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# Completion of the restructuring of China's coast guard administration: challenges and opportunities

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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**COMPLETION OF THE RESTRUCTURING OF  
CHINA'S COAST GUARD ADMINISTRATION:  
CHALLENGES AND OPPORTUNITIES**

By

**WANG HAOZHE**

People's Republic of China

A dissertation submitted to the World Maritime University in partial  
Fulfilment of the requirements for the award of the degree of

**MASTER OF SCIENCE**

In

**MARITIME AFFAIRS**

**(MARITIME LAW AND POLICY)**

2015

## DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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## **ABSTRACT**

Title of Dissertation: **Completion of the Restructuring of China's Coast Guard Administration: Challenges and Opportunities**

Degree: **MSc**

The dissertation is a study of the restructuring activities of entities of China's maritime law enforcement by focusing on the establishment of China's Coast Guard Administration. Because China's Coast Guard Administration was just established two years ago, the aim of this dissertation is to analyse the current situation of China's Coast Guard Administration, and then identify and analyse challenges and opportunities in China's Coast Guard Administration.

In order to provide a comprehensive cognition of the reasons for establishing China's Coast Guard Administration, the dissertation initially provides a brief explanation of the drawbacks of the past situation of entities of maritime law enforcement in China. Then the current situation of China's Coast Guard Administration is analysed by stating the framework and initial mandates of China's Coast Guard Administration.

Importantly, the legal foundations for previous departments are analysed and some of them are still available for China's Coast Guard Administration. The legal analysis is divided into two levels, which are international laws and domestic laws. Significantly, a vast number of challenges faced by China's Coast Guard Administration are identified and analysed by internal and external challenges. Besides, existing opportunities within China's Coast Guard Administration are analysed as well as three different aspects.

The concluding chapter summarizes the discussion and analysis of this dissertation, as well as confirming the challenges and opportunities are fulfilling the aim of this dissertation. Finally, several feasible recommendations are put forward which are based on the analysis of challenges and opportunities to promote the development of China's Coast Guard Administration.

**KEYWORDS: CHINA COAST GUARD; RESTRUCTURING; CHALLENGES; MARITIME ADMINISTRATION; MARITIME STRATEGIES; MARITIME LAW ENFORCEMENT.**

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## **LIST OF ABBREVIATIONS**

MSA	Maritime Safety Administration
FLEC	China Fisheries Law Enforcement Command
CMS	China Marine Surveillance
CMPB	China Maritime Police Bureau
PSC	Port State Control
MPS	Ministry of Public Security
EEZ(s)	Exclusive Economic Zones
SOA	State Oceanic Administration
SAR	Search and Rescue
IISS 2013	Regulation on the Interior Institutions and Staffing of the State Ocean Administration (2013)
CCGA	China's Coast Guard Administration
NPC	The National People's Congress
CPPCC	Chinese People's Political Consultative Conference
PLA Navy	People's Liberation Army Navy
UNCLOS	United Nations Convention on the Law of the Sea
Tokyo MoU	Memorandum of Understanding on Port State Control in the Asia-Pacific Region
PSC	Port State Control
US	The United States
The Area	International Seabed Area
CMPA	China Maritime Police Academy
USCGA	United States Coast Guard Academy
KCGA	Korea Coast Guard Academy

UK

The United Kingdom

# **1 Introduction**

## **1-1 Discussion of the Former Situation and Drawbacks**

### **1-1-1 The Past Situation**

Up until 2013, five different and independent departments held the responsibilities of enforcing Chinese maritime law simultaneously. They were: 1. Maritime Safety Administration (MSA), 2. China Fisheries Law Enforcement Command (FLEC), 3. China Marine Surveillance (CMS), 4. China Maritime Police Bureau (CMPB), and 5. Customs Police. In China, this situation was quite often described as the “five dragons that govern the Sea”. The “five dragons” carried out different responsibilities in order to deal with the maritime affairs by five various aspects, which was suitable for the previous situation because of the lack of experiences and resources. The Chinese government could not establish a powerful department to handle maritime affairs. Therefore, separation of powers was the best choice in that case. Specific affairs regarding maritime issues should be dealt with by specific departments in order to assure the overall effect. The specific departments and their responsibilities will be explained as follows.

