

The Nomocracy Pursuit of “the Maritime Silk Road”——On Legal Guarantee of State’s Marine Rights and Interests

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Abstract: “The Maritime Silk Road”, part of China’s maritime power strategy, will safeguard the realization of “Chinese Dream”. “The Maritime Silk Road” needs desperately legal guarantee of State’s marine rights and interest. The primary target of this paper is to put forward several suggestions on the legal guarantee of maritime rights protection based on analyzing the present situation of China legal system.

Key words: The Maritime Silk Road, marine rights and interests, legal guarantee.

1. Introduction

Maritime Silk Road, short for 21st Century Maritime Silk Route Economic Belt, was firstly and officially proposed by Chinese President Xi Jinping when he made a public speech to the Indonesian Parliament in October, 2013. In the 21st century, Chinese government makes a great effort to build maritime power and pursue the “converging interests” with other neighboring countries. Maritime Silk Road is our new strategy to develop and explore oceans and seas. Establishment of legal guarantee for State’s marine rights and interests is the urgent need for realizing the goal of maritime Silk Road strategy. The report of the 18th National Congress of CPC puts forward “maritime power” strategy, calling for enhanced capacity for exploiting marine resources, protecting the marine environment and safeguarding China’s maritime rights and interests. Hence, our main task in the near future is to establish and improve legal guarantee of State’s interests and rights.

2. Legal Definition of Marine Rights and Interests

Maritime Silk Road calls for national’s ecological civilization of oceans and seas and aims to enhance the capability of safeguarding state sovereignty. The definition of marine rights and interests is a controversial issue. Some scholars consider sea power as State’s marine rights and interests. However, this paper believes that sea power and marine rights and interests are two different concepts. Superficially speaking, marine rights and interests include rights and interests. According to UNCLOS, marine rights refer to that coastal state has sovereignty rights on water under national jurisdiction, such as territorial sea, contiguous zone, exclusive economic zone and continental shelf. Coastal state also has rights of innocent passage, fishing and exploration on the water beyond national jurisdiction, like high seas, international sea-bed area and other state’s jurisdiction area. State’s marine interests mainly refer to political interests of safeguarding national sovereignty and territorial integrity and economic interests by exploration of territorial sea, exclusive economic zone, continental shelf, high seas and international seabed.

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Our marine rights and interests include the sovereignty and jurisdiction right on territorial sea, exclusive economic zone, continental shelf, the right and interest of exploration, utilization, research of ocean and the benefits and interests China enjoys on international seabed area, high seas and polar regions.

The scope of marine rights and interests can be listed as followings:

(1). Marine political rights and interests, maritime sovereignty, maritime jurisdiction and control right are the core of marine political rights and interests;

(2). Maritime economic rights and interests, such as explore resources in territorial sea, exclusive economic zone, continental shelf and develop marine economy industry;

(3). Maritime security interests, such as make oceans and seas become national security defense and prevent military conflict at sea through diplomatic, military and other means;

(4). Marine science research interests, such as make oceans and seas become a scientific research experiments base, obtain natural law of marine, marine cultural interests, e.g. Maritime tourism, organizing cultural activities across the waters.

3. Current Structure and Demand of Legal Protection System for Marine Rights and Interests

3.1 Demand for Promulgation of Ocean Basic Law

China now has enacted several laws and regulations related to maritime area. Those laws and regulations play an important role on protecting State’s marine rights and interests. According to the incomplete statistics, there are more than 10 laws, 20 administrative regulations, 10 department rules, 30 local regulations related to maritime issues. In addition, there are several maritime rules scattered in other laws and judicial interpretations. China has made a considerable progress on the maritime legislation since 1980s. The legislation has the following characteristics:

(1). Great number of laws and regulations. Chinese government paid a great attention on safeguarding marine rights and interests and enacted a great number of maritime laws and regulations during the past 30 years;

(2). Covering a wide range of marine management area. Those laws, regulations and rules are related to the use and management of sea and island, marine environmental protection, sustainable development and utilization of marine biological and mineral resources, marine scientific research, maritime law enforcement and so on;

(3). Representation of characteristics of the times. UNCLO promulgated in 1982 and most of maritime laws and regulations enacted in China are after 1982. The direct result is that rights and obligations under those maritime laws and regulations are similar with UNCLO.

However, there are several issues about our legislation, such as legislative lag and poor operability. The main reasons are two aspects:

(1). Firstly, the lack of strategic guideline of legislation leads to legislation lag. Our national’s conscience of protecting ocean is at the primary stage and we are short of experience on legislation of maritime area;

(2). Secondly, the existing legislation is of one-sided view. There are two legislation stages in our history. From 1949 to 1977, this is a primary stage. China enacted several basic laws and rules to regulate maritime issues. The period after 1978 is a rapid development stage. Chinese government promulgated a great number of special regulations. Most of the special regulations focus on a specific area and they are lack of overall consideration of regulating maritime issues.

