulations.

Article 50. Coast guard organizations shall optimize their force systems; build a strong contingent of personnel; strengthen education and training; ensure personnel have the knowledge, skills, and qualities to perform their statutory duties; and improve their professional abilities in rights protection law enforcement.

Coast guard organizations shall establish certifications and qualification management systems for law enforcement personnel.

Article 51. Coast guard organizations shall strengthen informatized construction and use modern information technologies to promote open law enforcement and enhance services for the people and improve efficiency in maritime rights protection law enforcement.

Coast guard organizations shall launch a maritime service platform for reporting [incidents] to the police and promptly handle reports and urgent request for help from the public.

Article 52. Information sharing and work coordination mechanisms have been established between coast guard organizations and the People's Procuratorates, the military, and the departments in charge of diplomacy, public security, natural resources, ecological environment, transportation, fisheries administration, emergency management, and customs.

Relevant departments shall provide coast guard organizations with timely information and technological support such as basic data, administrative licenses, and administrative policies as related to the implementation of maritime rights protection law enforcement.

Coast guard organizations shall provide feedback data and information on maritime inspection and investigation of crime to relevant departments in a timely manner and cooperate with relevant authorities in completing maritime administration management work. Coast guard organizations impose administrative penalties in accordance with the law and shall transfer relevant materials to license issuing agencies for processing those that meet the statutory conditions for license revocation.

Article 53. Coast guard organizations may submit requests for assistance to relevant departments when required for carrying out maritime rights protection law enforcement work. The relevant departments shall cooperate if the request falls within the scope of the department's authority.

Article 54. Criminals in administrative detention and foreigners under detention for review, as well as criminal suspects under criminal and executed arrest as determined by coast guard organizations in accordance with the law, shall be respectively held at the detention centers (*juliusuo*) and custody centers (*kanshousuo*) where the coast guard organization is located.

Article 55. Property seized or detained by a coast guard organization in accordance with the law as part of a case shall not be processed until a People's Court determines a sentence or the coast guard organization determines a penalty. However, the following items may be sold or auctioned according to law with the approval of coast guard organizations at the municipal China Coast Guard Bureau or above, with notification of the owner:

1. Hazardous materials;

2. Items not suitable for long-term preservation, which are live or fresh, perishable, or may lose their effectiveness;

3. Items that are prone to mechanical degradation and devaluation if unused long-term, such as vehicles or vessels;

4. Items in bulk that are difficult to store;

5. Items placed under advance sale or auction by the owner.

Proceeds gained through their sale or auction shall be temporarily kept by coast guard organizations and shall be processed in accordance with relevant regulations after the case is closed.

Article 56. Coast guard organizations shall return property involved in a case to the original owner or the concerned party and provide notification to retrieve the property within six months. A public notification shall be made of the original owner's claim when ownership is unclear. If the property is still unclaimed six months after the original owner or concerned party was notified, it shall be treated as unclaimed and be turned over to the state treasury after registration, or proceeds from its sale or auction in accordance with the law shall be turned over to the state treasury. Processing may be postponed in special cases and the extension period shall not exceed three months.

Section 8. International Cooperation

Article 57. The PRC conducts international cooperation in maritime law enforcement in accordance with international treaties it has concluded or participated in, or in accordance with the principles of equal treatment and mutual benefit.

Article 58. The China Coast Guard Bureau may conduct international cooperation with maritime law enforcement agencies of foreign governments and relevant international organizations, organize or participate in the implementation of relevant international maritime law enforcement treaties, and negotiate and sign maritime law enforcement cooperation documents within its prescribed authority.

Article 59. The main tasks of coast guard organizations for international cooperation in maritime law enforcement include participation in the handling of foreign-related maritime emergencies, coordination and resolution of maritime law enforcement disputes, management of maritime crises, cooperation with foreign government maritime law enforcement agencies and relevant international organizations to combat maritime transnational crime, protection of marine resources and the environment, and the joint safeguarding of international and regional maritime public safety and order.

Article 60. Coast guard organizations may carry out international cooperation with foreign government maritime law enforcement agencies and relevant international organizations in the following maritime law enforcement activities:

1. Establishing bilateral and multilateral maritime law enforcement cooperation mechanisms with foreign government maritime law enforcement agencies and relevant international organizations;

2. Participation in relevant international organizations or the activities of bilateral or multilateral maritime law enforcement cooperation mechanisms;

3. Exchange and sharing of maritime law enforcement intelligence and information;

4. Joint maritime patrols, inspections, drills, and training;

5. Joint strikes against illegal and criminal activities at sea;

6. Humanitarian rescue at sea;

7. Education and training exchanges;

8. Mutual dispatch of international cooperation liaison officers for maritime law enforcement;

9. Other activities for international cooperation in maritime law enforcement.

Section 9. Supervision

Article 61. Coast guard organizations and their personnel shall perform their duties and exercise powers in accordance with the conditions, authority, and procedures prescribed by laws and administrative regulations, and shall not exceed or abuse their powers, and shall not infringe upon the legitimate rights and interests of individuals and organizations.

Article 62. To enhance transparency and public credibility of law enforcement, coast guard organizations shall respect and safeguard the rights of citizens, legal persons, and other organizations to information, participation, and supervision over its law enforcement work.

Coast guard organizations shall, in accordance with relevant state regulations, proactively or upon application disclose information produced or obtained in the course of performing their duties and record and keep such information in some form.

Coast guard organizations shall, in accordance with relevant news and public opinion work regulations, release information on maritime rights protection law enforcement work in a timely and accurate manner.

Article 63. When carrying out administrative law enforcement investigations or inspections, there shall be no fewer than two coast guard law enforcement personnel and they shall wear standard regulation uniforms or show law enforcement certificates to indicate their identities to parties and other relevant persons. Parties and other relevant persons have the right to request the production of law enforcement certificates.

Coast guard organizations using specially marked law enforcement ships and aircraft to carry out maritime law enforcement work such as patrols, security, interception, and pursuit shall be deemed to have shown their identity.

Article 64. Law enforcement activities such as inquiries, interrogations, continued cross-examinations, identification and security inspections of criminal suspects, and information collection by personnel of coast guard organizations shall be conducted at the location designated for handling the case. Emergency situations that require on-site inquiries or interrogations or other inquiries or interrogations not appropriate for the location designated for handling the case shall be exempt.

Coast guard organizations shall record and archive the process of maritime rights protection law enforcement activities in the form of text, audio, and video in accordance with relevant national regulations.

Article 65. Coast guard organizations and their personnel shall accept the supervision of public procuratorate and military supervisory organs over the conduct of maritime rights protection law enforcement activities in accordance with the law.

Article 66. The People's Government, its relevant departments, citizens, legal persons, and other organizations have the right to report and accuse coast guard organization personnel of violations of law and discipline to procuratorate and military supervisory organs. Complaints may also be made through the maritime police reporting platform for active violations of law and discipline or dereliction of duties by coast guard organization personnel.

No department or individual may suppress or retaliate against citizens, legal persons, and other organizations that report, accuse, or make complaints in accordance with the law.

Article 67. Higher-level coast guard organizations shall supervise the maritime rights protection law enforcement work of lower-level organizations and possess the right to cancel, alter, or order lower-level organizations to cancel or alter measures or decisions it finds to be wrong. If lower-level organizations are found not performing their statutory duties, higher-level organizations have authority to order them to perform those duties.

Article 68. Coast guard organizations shall establish robust maritime rights protection law enforcement work supervision mechanisms and systems for law enforcement accountability.

Section 10. Legal Responsibilities

Article 69. Individuals or organizations committing one of the following acts to obstruct the lawful duties of coast guard organization personnel enforcing the law, shall be punished by public security organs or coast guard organizations in accordance with the provisions of the Public Security Administration Punishments Law of the PRC on the obstruction of the People's Police from performing their law enforcement duties.

1. Insulting, threatening, surrounding, intercepting, or assaulting coast guard organization personnel while performing their duties;

2. Obstructing investigation and evidence collection by coast guard organization law enforcement officers;

3. Forcibly rushing into temporary maritime security zones established by coast guard organizations;

4. Obstructing coast guard organization personnel from performing tasks such as pursuit, inspection, searches, rescue, and security;

5. Obstructing the passage of coast guard organization law enforcement ships, aircraft, vehicles, and personnel while performing their duties;

6. Using methods such as dangerous driving or setting obstacles by fleeing vessels, thereby endangering the safety of coast guard organization law enforcement ships and personnel during the course of their duties;

7. Other acts that severely hinder coast guard organization personnel from performing their duties.

Article 70. Coast guard organization personnel committing one of the following acts in the performance of their duties shall be punished in accordance with the relevant regulations of the Central Military Commission:

1. Disclosure of state secrets, commercial secrets, and personal privacy;

2. Falsify or conceal the facts of a case or harboring and condoning illegal criminal activities;

3. Extorting confessions or corporal punishment and torture of criminal suspects;

4. Use police implements and weaponry in violation of regulations

5. Illegal deprivation or restriction of personal freedom and illegal inspection or searches of persons, objects, vehicles, residences, or places;

6. Extortion, blackmail, soliciting or accepting bribes, or accepting hospitality and gifts from interested parties and their representatives;

7. Illegal imposition of penalties, adoption of coercive measures, or fee collection;

8. Dereliction of duty and failure to perform legal obligations;

9. Other violations of law and discipline.

Article 71. Violations of the provisions in this law shall constitute a crime and be investigated for criminal responsibility in accordance with the law.

Article 72. Individuals and organizations not complying with administrative actions taken by coast guard organizations have the right to apply for administrative reconsideration by higher-level coast guard organizations in accordance with the provisions of the Administrative Reconsideration Law of the PRC; or to bring an administrative lawsuit to the People’s Court with jurisdictional authority in accordance with the provisions of the Administrative Reconsideration Law of the PRC.

Article 73. Damage caused by infringements on the lawful rights and interests of individuals and organizations through the illegal use of power by coast guard organization

personnel shall be compensated in accordance with the Law of the PRC on State Compensation and other relevant laws and regulations.

Section 11. Supplementary Provisions

Article 74. The meanings of terms used in this law are as follows:

1. Provincial-level coast guard bureaus refer to coast guard bureaus directly led by the China Coast Guard Bureau that are established in coastal provinces, autonomous regions, and directly-administered cities. Municipal coast guard bureaus refer to coast guard bureaus directly led by provincial-level coast guard bureaus that are established in cities under the jurisdiction of coastal provinces and autonomous regions and directly-administered cities. Coast guard work stations refer to grass-roots coast guard organizations usually led by municipal-level coast guard bureaus that are established in county-level administrative districts along the coast.

2. Jurisdictional waters of the PRC refer to the PRC's internal waters (*neihai*), territorial sea, contiguous zone, exclusive economic zone, and continental shelf, as well as other waters under the jurisdiction of the PRC. Internal waters refer to waters to the landward of the PRC's territorial sea baselines. Inland waters (*neishui*) refer to waters to the landward of the PRC's territorial sea baselines, including the internal sea, internal rivers, and internal lakes.

3. Vessels refer to any type of moving apparatus such as displacement and non-displacement ships, boats, rafts, craft that fly above the water (*shuishang feixingqi*), and submersibles; it does not include platforms for offshore oil and gas operations.

Article 75. With respect to maritime law enforcement, if foreign governments and their maritime law enforcement organizations adopt discriminatory prohibitions, restrictions, or other special measures against Chinese citizens, legal persons, and other organizations, China can adopt corresponding reciprocal measures against that country's organizations and individuals in accordance with the actual situation.

Article 76. The measures provided for in this law with respect to vessels apply to all kinds of fixed or floating structures, installations, and fixed or mobile platforms located at sea.

Article 77. In accordance with the laws and regulations and international treaties concluded by China and to which it is a party, when coast guard organizations execute law enforcement tasks in areas outside China's jurisdictional waters, [they shall] reference the relevant provisions of this law for the relevant procedures.

Article 78. In accordance with the law, administrative regulations, and the decisions of the State Council and Central Military Commission, the China Coast Guard Bureau shall, within the limits of its authority, release regulations and decisions related to maritime rights protection law enforcement matters.

Article 79. Coast guard organizations shall carry out defensive operations (*fangwei zuozhan*) and other tasks in accordance with the PRC National Defense Law, PRC

People’s Armed Police Law, and other relevant laws; military regulations; and orders from the Central Military Commission.

Hainan Passes Regulation Allowing Detention of Foreign Ships that Illegally Land on Islands Within Its Jurisdiction

People's Daily Online, Reporter Wu Shengjing

(November 27) – The 35th Meeting of the Fourth Standing Committee of the Hainan People's Congress passed the "Hainan Province Coastal Security Regulation." The regulation explicitly states six offenses that pertain to foreign vessels and crews that enter waters under the jurisdiction of Hainan Province. The regulation states that coastal security authorities have the legal right to board; inspect; detain; expel; and stop, alter course or reverse course of foreign vessels that illegally enter waters within the jurisdiction of Hainan Province .

The regulation's general provisions clearly state that coastal areas (including islands) should follow national regulations and set up coastal security offices, to be responsible for such things as boarder control, public security, and household registration, with a purview similar to that of local police departments. Coastal security authorities should strengthen the development of coastal security offices in Sansha City, and implement the full range of boarder security functions.

The regulation's general provisions clearly state that coastal security authorities should strengthen patrols of the islands/reefs and waters of Sansha City; maintaining coastal security and order; work in concert in the South China Sea to enforce the law, defend national sovereignty, and protect the resources of the South China Sea. Coastal security authorities should, in a timely manner, report security issues to the personnel who work within the islands/reefs and waters of Sansha City, and strengthen the overall state of security readiness.

The regulation's general provisions clearly state that the coastal security authorities should work with foreign affairs, maritime and fisheries, transportation, mining, cultural, maritime, customs, inspection and quarantine and other key departments to create a mechanism to enforce laws, implement law enforcement information sharing, curtail illegal and criminal activities, handle (in a timely manner) urgent maritime issues, and jointly defend maritime production and coastal security.

The regulation's general provisions also clearly state that coastal village committee members should assist the people's government and coastal security authorities to maintain coastal security, and support shipping associations, fishing associations and other community organizations to develop coastal security education, services, administration, stability preservation, and relief activities.

The regulation states that vessels and crews putting to sea should carry with them legal and valid credentials, and accept the inspection and administration of coastal security authorities. When people other than boat crews put to sea, they should carry their personal identification cards, passports, Hong Kong/Macau/Taiwan transit documents and other valid personal identification documents, and accept the inspection and administration of coastal security authorities. Passenger ships that enter and exit the country must clear customs as per national and provincial regulations.

The regulation also identifies specific types of prohibited behavior regarding foreign vessels and their crews that enter waters under the jurisdiction of Hainan Province. These include the following: illegally stopping, dropping anchor or causing trouble while transiting through territorial waters under the jurisdiction of Hainan Province; failing to get an inspection permit while entering/leaving the country or altering the port of entry without permission; illegally landing on the islands/reefs that fall under the jurisdiction of Hainan Province; destroying coastal security facilities or production/living facilities on the islands/reefs that fall under the jurisdiction of Hainan Province; conducting propaganda activities that infringe on China's national sovereignty or that threaten China's national security; and engaging in any other behavior that violates laws and regulations pertaining to coastal security.

The regulation states that when foreign ships and crew behave in a manner that violates the above regulations, coastal security authorities can legally board; inspect; detain; expel; and force the vessels to stop, change course, or reverse course. Coastal security authorities can also seize vessels in violation, or instruments such as navigation equipment, and ascertain legal responsibility according to laws such as the "Security Administration Law of the PRC" and the "Law of the PRC for Entering and Exiting the Country."

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An Unforgettable Maritime Contest in the East China Sea: A Partial Account of the Rights Protection/Law Enforcement Operation Following an Incident Involving the Sinking of an Unidentified Foreign Vessel in the East China Sea[1]

Liu Zhendong[2]

On 22 December 2001, several patrol ships (巡视船) from the Japanese Coast Guard sank a vessel from an unknown country in waters roughly 300km east of [China's] Xiangshan (象山) – part of China's exclusive economic zone (EEZ). Following the incident, Japanese patrol ships and aircraft deployed continuously day and night in the waters near where the sinking took place. They cordoned off 5nm from the site of the sinking, implementing de facto control over waters 3nm from the sinking. Japan sent a diving vessel to the area to conduct underwater search operations, with salvage operations successfully completed on 11 September 2002. Japan operated under the twin pressures of Chinese diplomacy combined with monitoring by China Marine Surveillance (CMS) vessels and aircraft. Japan began by claiming that China had no jurisdictional rights but eventually changed its position in April 2002 when it admitted China enjoyed sovereign rights and jurisdictional rights in its EEZs, and that its maritime activities were subject to the supervision of CMS. This rights protection/law enforcement (维权执法) operation not only effectively safeguarded the dignity of the state; it also established the position of CMS as a representative of the Chinese government and an implementer of government

[1] 刘振东 [Liu Zhendong], 一次难忘的东海海上较量: 东海不明国籍沉船事件专项维权执法侧记 ["An Unforgettable Maritime Contest in the East China Sea: A Partial Account of the Rights Protection/Law Enforcement Operation Following an Incident Involving the Sinking of an Unidentified Foreign Vessel in the East China Sea"], 海洋开发与管理 [*Ocean Development and Management*], (October 2008), pp. 47-49.

