

Study on Legal Issues of Sino-French Bilateral Cooperation on Marine Biodiversity Conservation

FENG Nan, QU Yanan

Dalian Ocean University, Dalian, China

In recent years, various kinds of marine pollution and the discharge of nuclear sewage have led to the destruction of marine biodiversity and its living environment. At present, the protection of marine biodiversity has become a hot issue of common concern to the whole world. China and France, both being big marine countries, have expressed the idea of cooperation in marine biodiversity conservation. This paper summarizes the current situation of Sino-French bilateral cooperation in marine biodiversity conservation, analyzes the dilemmas of Sino-French bilateral cooperation in marine biodiversity conservation on this basis, and finally puts forward corresponding countermeasure suggestions.

Keywords: marine biodiversity conservation, bilateral cooperation, community of maritime destiny

Status of Sino-French Bilateral Cooperation on Marine Biodiversity Conservation

Status of Bilateral Cooperation Norms on Marine Biodiversity Conservation Between China and France

The conservation of marine living resources, as well as research, is addressed in the United Nations Convention on the Law of the Sea, and the Convention's jurisdictional framework and general principles are also applied to the conservation and sustainable use of marine biodiversity.

The Convention on Biological Diversity, whose main objectives include the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of commercial interests in and other forms of utilization of genetic resources, applies equally to the conservation and use of marine biodiversity beyond areas of national jurisdiction and to the fair and equitable sharing of benefits arising out of the utilization of genetic resources, which can be achieved by contracting parties through direct cooperation or through the use of relevant international organizations. Contracting Parties may cooperate directly or through relevant international organizations in the conservation of biological diversity.

The Nagoya Protocol, which provides for the conservation of biodiversity through certain financial assistance and relevant technical cooperation in order to achieve the sustainable use of biogenetic resources, is aimed at guaranteeing the equitable distribution of the benefits of biogenetic resources.

FENG Nan, M.Sc. candidate, School of Marine Law and Humanities, Dalian Ocean University, Dalian, Liaoning, China.

QU Yanan, Ph.D., professor, associate dean, School of Marine Law and Humanities, Dalian Ocean University, Dalian, Liaoning, China.

The Agreement on Unregulated High Seas Fisheries in the Precautionary Central Arctic Ocean, in which the European Union and China participate, is committed to preserving the ecology of the Arctic Ocean. It provides for a ban on commercial fishing on the high seas in the central Arctic Ocean region until scientists can ensure that fisheries resources can grow sustainably.

The text of the first global legal framework for the conservation of marine biodiversity beyond national jurisdiction was agreed in 2023, the BBNJ Agreement, which establishes the basic legal framework for the regime on access to and benefits from marine genetic resources, area-based management tools, including marine conservation, environmental impact assessments, capacity-building and the transfer of marine technology under the framework of the United Nations Convention on the Law of the Sea, and completes and develops the international law of the sea. The system of international law of the sea has been perfected and developed.

The Action Plan for Sino-French Relations provides for continued cooperation between the two countries in combating climate change and protecting biodiversity, based on the experience gained at the Paris Conference on Climate Change and the United Nations Climate Action Summit.

The Sino-French Beijing Initiative on Biodiversity Conservation and Climate Change, emphasizes the importance of addressing climate change and biodiversity loss and recognizes the need to promote and implement transformational change to reduce the main drivers of biodiversity loss.

In 2023, the Heads of State of China and France adopted the latest Joint Declaration of the People's Republic of China and the French Republic, which builds on previous joint declarations adopted by the two countries, and which, in its fifth part, commits France and China to the protection of the oceans.

Status of Implementation of Sino-French Bilateral Cooperation on Marine Biodiversity Conservation

China and France are actively engaged in bilateral negotiations and agreements on biodiversity conservation. Over the past decade, the field of biodiversity has become the most active area of environmental cooperation between the two sides. It ranges from high-level diplomacy to collaborative research by experts and has seen multiple levels and areas of cooperation. In January 2019, the Heads of State of China and France made it clear in the Beijing Initiative that

China and France will endeavor to promote an effective global biodiversity agenda at the fifteenth meeting of the Conference of the Parties to the Convention on Biological Diversity (COP15), and support the development and implementation of a realistic post-2020 global biodiversity framework. (Duan & Wang, 2023, p 1157)

In 2020, President Xi Jinping and President Macron had several phone calls and talked about biodiversity, and the China-Europe and China-France foreign affairs events attended by Premier Li Keqiang, Vice Premier Han Zheng and Vice President Wang Qishan also touched on topics related to biodiversity conservation. At the Second Paris Peace Forum hosted by France and the Ministerial Roundtable on Building the Earth's Life Community hosted by China, four ministerial exchanges were held to discuss solutions to global biodiversity challenges with France. Behind the intense diplomatic work of negotiation, concrete cooperation between the two countries around biodiversity is also under way, with a particular impact on exchanges on national parks, ecological protection red lines, mobilization of biodiversity resources, and citizen awareness-raising.