The only one department that was not included in the restructuring activities was MSA. MSA was established in 1998 according to *The Approval of the Main Responsibilities and Staffing on the People's Republic of China Maritime Safety Administration* published by the State Commission Office for Public Sector Reform. From its establishment until now, MSA has been administrated by the Ministry of Transport and has taken the responsibilities for maritime safety, security, prevention of pollution from ships, and protection of seafarers' rights. Its mission was not static

and changed at times. Today, the main responsibilities include the following points (<http://en.msa.gov.cn/index.php?m=content&c=index&a=lists&catid=328>):

- Draft and implement guidance, policies, regulations and technological codes and standards in national water safety supervision;
- Comprehensively supervise water safety and prevent marine pollution;
- Responsible for the administration, certification and supervision of ship and offshore facilities check;
- Administer seafarers and pilots' training, examination and certification. Check and supervise the qualification and quality system of training institutions for seafarers and pilots; responsible for the management of seafarers' documents;
- Responsibilities for the survey and settlement of maritime accident, pollution incident of ships and water traffic violations;
- Undertake the responsibilities of Port State Control (PSC).

In the previous regime, the oldest entity under discussion was the Fisheries Law Enforcement Command (FLEC). FLEC was established in 1958 as a division of the Fisheries Management Bureau under the Ministry of Agriculture. It held the responsibilities for the enforcement of laws concerning fishing and maritime resources in Chinese territorial waters and exclusive economic zones<sup>1</sup> (EEZ). The main responsibilities included the following points (Liu, Yu & Wen, 2008, p.6):

- Research the planning and development strategies, draft the laws or regulations related to fishing activities;
- Protect the fishing resources, fishery ecological environment and other aquatic

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<sup>1</sup> Exclusive economic zone: With the term "exclusive economic zone" is described an area which beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. (UNCLOS, Article 55)

organisms;

- Inspect, administrate and supervise fishing port, fishing vessel; manage and certificate fishing vessel and crews;
- Deal with the international fisheries affairs.

Additionally, the entity dealing mainly with the domain of surveillance<sup>1</sup> of the China Sea was China Marine Surveillance (CMS). The CMS was established in 1998, and was administered by the State Oceanic Administration (SOA) and held the supervisory responsibilities. Its primary responsibilities included the following points (Zhang, X., 2013, p.58):

- Protect marine benefits of China by patrolling and implement the right of hot pursuit<sup>2</sup>;
- Supervise the marine infrastructure activities and scientific activities, assist the search and rescue (SAR as follows) activities at sea;
- Supervise the activities of the marine environment at sea area in China.

In particular, the entity with the right to use violence during law enforcement activities before restructuring activities was China Maritime Police Bureau (CMPB). CMPB was the maritime branch of the Public Security Border Troops, a paramilitary<sup>3</sup> police force under the leadership of the Ministry of Public Security (MPS as follows). CMPB normally carried out policing activities in accordance with

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<sup>1</sup> Surveillance: Longman English Dictionary Online defined surveillance as a term when the police, army etc. watch a person or place carefully because they may be connected with criminal activities.

<sup>2</sup> Hot Pursuit: With the term “hot pursuit” is described the situation of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State (Paragraph 1 of Article 111 of UNCLOS).

<sup>3</sup> Paramilitary: Oxford advanced learner's dictionary of current English (Hornby, Wehmeier, McIntosh, Turnbull & Ashby, 2005) defined paramilitary as the meaning of helping the official army of a country.

the following detail of the main responsibilities (Yan & Sun, 2011, p.6):

- Inspect the immigrant ships and persons;
- Prevent and combat crime at sea including piracy and terrorism;
- Seize the smuggling case and drug trafficking.

Finally, the department dealing with smuggling activities was the Customs Police. It was established in 1999 under the supervision of MPS and General Administration of Customs collectively. Significantly, the Customs Police had the power of investigating smuggling activities at sea. The main responsibilities included the following points (Qian, 2014, p.3):

- Develop the plan of anti-smuggling and implement it;
- Work with foreign authorities to combat smuggling.

### **1-1-2 Drawbacks of the Previous Situation**

After the explanation of the specific responsibilities carried out by all the above mentioned different departments, a number of drawbacks among their activities had occurred in the past decades, because the development of technology and economy had changed the situation over time. The restriction of the performance and ability of China's entities of maritime law enforcement was the policy instead of experience and resources. Separation of powers was not the best choice for the Chinese government anymore. Therefore, these drawbacks had a negative impact on the performance and ability of China's entities of maritime law enforcement. Although restructuring activities could easily solve some drawbacks, a certain number of the previous drawbacks still need to be examined further in order to provide references for the future activities.



The most pressing and significant drawback was that each department just assumed their responsibilities, which caused the decentralization of the maritime jurisdiction as well as the lack of coordination. Therefore, maritime affairs could not be solved efficiently when two or more departments were involved because of the overlapping responsibilities (Sun, 2011, p.20). For example, the accident of “Dashun” happened in Bohai Bay on 24<sup>th</sup> of December 1999. From the beginning to the end, the process sustained almost 10 hours. Apart from the reasons such as bad weather condition, another driving cause for failure was the decentralization of the maritime jurisdiction resulting in the fact that the rescue activities could not be conducted immediately. Unfortunately, over 280 people died in that accident in the end (Fernandez, 1999).