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functions during major rights protection/law enforcement operations. This event also led to the creation of a maritime rights protection/law enforcement coordination mechanism comprising diplomats, civilian maritime law enforcement agencies and the military.

During this more than nine month rights protection operation, we continuously implemented the directives issued from the top to "maintain presence, show jurisdiction, and ensure security." We effectively implemented law enforcement supervision throughout the entire process from when Japan began underwater surveys of the area to when it completed salvage operations, satisfactorily completing the tasks assigned to us from the top and showing what CMS is capable of. We waged our war beautifully. As the commander of the CMS squadron (编队) involved, I personally went on 9 deployments for a total of 69 days. From the first encounter with a Japanese Coast Guard vessel to the very end when salvage operations were completed, I was on the scene at the front line. Through 270 days and nights, while directing and commanding the operations of the vessels in the task force and arranging various things such as which words to yell at the Japanese, conducting surveillance, and handling strategy, I overcame various difficulties and experienced severe trials. Ultimately [I] ensured the safety of all Chinese vessels involved and satisfactorily completed the mission, doing my utmost to fulfill all of my responsibilities. On several occasions while returning to Beijing to provide briefs, I received generous approbation from my superiors, and received a military decoration (**三等功**). Although six years have already passed, that unforgettable time will forever be etched deep in my memory.

I recall the first time the CMS ranks assembled on the sea. Because there was no precedent from which to draw, management of the situation was complex and sensitive. I was profoundly aware of the heavy burden of responsibility on the commander. The first thing we needed to do was focus on internal organization, establishing an explicit division of labor with clear responsibilities. On the CMS vessels, we set up command groups (指挥组), law enforcement groups (执**法**组), and ship security groups (船舶安全组). The command groups comprised the commander, the detachment (**支**队) leader, the ship leader, and law enforcement personnel, among others. The law enforcement group comprised the detachment leader, law enforcement personnel, and ship crewmembers. The ship security group was headed by the ship's captain. We made clear the responsibilities and membership of each group. While at sea, work was

performed according to pre-established responsibilities and division of labor. The command group would have a meeting every day at nightfall. It would summarize that day's work and assign the next day's surveillance and supervisory tasks. Organizationally, this ensured ship security and tight and orderly performance of the surveillance and supervisory operations. At the same time, we took into consideration the ships sent from other CMS administrative regions: in order to demonstrate the power of CMS, we rationally arranged for CMS vessels from other administrative regions to take turns entering the Japanese operations zone in order to take photographs and collect evidence (**拍**摄取证).

Comparing maritime forces in the East China Sea during this incident, Japan's Coast Guard sent ships with large displacements, including, at 6,500 tons, the world's largest patrol ship. The vessels had sophisticated equipment, with the majority of them deploying helicopters and weaponry. One could say that their equipment was extremely sophisticated. Their vessels were also numerous: there were as many as 19 Japanese vessels active on the scene at one time. They had lots of aircraft, with six different aircraft appearing on the same day. Our CMS ships were of small displacement, the majority being 1000 ton class. We had far fewer ships, with 4 being the most that appeared on any given day. CMS only had a single aircraft. However, what made one profoundly gratified and proud was that despite the great disparity between the two forces, under the correct command of our superiors and with our careful organization and sedulous implementation, during this 9-month maritime contest of monitoring and counter-monitoring (监视**与反**监视) we always seized the initiative and achieved several periodic (阶**段性**) victories.

1. **Seize on [Japanese] mistakes, forcing them to apologize.** In January 2002, CMS 49 engaged in communication with a Japanese ship. The Japanese side made false statements, absurdly claiming that it had obtained the approval of the Chinese government to enter China's EEZ to conduct search and rescue activities. We recorded evidence of this Japanese lie, and immediately reported it to Beijing. The Ministry of Foreign Affairs (MFA) expressed strong disapproval to Japan, demanding that it swiftly clarify the facts and provide an explicit response. Later on, Japan's Ministry of Foreign Affairs investigated the matter and apologized to China, making assurances that this type

of issue would never occur again. This allowed China to prosecute the diplomatic struggle with greater proactivity, winning the initiative (赢得先机).

2. **Seize opportunities to break through the security perimeter (突破警戒).** From 17 April to 7 May [2002], Japan formally began its diving operations. At some point in the middle of April 2002, after Japan's diving operations vessel had arrived, Japan's 3nm security perimeter became heavily guarded. According to a pre-arranged plan, our CMS ships would not generally enter this security zone (警戒区), and would not interfere with their underwater operations. On 1 May, Japan's command ship sent a message to our command ship: a Chinese fishing vessel (ZLY-21038) was operating 0.8nm from where Japan was conducting its diving operations and Japan requested that we ask the vessel to leave the area. At this moment, we believed that this was an extremely excellent opportunity for us to break through their security perimeter and enter their area of operations. We immediately told the Japanese side that we would supervise (监管) all passing ships and fishing vessels. When the Japanese side expressed objection, CMS 49 smoothly entered the 3nm security zone to a position adjacent to Japan's operations mother ship. It first asked the Chinese fishing vessel to depart, and then circled around the Japanese underwater operations vessels to conduct monitoring and collect photographic evidence. We seized on this sudden opportunity to successfully enter Japan's core zone for the first time, gaining an understanding of the dynamics of Japan's diving operations within that zone. This established a foundation for our future entries [into that zone].

3. **Supervise [the situation], according to the law and with justification.** Although on 1 May we had already made use of the opportunity presented by the fishing vessel to send a CMS ship to breach the Japanese security perimeter, the CMS ship that attempted to enter the security zone on 2 May was interdicted by a Japanese patrol ship. In order to avoid a conflict and confrontation, we did not forcibly attempt to enter the zone. How to enter the area of operations within the 3nm security zone to monitor [the situation] was a fairly thorny issue. According to UNCLOS, within our EEZs we possess sovereign rights (主权权利) and jurisdictional rights (管辖权). We definitely wanted to continue to enter the

3nm security zone to manifest our presence and conduct supervision. However, in order to avoid conflict and confrontation, we needed to seize on the right opportunity and have ample reason(s) [to enter]. Therefore, during the first part of May, when our CMS aircraft and ships discovered an oil slick in the waters near the Japanese diving operations ship, we seized on this opportunity (to demand that Japan clean up the oil) to approach and monitor the Japanese operations ships and patrol ships. We got as close as 0.2nm, collecting photographic evidence, including large quantities of materials on the Japanese operations vessel conducting operations, the status of the oil cleanup, and the Japanese patrol ships. In this way, CMS took advantage of collecting evidence on oil discharge, removing a Chinese fishing vessel from the area, and monitoring the environment as reasons to force the Japanese side to compromise, to stop erecting obstacles to our CMS ships entering the security zone, and to admit that these operations are part of CMS on-sight supervisory functions. Our CMS ships were perfectly justified in entering the 3nm security zone, and they made it a part of their normal operations. Moreover, our urging of the Japanese side to provide us with a daily report on their operations and ship activities effectively showed our supervision over the Japanese operations.

4. **Organizing our forces to increase pressure [on Japan].** Given that we only had a small number of CMS ships on the scene, in order to ensure complete monitoring and supervision of the Japanese side, we placed our four ships at points equidistant 3.5nm north, south, east, and west of the Japanese security ships (警戒船). Every day, the 3-4 ship formation would patrol one or two times, with the patrol times and configurations continually changing. In the waters beyond the Japanese security zone, we conducted clockwise and counterclockwise patrols. We created a situation whereby the Japanese vessels were surrounded. Moreover, starting in April 2002, CMS aircraft also began monitoring the area of the sinking. CMS air and surface forces worked together to achieve complete monitoring of the Japanese fleet, creating massive pressure on the Japanese side.

5. **Monitoring the Japanese, providing information.** During the middle part of January [2002], not long after the Japanese Coast Guard sank the vessel of unknown nationality, our side quickly dispatched CMS ships to cooperate with the State Oceanic

> Administration's Second Maritime Research Institute (第二海洋研究所) to conduct multi-beam surveying (多波束探测). Using our equipment, we identified the precise location of the sunken vessel. During the period when Japan conducted diving operations, the CMS command ship conducted monitoring to as close as 0.2nm from the Japanese diving operations, taking photographs of the Japanese underwater vessel submerging and entering/exiting the water. On 11 September [2002], when the sunken vessel was pulled out of the water, our CMS ship was China's only ship on the scene supervising at close range. It got close to the Japanese salvage vessel to monitor and take photographs, compiling materials chronicling the entire salvage operation. During the period of monitoring and supervising, we conducted effective supervisory control over the Japanese underwater and salvage operations, providing important support for our superiors to make policy and conduct diplomacy with Japan.

During nearly 9 months in 2002 in these confined waters (less than 130 km^2) in the East China Sea, from time to time there were vessels from Russia, South Korea, and other countries shuttling back and forth. Vessels from the Japanese Coast Guard's 11 administrative zones were on constant rotation to deal with them. Meanwhile, China Marine Surveillance concentrated the cream of its three administrative regions to conduct real, large scale rights protection/law enforcement combat of epochal significance! This maritime rights protection operation established several "firsts" for CMS since its founding: the first time it conducted such a lengthy, continuous maritime monitoring and supervisory mission; the first time it organized vessels from the three CMS administrative zones to form a mixed force to conduct maritime rights protection activities; the first time it organized CMS air and surface forces to cooperate in conducting maritime rights protection; and the first time it compelled a foreign entity that refused our jurisdiction to ultimately submit to our supervision.

This East China Sea rights protection/law enforcement operation demonstrated that CMS constitutes a maritime rights protection/law enforcement corps that comes quickly when it's called, comes ready to fight, fights to win, and is very combat effective (特别能战斗). This event created a foundation for future CMS fleet formations to smoothly monitor and

supervise foreign entities and for how CMS fleet formations should organize to conduct monitoring and supervision. This East China Sea rights protection/law enforcement operation augmented the influence of CMS both at home and abroad and increased its approval rating (认可程度). It proved that the preponderance for victory in maritime contests does not necessarily fall with the side with the best equipment. This unforgettable period stands as a milestone in the history of CMS rights protection/law enforcement operations. It is a glorious page in the history of growth and maturation at CMS, and it will forever remain a sublime chapter in the history of CMS rights protection/law enforcement!

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Research on Requirements and Measures in Civilian Vessel Mobilization for Maritime Rights Protection[†]

DAI Jiachen and GENG Yueting[*]

Civilian vessel mobilization for maritime rights protection is the use of military and civilian mobilized maritime forces to protect the state's maritime security and the development of its interests. It is an important means of safeguarding maritime rights and interests from foreign infringement. Exploring and analyzing mobilization requirements for maritime rights protection in the new situation and constructing and perfecting an operating mechanism for civilian vessel mobilization under market economic conditions have great significance for improving the ability of [China's] maritime force to conduct joint law enforcement and coordinate effectively during national maritime rights protection.

I. Primary issues and potential for mobilization of civilian vessels for maritime rights protection

A. Mobilization Potential of China's Civilian Vessels for Rights Protection

The scale of China's shipbuilding and marine industries has dramatically increased in recent years in conjunction with the country's rapid socio-economic development. China's current

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shipbuilding capacity, quantity, and tonnage are all ranked first in the world. China possesses all types of vessels; they are found in large quantities and have good performance. China's vessels can be used for maritime rights protection with little or no modifications. This gives them great mobilization potential for rights protection. As of 2011, China's merchant fleet capacity ranked fourth in the world with 3,227 vessels displacing a total of 106.14 million tons. There were over 280,000 motorized marine fishing vessels displacing a tot al of 7.714 million tons. 79.6 percent of these vessels are located in Liaoning, Zhejiang, Fujian, Guangdong, and Hainan provinces. At the same time, there is improved infrastructure for vessel construction and repair, strengthening capacity for vessel refitting. China has three large-scale shipbuilding bases, respectively located in the Bohai Gulf area, the Yangtze River Delta, and the Pearl River Delta.

B. Major Issues in China's Mobilization of Civilian Vessels for Rights Protection

The privatization of property rights makes mobilization difficult. The marine fishing industry has achieved rapid development in conjunction with the increased development of the socialist market economy. The number of civilian vessels at sea continues to grow. However, the degree of privatization has become higher and higher, especially the small and medium civilian vessels operating in the near seas that are necessary for maritime rights protection. Most belong to private enterprises and individuals. The traditional mode of mobilization through executive orders (*xingzheng mingling*) has proven ineffective. Moreover, as a result of a long period of living in an environment of peace and stability, the people's national defense awareness has gradually faded. They now take economic interests into greater consideration. Therefore, mobilization work is burdensome, demanding, and difficult.

Organizational deficiencies make management difficult. There are many fishery companies along China's coastal regions and civilian fishing vessels are numerous. However, the marine fishing vessel management system is still deficient, with no unified managing and coordinating agency. Many civilian vessels also have no uniformed registry, causing deficiencies in survey work on the potential of civilian vessels. The frequent sale and renting of civilian vessels causes large-scale transfers in ownership and usage rights. Statistics on mobilization potential have a difficult time tracking changes in the fleet of civilian vessels, making management much harder.

There's high turnover (*liudong da*) and it requires a long period of time to amass civilian vessels. The special nature of the marine fisheries, ocean shipping, and tourism service industries means that civilian vessel activities are broad in geographic scope, have irregular operating times, and have a high turnover. Most civilian vessels operate at sea for long periods of time. They make frequent movements during peak periods and usually work in other industries during the off-season or fishing offseason. This high turnover and uncertainty—compounded by the unexpectedness and urgency of maritime rights protection—makes rapid assembly of civilian vessels relatively difficult and impacts the efficiency of mobilization.

The foundation of mobilization is weak and [vessel] refitting is highly difficult. Although China has for a long time made great advances in the mobilization of civilian vessels, the institutional mechanisms and laws and regulations for mobilization are still imperfect. This causes a lack of

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specificity in regulations for the design and construction of vessels implementing national defense requirements. Regulatory supervision and incentives and penalties are not detailed, causing most civilian vessel constructions to fail to consider national defense requirements in their early stages. Civilian vessels must [then] undergo refitting before they can satisfy rights protection requirements. Moreover, since there are no preliminary designs for retrofits, retrofits in latter stages are much more difficult and time-consuming.

Inadequate regulations make support difficult. China has promulgated successive legal documents associated with civilian vessel mobilization, such as the National Defense Mobilization Law (《国防动员法》), Regulations for National Defense Mobilization of Civilian Transportation (《民用运力国防动员条例》), and Provisions on National Defense Mobilization of Civil Transport Resources Assistance and Compensation (《民用运力国防动员补助补偿规定》). While [these laws] have laid some legal foundation for the mobilization of civilian vessels, there are still no dedicated regulations for civilian vessel mobilization. Existing regulatory documents only focus on the policy level, with no associated regulations on the specific issues involving mobilization of civilian vessels, such as mobilization procedures, operational methods, compensation standards, and supporting measures. Timely compensation

for civilian vessel mobilization has been difficult to implement effectively, dampening the motivation of the subjects of mobilization.

II. Analysis of the Requirements of Maritime Rights Protection with Respect to Civilian Vessel Mobilization

A. Directly Participate in Rights Protection and Security Maintenance (*wei'an*) Operations

At present, it is hard to be optimistic about the maritime security environment along China's periphery. Maritime contradictions and disputes continue to be extremely intense and the maritime rights protection struggle is increasingly complex and severe. Some neighboring states, taking advantage of the fact that China's maritime forces have not yet become fully powerful (*wanquan qiangda*), are continuously consolidating and expanding their interests. They regularly deploy various types of vessels to conduct activities that violate Chinese rights. Moreover, they adopt methods such as bumping (*chongzhuang*) and encirclement (*weidu*) as a means to resist Chinese rights protection law enforcement operations. Due to their special status and legal constraints, China's law enforcement vessels sometimes have a hard time confronting them on equal footing (*duideng*), resulting in difficulties and passivity for Chinese law enforcement. This situation requires that we mobilize societal forces, which can participate in front line rights protection and security maintenance operations on an equal footing [with the adversary], thereby effectively safeguarding China's maritime rights and interests.