China and France actively participate in the biodiversity conservation activities of international organizations. As important member countries of the IUCN, China and France have long been cooperating in the

field of biodiversity through the organization, including the active participation of the two countries' governments, research institutes, and non-governmental organizations in the World Conservation Congress hosted by the international organization, discussing global policies on biodiversity conservation and putting forward initiatives and action plans. Chinese and French experts have jointly participated in the compilation of the organization's Red List of Threatened Species, which provides a scientific basis for assessing the threatened status of global species and formulating corresponding conservation strategies; the two countries have supported and participated in the project on the construction and management of a global network of natural protected areas promoted by the organization, and carried out research on biodiversity monitoring and ecosystem restoration under its framework. As members of the International Seabed Authority (ISA), China and France have jointly participated in the formulation of environmental guidelines, policies, and regulations on deep-sea mineral exploration and exploitation activities, with a view to ensuring that economic benefits are pursued while minimizing damage to deep-sea ecosystems. As States members of the Food and Agriculture Organization of the United Nations, China and France are actively involved in the development and implementation of global fisheries policies, resource management, and technical standards, including participation in projects related to the reduction of illegal, unreported, and unregulated (IUU) fishing, in order to promote the sustainable development of fisheries.

Legal Aspects of Sino-French Bilateral Cooperation on Marine Biodiversity Conservation

Inadequate Normative Basis for the Extraterritorial Application of Marine Biodiversity Conservation

For China, the China Biodiversity Conservation Strategy and Action Plan provides a top-level guiding framework for regulating and promoting the effective conservation, rational utilization, and fair benefit-sharing of biological genetic resources nationwide, while the Technical Provisions on Classification, Investigation and Cataloguing of Biodiversity-Related Traditional Knowledge (for Trial Implementation) clarifies, from the operational level, how to scientifically and systematically organize, research, and document traditional knowledge on biodiversity. The newly revised Marine Environmental Protection Law of the People's Republic of China explicitly mentions the establishment and management of marine protected areas, and explicitly incorporates them into the system of national nature reserves for regulation, and the Measures for the Management of Marine Specially Protected Areas also mentions the protection of marine biodiversity through marine protected areas, and stipulates the penalties and enforcement authorities. The core of China's environmental impact assessment system is based on the Environmental Impact Assessment Law of the People's Republic of China, the main purpose of which is to prevent, manage, and mitigate the environmental pollution and ecological damage that may be caused by the implementation of planning and construction projects from the initial stage of such projects, and the procedures and legal responsibilities of the environmental impact assessment system are stipulated in greater detail in the Regulations on the Administration of Environmental Protection for Construction Projects. The Law of the People's Republic of China on Exploration and Exploitation of Resources in the Deep Seabed Area (hereinafter referred to as the Deep Sea Law) and its supporting system as well as the legal system related to intellectual property rights are the domestic legislation for China's participation in international seabed area activities. Moreover, the contents of the Deep Sea Law on the construction of a sharing mechanism for deep-sea public platforms, sharing of information as well as scientific and technological

exchanges and cooperation are only of a framing and principle nature, and are not very operable. It is not very operational.

For France, Chapter V of the Law on the Restoration of Biodiversity, Nature and Landscapes focuses on and elaborates the core elements of access to and benefit-sharing of genetic resources and associated traditional knowledge. At the same time, a specific decree on access to and benefit-sharing from the utilization of genetic resources and associated traditional knowledge further establishes a set of specific rules and guidelines that must be followed in the use of such genetic resources and associated traditional knowledge to ensure that the process is scientifically sound, fair, and equitable. Chapters III and IV of the French Environment Code emphasize the protection of the marine environment and coasts and the fight against crimes committed on the high seas, clearly highlighting the principle of public participation in the environment, and incorporating the system of marine protected areas, such as article 334-1 of the Environment Code, which defines the types of marine protected areas in France.

Absence of Bilateral Agreements on Cooperation for the Conservation of Marine Biodiversity

The Agreement between the Government of the People's Republic of China and the Government of the French Republic on Cooperation in Environmental Protection is a cooperation agreement between the two Governments on environmental protection, emphasizing cooperation in environmental monitoring and evaluation techniques through exchange of visits by experts, exchange and sharing of information, seminars, etc., and involving the transfer of marine technology in the area of marine ecological protection. However, no bilateral agreements have been signed on marine genetic resources or the establishment of marine protected areas.