In another example in this domain, a foreign vessel was sunk by a Japanese vessel in China’s EEZ of the East China Sea in 2002 (Zhang, Y, 2013, p.18). After that specific incident, MSA, FLEC, CMS and other entities of maritime law enforcement allocated their governmental vessels to the location of the incident in order to safeguard China’s benefits. Because of the lack of the coordination mechanism, these actions did not fulfil the intended goals. Effective solutions were not being conducted at that time. Therefore, the maritime authority of Japan conducted their survey in China’s EEZ regardless of legality and the attitude of the Chinese government. Afterwards, the Chinese government decided to appoint CMS as the main force to monitor that maritime area and Japanese vessels in order to safeguard China’s rights and interests. Fortunately, in the long run, the desired result was achieved in this field without serious conflicts between Japan and China. Both these examples revealed the drawback about decentralization among the “five dragons”.

Secondly, multiple departments, because of the decentralization of maritime law enforcement departments, certainly have a massive number of staff and equipment which wasted an enormous portion of financial resources, human resources and physical resources. For example, in 2009, the quantity of quays established by different law enforcement departments was 170, including more than 50 quays established by MSA, 78 quays established by FLEC and 25 quays established by CMPB. Most of these quays were overlapping establishment (Han, 2012, p.27). Therefore, the total amount of financial input was huge, but the allocation of finance to each department was limited. The money could not be used properly, which was the primary reason for the low-standard governmental ships and equipment operated by the “five dragons”. Also, based on the above examples, a maritime task could be in charged by two or more departments resulting in the waste of administrative resources and funding. To some extent, it was difficult to manage. In most unclear cases, such as the previous example when the Japanese vessel sunk a foreign vessel in China’s EEZ, all the relevant departments wanted to participate in that incident. It was a tough decision about which department is the best-qualified department to deal with that incident. Today, maritime affairs are handled by MSA and CCGA which only reduce the difficulty of management by the Chinese government.

Finally, due to its limited resources and capabilities, the “five dragons” were not able to shoulder the capability of maritime law enforcement of the Chinese government. In fact, most entities of maritime law enforcement just had the right of administrative law enforcement<sup>1</sup>. Except CMPB and Customs Police, Their jurisdictions were based on the policing law enforcement<sup>2</sup>. However, because of the reasons mentioned above,

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<sup>1</sup> The right of administrative law enforcement will be explained in Chapter 3 that follows.

<sup>2</sup> The right of policing law enforcement will be explained in Chapter 3 that follows.

the right of policing law enforcement carried out by CMPB and Customs Police could not be enforced properly. If the capability of law enforcement was restricted, the entities of maritime law enforcement could not safeguard China's benefits in China's maritime zones.

## **1-2 Explanation of the Restructuring Activities**

In accordance with the above contents, a brief conclusion can be drawn. On the one hand, China's entities of maritime law enforcement faced certain internal challenges, and reform activities were required to rectify the complicated situation, including issues about decentralization of the maritime jurisdiction, unwieldy organizations and the absence of the right of policing law enforcement at sea. On the other hand, external challenges have influenced China as well. For example, China has suffered from disputes with neighbouring countries, such as the dispute about maritime delimitation in the East China Sea between China and Japan, as well as in the South China Sea between China and the Philippines. Both at home and abroad, more and more attention has been paid to issues regarding maritime rights and interests. Ocean rights and interests are crucial to the development of a country and nation. Overall, the Chinese government took a series of reform activities to highlight the importance of protecting ocean interests and improve the efficiency of maritime law enforcement. One of these reform activities was to restructure SOA and establish China's Coast Guard Administration (CCGA) with the purpose of improving the efficiency of maritime law enforcement.

According to the report that was released during the 18th National Congress of the Communist Party of China, "exploiting marine resources, developing the marine economy, protecting the marine ecological environment, resolutely safeguarding

China's maritime rights and interests, and building China into a maritime power" should be prioritized. The concept of "build China into a maritime powerful country" was first proposed as an active response to the complicated situation and indicated the determination of the Communist Party of China Central Committee with the aim of guarding the "blue territory"<sup>1</sup>.