B. Compensate for the Present Inadequacies of Chinese Maritime Law Enforcement

China's coastline is 18,000 km long and it has jurisdiction over an area of roughly three million square km of maritime space. Due to various reasons—including historical and geographic—China is involved in disputes over maritime rights/interests with nearly every one of its neighbors. Nearly half of China's jurisdictional waters are disputed. China has suffered the most infringements of maritime rights/interests and is party to the largest number of maritime disputes of any country in the world. Moreover, China's active duty (*xianyi*) maritime law enforcement is comparatively weak. Compared with other maritime powers, China is inferior in terms of quantity, quality, and capabilities. Considering the vast area of Chinese waters and the severity of the maritime security situation, it is fairly difficult for China to implement administrative

control over all these waters. It is particularly difficult to handle emergency incidents. When facing sudden maritime rights protection incidents, China must mobilize societal forces, leverage the full potential of China's maritime forces, and effectively handle maritime conflict.

C. Improve Aid and Support in the Maritime Struggle

The forces participating in the maritime rights protection struggle under informatized conditions are diverse, as are the modes of conflict. It is not just a contest involving numbers and capabilities of ships. Above all, it is a contest testing the ability of states to comprehensively employ their maritime forces. Thus states need fairly strong capabilities in maritime struggle and comprehensive support. Mobilizing civilian vessel resources to participate in the maritime rights protection struggle would greatly raise China's maritime rights protection capabilities and improve outcomes in the struggle. China could leverage advantages such as its large numbers and variety of civilian vessels and the superb professional skills and superior capabilities of civilian mariners in order to assist active duty maritime law enforcement forces in aspects of transporting supplies and materials, completing emergency repairs of equipment, conducting attack and defense of information networks, controlling the electromagnetic spectrum, sharing intelligence and information, and providing medical care at sea.

III. Primary Measures That Can Be Taken to Improve China's Maritime Rights Protection Mobilization Capabilities

A. Strengthen Building of Civilian Vessel Mobilization Systems and Mechanisms

Create an Emergency Mobilization Command Organization. A capable, efficient mobilization organization and command structure is the key to effective implementation of rights protection mobilization. China should take as its basis the current multi-level national defense mobilization committees. Government should be the primary actor but it should rely on the administrative bodies of the corresponding national defense mobilization committees. It should draw in people from the Party, government, military, police, and coast guard to build a national defense mobilization emergency command organization comprising national, war zone (*zhanqu*), provincial, and municipal levels. If necessary, it should build small groups focusing on specific tasks such as command coordination, special mobilization, and comprehensive support. These

should organize the mobilization support and organizational command work within their respective areas. The aim should be to realize a mobilization organization command that unifies and concentrates military and civilian personnel, facilitating the efficient operation of civilian vessel mobilization.

Improve Emergency Mobilization Operating Mechanisms. A streamlined mobilization operating mechanism ensures rapid and efficient mobilization. China needs to build a solid communication and consultation mechanism for military and civilian leaders, improve its national defense mobilization committee meeting system and its system of regular communication, effectively integrate military and civilian mobilization resources, and improve the quality and effectiveness of emergency mobilization. China should improve its mechanism of work coordination; improve systems such as tasking, task completion, emergency coordination, and intelligence sharing; clarify military and civilian responsibilities; and establish norms for the mobilization process. Lastly, China should improve the joint mobilization operating command mechanism and clarify emergency responses, approaches for transitioning from a peacetime to a wartime situation, command procedures, and the scope of different responsibilities. The aim should be to ensure smooth command of the mobilization action organization.

Streamline Emergency Mobilization Command Relationships. The forces participating in maritime rights protection mobilization are diverse and command coordination is complex. China should create highly unified, smooth and efficient mobilization command relationships. At the same time that mobilization command organizations of different levels obey the mobilization command organizations above them, they should accept command from maritime rights protection struggle joint command centers of the same level and take responsibility for national defense mobilization work in their areas of responsibility. Mobilized civilian vessels should carry out maritime struggle operations according to the operational commander established by the task group. It should directly obey the command of the maritime rights protection struggle joint command center. The maritime rights protection struggle joint command center should be subject to the unified command of the Coast Guard and the Navy, in light of the maritime rights protection struggle and according to the principle of whomever uses the forces shall command them (*shei shiyong, shei zhihui*).

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B. Improve the Management of Civilian Vessel Mobilization

Conduct Surveys of Potential. Being clear on mobilization potential is the foundation for implementing rapid mobilization. Organizations at every level responsible for civilian vessel mobilization should guide and encourage the national defense transportation management departments, marine management organizations, and marine transportation companies under their responsibility to conduct surveys of civilian vessel resources. Data should include numbers, capabilities, distribution, ownership status, areas of activity, etc., and the situation with respect to ship crew team construction, abilities to berth in given ports, support capabilities, loading and unloading capacities, and shipyard repair and construction capacities. They should create complete and accurate civilian vessel mobilization databases and conduct periodic investigations to validate data on mobilization potential and update/improve mobilization database information.

Improve Dynamic Management. There is high turnover in civilian vessels and the geographic scope of their operations is wide. China must formulate practical and effective means to manage their movements. This is the only way to efficiently undertake mobilization when there is an emergency situation. Civilian vessel management departments and shipping companies should regularly report to mobilization management organizations on matters such as civilian vessel numbers, vessel quality, and operational state of each vessel. National defense mobilization committees at each level should use national defense mobilization command information systems and shipping company information management systems to create civilian vessel mobilization management networks and policymaking support systems. They should strengthen communication and compatibility with the marine target processing systems and AIS ship management systems of the Ministry of Transport, State Oceanic Administration, and local level marine management departments. The aim should be to achieve the timely sharing of information on vessel mobilization.

Organize Civilian Vessels Into Groups. Scientifically organizing civilian vessels into groups is the foundation for implementing their effective management. China should integrate crews and their ships, determining which personnel are assigned to which ships. It should organize vessels into groups based on responsibilities, vessel capabilities, and geographic locations. Depending on

the force needs of the maritime rights protection struggle, China should place mobilized civilian vessels into groups based on responsibilities and tasks. They should participate in the operations either independently or while attached to active duty rights protection forces. Vessels of similar capabilities should be grouped together and they should be assigned tasks appropriate to their capabilities. Vessels should be grouped according to the work unit they belong to and the region in which they are located.

C. Improve Civilian Vessel Mobilization Planning

Improve Preparation for Transition from Peacetime Emergency to a State of Mobilization. Civilian vessel mobilization organizations should, according to the mobilization needs of the maritime rights protection struggle and the tasking situation, integrate their respective civilian vessel mobilization potential and formulate a civilian vessel mobilization plan. They should make arrangements and plans for matters such as the division of labor during mobilization, vessel requisition procedures, command organization, modes of concentration, and management and use of forces. They should also formulate a complete and accurate mobilization plan and ensure that during an emergency they can calmly, rapidly, and smoothly implement the rights protection mobilization operation.

Formulate a Mobilization Implementation Plan for Different Levels of Organization. The mobilization command organization should integrate the overall plan for the maritime rights protection struggle and the tasking handed down from the organization above, rationally determine the scale and scope of mobilization, and make preparations for mobilization. It should integrate civilian emergency response mechanisms and create a similar hierarchy for rights protection mobilization requirements. It should integrate mobilization requirements for the rights protection struggle, clarify the relevant regulations and requirements for mobilization, determine the purview of and procedures for mobilization, and formulate corresponding mobilization hierarchies. It should make preparations for conflict escalation, formulate various plans for transitioning civilian vessels from rights protection emergency response mobilization to wartime mobilization, and ensure that the rights protection struggle is conducted smoothly.

Prepare Associated Plans for the Struggle. Civilian vessel mobilization maritime command organizations should integrate the overall plan for the maritime rights protection struggle and

formulate an effective action plan for mobilizing civilian vessels and prosecuting the rights protection struggle. Moreover, they should, depending on the given task, determine matters such as the relevant force composition, organizational leadership, command and control, communications, and support. They should determine emergency action plans for matters such as security/protection, search and rescue, emergency repairs, and medical treatment, given the possible situations that may occur during the rights protection struggle. These measures will ensure the smooth completion of rights protection activities.

D. Provide Comprehensive Support for Civilian Vessel Mobilization

Provide Material Cost Support. Mobilization of civilian vessels for maritime rights protection touches upon many different things. The volume requirements are extensive, and material consumption is considerable. Therefore China must provide ample cost and material support. China should consider the material needs of maritime rights protection ships. It should prepare stocks of strategic materials and locate them in key places, establish a material support center, and improve area support capabilities. It should set up dedicated funds for mobilization of civilian vessels for maritime rights protection, increase the levels of these funds, and ensure the smooth implementation of mobilization. It should create a system for mobilization fund support; provide subsidies for companies and individuals that carry out their national defense responsibilities; and provide compensation for costs, lost income, property damage, and production costs during the process of requisition. Doing these things will increase the motivation (*jijixing*) of the civilians subject to mobilization.

Provide Support for Refitting Civilian Vessels. China should make technical preparations for refitting civilian vessels. China should validate refit design plans in light of possible rights protection missions and determine refit plans and shipyards, so that refitting can be conducted rapidly. China should prepare materials and equipment needed for refits. It should scientifically appraise the needs and scale of refitting in light of the future needs of rights protection missions and prepare inventories of materials and equipment that may be used in the future.

Provide Equipment Support. The maritime rights protection struggle is very intense and it comes in many forms. There could possibly be bumping and collisions between ships, or conflicts in invisible domains (*wuxing lingyu*), like those between networks and information. At the same

time as China performs refitting of mobilized vessels for security/defensive purposes, it should refit them with mobile communications equipment such as satellite phones, short wave, ultra short wave, network, and encryption equipment. Moreover, it should provide them with early warning and detection equipment such as radar and sonar, GPS navigation, information interception (*xinxi jiehuo*) equipment, and friend-foe identification systems. Doing so would strengthen their rights protection support capabilities.

E. Improve the Legal System for Civilian Vessel Mobilization

Improve Relevant Laws and Regulations for Civilian Vessel Mobilization. A good system of laws and regulations for civilian vessel mobilization is the foundation for legally organizing and implementing civilian vessel mobilization in emergency situations or during war. America has

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formulated various mobilization laws and regulations such as the National Mobilization Law, Emergency Law, Merchant Vessel Law, and Military Transport Law. These do a fairly good job at ensuring the legal mobilization of civilian vessels. We should study and learn from the experiences of developed countries and formulate as quickly as possible merchant vessel mobilization laws and regulations such as a Civilian Vessel Mobilization Law (《民用船只动员法》) and a Merchant Vessel Law (《商船法》). Moreover, China should gradually improve current legal regimes such as the National Defense Law (《国防法》) and the Regulations for National Defense Mobilization of Civilian Transportation (《民用运力国防动员条例》). It should form a complete system of laws and regulations for civilian vessel mobilization and truly bring civilian vessel mobilization work under the rule of law.

Create More Detailed Mobilization Implementation Regulations. To date, China has already promulgated the National Defense Mobilization Law (《国防动员法》) and National Defense Transportation Regulations (《国防交通条例》). These have provided some guidance and specifications for civilian vessel mobilization work. However, these laws/regulations are more expressions of principles. They are not very operational. Thus, mobilization organizations of different levels, local governments, and companies should formulate specific and feasible

civilian vessel mobilization implementation regulations. They should do so according to the realities of their respective regions and work units, and they should integrate national level mobilization laws/regulations. These implementation regulations should be detailed and explicit about organizational leadership, organizational structure, defining responsibilities, defining the division of labor, implementation of national defense requirements, and means of compensation. Moreover, they should formulate means of oversight and supervision and rewards and punishments. They should establish complete and detailed mobilization system measures, and ensure that civilian vessel mobilization is methodical and efficient.

Improve Incentives and Compensation Policies. The national government has promulgated the Provisions on National Defense Mobilization of Civil Transport Resources Assistance and Compensation (《民用运力国防动员补助补偿规定》). This provides regulations for relevant measures and means for compensation in civilian vessel mobilization and provides a legal basis for economic compensation for civilian vessel mobilization. But this regulation does not provide detailed provisions with respect to levels of compensation, means of compensation, and the types of compensation. Thus, it is not very operational. Different locations should formulate specific regulations for standards of compensation, taking into account their respective economic situations. They should specify levels, principles, and procedures for compensation. They should find the means to provide economic compensation to work units, companies, and individuals, thereby ensuring that those who take part in mobilization do not suffer financial losses. In deciding on compensation, they should distinguish between the peacetime implementation of national defense requirements and the wartime execution of national defense service (*qinwu*), thereby ensuring the interests of civilian mariners in peacetime and promoting smooth mobilization.

Conclusion

In recent years, a number of coastal states along China's periphery have instigated maritime disputes, squeezing (*jiya*) China's maritime space. The struggle over maritime rights/interests is increasingly severe and intense. China's maritime military and law enforcement forces, with the vigorous support of and in coordination with China's maritime civilian vessel mobilization forces, have done a fairly good job dealing with a number of maritime provocations and conflicts.

They have safeguarded security and stability in the seaward direction. In the face of an increasingly complex and intense maritime rights protection situation, China should strengthen research on the construction and use of maritime civilian vessel mobilization forces and amply leverage the potential power of civilian vessel mobilization. Moreover, keeping in mind the strategic objective put forth at the 18th Party Congress to "resolutely safeguard national maritime rights/interests and build China into a maritime power," China should continuously improve the comprehensive rights protection capabilities of military and civilian forces, thereby providing vigorous support for achieving the objective of becoming a maritime power.

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Research on Civil Wharfs Construction Implementing Maritime Strategic Projection Requirements[1]

Wang Xin[2]

With the increasing requirements to safeguard China's maritime and overseas interests and the worsening maritime security situation, the construction of maritime strategic projection capabilities has become an urgent strategic task. Highly efficient, safe, sensible, and intermodal, maritime strategic projection is the chief means of transportation support in the conduct of combat at sea, pre-deployment assembly, and the movement of materials. Maritime strategic projection includes the phases of home coast embarkation, sea transit, and debarkation at destination. As the main basis for the home coast embarkation phase, civil wharves are important infrastructure. In the future, China will establish many strategic projection support ship fleets. Enabling support for our military's maritime strategic projection operations, civilian wharves will undertake more new tasks such as the delivery, loading, and unloading of military forces and national emergency response forces, warship berthing, maritime safety and rescue, and protection of the facility system's security. While the construction of civil wharves satisfies multiple economic and social benefits, it also needs to meet national defense requirements such as the loading and unloading of heavy equipment, emergency repair and protection, and the normal activities of military shipping, providing strong support for the preparation for military struggle. It is of great practical significance to study approaches in the implementation of maritime strategic projection requirements in civil wharf construction and their provision of strong support for building the maritime strategic projection capabilities of units.

1. Analysis of the Requirements of Maritime Strategic Projection in Civil Wharf Construction

1.1. Adapting civil wharf ancillary facilities to the needs of large military ship berthing

In wartime, our military's large warships, such as standard landing ships, should use civil wharves to provide the necessary water, refueling, power supply, and technical maintenance support in ship berthing when channel depth and port waters permit safe navigation. Special

[1] 王欣 [Wang Xin], 民用码头建设贯彻海上战略投送要求研究 ["Research on Civil Wharfs Construction Implementing Maritime Strategic Projection Requirements"], 国防交通工程与技术 [*Traffic Engineering and Technology for National Defence*], vol. 20, no. 5 (September 2022), pp. 7-10.

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requirements for berthing or mooring of naval ships should be fully considered during wharf construction, such as the requirements of various types of ramp configurations and forms for different types of ships at docks and ramps. Since landing ships must use bow or stern docking at sloped ramp RO-RO docks to conduct roll-on/roll-off operations, civil wharves must be equipped with attached installations such as RO-RO berthing platforms for conventional docks. [Being able to] rely on ordinary conventional docks for loading and offloading by landing ships in a Mediterranean mooring can effectively solve the problem of insufficient sloped ramp RO-RO docks on our coasts. The main purpose of civil wharves is to transport passengers, light wheeled vehicles, and bulk cargo. Their overall applicability is good, but the water depth in front of docks will also need to increase and berthing capacity design must be strengthened.[3]

1.2. Conforming the structure of civil wharf facilities to the requirements of wartime protection and emergency repair

Civil wharves will become key targets for enemy attacks and sabotage in wartime. Trestle-type oil terminals and floating docks are extremely vulnerable to damage. Warships moored in civil wharves are key targets for enemy attacks and sinking them at a dock can block channels and render docks unusable for a long time. In light of the vulnerability of facilities to sabotage in wartime, civil wharves should preset underground command posts, underground oil depots, temporary docks, temporary loading and unloading points, and reserve ports which can all be temporarily activated to effectively meet the requirements of protection and emergency repair as well as the need for strike-resilient operations in wartime. At the same time, the road surface along civil wharves should be resistant to damage, be equipped with a certain number of emergency power supplies, and have roads that are conducive to concealment, evacuation, and detours. Furthermore, wartime protection and repair require that civil wharf facilities, equipment, and storage yards be arranged as far as possible without setting up fixed buildings and equipment that cannot be dismantled and would impact the transition from peacetime to wartime. They should be readily available for rapid modification and use during combat.