In 2023, the Heads of State of China and France decided to build on their previous Joint Declaration by signing the Joint Declaration of the People's Republic of China and the French Republic, which reaffirmed biodiversity as one of the common priorities of the two countries and demonstrated their joint commitment to marine conservation under the BBNJ Agreement; the Heads of State of China and France reaffirmed the promotion of the conservation of Antarctic marine living resources and continued discussions on the establishment of a Marine Protected Area (MPA) in Antarctica. The two heads of state reaffirmed their commitment to promote the conservation of Antarctic marine living resources and to continue discussions on the establishment of marine protected areas in Antarctica. However, this is only a declaration document, not a treaty, and is not legally binding on China and France. Therefore, China and France should strengthen cooperation and, when signing bilateral cooperation agreements, focus on clarifying the exploitation and utilization of marine organisms and the marine environment, so as to ensure the stability and sustainability of cooperation and help the two countries to establish a long-term development mechanism for cooperation between the two sides.

China and France in Dispute Over BBNJ Agreement

The dispute between China and France over marine genetic resources lies in the principle of exploitation and utilization. France insists that the United Nations Convention on the Law of the Sea clearly stipulates that the regime of the Area applies only to mineral resources, whereas China insists that marine genetic resources should be characterized as “common heritage of mankind”, like mineral resources in the Area. China, on the other hand, insists that marine genetic resources should be characterized as the “common heritage of mankind” like mineral resources, which can be shared by all subjects of international law. With regard to zoning tools,

including marine protected areas, France rejected provisions that favoured the rights of adjacent coastal States and opposed special consideration for developing countries, while China considered that marine protected areas imposed a certain degree of restriction on activities such as fishing and navigation, and indicated that agreements should take into account their economic development needs, balanced conservation, and sustainable use. With regard to environmental impact assessments, the dispute between the two countries is that marine protected areas impose a certain degree of restriction on activities such as fishing and navigation, indicating that the agreement should take into account their economic development needs, balanced conservation, and sustainable utilization (Jiang & Lu, 2023).

Pathways for Sino-French Bilateral Cooperation on Marine Biodiversity Conservation

Complementing the Normative Basis for the Extraterritorial Application of Marine Biodiversity Conservation

Owing to the lack of laws related to the protection of marine biodiversity beyond national jurisdiction in China and France, in order to strengthen the domestic legal basis for bilateral cooperation between the two countries in the protection of marine biodiversity, it is necessary for the two countries to supplement their domestic legislation on the protection of marine biodiversity beyond the limits of national jurisdiction. In terms of biological resources development activities, the two countries can each set up a strict licensing system for marine development and utilization projects through their domestic laws; in terms of marine scientific research, the domestic laws of the two countries can set up a strict licensing procedure for marine scientific research projects; in terms of ship navigation activities, China and France can each set up a strict regulation on ship discharges, and the two countries can ensure that ships are discharged within the boundaries of their national jurisdiction in strict accordance with the provisions of international agreements, such as the International Convention for the Prevention of Pollution from Ships. In terms of fishing activities, the two countries can set up a strict fishing license system, and all fishing activities must be approved and obtain the corresponding permits, which should specify the type of operation, area, time, specifications, and quantity of fishing gear, etc. At the level of environmental impact assessment, the two countries can establish a comprehensive and scientific marine environmental impact assessment system, requiring that the assessment process take into full consideration the integrity of the ecosystem, the diversity of species, and the need to protect biological habitats, and requiring that all scientific research projects that may potentially affect the marine ecosystem should be subject to environmental impact assessment.

Conclusion of Bilateral Agreements on Cooperation for the Conservation of Marine Biodiversity

Although the vision of China and France for joint marine biodiversity conservation has been mentioned many times in the joint statements of the two countries, there is no highly harmonized and binding document between the two countries, which is an impediment to future bilateral cooperation on marine biodiversity conservation. In order to strengthen cooperation between China and France in the conservation of marine biodiversity, the two countries may negotiate and sign a Sino-French Bilateral Agreement on the Conservation of Marine Biodiversity, which establishes that the objectives of the two parties in the conservation of marine biodiversity are to work together to maintain and restore the health of marine ecosystems, and to work towards the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, and specifies the content of the cooperation between the two parties. The agreement will establish that the cooperation between

the two parties is based on international legal frameworks such as the United Nations Convention on the Law of the Sea (UNCLOS), the Convention on Biological Diversity (CBD), and the BBNJ Agreement, as well as the domestic legislative and policy frameworks of the respective countries; and it will clarify the rights and obligations of the two parties and their responsibilities in the conservation of marine biodiversity. If it is difficult to reach a bilateral cooperation agreement in the short term, a cooperation framework can be reached first as a transition, and by signing a binding document on cooperation in the protection of marine organisms and the survival of the environment, China and France can form a binding framework of cooperation in the protection of marine biodiversity, which will promote exchanges and cooperation between the two sides in the field of marine protection.