During the National People's Congress (NPC) and Chinese People's Political Consultative Conference (CPPCC) in 2013, the introduction of "the Cabinet Reshuffle plan"<sup>2</sup> put forward the integrated solutions of safeguarding maritime rights clearly, restructuring the State Oceanic Administration, establishing a Marine Committee, and establishing the China Coast Guard was also first proposed. On July 22, 2013, the new State Oceanic Administration and CCGA were established officially after the restructuring based on *the Regulation on the Interior Institutions and Staffing of the State Ocean Administration 2013* (IISS 2013 as follows) which was published by the State Council. The State Oceanic Administration would carry out the right of protection and law enforcement at sea in the name of CCGA. In addition, CCGA receives professional guidance from MPS. The new CCGA is the result of integrating the departments mentioned above, except for the Maritime Safety Administration. Until now, China has three main pillars to maintain maritime rights that are the People's Liberation Army Navy (PLA Navy), CCGA and the MSA.

Establishing CCGA is just the beginning of optimizing China's entities of maritime

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<sup>1</sup> Blue territory: With the term "blue territory" is described the joint name of the internal water, territorial sea and governing maritime zones of one country. Governing maritime zones include contiguous zone, exclusive economic zone, continental shelf, historical waters, traditional ocean area and so forth. The country has fully sovereignty over internal water and territorial sea. With regarding to other governing maritime zones, the country has sovereign rights. (Zhang, X., 2013)

<sup>2</sup> The Cabinet Reshuffle plan: With the term "cabinet reshuffle plan" is described the reform activities conducted among those departments carried out similar responsibilities by integrating them into a super department with general management functions. The main purpose of this plan is to reduce administrative cost, centralize the administrative rights and improve the administrative efficiency.(Cai, 2012)

law enforcement because it is hard to achieve the target through one single restructuring action. In the beginning phase, CCGA needs a transitional period in order to harmonize the different functions and train or retrain the staff. After the establishment of CCGA, the hull number of governmental ships has been changed to China Coast Guard. However, the specific responsibilities have been carried out by former officers in the identical name of China Coast Guard. For example, the staff that belonged to CMS has continued to work in surveillance part, and the staff that belonged to FLEC has continued to deal with fishing affairs. The latter will be analysed in detail in chapter 4 that follows.

### **1-3 Purpose and Structure of the Dissertation**

As it was mentioned before; CCGA was established on July 22, 2013, which revealed that a new phase of China's maritime law enforcement was coming. Despite CCGA having been established and the initial step of restructuring activities having been done, the optimizing process of the result of the restructuring activities is still going on. CCGA is still facing a lot of urgent problems: Firstly, the detailed mandates and responsibilities of CCGA should be clarified because there is no detailed description or regulation regarding the responsibilities of CCGA. Secondly, the law foundation of CCGA should be clarified with respect to the international laws and national laws. Before the restructuring activities, the different legal basis of former departments was dispersed in different laws and regulations. Although the CCGA was formulated by integrating those departments mentioned above, the legal basis for CCGA should be examined, further taking into account relevant international laws and domestic laws because of the special status of CCGA regarding a paramilitary department. Finally, it is difficult to achieve the goal of restructuring activities in the short run. The new CCGA will face plenty of challenges during the future activities. Meanwhile,

challenges are always accompanied by opportunities. These challenges and opportunities should be researched in more depth in order to optimize the further restructuring activities. With the purpose of solving the problems mentioned above, the research of this dissertation is important, necessary and qualitative in nature with the aim to promote the process of restructuring activities.

This dissertation has five chapters. Chapter one will explain the purpose and the structure of this dissertation. It provides a comprehensive cognition of the former circumstances of China's maritime law enforcement and the restructuring activities, which can lay the foundation for the analysis of the detailed responsibilities carried out by CCGA as well as the relation between CCGA and other related departments. Chapter two will introduce and explain the current framework and functions of CCGA, and along with discussing all other departments that have responsibilities for maritime affairs partly, and then analysing the relation between CCGA and them. Chapter three will highlight the legal basis based on the international laws and the domestic legislation in consideration of the special status of CCGA. Chapter four will analyse the challenges and opportunities faced by CCGA, which is the main part of this dissertation in order to state the urgent problems suffered by CCGA and lay the foundation for the future restructuring activities. Chapter five will provide the conclusion of this dissertation. Furthermore, it will put forward the necessary recommendations for the future restructuring activities based on the analysis in this dissertation.

## **2 The Present Situation of China's Coast Guard Administration**

Chapter 1 briefly discussed the situation of China's maritime law enforcement in the near past. Today, MSA, CCGA and PLA Navy are the three main pillars of maritime law enforcement, all safeguarding China's rights and interests on the ocean. These three entities will deal with maritime affairs within their responsibilities. Initially, the current chapter will describe the framework and functions of CCGA in order to provide a basic explanation of CCGA. Then, a comparison of the responsibilities of CCGA with other related departments will be provided. By doing this, the author is trying to provide a clear cognition of the present situation of CCGA.