1.3. Matching the support capabilities of civil wharves to the movement and handling requirements of heavy equipment

As civil wharves support the convenient and quick transfer of units between ground and waterway transportation, loading and unloading is the key element in this process. During the embarkation process, wheeled vehicles and personnel enter RO-RO ships via a RO-RO terminal and equipment ashore is hoisted into the ship by loading machines.

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During the debarkation process, the bearing surface of the civil wharf, the transport turning radius along routes, the dimensions and carrying capacities of RO-RO vessel gates and ramps, and other aspects must adapt to the requirements of heavy equipment driving in and out of the

[3] **Translator's note**: Original text refers only to the "water marking in front of docks" (码头前水位), which may be a mistakenly used character.

vessel. Most units' heavy equipment exceeds limits and is overweight. When moving heavy equipment, the width, slope ratio, bearing weight, turning radius, and measures to deal with tidal effects on the connecting bridges or ramps between civil wharves and vessels should be considered. The safe and convenient passage across main land routes, unobstructed port roadways (*shugang daolu*), port areas, and roll-on embarkation should be ensured. It is necessary to focus on improving the load-bearing capacities of the landing points of sloped ramps at civil wharves so that bearing standards can be reached for traffic loads. Assembly site design should meet the needs of unit assembly and their special and heavy equipment going onto the island (*shang dao*).[4]

2. The Standards System for Implementing Maritime Strategic Projection Requirements in Civil Wharf Construction

2.1. Standards system framework for implementing requirements in civil wharf construction

As an effective supplement and expansion of the military wharf system, the standards system for implementing maritime strategic projection requirements in civil wharves consists of three sub-systems: facilities standards, technical standards, and management standards. The framework structure of the system combines the characteristics and needs of implementing maritime strategic projection requirements, so [civil wharf] standards are comprehensive, classified rationally, have a clear hierarchy, and are well-structured. The facility standards system should address different situations of shorelines, tides, and main docks, highlighting the specific features of implementing maritime strategic projection infrastructure in civil wharves. For the technical standards system, the technical specification and standards requirements for maritime strategic projection in terminals should be fully reflected in the civil wharf technical specifications and standards system. The standards system for civil wharf management should form a complete legal system and legislate clear powers and obligations of relevant work units to improve the effectiveness of management. Figure 1 shows the standards system framework for implementing maritime strategic projection requirements in civil wharf construction.

[4] **Translator's note**: Original Chinese sentence is "满足部队特种、重型装备上岛及部队集结需求."

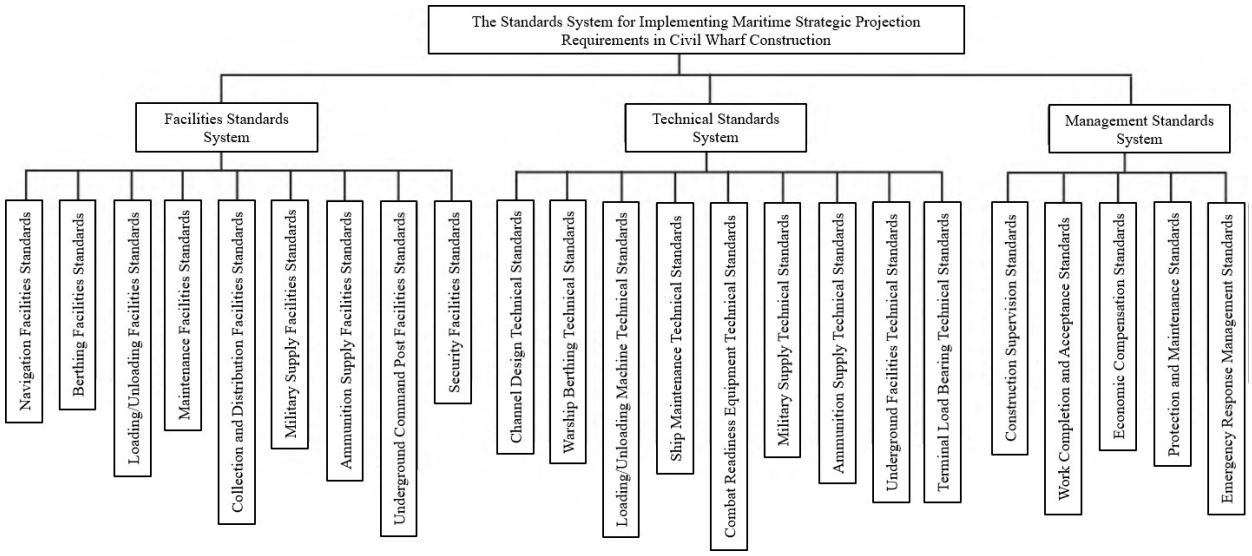

Figure 1: Standards system framework for implementing maritime strategic projection requirements in civil wharf construction.

2.2. Key aspects of implementing requirements in newly built civil wharves

Newly built civil wharves should use modern design concepts and new materials science to implement the requirements of maritime strategic projection. Key aspects of this include design plans and technical standards. First, supporting dock facilities and military transportation facilities must be built according to the needs of maritime strategic projection. Newly built civil wharves should have ship evacuation areas and berths suited for military ship use, and there should be spacious roadways connecting the various working areas to facilitate the assembly and adjustment of units moving in and out of terminals. Conventional dock construction should achieve standards in bearing capacity and piers and passages should be of corresponding strength to meet the needs of handling military cargo, armaments, and equipment. Second, the relevant technical standards for maritime strategic projection support should be met. Floating mobile heavy-lift RO-RO docks (*yidongshi zhongjian gunzhuang fumatou*)[5] must meet load capacity standards and their functions should be suited to the offshore (*jinhai*) berthing and operating requirements of RO-RO vessels and RO-RO passenger vessels. Container terminals should be equipped with container shore-cranes that can handle heavy military equipment, and multi-purpose and general cargo terminals should be equipped with gantry cranes and stored hoisting rigging that can also handle heavy military equipment. To meet the needs of naval ships, a fuel and water supply system should be built that is fixed and mobile with main and backup lines to ensure an uninterrupted supply of fuel and water in wartime.

2.3. Key aspects in the implementation of requirements for converting existing civil wharves

As shoreline resources in China's major ports and terminals are constantly adjusted and optimized, the key role that existing terminals serve as a node in the cross-sea delivery of

[5] **Translator's Note**: Original phrase is "移动式重件滚装浮码头."

personnel and equipment of units has become an important target for the implementation of maritime strategic projection requirements. The focus of implementing these requirements in existing civil wharves includes conversion technology and performance standards. First is to fully draw on advanced foreign experience. [We should] learn from foreign experience in implementing maritime strategic projection requirements in existing large civil wharves. For the conversion work process, technical standards schemes should be drawn up for optimal construction processes and application techniques of new materials, to ensure the adaptability and reliability of civil wharves in terms of design theory, content, and their resulting form. Second is the transformation of functions toward the next generation of terminals. The functional transformation to second generation terminals should be done on the basis of the number, distribution, and future development direction of various national and military RO-RO vessels. They should be able to bear [the weight of] main battle equipment such as main battle tanks, amphibious assault vehicles, and amphibious infantry fighting vehicles and effectively meet the needs of large, special equipment of the air force and the rocket force and the berthing and movement requirements of the navy's large dock landing ships.

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3. Measures to Improve the Level of Implementation of Maritime Strategic Projection Requirements in Civil Wharves

3.1. Raise strategic awareness of [the need to] implement maritime strategic projection requirements in civil wharves

With the changes in our military's missions and tasks in the new era and new phase, civil wharves are shouldering the important task of responding to threats in multiple directions and completing diversified military missions. It is necessary to further raise awareness about the importance of implementing maritime strategic projection requirements in civil wharf construction on a national strategic level; do a good job with the top-level design of civil wharf planning, construction, and management; and solve the problem of emphasizing short-term benefits over long-term demands and emphasizing economic use over national defense requirements. Conduct overall planning for the distribution of civil wharves while taking into account the direction of the nation's preparation for military struggle and corresponding modes of combat. Site selection and the layout of civil wharves should not be limited by the composition of local economic development, but should be adjusted and considered in high strategic terms of implementing national defense requirements. At the same time, the content of implementing maritime strategic projection requirements in civil wharf construction should be further enriched in terms of expanding the scope of functions, and approval of this consensus must be bolstered. Civil wharf names (*mingcheng*) should be transformed to [reflect] their implementation of maritime strategic projection requirements and should belong to the same category as civilian ships implementing such requirements. Civil wharves must be returned to their essential concept.

3.2. Improve support regulations and management systems for civil wharves implementing national defense requirements

Our military can learn from the U.S. method of mobilization using legal contracts. Such contracts signed by military and mobilized work units clarify the rights and responsibilities of civil wharves implementing maritime strategic projection requirements in their construction, what constitutes a breach of contract, and reduces links in coordination and orders. Drawing on the precedents of maritime strategic projection requirements implemented in civilian ships, corresponding management measures should be formulated for newly built civil wharves implementing maritime strategic projection requirements. The responsibilities and tasks of Transportation War Preparedness Departments, military representatives, owners, and industrial authorities can be clarified via the management regulatory system. Establish a joint research and approval mechanism for transportation construction projects when governments finance and participate in civil wharf construction. While fully considering the rights and interests of enterprises, effectiveness in national defense should be maximized in the course of promoting the implementation of maritime strategic projection requirements in civil wharves. Institutional mechanisms should fully foster enthusiasm by enterprises. At the same time, the problems of having multiple managing [entities], compartmentalization, and a separation of construction and management existing in the management of current civil wharves implementing national defense requirements should be resolved. Resources from all parties should be integrated to form principled, operational laws and regulations, which will change the mode of implementing maritime strategic projection requirements from mandatory to contractual mobilization and strengthen the functions of managing authorities. A complete system of laws and regulations will promote the construction and use of civil wharves.

3.3. Strengthen the overall technical performance of civil wharf infrastructure facilities

The embarkation phase of landing ships and RO-RO passenger ships on home shores is vulnerable to significant limitations in wartime. In the past, the implementation of national defense requirements in civil wharf construction was mainly to solve bottlenecks in transportation mobilization, and, in terms of scale, it adopted fixed-point methods of construction. In order to meet the needs of future maritime strategic projection, the functions of civil wharves should be strengthened and a single combat readiness terminal (*zhanbei matou*) or several combat readiness terminals should be supplemented to form supporting modules and system-of-systems capabilities (*tixi nengli*). The scale of civil wharf construction is being transformed towards system-of-systems capabilities. In terms of implementing maritime strategic projection requirements, we should start by building system-of-systems capabilities and do a good job in the construction of infrastructure such as [maintaining] dredged port channels (*shugang hangdao*), clear port roadways (*shugang gonglu*), dedicated rail lines, harbor service vessels, rear assembly areas, rear oil depots, and military supply support. At the same time, technical specifications and military standards for the construction of civil wharves implementing maritime strategic projection requirements should be formulated and updated in real time. Technical specifications should be further improved and specific technical requirements put forward for carrying out construction planning and design and construction review and acceptance for civil wharf infrastructure facilities, such as the berthing capacity of sloped RO-RO docks in coastal cities. [We should]

make it so the technical performance of infrastructure facilities in civil wharves achieve the standards for meeting the berthing, loading, replenishment, and maintenance requirements of large landing ships and RO-RO passenger ships.

3.4. Integrate multi-purpose civil wharves

In the construction of civil wharves, there are usually problems of weak functional integration. There are issues of inaccessibility by suitable vessels, inability of roll-on equipment to load, and a lack of universal technical standards, all of which have an impact on construction supervision, acceptance of completed work, financial compensation, and later management. The construction of civil wharves should be set up scientifically in a position relative to the main wharf, have a rationally designed dock structure, and should have uniform design and construction standards. Civil wharf construction should appropriately extend the shoreline for military use (*yanchang junyong an'xian*). It should improve the ability [of civil wharves] to accommodate wartime military transportation needs and fully integrate peacetime and wartime functions. At the same time, [we should] facilitate the use of existing terminals according to local conditions, strengthening use, research, and demonstration of completed and idle civil wharves. Through measures such as changing their operating models, supporting local preferential policies, and giving priority to task planning, civil wharf operators will take the initiative to protect and maintain [their facilities]. The use of civil wharves should be arranged as much as possible during unit maritime training, exercises, and drills, and the frequency of their use in inspections of actual troops, real loading, and practice should be increased. Terminal use fees should be paid according to settlement standards to improve economic benefits to civil wharves.

4. Conclusion

The implementation of maritime strategic projection requirements in civil wharf construction should adhere to the principle of task-driven development. Driven by the needs of preparation for military struggle, the military and economic benefits of civil wharf construction that implements maritime strategic projection requirements should be rationally improved, adhering to the principle of combining peacetime and wartime in construction. There should be true functional integration in terms of management, planning, and technology. While promoting economic development, the loading and unloading conditions for maritime strategic projection [in civil wharves] should be effectively enhanced. The support capabilities of civil wharves for maritime strategic projection should be leveraged to provide a strong guarantee for our military's future maritime military operations.

Part V: Legal Analysis of Force, Self-Defense, and Jurisdiction

This concluding section delves into specific, high-stakes legal issues concerning the use of force, the jurisdiction over military personnel, and the role of the maritime militia in legal conflict.

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Legal Problems Regarding the Use of Force in Military Actions at Sea*

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In military actions at sea, the prospect of using force is considered extreme and undesirable. It is also a real possibility that can happen at any time, and therefore must be considered. This article primarily discusses the use of force in actions at sea. It examines the legal nature of using force in actions at sea, conditions of employment, procedures, and limitations.

I. The Legal Nature of the Use of Force in Military Actions at Sea

The nature of force depends on the nature of a given military operation. Usually it is understood that military actions at sea are both military activities and law enforcement activities. From the overall perspective, military actions at sea are activities conducted by the military. They therefore naturally should be seen as military activities. From the perspective of the separation of powers, military actions at sea cannot possibly be legislative activities and cannot possibly be judicial activities. They can only be law enforcement activities. Therefore, these actions should combine force of a military nature (military force) and force of a law enforcement nature (law enforcement force). However, this understanding obviously cannot satisfy the requirements of international practice.

In international practice, the use of force is often differentiated between use of force occurring in international relations and use of force in law enforcement. Usually, the former is understood as

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† Translators' note: When this article was published, the author was the Deputy Dean at the Academy of Military Law of the PLA Navy East Sea Fleet.

military force and the latter is understood as law enforcement force. According to representative documents such as the UN Charter, the use of force is prohibited on principle. It is only permitted in a small number of situations. The international community is relatively tolerant of the use of law enforcement force. It is allowed in principle, but it must meet certain requirements. [These requirements are outlined] in treaties and customary law, such as the *UN Convention on the Law of the Sea*, the *2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, *Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures*, and B*asic Principles on the Use of Force and Firearms by Law Enforcement Officials*. They are also outlined in state practice, including the legislation of countries such as the United States, Russia, Canada, Barbados, and Tanzania. If use of force in actions at sea is both military force and law enforcement force, then it is possible to face contradictory circumstances in which it is both prohibited and allowed. How did this problem arise? To resolve it, it is necessary to

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engage in more detailed examination of the concepts of military activities and law enforcement activities.

First, let us examine military activities. Today, aside from traditional military tasks related to war and armed conflict, militaries are increasingly charged with non-traditional tasks. These tasks include patrolling disputed waters, suppressing pirates, and participating in emergency rescue and disaster relief. Some of these non-traditional tasks have defined political-military purposes and are closely related to national defense and military matters. They are of a traditional military nature, and include military exercises and drills, patrolling disputed waters, etc. There are also many [non-traditional tasks] that bear no relationship to political-military purposes. Their chief or entire purpose is to safeguard state or social order; they have a pure law enforcement purpose. Examples include suppressing pirates, participating in emergency rescue and disaster relief, etc. That is, although these activities are conducted by the military, some have military purposes and some do not. The former we can call activities with military purposes, and the latter we can call activities with law enforcement purposes.