Joint Coordination of Disputes Between the Parties on the BBNJ Agreement

The application of the principle of the common heritage of mankind to marine genetic resources on the high seas is not only in line with China's maritime interests, but also with those of France. France will be able to explore and study genetic resources in the high seas on an equal footing with other countries, and at the same time, it will be conducive to its access to and participation in the results of research on genetic resources and its related benefits on a global scale; it will be able to prevent the loss of biodiversity due to uncontrolled competition, which is environmentally friendly to France, which is endowed with rich marine biodiversity and unique ecosystems; and it will contribute to the construction of a more just and reasonable international order and the maintenance of long-term stability in global ocean governance. It is in the fundamental interest of countries that advocate multilateralism and sustainable development, such as France, to maintain the long-term stability of global ocean governance.

In order to jointly build a soft law system for the sustainable development of high seas biodiversity, the two countries can reach a consensus on the core values, conservation objectives, and criteria for the sustainable use of high seas biodiversity on the basis of the relevant international agreements and soft law principles; the two countries can organize a team of experts to conduct a joint study and jointly formulate a set of scientific, fair, and operational evaluation index system, which should cover the current status of biodiversity, assessment of ecosystem health, effectiveness of fisheries resources management, control of environmental pollution, effectiveness of protected areas construction and management, etc. The system should cover the assessment of the current status of biodiversity, the health of the ecosystem, the effectiveness of fishery resources management, the control of environmental pollution, and the effectiveness of the construction and management of protected areas.

With regard to the requirement of "without prejudice", the United Nations General Assembly, in clarifying the BBNJ Agreement, specified that it meant that "the process and its outcome shall be without prejudice to existing relevant legal instruments and frameworks and relevant global, regional and sectoral organizations" (Chen & Yang, 2018, p. 94), and that in the context of the conservation of high seas biodiversity, the organization and monitoring of EIA could indeed be undertaken by relevant international organizations, and that existing institutional arrangements for EIA would not be undermined. During the negotiation phase of the BBNJ, the influence of international non-governmental organizations (NGOs) has been expanding, and the NGOs proposed to be involved in EIA include the International Council of Environmental Law (ICEL), the World Wide Fund for

Nature (WWF), and the High Seas Alliance (HSA), among others. In this case, the international NGOs can be the organizers of the EIA. China and France have been maintaining close cooperation in environmental protection and biodiversity conservation, so the two countries can carry out EIA activities under the leadership of NGOs, with specific content including start-up thresholds, impact factors, procedures, and disclosure of results, etc.

Conclusion

The 21st century is the century of the ocean, and the development of blue economy and blue carbon industry cannot be separated from the conservation of marine resources, especially the protection of marine biodiversity. Although this paper only focuses on the cooperation between China and France to protect marine biodiversity, it does not mean that the protection of marine biodiversity is only the responsibility and obligation of individual countries; in the context of the community of human destiny, the protection of marine biodiversity is a global issue, and the protection of marine biodiversity requires international cooperation and the joint efforts of all countries in the world.

References

- Chen, J., & Yang, C. B. (2018). Texts, experiences and constructs: Co-operative conservation and management of fishery resources in the South China Sea. *Hebei Law*, 36(9), 91-106.
- Duan, K., & Wang, X. L. (2023). Research on China's marine protected areas policies adapted to the objectives of the Kunming-montreal global biodiversity framework. *Policy and Management Research*, 38(8), 1154-1167.
- Gong, Q. Q. (2023). The development of strategic environmental assessment systems in regions beyond national jurisdiction and their implementation. *Journal of Beijing Institute of Technology (Social Science Edition)*, 25(5), 73-82.
- Jiang, X. Y., & Lu, Z. W. (2023). An analysis of the main points of dispute and the positions of all parties in the negotiation of the BBNJ International Agreement. *Journal of Ocean University of China (Social Science Edition)*, 36(3), 25-36.
- Qu, Y. F. (2023). Study on the incorporation of high seas fisheries issues into the BBNJ Agreement—An analysis of China's response path. *Journal of Hainan University (Humanities and Social Sciences Edition)*, 41, 11.
- Qu, Y. N., & Zhou, J. X. (2020). Study on the application of the principle of common heritage of mankind to biological genetic resources in the international seabed area. *China Maritime Law Research*, 31(3), 104-112.
- Yin, L. (2021). A comparative study on the legal regimes of access and benefit-sharing for traditional knowledge related to genetic resources in China and France. *French Studies*, 39(1), 55-65.