China shares maritime borders with several neighbouring countries. The ownership of island and maritime delimitation always cause trouble to our diplomacy. Chinese government is facing extremely severe challenges on safeguarding maritime security

and marine rights and interests. We need to enact Ocean Basic Law based on other countries’ experience to improve our maritime legislation and realize rights under UNCLO.

The necessities for promulgation of Ocean Basic Law are as followings:

(1). From the global perspective, promulgation of Ocean Basic Law is a smart decision based on current international situation. Most of maritime countries have enacted Ocean Basic Law to protect their marine rights and interests. For realizing rights under UNCLO and competing with other maritime countries, promulgation of Ocean Basic Law is the force of circumstances;

(2). From a domestic perspective, enactment of Ocean Basic Law is the inevitable countermeasure to build China into a maritime power. The sentences, enhance capacity for exploiting marine resources, protecting the marine environment and safeguarding China’s maritime rights and interests, wrote in the report of the 18th National Congress of CPC are the final goal of our maritime legislation. Enactment of Ocean Basic Law is the first step;

(3). From the perspective of game theory between China and other countries, Ocean Basic Law is the legal weapon for protecting marine rights and interests and maritime security. Since the enactment of UNCLO, a lot of coastal countries revise laws to strengthen the management of water. We really need to make effective law to regulate maritime issues.

Meanwhile, we strongly suggest that Chinese government should enact China Coast Guard Act and Decree of Maritime Law Enforcement as soon as possible considering the practice.

3.2 Improvement of Marine Environmental Protection Legislation

According to China’s Ocean Agenda 21, maintaining the wholeness of the oceans, protecting the marine environment and guaranteeing the sustainable utilization of marine resources and

maritime safety is our goal. To realize this goal, we need to improve the marine environmental protection legislature.

Since 1980s, Chinese government has enacted several marine environmental protection laws and regulations, such as Environmental Protection Law of PRC, Marine Environment Protection Law of PRC, Law of PRC on the Prevention and Control for Water Pollution, Regulations of PRC on the Prevention of Vessel-induced Sea Pollution, Regulations of PRC on the Administration of Environmental Protection in the Exploration and Development of Offshore Petroleum, Regulations of PRC on Control Overdumping of Wastes in the Ocean, Regulations of PRC on the Prevention of Pollution Damage to the Marine Environment by Land-sourced Pollutants, Administrative Regulations on the Prevention and Control of Pollution Damages to the Marine Environment by Coastal Engineering Construction Projects of PRC and Measures for Implementation on Maritime Administrative Punishments.

However, those laws and regulations are made by different administrative agencies. If ship polluted in several areas, the case of those areas will be subject to different regulations. With the development of environmental protection legislature in the world, we need make a great effort on improving our legislature system.

In the first place, strengthen international cooperation and follow with the international trend. Unify marine environmental protection law under the background of enactment of Ocean Basic Law. The improvement of marine environmental protection law provides a better way to protect our marine environment and will boost national economy to some extent.

Under the background of globalization, we need to take effective measures to ensure the implementation of international environmental protection law in our country. We should cooperate with other country deeply and use the capital and advanced technology

aboard to manage oceans and seas. Furthermore, we can establish several demonstration projects of environmental protection and control of pollution and train excellent legal talents and experts in the meantime.

In the second place, use global ocean governance to replace traditional administrative governance model. Since the marine environmental issues are global and international, we need to use global ocean governance measures to effectively manage and protect marine environment.

In the third place, integrate the relative marine environmental laws and regulations into Ocean Basis Law. We should pay close attention to enact the special regulations of high-tech marine industry in the first place, and then learn the legislature structure of UNCLOS. Protection and Preservation of the Marine Environment are part XII of UNCLOS, in the near future, we should consider to set marine environment protection rules as one chapter of Ocean Basic Law.

Lastly, we should set a clear boundary of duty for protecting marine environment and motivate local governments’ participation. Our major ports, offshore pipelines, dock facilities, naval bases are under control of local government. Only if we set a clear duty boundary for local government departments, we can regulate the maritime issues effectively.

3.3 Future Focus on the Research of Law of Sea

We need to focus on the following areas in the future research on the law of sea.

Firstly, Fukushima Daiichi nuclear disaster in 2011 is much more serious than Chernobyl disaster of 1986. As we all know, nuclear radiation may affect people’s health and cause severe damage to environment. We have to learn how to use nuclear power scientifically and safely. In addition, from legal perspective, we have to set laws and rules to regulate the use of nuclear power and provide damage compensation system for the victims.

Secondly, we need to pay enough attention on

sustainable development. Since ocean will be much more important resource in the 21st century, protection of sea is the worldwide issue. With the rapid development of national economy, we have to take measures to prevent discharging land-based source pollution into water, and provide legal protection of sustainable development of ocean resources.