Next, let us examine law enforcement activities. Although law enforcement activities are activities that fall under one of the three types of state power, they actually represent much more than one-third of state and social life. We might say that among the different types of state power activities (*quanli huodong*), law enforcement is a power activity that covers the broadest scope, has the richest content, and has the largest impact on citizen life. Therefore, this concept cannot precisely define all types of behavior. In addition to administrative law enforcement activities, which are the most commonly-recognized, I believe that law enforcement activities can be more clearly differentiated into military law enforcement, judicial law enforcement, and diplomatic law enforcement activities. Whether in terms of purpose, mode, judicial litigability, or legal consequences, all are fundamentally different from strictly-defined administrative law enforcement. Specifically with respect to military action at sea, at the very least we can divide it into two types. One type has a national defense military purpose, such as protecting national territory, resisting foreign invasion, etc. These examples constitute law enforcement activities of a military character. Another type is purely about safeguarding day-to-day social order. Law enforcement activities of this type do not have a national defense purpose. They have a non-military character. They include suppressing pirates or drug trafficking on the high seas based on international law, or assisting national administrative law enforcement organizations such as the Coast Guard or Maritime Safety Administration to conduct maritime law enforcement in the near seas. These two types of behavior might be respectively called military law enforcement activities and civil maritime law enforcement activities.

From the above discussion we can see that military actions at sea can be differentiated into two types: activities with a political-military purpose and activities with a purely law enforcement purpose. The first type's direct or even total purpose is to achieve political-military aims. Activities with a political-military purpose involve national defense and national security. They resolve problems between states (or non-state political entities). The second type is purely about safeguarding the legal system and the day-to-day social order. This paper respectively defines these two types of actions as activities with a military character and activities with a law enforcement character (or "military activities" and "law enforcement activities"). Unlike the broadly defined "military activities" and "law enforcement activities" discussed above, these two types of activities are mutually exclusive and mutually incompatible. Military actions at sea are either activities of a military nature, or activities of a law enforcement nature. They cannot be

both at the same time. Take, for example, the disputes between China and Japan involving the Diaoyu Islands‡ and the East China Sea continental shelf, which involve various types of activities conducted in the name of law enforcement. They clearly stem from the purpose of safeguarding sovereignty over the islands and maritime space. They are law enforcement in name, but are in fact activities of a military character. Correspondingly, armed force is either military force or law enforcement force. It cannot be both military force and law enforcement force. Take for example the Philippines killing of Taiwanese fishermen in waters of overlapping rights claims. [The Philippines] asserted that this was a use of law enforcement force. However, if one traces its purpose, it was about national rights in the relevant waters. Therefore, [the Philippines] action should be seen as military force.

Moreover, some special types of activities, such as activities meant to counter activities of a military character, or behavior directed at foreign military vessels/aircraft or foreign government vessels/aircraft, should in many cases be regarded as activities of a military nature. Based on international law, military vessels and governmental vessels (including aircraft) possess jurisdictional immunity. Therefore, it is very difficult to explain jurisdictional behavior directed at this type of vessel or aircraft as a law enforcement activity. In theory, there is a clear difference between military activities and law enforcement activities. However, in reality this difference is not necessarily obvious. Therefore, in order to prevent the abuse of armed force and prevent efforts to evade the principle prohibiting use of force, the expectations governing the use of force should be rigorously defined. When the nature of specific military operations cannot easily be clarified, they should be regarded as military activities, thereby strictly regulating the use of force.

II. The Conditions for the Use of Force in Military Actions at Sea

The conditions for the use of force are akin to the issue of initiating force. The question to be answered is, under what circumstances may force be used, and when is use of force not unlawful? Because military actions at sea can be differentiated into military activities and law enforcement activities, the conditions for use of force should likewise be considered differently.

‡ Translators' note: i.e., the Senkaku Islands

1. Conditions for the Use of Military Force

Based on level and scale, military force can be divided into different types: strategic, campaign, and tactical. Strategic force sits at the top. It has abstract significance. At the bottom is tactical force, which is the most specific and graphic. It is also the most commonly-known type of force. Campaign force is located between the two. It possesses the characteristics of both types. Therefore, for the sake of discussion, large aspects can be categorized as strategic force, and small aspects can be discussed as tactical force.

Strategic force is the basis of campaign force and tactical force.

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It has a determining effect. Initiation of strategic force is the precondition for use of campaign and tactical force. If strategic force has not been initiated, then campaign and tactical force often cannot be employed. Once strategic force has been initiated, limits on the use of campaign and tactical force end. Therefore, we should focus our research on strategic force. Today, there appears to be little dedicated research on strategic force. However, careful analysis shows that theoretical research and international practice related to military force is chiefly concerned with strategic force. With respect to the conditions related to the use of strategic force, the attitude of international practice is to prohibit in principle but allow legal exceptions. There are three main types of exceptions. The first is self-defense. The UN Charter provides that when UN members are subject to armed attack, they can engage in individual or collective self-defense. The use of force in self-defense is subject to strict requirements. First, one must be subject to armed attack. Next, it should occur before the UN Security Council adopts necessary measures to maintain international peace and security. Lastly, after acting in self-defense, a state must immediately report to the UN Security Council the measures used. The second exception includes wars for national independence or national liberation. The legality of wars for national independence or national liberation has its origins in the international legal principle of self-determination. Third, an exception is made if the UN Security Council adopts or authorizes the adoption of military operations. Articles 39, 41, and 42 of the UN Charter contain explicit provisions for this. Among the three abovementioned exceptions, type two involves nations or similar state entities that are striving for independence, while type three involves the right of the UN Security Council to use

force. Therefore, in theory there is only one type of condition for state use of strategic force: self-defense.

Then there is tactical force. In practice, tactical force has been used before the initiation of strategic force, thereby exerting an inverse effect on strategic force. There are two conditions for the use of tactical force. The first, as mentioned above, is as an adjunct of strategic force. It can only occur with the initiation of strategic force. The second situation is "self-defense." Self-defense can be understood in terms of two levels. One is the state level, and one is from the individual level. Self-defense at the state level refers to when the state as a whole is subject to harm and adopts countermeasures that involve armed force. In fact, this is self-defense in the strategic sense. Self-defense on the individual level refers to when part of the armed forces or individual elements of the armed forces suffer harm and adopt armed force countermeasures. In reality, this is self-defense in a tactical sense. In theory, being part or an individual element of an armed force is distinct from being part of a whole or an individual with rights/interests. When these legal rights/interests are harmed, there is naturally a need to engage in self-defense. Therefore, self-defense in a tactical sense is both reasonable and inevitable. With respect to the right of self-defense for tactical units, not all states have clear regulations. But the legitimacy and necessity [of self-defense] is not contrary to the will of states. Therefore, the two types of conditions for the use of tactical force are [called] "tactical self-defense."

2. Conditions for the Use of Law Enforcement Force

With respect to the use of law enforcement force, the attitude of international society is to allow it in principle, but expect that it be strictly regulated. For example, according to article 28 of the *Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures*: "The use of force shall be avoided except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties." Also, as article 5[§] of the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* states: "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the

[§] Translators' note: It is actually article 4.

intended result." The U.S. *Commander's Handbook on the Law of Naval Operations* states, "In the performance of maritime law enforcement missions, occasions will arise where resort to the use of force will be both appropriate and necessary. U.S. armed forces personnel engaged in maritime law enforcement actions under Coast Guard operational or tactical control (OPCON or TACON)…will follow the Coast Guard Use of Force Policy for warning shots and disabling fire. DOD forces under Coast Guard OPCON or TACON…retain the right of NWP 1-14M 3-16 JUL 2007 self-defense in accordance with the CJCS Instruction (CJCSI) 3121B.01, Standing Rules of Engagement/Standing Rules for the Use of Force for US Forces, Enclosure L." Russia and Canada have similar regulations. When analyzed comprehensively, there are two conditions for the use of law enforcement force.

One is the proactive use of force to remove obstacles to law enforcement. This means, using coercive measures to suppress or remove people and things that impede law enforcement or impact the progress of law enforcement, thereby ensuring the smooth conduct of law enforcement. Law requires coercion as a guarantor; law without coercive power lacks the ability to inspire awe. Therefore, in the process of law enforcement, law enforcement personnel must have coercive measures in reserve. This includes armed force. For example, when in the process of pursuit,

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it is okay to target a fleeing vessel's propulsion system to reduce its ability to escape. As another example, in order to prevent a criminal threat from expanding, it is okay to impair the criminal subject's ability to act, when doing so can stop the criminal behavior from continuing or stop the consequences of criminal behavior from expanding.

Next is the passive use of force in self-defense by law enforcement personnel (units). This refers to actions by law enforcement personnel (units), when confronted by unlawful attacks during the course of law enforcement, to protect life and personal safety through the use of strikes to eliminate risky or threatening behavior by criminal actors. There are at least two preconditions for the use of force in self-defense. First, [law enforcement personnel] should be subject to real attack or imminent and unavoidable threat of death or severe injury. Second is when there is no

other means to defend against this kind of attack or eliminate this threat. The use of force should be avoided if alternate measures, such as the donning of protective gear, [are available].

III. Procedures for the Use of Force in Military Actions at Sea

Strategic use of force is usually based on political considerations. There are no fixed procedures to speak of once it is used. The following discussion of related military [uses] of force is largely focused on tactical uses of force.

1. Relevant international legal rules on the procedures for military use of force

The military's use of force involves rules of engagement. The specific content of many nations' rules of engagement are classified because of sensitivity. The International Institute of Humanitarian Law in San Remo presided over the development of the *San Remo Handbook on Rules of Engagement* to promote dissemination of humanitarian concepts and develop and integrate the rules of engagement. Appendices two and three of annex A in the *Handbook* provide instructions on the formulation of rules of engagement. Appendix five of annex A provides instructions on the escalation of force in self-defense. Appendix six of annex C provides language templates for requests for identification and warnings during military actions. This appendix includes three levels of force intensity: warning shots, disabling fire, and deadly force. The options available for showing force are presence, verbal and visual warnings (including display of weaponry), soft physical pressure, hard physical pressure, non-lethal use of force, and lethal use of force. Graduated use of force should be the principal [guiding] the use of force. Overall, the procedures for military use of force should at the very least include query, verbal warning, display of force, and actual use of force.

2. Relevant international legal rules on the procedures for law enforcement use of force

The UN's *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* stipulates that law enforcements officials "shall identify themselves" prior to the use of force and then give "warning of their intent to use firearms." If time permits, they should also give "sufficient time for the warning to be observed." After using force, the law enforcement official should "ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment" as well as promptly report to superiors [in accordance] with the

government's established reporting procedures. The *Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures* also contains similar rules. Prior to boarding and inspection, "authorized inspection vessels shall fly, in clearly visible fashion, the WCPFC inspection flag as designed by the Commission." [It also provides that] "authorized inspectors shall carry an approved identity card identifying the inspector as authorized to carry out boarding and inspection procedures under the auspices of the Commission and in accordance with these procedures." The use of force should be avoided during an inspection, "except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties." "The fishing vessel's authorities and the Commission are to be immediately notified" after the use of force. In the M/V Saiga Case[**], "The common practice of intercepting ships in 'law enforcement operations at sea having been followed for many years' was summarized by the International Tribunal for the Law of the Sea as follows: 'First issue an internationally recognized visual or auditory signal to halt. If unsuccessful, then various measures can be taken, including shots across the vessel's bow. Use of force by the pursuing vessel can only be taken as a last resort if these appropriate measures are still ineffective. Even during such times, appropriate warnings must be given to the vessel and every effort must be taken to ensure life is not endangered.'"

Similar procedures can be seen in the legal practice of the United States, Russia, and Canada. For example, *The Commander's Handbook on the Law of Naval Operations* 3.11.5.2 [states] "disabling fire is firing under controlled conditions into a noncompliant vessel's rudder, propeller area/outboard engine, or engine room for the sole purpose of stopping it after warning shots or oral warnings have gone unheeded." Article 43 of the *Federal Law on the Continental Shelf of the Russian Federation* [states] "The use of arms must be preceded by a clearly expressed warning of the intention to use arms and by the firing of a warning shot into the air." Article 19.5 of the 1994 amended Canadian *Coastal Fisheries Protection Regulation* states "a protection officer … shall, before using force … fire a warning shot or … a series of warnings in the vicinity of the foreign fishing vessel but at a safe distance …" Overall, the procedures for use

[**] Translators' Note: The M/V Saiga Case (1997) was the first judgement delivered by the International Tribunal for the Law of the Sea. It was brought on from the arrest of the oil tanker M/V Saiga on 28 October 1997 by Guinean Customs patrol boats off the West African coast. For more information see: "Case No. 1," International Tribunal for the Law of the Sea, https://www.itlos.org/cases/list-of-cases/case-no-1/#c77.

of force in law enforcement should at the very least include the following steps: indicating identity, issuing warnings, [firing] warning shots, [engaging in] actual fire, and reporting situations where force was used.

3. Procedures for the use of force in military actions at sea

The above analysis demonstrates that although use of force for the military and law enforcement are different in nature, they do have procedural commonalities. I believe they can be summarized (but not limited to) the following five steps.

Identification and situational query. That is, military ships and aircraft will first indicate their identity as law enforcement and the powers granted to them in accordance with the law, and require the subject to cooperate. Then, the identity, activity and purpose of the subject can be ascertained. Military ships and aircraft can typically indicate their identity with their profile and surface markings.

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However, if they proceed to board and inspect, personnel should take further steps to indicate their identity. For example, uniforms should be neat and clearly marked. Identifications, law enforcement credentials, and law enforcement tools should be presented to the subjects of inspection. If a suspect or vessel flees, signals to halt or stop should be given using the visual and audio signals recognized by international law.

Verbal warnings. A verbal declaration of intent to use force and warning to immediately cease action is made toward subjects that do not cooperate with law enforcement or military activities, or toward actions that are harmful to the safety of service members aboard military ships and aircraft. These warnings should be given using the visual and audio signals recognized by international law.

Warning shots. The firing of weapons as a warning may be used when verbal warnings fail to compel the suspect to cease unlawful behavior. This can be broken down into warning shots using blank ammunition and those using live ammunition. Blank warning shots are usually used prior to live ammunition. Subjects must not be targeted by live ammunition. [Instead], warning

shots may be fired into the air, nearby or in front of the subject. For fleeing vessels, shots maybe fired in front of or to the sides of the vessel.

Actual use of force. Actual use of force may be considered when verbal warnings and warning shots are ineffective. Use of force should also be graduated. Force intensity includes disabling fire and deadly fire. Disabling fire is the use of force to render a subject incapable of continuing its actions. Examples include targeting a subject's hands to prevent use of firearms, targeting a subject's feet to control movement, or targeting the propulsion system to prevent the perpetrating vessel from fleeing. Deadly force refers to directly targeting a subject's vital parts and causing irreparable damage. Examples include firing upon the vital areas of the suspect's head and chest to end his/her life, or to sink a vessel by bombarding it without restraint. In most circumstances, disabling fire should be used before deadly force.

Reporting situations where force was used. According to the rules, after an event occurs the relevant authorities should promptly receive reports on the cause, procedure, and results of the use of force. [Reports] should also include relevant evidence so departments can identify the cause, determine responsibility, and respond to the situation. Of course, if the situation permits reporting should begin during the use of force.

Under normal circumstances, these five steps should be graduated. But this is not always the case. For instance, when engaging in self-defense from an attacking criminal vessel there is no need to adhere strictly to the process of identification, query, and warning. Direct fire may be returned based on the situation. Additionally, graduated use of force does not simply mean adhering to procedure. Sometimes even thorough procedure is not necessarily legal. For example, the language used for warnings should at least be a regional language or a common internationally used language. When conditions permit, [personnel] should use languages the other party can understand. Under normal circumstances, sufficient time should be given at each step, especially between warnings and the use of force. Sufficient time should be granted for the target subjects to understand their instructions; otherwise the use of force can be considered illegal. Moreover, after the use of force concludes, measures should be taken to provide effective assistance to the targeted subjects, thereby reducing damage, as long as doing so does not endanger the military ship, aircraft, or personnel.

IV. Limits to the Use of Force in Military Actions at Sea

Limitations on the use of force refers to thresholds of intensity in the use of force. Conditions resolve the issue of whether force can be used and procedures resolve issues over the methods and the steps of using force. In contrast, limitations on the use of force resolve the issue of whether the amount or degree of force used is appropriate. Using an inappropriately intense amount of force also constitutes a violation. The international community places strict limitations on force for both military and law enforcement out of concern for the protection of life and property, and to limit abuses of force. However, formulation of a uniform standard [for limiting the use of force] has been difficult because of problems with accurately describing the amount of force as well as the wide variety of force used. Current international practice on limiting the use of force often specifically examines the evidence of individual cases. However, some theoretical frameworks have also been proposed. There is no disagreement about the application of the three major principles of necessity, proportionality, and distinction for the use of military force. International practice has already formed an initial standard of reasonable necessity. Some scholars have conducted further analysis of the principle of proportionality. They find that the principle of proportionality actually covers the three principles of gradual progression: the principle of relation, the principle of necessity, and the principle of balanced interest.

Yet, necessity and justifiability remain core components. Therefore, this paper will conduct a brief analysis of the three principles of military force.

The principle of necessity refers to force that may be used only after all other means to avoid harm and complete the mission have been exhausted. The principle of necessity contains two meanings. First is the necessity to use force as stated in [documents] such as the UN's *Code of Conduct for Law Enforcement Officials*: "law enforcement officials may use force only when strictly necessary." Second is the requirement to use an appropriate intensity of force. The *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* states that "in any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

The principle of proportionality means that collateral civilian or civil property casualties resulting from the use of force must be balanced or matched by expected military gains. That is, collateral damage should be less than or equal to the military gain. It is best to have no collateral damage. Military use of force will be in violation of international law and considered an international crime if collateral damage exceeds expected military gains. There are also issues of proportionality in the use of force by law enforcement personnel, whose actions will also be considered a criminal offense if the use of force exceeds that required to enforce the law. For example, fire may be used against a fleeing suspect vessel to render it immobile. Deadly force should not be applied.

The principle of distinction means that parties should distinguish between military and civilian targets in the use of military force. Use of force should be directed at military objectives, not against civilian targets. Strictly speaking, the principle of distinction is mainly concerned with targeting and not on limiting the use of force. However in a broader sense, the purpose of the principle of distinction is to limit military force within the scope of military targeting and not to expand [targeting] arbitrarily. Therefore, it is reasonable to understand [this principle] as one aspect of restricting the use of force. In the use of force in law enforcement, it is also necessary to distinguish between criminal suspects and ordinary citizens, as well as criminal suspects [exhibiting] dangerous behavior and criminal suspects that do not. [Law enforcement] has to add distinction to all uses of force, or apply the same intensity on all uses of force.

In conclusion, when it comes to limiting the use of force, force [should] not be used in [those cases] that do not require the use force. High-intensity force [should] not be used in those cases in which low-intensity force can be used. [And] in cases in which targets can be distinguished, attacks must be conducted with distinction.

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Tasks and Operations of the Maritime Militia When Participating in Maritime Combat[1]

Liu Zili and Chen Qingsong[2]

Engaging in strategic management of the sea, protecting our maritime rights, and building China into a maritime power are the necessary requirements for achieving the dream of becoming a powerful country and powerful military. Today, China is involved in many disputes with its neighbors over maritime rights and interests. In particular, the United States, acting in the name of freedom of navigation, has continuously challenged China's red lines with respect to protecting and defending its maritime border. As a result, maritime issues have become extremely complex. The situation China faces with respect to safeguarding its maritime rights and interests and safeguarding and holding its maritime periphery is severe and volatile and could very easily give rise to maritime hostilities or a military conflict. The maritime militia is an important force that will take part in front line maritime combat operations. It will conduct operations related to missions and tasks such as maritime guerilla war, cooperating with and supporting maritime combat operations, and organizing "Three Warfares"[3] at sea.

[1] 刘自力，陈青松 [Lui Zili and Chen Qingsong] 海上民兵参加海战的任务与行动 ["Tasks and Operations of the Maritime Militia When Participating in Maritime Combat"] 国防 [*National Defense*] (No. 11, 2018), pp. 50-51.

Translator's note: *National Defense* is an academic journal published by the Chinese Academy of Military Science.

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Translator's note: Among other responsibilities, People's Armed Forces Departments manage militia forces.

[3] **Translator's note:** The "Three Warfares" concept refers to public opinion warfare, psychological warfare, and legal warfare.

I. Carry Out Maritime Guerilla Warfare

Carrying out maritime guerilla warfare generally includes performing operations such as maritime reconnaissance and early warning, disguise and protection (*weizhuang fanghu*), low-intensity obstruction and delay (*zuzhi*), and capture of enemy personnel. These operations will be conducted independently by the maritime militia or completed by groups largely consisting of maritime militia.

1. Reconnaissance and early warning

Organize maritime militia reconnaissance and early warning detachments (*fendui*). Leverage the advantages that come from their familiarity with the meteorological and hydrographic conditions, sea routes, and the layout of islands/reefs, and their ability to identify our ships and the ships of the enemy. Leverage their roles as maritime "mobile sentries" (*liudongshao*) and "carrier pigeons" (*baoxinge*). Adopt measures such as "all domain reconnaissance, static control and defense of a fixed location (*dundian kongshou*), patrol reconnaissance, island/reef inspection, and electronic detection." Employ measures such as disguised reconnaissance, relay reconnaissance, area reconnaissance, and signal reconnaissance. Create a joint reconnaissance early warning system that covers the entire maritime space. Organize operations such as maritime reconnaissance to fill in blind spots, provide video reporting, and guide precision strikes against the enemy.

2. Carry out disguise and deception (*weizhuang qipian*)

Create maritime militia detachments that operate in disguise and create obstacles for foreign forces (*weizhuang shezhang*). Use corner reflectors, false radio waves, and false heat sources. At sea, or on islands/reefs or floating objects, set up false targets including false vessels, false missiles, and false combat aircraft. Adopt methods and means such as deformation camouflage, electronic camouflage, and color camouflage. Force the enemy to make errors of judgment and entice the enemy to conduct strikes against false targets. Achieve the aim of deceiving the enemy, baffling the enemy, and confusing the enemy.

3. Create obstacles and cause delays (*shezhang zuzhi*)

Build militia detachments that create obstacles for foreign forces in the far seas. Exploit our

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large numbers of civilian vessels, the familiarity of civilian mariners with the ocean conditions, and the rapidity with which they can create obstacles (*shezhang*). Install explosive and non-explosive objects such as fire obstacles, smoke obstacles, oil obstacles, fishing nets, and sea mines along sea routes that the enemy might take. Adopt methods such as creating obstacles and barriers (*shezhang zurao*), deploying forces in a misleading way (*yibing buzhen*), and effectively frightening the enemy, thereby preventing the enemy from seeing clearly and making wise judgments and forcing the enemy to change course, slowing down the enemy's operations, and luring the enemy into range of our strikes.

4. Capture enemy prisoners

Allocate a small number of Army Special Forces and Navy Marine Corps to form maritime special operations detachments centered on the maritime militia. [They can] use wolf pack tactics to conduct special operations raids and round up damaged or isolated enemy ships, or personnel in the water or units isolated on islands and reefs. Use unmanned aerial vehicle bombing, unmanned surface vehicle bombs (*wurenting chongbao*), and strikes by maritime special forces armaments against enemies that still resist, in order to force them to surrender or be destroyed.

II. Coordinate with PLA Units in their Conduct of Maritime Operations

Conducting maritime operations in coordination with PLA units generally includes assisting PLA units with inspections and verifications, covering unit movements, helping units to detect submarines (*zhenqian*) and lay mines.

1. Assistance in inspection and verification

The maritime militia implements maritime control jointly with the PLAN, China Coast Guard, and Fisheries Law Enforcement during joint maritime operational missions. They will inspect transiting vessels through route management, boarding and inspections, and seizure and pursuit. Suspicious vessels will be detained and those ships harboring enemy agents or violating wartime controls will be seized to prevent enemy infiltration and sabotage.

2. Covering the movements of PLA units

Maritime militia will use civilian vessels, floating objects, islands and reefs, smoke, complex weather, and sea states to produce cover. Civilian ships and units will merge to cover the movement of small combat ships and submarines by taking physical cover, noise masking (*zaoyin fugai*), and feint movements. Enemy reconnaissance, observation, and communications systems will have difficulty in detecting them, thereby enhancing the stealth, surprise, and precision of [our] combat ship operations. This will support units in conducting stealthy, sudden strikes against the enemy.

3. Assisting PLA units with submarine detection

Establish maritime militia submarine detection detachments to take advantage of the fact that "power comes from large numbers of vessels." Use civilian ship sonar, fish-finding instruments, and visual observation to carry out "cluster detection, dragnet inspections, and zone patrols" (*jiqun zhence, lawang paicha, quyu xuncha*). The maritime militia will coordinate with anti-submarine aircraft and ships to organize submarine detection in the sea area of operation, tracking and reporting discovered targets.

4. Assisting PLA units with minelaying

Establish maritime militia minelaying and minesweeping detachments. Use modified civilian ships to load sea mines and deliver them to the sea area of operation. Carry out deployment in accordance with the PLAN's requirements to achieve mine blockades against ports, islands and reefs, and important navigational routes.

III. Support PLA Units in their Conduct of Maritime Operations

Establish maritime militia comprehensive support fleets, typically organized out of medical ships, search and rescue vessels, transport ships, replenishment ships, repair ships, firefighting and towing vessels. In order to restore the operational capabilities of maritime units, [these maritime militia units] will carry out maritime search and rescue, medical support, repair, firefighting, towing, materials transport, refueling and replenishment, and personnel reinforcement for friendly ships, personnel, equipment, and materials engaged in naval combat. This will be done through prepositioned, underway, and area joint support.

IV. Organize "Three Warfares" Missions at Sea

Establish maritime militia "Three Warfares" detachments to use methods such as verbal remonstrations, flag signals, banner slogans, radio hails, and transmissions when participating in maritime operations. They will undermine the morale of enemies on islands, on ships, and in the water, as well as enemy combat casualties, by urging them to surrender and using intimidation, persuasion, and psychological shock. They will also raise the combat spirits of friendly troops participating in battle by engaging in ideological mobilization, psychological counseling and protection, and boosting morale.

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Research on Legal Issues Related to Security and Defense of China's Overseas Military Bases[1]

Zou Ligang and Wang Zhangping[2]

I. On the Necessity and Significance of China's Building of Overseas Military Support Bases

A. Establishing Overseas Military Bases is an Important Action to Guarantee National Overseas Interests

Throughout history, the expansion of a state's sea power has without exception relied on the strategic support of overseas bases. Following World War II, America's military bases at one point reached upwards of 5,000 (among which, nearly half were overseas). The 2013 Fiscal Year U.S. Military Base Structure Report showed that the U.S. had a total of 598 overseas military bases. America's military activities and influence are everywhere. During the Soviet period, the Soviet military possessed the ability to conduct military operations all over the world, made possible by a large, well-distributed, and well-equipped network of overseas military bases. Britain's overseas military bases were closely linked to its global and regional great power status. In 2002, India began to establish a number of bases outside its territory.

Since 2010, China has become the world's second-largest economy. Beginning in 2008, China's port cargo and container throughput led the world for five consecutive years. In 2013, China surpassed the U.S. for the first time to become the world's number one trader in goods, and has remained so ever since. Since 2013, construction of the "Belt and Road" advocated by Chairman Xi Jinping has advanced steadily. Within the framework of international law and in accordance

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with many precedents, China is fully justified in building overseas bases for the purpose of safeguarding its overseas interests and serving the relevant needs of peaceful development.

Some scholars have cited examples to explain the term “overseas interests,” arguing that a country’s overseas interests chiefly include the security of the person and property of overseas citizens and expatriates; the security of the state’s political, economic, and military interests, and organizations and enterprises operating outside its borders; and the security of foreign transport and means of transport. Some scholars have also offered general interpretations, such as asserting that China’s overseas interests refer to the national interests of the Chinese government, enterprises, social organizations, and citizens arising from global connections, which exist outside China's sovereign jurisdiction and are mainly expressed in the form of international contracts.

Establishing mechanisms for protecting overseas interests has become China’s national strategy. The 2015 National Defense White Paper entitled “China’s Military Strategy” called for the Chinese Navy to meet the strategic requirements of “near seas defense and far seas protection,” with “far seas protection” exemplified by the Chinese Navy’s organization of 34 escort task forces from December 26, 2008 to December 23, 2019. Building out (*bujian*) reasonable overseas forces is an important assurance for safeguarding China’s overseas interests and achieving a peaceful rise.

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However, some scholars argue that the political and economic costs of overseas military bases are exorbitant. Thus, some scholars argue that the speed at which China establishes overseas military support bases will in all likelihood be slow.

B. The Geostrategic Advantages of the Djibouti Military Base

Djibouti is located in the core area of the Bab el-Mandeb. [From there,] traveling via the “China-Djibouti Railroad,” which China helped to build, one enters deep into the hinterlands of East Africa. The Bab el-Mandeb is one of the world’s most important and busiest straits. Djibouti has a favorable attitude towards leasing land to foreign countries to build military bases. Doing so benefits its political stability and border stability. The rent it receives accounts for one-fifth of its GDP. Foreign militaries stationed there promote its domestic consumption. Djibouti is known as a “military port for 10,000 countries.” France is the former sovereign state of Djibouti and it currently has several thousand soldiers stationed there. The U.S. military created a military base in Djibouti very early on. Japan plans to transform its foothold in Djibouti into a well-equipped, fully-functional military base that it can use for a long period of time. In January 2013, China Merchants International Ltd. acquired a 23.5 percent stake in the port of Djibouti for $185 million, which included the establishment of China’s military support base.

The establishment of China’s military base in Djibouti has important significance for China’s construction of the “Belt and Road” and ensuring the security of international strategic shipping lanes. (1) As China’s only transshipment and cargo resettlement port in Africa, [Djibouti] helps China promote the construction of the “Belt and Road” in Africa. (2) A country’s overseas military bases [provide] the political presence and military deterrence in the geopolitical game.

During the Cold War, the U.S. and the Soviet Union each built large numbers of military bases on the territory of their allies and satellite countries. (3) The security of maritime passages involves each state's development and security interests. In modern warfare, the key to decisive victory is controlling key areas of land and sea. (4) It serves important functions for China's overseas deployments, mission execution, and distant-ocean replenishment, and it is an important base for China's "far seas protection." (5) Bases have functions such as warehousing and transshipment. They are fairly good at providing logistics support for humanitarian relief and evacuation operations. For example, during the March 2015 evacuation operation in Yemen, the port of Djibouti became a place of settlement for Chinese expatriates.

II. International Agreements for Establishing Overseas Military Bases and their Jurisdictional Categorization

A. Ways of Obtaining Overseas Military Bases

An overseas military base usually refers to "any installation located overseas that supports armed forces, including through the provision of accommodations, food, health services, arms storage, facilities maintenance, communications, and transportation." Overseas military bases are often established on foreign territory. There are some exceptions, such as establishing a base on overseas territories, colonies, and trust territories. There are also some examples of states establishing a temporary base on the high seas, such as in the 1970s the Soviet Union created a floating berth in international waters in the Mediterranean Sea. Overseas military bases serve multiple functions. Military bases are sites for projecting military forces and supporting military operations. The main function of contemporary overseas military bases is to serve as platforms for strategic deterrence, resupply and recuperation, intelligence gathering, and counter-terrorism cooperation.

The leasing of a base usually involves the signing of a relevant international agreement between the host state and the leasing state. In 1903, the U.S. and Cuba signed relevant treaties to lease the Guantanamo base. In 1934, the U.S. and Cuba renewed a permanent lease agreement. On March 14, 1947, the U.S. and the Philippines signed a military base agreement. During the Cold War, the U.S. and Soviet Union maintained military bases in western European and eastern European countries based on their respective NATO and Warsaw Pact military alliance agreements. In 1951, the U.S. Japan security agreement confirmed that the U.S. had the right to maintain military bases in Japan, and in 1952 the U.S., United Kingdom, France, and West Germany signed an agreement legalizing the allies' military bases in West Germany. The legal bases for Soviet troops being temporarily stationed in Poland, East Germany, Hungary, and Czechoslovakia was the May 14, 1955 Warsaw Treaty; bilateral treaties of friendship, cooperation, and mutual assistance; and agreements regarding the Soviet military's legal status. However, the establishment of some foreign military bases had no legal basis, such as America's 2003 military bases in Iraq. They were not authorized by the United Nations Security Council; nor was an agreement signed or permission granted by the country in which they were to be located.

Although the majority of countries have laws providing the government or legislature with the authority to decide whether or not to allow foreign countries to maintain a military base, some countries explicitly prohibit foreign military bases on their territory. For example, article 146 of

the Iranian constitution prohibits the establishment of foreign military bases in Iran, even those intended for peaceful purposes. The international community sometimes provides for the demilitarization of certain strategically important places by way of treaty. For example, the 1888 Constantinople Convention provided for the demilitarization and neutrality of the Suez Canal. The 1920 Treaty of Svalbard provided that Norway's Svalbard Islands "maintain an abolition on armaments." The 1923 Treaty of Lausanne provided for the "demilitarization of area of the straits." The 1947 Paris Peace Treaty provided for the "demilitarization of the Finnish Aland Islands." Moreover, due to international treaties or customs foreign countries are not allowed to maintain military bases in neutral countries such as Switzerland, Austria, Finland, Costa Rica, Sweden, Liechtenstein, and Turkmenistan.