Thirdly, improve maritime administrative legal system. In order to follow with the international trend and ensure the implementation of international convention, we should improve the administrative system as soon as possible.

Lastly, build an unified marine environment legislation. There are several issues in the existing legal system we mentioned earlier. For regulating exploration of marine resources and protection of marine environment, Chinese government should use legal measures and administrative policies at the same time.

4. Legal Guarantee Of Marine Rights and Interests

4.1 Peaceful Settlement of International Maritime Disputes

In recent years, more and more maritime disputes occurred between China and our neighboring countries. Several countries used civil development and utilization method to occupy the islands and oceans. Vietnam and Philippines made domestic legislation which violated our sovereignty on reef and water. I will analyze this issue in the perspective of disputes settlement principles and countermeasures.

Chinese government should adhere to the policy of “shelving disputes and carrying out joint development” over the questioned areas. In order to safeguard China’s marine rights and interests and solve the disputes of South China Sea and Diaoyu island, I will propose several ideas:

At first, we must improve and perfect the top-level design and maritime rights. Then we need to make a

deep historical research for solving disputes in the legal way. Chinese government could try to accumulate fisheries subsidies and support in the East China Sea and South China Sea area. Make a severe punishment to the illegal fishing in those areas. Organize and encourage residents to actual possess and control the “uninhabited islands”.

Refer to countermeasures to solve the dispute of South China Sea, we need to study further about “Intermittent Line” under the relevant international convention. Make full use of International law and China-ASEAN cooperation system. China is opposed to the view proposed by Philippines that the South China Sea island are part of archipelago Philippines. Chinese government should propose different policy on several areas in South China Sea. We should develop further on the non-controversial area and enhance the enforcement capability. Chinese government may also take actual actions to solve the disputes instead of simple oral argument. According to article 123 of UNCLOS, States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. South China Sea is semi-enclosed, Chinese government should cooperate with other countries in the performance of duties under UNCLOS.

4.2 Boost Maritime Power

Firstly, If China wants to rise as a powerful maritime State in a peaceful way, we should learn with other countries’ experience. The history of marine rights and interests shows that strong marine power is vital to China’s development. We need to encourage the civil development and exploration of oil gas and fish resource in the oceans and seas.

Secondly, integrate resources to safeguard marine rights and interests and establish national marine strategy committee. This committee should take the orders directly from the State Council.

Thirdly, China’s maritime strategy should contain

the following aspects: maritime defense and security strategy; accelerate the development of marine resources; make an effort on ecological civilization construction. Maritime strategy should serve the State’s economic strategy and political strategy.

Lastly, with the fierce competition between countries, China has to take advantage of oceans and seas to develop as a powerful State. Military is just a starting point for building marine power, we should also develop marine cultural environment. Strive for the peaceful development should be always the guideline for Chinese government’s marine diplomacy. Marine diplomacy will play an important role on bilateral coordination, peaceful settlement of disputes and so on.

4.3 Cultivate Outstanding Maritime Talents

Implement training programs to cultivate outstanding legal talents. Legal talents should include the academic experts and legal professionals. According to the Plan of training outstanding legal talents proposed by Ministry of Education of PRC, legal talents mainly refer to legal professionals.

Firstly, the legal talents should meet the following requirements:

- (1). Loyalty is the first character. Legal talents should be loyal to China, loyal to the people and law;
- (2). Deep understanding of law. Legal talents should be familiar with at least one area of law. They also should have strong ability of learning new knowledge and skills;
- (3). Superb legal skills. Legal talents should master good skills of legal practice;
- (4). Sincere feelings of the people. Legal talents should have sincere feelings to people and use this feeling to work;
- (5). Good at social science. Legal talents should be good at social science. Not only should they have physical health, but also mental health.

Secondly, when implementing the training program, we should focus on several issues:

(1). Targeting the specific people and know exactly what kind of people this program aims to train.

(2). Improve teaching skills. Legal education is not only the education of law, but also the education of other social science knowledge.

(3). Education of rule of law. During the training process, we should educate students with rule of law and rule by law.

(4). Train legal skills. In the training program, we have to train students with legal skills through case study.

(5). Legal ethics education. Legal talents should have good ethics and we should provide a supervision system to test them.

(6). Cooperation with practical department. We should cooperate with practical department and provide enough internship opportunities for students. They could learn more practical skills during the internship.

Lastly, we should encourage creative thinking. Every legislation system will be old stuff in the future and we should train creative people to build a new legislative system or find the bug.

Nomocracy pursuit of “The Maritime Silk Road” provides a good opportunity for us to think about our maritime legislation system. Improvement of

legislation system will make great benefits to safeguarding State’s marine rights and interests and realizing Chinese dream.

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