International law normally prohibits the establishment of military bases in space beyond state jurisdiction. Examples include Articles 1, 2, and 4 of the United Nations Charter, and a series of provisions in the United Nations Convention on the Law of the Sea (UNCLOS),

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especially article 301 with its regulations on the "peaceful use of the sea." Article 1.1 of the Antarctica Treaty provides that "Antarctica shall be used for peaceful purposes only. There shall be prohibited, inter alia, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons." Article 4 of the Outer Space Treaty and article 3 of the Moon Agreement also have corresponding provisions.

B. Jurisdictional Categories for Overseas Military Bases

In practice, the classification of overseas military base jurisdiction is fairly complex. There are chiefly two types: the Soviet model, in which the host state chiefly exercises jurisdiction, and the U.S. model, in which the leasing state chiefly exercises jurisdiction. The core provisions of relevant agreements usually involve the following content: types of military facilities; number of troops and overseas assets such as number and type of arms, aircraft, ships, radar, and observation equipment; the right to use the facilities and equipment of the military base and the right of free access to the base and the right of overflight in areas outside the base; the legal status of military personnel and their property, such as freedom of movement, dress, bearing of arms, taxation, criminal and civil justice, right of access, driver's license, and registration fees; issues of sovereignty, such as the scope of application of local laws, judicial proceedings against military personnel, compensation for the use of military bases, and consultation procedures between host and leasing state.

The content of the relevant American agreements might involve the legal status of three types of people: the relevant administrative and technical personnel, whose legal status is generally determined by reference to the Vienna Convention on Diplomatic Relations; base military personnel and their property; and combatants briefly deployed in a foreign country, such as those participating in joint military exercises. Agreements can be divided into three types, depending on the extent of the leasing state's jurisdiction. (1) The leasing state basically enjoys extraterritorial jurisdiction, only allowing the host state to exercise jurisdiction in exceptional circumstances. (2) Distinguishing between the base area and the rest of the host country's

territory, using this as a standard to determine whether the host or leasing state has jurisdiction over a given matter. (3) Providing for concurrent jurisdiction by the host state and the leasing state without distinguishing regional scope, but on the basis of certain modalities as to whether concurrent jurisdiction is to be exercised preferentially by the host state or the leasing state under different circumstances. Examples of type one include U.S. military bases in Japan, West Germany, Korea, and Greenland at the beginning of the Cold War. Examples of type two mainly include military and civilian officials who enjoy extraterritorial jurisdiction only on the base and in its immediate vicinity, but do not enjoy immunity in other areas. Examples of type three include NATO military bases in the European Union. After the end of the Cold War, the relevant agreements signed by the U.S. and host countries were mainly the last two types. In the century-long history of America's development of overseas military bases, whatever the case—whether an imposed treaty, a treaty of alliance, or a treaty of cooperation—both the textual content and the practical effect reflect the essential nature of U.S. power politics.

The content of the Soviet model is as follows: (1) As a general principle, Soviet servicemen and members of their families who violate the law of the host country bear the legal responsibilities of the host country. (2) Soviet legislation and the jurisdiction of Soviet courts applied to Soviet servicemen and members of their families for offences committed against the Soviet Union or harmed members of the Soviet military or their family members, or for offences committed in the performance of their duties. (3) If a citizen of the host country committed a punishable act against the Soviet military and its members, he or she was liable under the legislation of the host country as if it were an act against the armed forces of the host country. (4) In the event of disagreement between the two sides over the administration of justice in cases of crimes or offences committed against Soviet servicemen, the matter might be referred to joint commissions in Berlin, Warsaw, Budapest, and Prague, in accordance with the treaty. If the joint commissions could not resolve the matter, then it could be handled through diplomatic channels. (5) Training, exercises, and other movements occurring outside their usual stations should be carried out in consultation with the competent bodies of the country in which they are stationed.

III. The Leasing State's Legal Basis for Jurisdiction over Overseas Military Bases

A. International Easements (*guoji dijing quan*)

From Roman Law to some of the most important civil codes of modern times, the concept of easement has always clearly maintained an inherent prescriptiveness. The essence of easement is the use of another person's land for the purpose of improving land use efficiency. International easement is a restriction on the territorial sovereignty of a particular state that has been set by treaty, placing that state's territory under conditions and limitations from which another state can derive benefits. International easements are international legal relations in which a state exercises its territorial rights over a part of the territory of another state for a specific purpose. International easements can be divided into positive and negative easements. Examples of negative easements include the 1815 Treaty of Paris, which stipulated that the city of Schoningen in the French canton of Alsace was not to be fortified, for the sake of the security of the Swiss canton of Basel.

The North Atlantic Coast Fisheries Arbitration of 1910, the Upper Savoy and the Free Zone of the Turks and Caicos case of 1932, and the Indian Territory Right of Passage case of 1960 all

dealt with the question of international easements. Among these, the judgement in the Indian Territory Right of Passage case recognized the right of passage through Indian territory for Portuguese civilians, civil officials,

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and goods to and from Damman and certain Portuguese possessions surrounded by Indian territory, but the passage of military police and arms was still subject to the control of Indian authorities.

Some scholars believe that contemporary overseas military bases "belong to positive international easement." However, other viewpoints argue that international easements have an established connotation, and without exception international legal doctrine, relevant agreements between states, and international judicial precedents do not qualify overseas military bases as international easements. Thus, the theory of international easements cannot serve as a legal basis for the division of jurisdiction or even the existence of overseas military bases.

B. Cession of State Sovereignty

In international law, a fairly consistent view of "sovereignty" defines it as follows: internally, sovereignty is the supreme power; externally, it is the power of independence and autonomy, and it is not subject to the control of any other state. State sovereignty is the inherent supreme power of a nation-state to deal with its internal and external affairs independently and autonomously. It has the attributes of independence, autonomy, exclusivity, indivisibility, and inalienability. However, in the context of globalization, the relative nature of national sovereignty has become more pronounced. Some scholars have argued that within the general trend of globalization, each sovereign state has no choice but to cede a part of its sovereignty with respect to economic management, national political decision making, and national jurisdiction in order to share the economic fruits. The cessation of state sovereignty is a new theory of sovereignty that has emerged in the context of globalization. This change in sovereignty is the inevitable result of the dynamic convergence of sovereignty theory and practice under specific historical conditions. Some scholars have argued that state sovereignty may also be partially ceded to international organizations. In practice, sovereign states have ceded the exercise of certain political, economic, or military powers to a particular organization under a treaty to which they are parties, or have submitted certain political, territorial, economic, or military disputes between states to international judicial or arbitral bodies as provided for in treaties. A typical example is the European Union, whose various organizations exercise some of the legislative, judicial, executive, diplomatic, and national security powers ceded by its members states. For this reason, some scholars have called the European Union a "supranational organization."

Jurisdiction is one of the rights that derive from sovereignty. Surveying the military base agreements signed between major states around the world, the host state has ceded part of its jurisdiction to the leasing state. For example, although certain harmful acts have been committed on the territory of the host state, the use of that particular territory has been leased, and that particular act has harmed or violated the national security, base security, or the personnel or property of the leasing state, not the host state. Thus, the host state can cede some of its jurisdiction to the state leasing the base.

C. Right of National Self-Protection (*guojia zibaoquan*)

The right of national self-protection is a natural right inherent to sovereign states and recognized by international law. It includes the right of defense (*fangweiquan*) and the right of self-defense (*ziweiquan*) of states to ensure their existence and security. The right of national self-protection derives from natural law and the natural rights of the individual. Locke said that people have the right to defend themselves against threats. Some scholars in China argue that the concept of the right of self-defense in international law originated in the relationship between individuals. The *Caroline* Affair of 1837 was an early example of the right of states to self-defense. The reply of the United States Secretary of State to the British Ambassador stated that the territorial inviolability of independent states was the most important foundation of civilization, and that while there should be certain exceptions to that principle, they should be limited to cases where the need for self-defense was imperative and overwhelming, and no other means were available and there was no time to consider them. Accordingly, the *Encyclopedia of International Law* defines the right of self-defense as the rule of self-defense as expressed in the exchange of letters between the United States and Great Britain on April 24, 1841 in connection with the *Caroline* Affair. In *Oppenheim's International Law* it is written that the International Military Tribunal at Nuremberg in 1946 adopted the definition of legitimate self-defense laid down by the U.S. in the *Caroline* Affair with regard to preventive action on foreign soil. A state's overseas military bases have a certain legality and legitimacy in contemporary international law, especially when a sovereign state establishes military bases on the territory of another state in the name of exercising its rights to self-defense on the grounds of national security, or in order to safeguard the common security of the international community.

However, Article 51 of the United Nations Charter limited the right of self-defense to the natural right of individual or collective self-defense when a state is subjected to a foreign armed attack. As a result, the scholarly definition of a state's right to self-defense has been divorced from the "*Caroline* principle," which holds that a state's right to self-defense is the right of a state to use armed force to resist unlawful attacks from abroad in order to protect itself, and the right of self-defense is the right of the state to resist and respond by force to any foreign attack, violation, or act of aggression. According to Rousseau, the sovereignty of a state is based on the cessation of rights by citizens, and therefore a part of the state's right of self-defense can also be ceded. However, existing international law has limited the right of national self-defense to apply in a state of war, not in peacetime. Article 451.1 of the Criminal Law of the People's Republic of China defines "wartime" as "the time when the state declares entry into a state of war, troops are assigned to combat duties, or when there is a sudden attack by the enemy." Moreover, in recent years the U.S. established a strategy of "pre-emption" (*xianfa zhiren*), and the war in Iraq was its first experiment in using this strategy. Chinese scholars have criticized the preemptive use of armed force, arguing that it is impermissible under Article 51 of the United Nations Charter. Preventive self-defense

conducted in order to prevent an armed attack has no basis in international law.

The right of national defense (*guojia fangweiquan*) is the right of national self-protection (*guojia zibaoquan*) applied in a state of peace. It connotes the right of prevention. It includes two main

aspects. (1) The right of national defense (*guofangquan*), that is, the right of the state, for the purposes of guaranteeing its survival and security, to formulate its national defense policy and build up its national defense forces in accordance with its national conditions in order to prevent (*yufang*), shock (*zhenshe*), and deter (*zu'e*) possible foreign aggression. (2) Adopt other defensive measures, in order to prevent the occurrence of a situation that harms national security, or to deter the continuation of such events as they occur, or to punish such acts after the fact on the basis of the act, its consequences, and its causal relationship.

D. On the Legal Characterization of Military Frogmen

China's military support base in Djibouti went into operation in 2017. Subsequently, while a Chinese naval vessel was docked in Djibouti harbor for rest (*xiuzheng*) a Japanese warship docked nearby sent frogmen to approach the Chinese ship. Media reports say that the Chinese have complained (*kongsu*) about foreign military surveillance aircraft flying over the Chinese base in Djibouti. Military frogmen are personnel who perform underwater reconnaissance, demolition, and other special tasks. In international law, there are three main classifications of this type of frogmen: frogmen as belligerents, frogmen as extensions of warships, and frogmen as spies.

The main basis for treating frogmen as belligerents is that they are special forces. But this type of classification is flawed in that in international law combatant status presupposes that the two states are at war. *Oppenheim's International Law* asserts that war is a struggle between two or more states involving their armed forces. Moreover, if one considers frogmen to be combatants, they need to be treated as prisoners. Thus, treating frogmen as combatants is clearly inconsistent with the law of war and the elements constituting a prisoner of war.

The primary basis for regarding frogmen as extensions of warships is that frogmen are generally delivered to designated mission areas via warships, including submarines. Article 5.2 of the Convention on the High Seas and article 29 of UNCLOS provide definitions of warships. According to the definition of ports in article 11 of UNCLOS, ports are components of a state's territory. Therefore, it is undoubtedly unlawful for Japanese frogmen to venture deep into a port to reconnoiter China's military base and warship. However, while the illegality of the reconnaissance can be established by treating the frogmen as extensions of warships, warships enjoy legal immunity in peacetime, although not from legal liability for their violations.

Frogmen may also be regarded as spies. The relevant laws of the world's major countries, such as national security laws, counter-espionage laws, and criminal laws, all have relatively mature rules for the recognition and punishment of spies and their actions. Article 110 of the Criminal Law of the People's Republic of China provides for the crime of espionage. Article 15 of the National Security Law of the People's Republic of China provides for the "prevention, suppression, and legal punishment of infiltration, sabotage, subversion, and separatist activities by foreign forces." Article 38 of the Anti-Espionage Law of the People's Republic of China stipulates five major categories of espionage acts that should be prosecuted under the law. Article 2 of the Law of the People's Republic of China on the Protection of Military Facilities stipulates eight categories of buildings, sites, and equipment used for military purposes that are protected by the law.

In conclusion, according to relevant international law, domestic law, and international practice, this sort of reconnaissance by foreign frogmen matches the constituent elements of relevant espionage behavior, regardless of the subject of investigation, the object being investigated, and the subjective and objective elements of the frogmen. When the Japanese warship sent the frogmen to approach a Chinese warship to conduct reconnaissance, the Chinese side took measures to repel them including shining lights at them and shouting warnings, and it organized the collection of relevant evidence, exposing the improper behavior of a Japanese warship operating illegally in another country's port.

IV. Suggestions for Improving Defensive Mechanisms for Overseas Chinese Military Bases

A. Suggestions for Improving Relevant International Agreements

The abovementioned incident alerted China of the necessity and urgency to strengthen defensive mechanism for overseas military bases. However, national jurisdiction over overseas military bases is based on the transfer of authority from the host country; it is therefore necessary to improve relevant international agreements in order to establish a legal basis for exercising jurisdiction. Drawing from the experience of other countries, jurisdiction over overseas military bases should be vested in the host country and leasing country, depending on the nature of the relevant action, the location where the action took place, the nationality of the perpetrator, the target of the action, and other factors.

In accordance with the principle of state sovereignty and the principle of territorial jurisdiction (*shudi guanxia yuanze*), the host state enjoys jurisdiction and application of its laws in the case of actions committed by foreigners within the territory of the host state —including foreign military and civilian personnel (and their dependents) on base—who are in violation of the laws of the host state, including general criminal offenses and offenses that endanger the security of the host state and the security of other states. However, according to the principle of ceding sovereignty, China can exercise jurisdiction and apply relevant Chinese laws under several specific circumstances by means of the provisions within relevant agreements concluded.

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Circumstance one: the conduct of China's military, civilian personnel, and their families on the base and behavior between them, including ordinary criminal offenses and offenses that endanger China's national security and the security of the base. The main grounds on which the host state might cede its jurisdiction are that such acts occur on the base leased by China; the persons committing the acts have Chinese nationality; the damage or violation is directed against Chinese national security, the security of the base, state property, or Chinese personnel or their property; and these actions have not damaged or violated the national security, state property, or the personnel or their property of the host country or a third country.

Circumstance two: the relevant conduct occurs within the borders of the host country and involves base personnel who are subject to Chinese military law. China's military laws refer to the sum total of legal norms regulating national defense construction and military activities, such as the Law of the People's Republic of China on National Defense, the Law of the People's Republic of China on Military Service, the Regulations of the Chinese People's Liberation Army

on the Service of Active Duty Soldiers, the Regulations on the Service of Active Duty Officers of the Chinese People's Liberation Army, the Regulation on the Military Ranks of Officers of the Chinese People's Liberation Army, and the Law of the People's Republic of China on the Protection of Military Facilities. Although such acts occur within the borders of the host country, they arise or result from the performance of military duties; those who have committed the act are Chinese nationals; the damage or violation is to China's legal interests; and there is no damage or violation of the legal interests of other countries. Therefore, the host state may cede its jurisdiction to the leasing state.

Circumstance three: crimes by nationals of a state other than the host state against the security of the Chinese state or base, state property or its personnel and their property. This category of jurisdiction is also consistent with the principle of protective jurisdiction in international law. In criminal law, protective jurisdiction refers to the right of the state to exercise its jurisdiction over crimes committed by foreigners outside its territory that seriously harm the state or its citizens. Its exercise requires the fulfilment of two basic conditions, such as "the principle of serious crime" and "the principle of double criminality." Of course, there is a conflict between protective jurisdiction, territorial jurisdiction, and personal jurisdiction (*shuren guanxiaquan*). Generally speaking, protective jurisdiction can be realized in two ways: the perpetrator of the crime enters the state's territory or the state pursues extradition of the perpetrator of the crime.

It is also necessary to conclude consultation clauses on relevant outstanding matters, to properly address disputes over relevant jurisdictions through diplomatic negotiations and to specify the jurisdiction of outstanding matters. Moreover, with respect to achieving relevant jurisdiction, it is also necessary to conclude relevant clauses such as mutual assistance clauses, including notification of relevant events, assistance in investigations, assistance in gathering evidence, as well as surrender, apprehension or arrest of suspects and surrender and notification of relevant handling measures and results, etc.

B. Suggestions for Improving Relevant Defensive Measures

China should strengthen security and defensive measures for overseas military bases in order to prevent related actions from occurring, such as using fully-enclosed walls or containment walls or fences for defense of the base on land and underwater; installing defensive equipment such as trigger sensors and infrared sensors; and conducting routine patrols and inspections. When an infringement occurs, the determined measures can be taken in accordance with the law. Especially important is to collect and consolidate evidence for later use, mainly to lay the foundation for the legitimacy of the measures that we take, and the evidence can be used in diplomatic engagements, such as negotiations or protests with the country of the violator, informing and communicating with the host country, etc.

According to the provisions of the Law of the People's Republic of China on the Protection of Military Facilities, when a violation occurs our base authorities can mainly adopt the following measures. (1) Stop the relevant actions. For example, the personnel on duty at the military facilities management unit have the right to stop three types of illegal acts (article 41). (2) Take coercive measures. For example, offices on duty may, in accordance with the law, forcibly remove or detain persons to be transferred to the relevant authorities; immediately halt the transmission of information, seize relevant equipment and items to be transferred to the relevant

authorities; remove obstacles; and use weapons in “emergency situations” (article 42). (3) Administrative penalties for public order. For example, the penalties provided for in articles 23, 28, and 33 of the Law of the People’s Republic of China on Public Security Administration Penalties are applicable to certain acts (articles 43-45). (4) Imposition of criminal liability. Criminal liability is imposed in five categories of cases, as provided for in the relevant law of the country (article 46). (5) Making civil claims. In case of damage to military facilities, liability is imposed by law (article 49). Although, it is generally necessary to proceed through diplomatic channels between states.

Grasp the New Features of Escort Missions and Strengthen the Effectiveness of Political Work[1]

Wang Zhanwu[2]

With the great changes unseen in a century coinciding with a major epidemic, transformation and construction [of the navy] has entered a critical stage and the responsibilities of regular escort missions are even more arduous and the risks and challenges even more severe. Political work must deeply grasp the new features of the new situation, highlight setting the correct direction, and focus on preparing for and winning war. It should vigorously uplift spirits, promote transformation and development, and fully play a functional role.

1. The Great Changes Unseen in a Century have Placed an Even More Severe Political Test on Escort Operations. Political Work Must Prominently Raise the Flag and Cast the Soul on the Right Course.

The more severe the political test becomes, the more we must hold high the flag and set the course in the right direction to ensure that the People's Navy is loyal to the Party and that the ship does not get lost. First, there must be strong Party leadership in the right direction. The spirit [embodied in the] "Regulations on the Construction of the Chinese Communist Party in the Military," the decisions of the PLA Navy Party Committee, and documents jointly issued by headquarters must be strictly implemented. We must scientifically set up and establish task forces in a timely manner and designate temporary Party committees and temporary Party branches for ship personnel so that all hands are within the organization, work under it, and are managed by it. We must fully implement the Party Committee system (*dangwei zhi*) and the dual commander system (*shuang zhihuiyuan zhi*). All major matters must be collectively decided in Party committee meetings and all military operations must be jointly decided by the two commanders to ensure the absolute leadership of the Party over tasking. During command post relief and study sessions [of the Party committee] central group, opportunities should be taken for in-depth study and understanding of escort regulatory systems, follow-up study and

[1] 王占武 [Wang Zhanwu], 把握护航任务新特点 增强政治工作质效 ["Grasp the New Features of Escort Missions and Strengthen the Effectiveness of Political Work"], 政工学刊 [*Journal of Political Work*], no. 12 (December 2021), pp. 72-73.

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[2] Wang Zhanwu is the Political Commissar of the Southern Theater Navy's 2nd Destroyer Zhidui. He was commander of the 37th Anti-piracy Escort Task Force that completed its mission in October 2021.

understanding of the instructions and requirements of superiors, and firmly grasping the end execution of high-level strict requirements, so as to follow the Party's flag and the Party's direction. Second, education must be deepened to guide firm beliefs. The ship formation is in a vast ocean and only by turning on the lighthouse of faith can we guide the voyage forward. We must solidly carry out the study and education of Party history, arrange collective lectures on special topics, and use media such as ship magazine broadcasts and deep-blue theaters in coordination with studies. These can be interspersed with organized exchanges of experience, Party history story-telling, and themed evenings to deepen understanding and perception, to guide officers and sailors to draw from the power of faith in the Party's century-long struggle and great achievements. In particular, we should use opportunities when berthed in Djibouti to make good use of local resources and carry out "Five Comparisons and One Increase" (*wubi yizeng*) education. Offices and sailors will be guided to compare epidemic prevention, people's livelihoods, economics, ecology, and politics, thereby strengthening the "Four Matters of Confidence" (*sige zixin*)[3] and firmly solidifying the roots of their faith. Third, we must tighten discipline to ensure adherence to the rules. Discipline is the yardstick and being strict is the only way to ensure adherence. From a political aspect, we should implement measures to manage violations of laws and discipline in naval units overseas and meticulously do the work of political evaluations, education discussions, and item inspections. We should pay close attention to the "20 prohibitions"[4] and put them into practice, and resolutely curb the occurrence of problems. With a focus on coordinating with the overall political and diplomatic situation, we should prudently handle and respond [to problems] in strict accordance with regulations and strictly control publicity and reporting. We should selectively communicate with foreign militaries when our objectives can be guaranteed, adding luster, not chaos [to the overall political and diplomatic situation]. We should highlight opportunities when [task forces] berth at Djibouti or transit straits to vigorously strengthen the management and control of internet use. We must strictly rectify and control behaviors such as accessing overseas networks, browsing overseas webpages, and exposing military identities. We must resolutely put an end to political issues such as collusion, leaks, and the posting of inappropriate remarks.

2. The New Stage of Preparations for Military Struggle has Magnified Requirements for the Escort Task Force to Respond to Emergencies and Respond to War. Political Work Must Focus on Missions and Tasks and Prepare for War (*beizhan*)[5]

In view of the severe and direct threat posed by the enemy, we must give full play to the role of [escort task forces] in supporting combat and ensure they can fight and win at any time. First, their "contribution rate" should be increased. In response to the thinking of some officers and sailors that "escorting is not warfighting," we should thoroughly study and implement the spirit

[3] **Translator's Note:** The "Four Matters of Confidence" (literally "the Four Confidences" 四个自信) is a doctrinal theme included in the Chinese Communist Party's constitution in 2017 and endorsed as Xi Jinping philosophy. It reflects the belief that the Communist Party is the institution best suited to governing China, specifically calling for confidence in the path, theory, system, and culture of socialism with Chinese characteristics.

[4] **Translator's Note:** This term refers to the 20 types of behavior prohibited while operating overseas. The specific content of these prohibitions is not revealed.

[5] **Translator's Note:** The term b*eizhan* (备战) can also be translated as "readiness."

of the Navy's notice on strengthening situational combat readiness education in the new stage. Daily reports on the enemy situation, regular distribution of military intelligence reports, and regular combat readiness education should be conducted to guide officers and sailors in raising their sense of urgency and getting them to think about and prepare for war. Actively carry out military democratic activities such as "I offer a plan for training" and "Zhu Ge meetings on strategy" (*zhanfa zhuge hui*),[6] vigorously organize all-hands training competitive activities such as "mini lectures," "mini competitions," and "mini innovations," and make participation in training and combat operations an important criteria for special rewards, which will lead to an upsurge in personnel training and war preparation. The Party committee should fulfill its roles in setting the overall training plans and implementing them by conducting regular meetings on combat and training, setting training goals, strictly monitoring training, and promoting realism and deeper combat readiness training. Second, the "combat value" [of escort task forces] should be improved. We should concentrate on giving full play to the direct combat functions of political work, focusing on military operations such as prevention and countermeasures and responding to provocations and harassment by ships, submarines, and aircraft. Political work plans and contingency plans for handling special situations should be based on the most complex, difficult, and urgent situations and should integrate pre-training and actual responses into rolling [plan] revisions and improvements so as to be prepared to respond.

In accordance with the principle of "determining plans, deployments, personnel, and equipment," we should optimize plans and arrangements [for actions] such as front-line evidence collection, battlefield communications with counterpart forces (*zhanchang hanhua*), negotiations, prisoner handling, and psychological attack and defense. We should pay close attention to core training and live drills (*gugan peixun he shiji yanlian*) to improve real combat capabilities. We should establish a combat readiness duty system, do a good job in evidence collection and legal service support throughout the process, and provide strong support for creating a favorable situation for our side. Third, [escort task forces] should cultivate a strong "heroic spirit." Confronted with a superior combat adversary in a far-seas operational environment with no support, one must have the courage and bravery to do a "bayonet charge at sea." We should project a combat atmosphere using the influence of fighting culture, P-way culture, bedside mottos, combat post slogans, and other means. Battle songs can be sung aboard using ship broadcasts, at holiday parties, and during karaoke competitions. These will subtly ignite heroic aspirations [among personnel]. Dangerous situations should be used to improve and sharpen [skills], exercising responses and psychological coping in circumstances when the ship is faced with a loss of power, flooding from large breaches, and saturation attacks. This will reinforce heroic qualities [in personnel] through constant tempering. We should use heroic battles as inspiration and deeply study the

[6] **Translator's Note:** The use of "democratic" in this sentence implies that efforts are being made to implement programs from the bottom-up rather than top-down within a given military unit. The phrase "Zhu Ge meetings on strategy" (战法诸葛会) likely refers to meetings to discuss general military strategic topics. Zhu Ge refers to Zhu Geliang, a well-known Chinese statesmen and strategist during the Three Kingdoms Period.

deeds of heroes that defended the country and guarded the borders and the old hero Mai Xiande.[7] Through in-depth analysis of the secrets to victory in past naval battles, we can cultivate future heroes by carrying forward traditions.

3. New Challenges of Normalized Epidemic Prevention and Control Have Worsened Practical Issues for Escorts. Political Work Must Persevere in the Cohesion of Spirit to Show Our Might.

Normalized epidemic prevention conditions mean task forces have forgone in-port rest and replenishment during the entirety of their missions. This has caused many practical issues such as high pressure on equipment maintenance, difficult physical and mental adjustments for personnel, and difficulties for the families of officers and sailors. We should focus on uniting the troops, raising fighting spirits, and injecting unending motivation for them to successfully complete our task. First, we must strengthen mission incentives. Focus on motivating officers and sailors with the weight of their mission to boost their spirits and overcome difficulties. We should solidly organize mission mobilization education and hold solemn departure oath ceremonies. When sailing beyond our traditional [maritime] boundary (*chuantong jiangyuxian*),[8] we should hold activities to bid farewell to the homeland and sign oaths. Flag-raising ceremonies on major holidays should be held to strengthen the sense of duty for officers and sailors to serve their country. The spirit of the navy and the spirit of escort [missions] should be vigorously promoted. We should organize activities such as escort storytelling or photography exhibitions on [sailors'] impressions of Aden, and correct the [outdated] values of officers and sailors and their roles at sea. Meritorious and model-building activities should be vigorously carried out, and we should set up demonstration posts and evaluate worry-free posts (*fangxingang*).[9] [Personnel] should join the Party ranks from the front lines and receive awards according to standards, and special awards should be strictly organized to stimulate motivation in officers and sailors to perform their duties and strive for excellence. Second, we should create a comfortable atmosphere. As officers and sailors on missions originate from different units, we should build exchange platforms such as pairings, sharing skills, and specialty demonstrations and cultivate the concept of "one escort together, a lifetime of friendship" to build good interpersonal relationships. In accordance with the requirements of "physical exercise every day, group activities every week, major events every month, and parties on major holidays," we should adhere to the [pattern of] task force commands coordinating major events and each ship handling regular activities. This should commit to [using] various forms with extensive participation while regarding local conditions and planning according to the time available, so that officers and

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[7] **Translator's Note:** Mai Xiande (麦贤得) is a highly renowned figure that received China's highest military award for his service in the August 6, 1965 naval battle with Nationalist naval forces east of Dongshan Island, Fujian province. The story depicts him as part of the engine crew aboard corvette No. 611 which received enemy fire and subsequently lost power. Mai and the rest of the engine crew were severely wounded during the fight, but Mai overcame significant odds in single-handedly restoring engine power.

[8] **Translator's Note:** The term *chuantong jiangyuxian* (传统疆域线) refers to the nine-dash line in the South China Sea.

[9] **Translator's Note:** The term *fangxingang* (放心岗) likely refers to a post that is deemed trustworthy and unlikely to experience issues during the conduct of duties.

sailors can relieve their negative energy and feel happy in a rich cultural life. To deal with the physical and mental characteristics of officers and sailors at different stages of the mission, we should scientifically control the rhythm of training and work to maintain a degree of relaxation and avoid excessive rushing and overworking, allowing officers and sailors to effectively adjust. Third, we must do a good job in service support. We must earnestly implement the "Double Nine Clauses" of respecting officers and caring for the troops (*zun gan ai bing*)[10] and carry out in-depth "Three Cares" (*san guan'ai*)[11] activities. To set up service targets, we can organize large heart-to-heart chats and conduct comprehensive ideological surveys every month to dynamically and accurately grasp the thoughts, hopes, and disturbances of officers and sailors. Our work should touch the hearts of officers and sailors by opening a cross-ocean family hotline, organizing group birthdays, carefully adjusting diets, establishing rear service mechanisms, coordinating condolences and relief for officers and sailors [experiencing] the birth of a child, the death of a relative, or family difficulties. We should set up a psychological service hotline, organize lectures on common psychological counseling, and teach skills to improve sleep quality. Psychological evaluations for all personnel should be arranged during the mid-to-late stages of the mission and specific service measures formulated to ensure the mental health of officers and sailors.

4. The Navy's Transformation Has Entered a Critical Period, Placing Even Greater Weight on Escort Missions. Political Work Must Focus on Gathering Strength, Consolidating the Foundation, Seeking Innovations, and Promoting Development.

In light of the arduous missions of task forces during transformation, we should vigorously strengthen, improve, and innovate, and use new achievements to promote new developments and strive to be pioneers in [the navy's] transformation. First, we must work hard in construction during the course of missions. We must earnestly implement the "Outline of Military Grassroots Construction," focusing on the completion of tasks on one hand while improving construction on the other, so that tasks and construction can promote and complement each other. Task force command takes the initiative in their duties of construction while underway by conducting in-depth analysis and organizing [command staff] to inspect and assist [the grassroots] (*zundian bangdai*). They should inspect the implementation of political requirements, monitor training quality, and assess satisfaction levels with the food aboard ships. They should supervise units to rigidly implement the requirements of their superiors and give full play to the role of the "front-line command." Each ship and task team should strengthen their self-motivation in political work construction. They should understand the rules and act on initiative to creatively implement the "Four Basic Tasks" (*si xiang jiben gongzuo*), so that the ship continues to build [capabilities] no

[10] **Translator's Note:** The term *zun gan ai bing* (尊干爱兵) is a phrase describing a PLA tradition going back to 1944 whereby officers are expected to respect and care for their troops and the troops are expected to respect and listen to their officers. The PLA Navy has implemented a new initiative directed by Xi Jinping in recent years to promote better treatment of personnel and improve how officers lead at the grassroots levels. The term "Double Nine Clauses" (双九条) likely refers to clauses contained in the "Interior Service Regulations" (内务条令) which are basic military regulations on personnel duties, relations, and conduct.

[11] **Translator's Note:** The term *san guan'ai* (三关爱) refers to leaders' care for their subordinates, Party members' care for the masses, and officers' care for their soldiers.

matter how far it travels. Second, we must work hard in showing our image. Task forces are a "window" into the navy, and the country's "business card." They must make a good appearance in every aspect and be upheld strictly. Task forces must release escort information in a timely manner, actively accept escort requests, and provide "special protection" for ships in need, demonstrating the responsibilities of a major power. Berthing visits, joint exercises and drills, commander meetings, and information exchanges should be used as opportunities to actively tell Chinese stories, convey Chinese voices, promote Chinese ideas, and leave an impression of China. A clean and orderly ship appearance should be strengthened and units must be strictly managed, especially in controlling topside activities and the handling of trash. We should stick to the bottom line of [ship] security with military operations and epidemic prevention and control, and demonstrate a first-class professionalism. Third, we must focus on research and practice. A series of practical results can be reached through research and demonstrations conducted on issues related to political work in the far seas focusing on ad hoc Party committee operations, organization building, and psychological services, especially important and difficult issues. This research should make use of the special characteristics of task forces which are deployed for long periods of time in the far seas, place high burdens on their forces, and are multi-arm joint [forces]. Focusing on far-seas task forces, we should conduct exploratory practices in issues such as the organization and execution of public opinion and legal struggle and psychological warfare, wartime discipline inspection and supervision, and the handling of prisoners. This can improve the planning system, standardize work operations, and help boost transformation and construction.

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TRANSLATIONS

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