### **2-1 Framework and Functions of China's Coast Guard Administration**

#### **2-1-1 Framework**

In accordance with IISS 2013, maritime law enforcement is conducted by SOA on behalf of China Coast Guard. Therefore, CCGA is not a fully independent administrative body. The relationship between CCGA and SOA can be described as one department with two titles because the structure of CCGA is attached to SOA. The most significant difference between SOA and CCGA is that CCGA also receives professional guidance from MPS but SOA does not. In fact, there is one relatively independent branch of SOA executing the specific responsibilities of CCGA. Consequently, it reveals that the CCGA will be under the dual leadership of the SOA and MPS. (Hong, 2015) The second leadership of Ministry of Public Security determines the special status of CCGA, which is a paramilitary department.

In general, there are four levels in the framework of CCGA. The first level is the headquarters which consists of three internal departments of SOA called the Command of Coast Guard, the Political Department of Coast Guard and the General Logistics Department of Coast Guard. The second level is three Branches of SOA located in primary areas around coastal provinces which are the North Sea Branch, the East Sea Branch and the South Sea Branch. The third level is the General Division under Branch. The fourth level is the Division under the General Division. Figure 2.1 shows the detailed framework of CCGA.

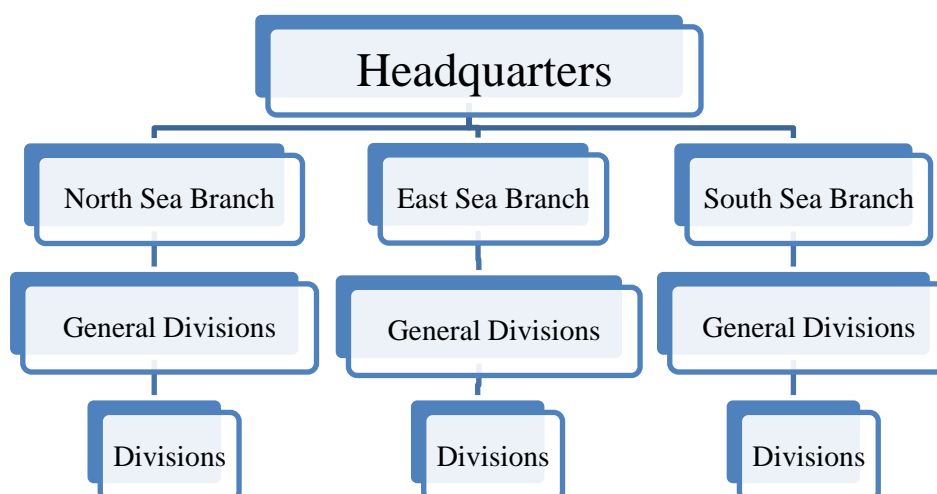


Figure 2.1 Framework of China's Coast Guard Administration

### 2-1-2 Functions of China's Coast Guard Administration

After the restructuring, CCGA integrated all the responsibilities conducted by the former departments. Overall, in accordance with IISS 2013, the responsibilities carried out by CCGA can be summarized as follows:

- Draft regulations, procedure, measures and standards of enforcing maritime law;
- Patrol of China's ocean area;



- Anti-smuggling, anti-piracy, anti-drugs, anti-people smuggling, combat crime at sea;
- Maritime policing, harbour and coastal security;
- Research and survey, Search and Rescue coordinated with other departments;
- Fisheries protection.

Regarding the headquarters, firstly, the Command Centre of Coast Guard is responsible for drafting regulations, measures, standards and procedures of enforcing maritime law. It is also responsible for commanding and organizing the specific missions regarding maritime law enforcement activities at sea. Secondly, the Political Department of the Coast Guard is responsible for the human resource management, and adjusting organizations or structures of CCGA. It is responsible for the training as well, including recruiting and training new staff as well as retraining incumbent staff. Thirdly, the Department of Logistics and Equipment of Coast Guard is responsible for budget and final account of the headquarters and subordinate divisions. It is also responsible for financing and managing all the state-owned assets. The website of SOA has information relating to this ([http://www.soa.gov.cn/english/201409/t20140926\\_33679.html](http://www.soa.gov.cn/english/201409/t20140926_33679.html)).

Regarding Branches, the respective Branch mainly exercises the general or multiple functions of administration and leads the maritime law enforcement activities within their responsible area. The Branches can establish General Divisions within their jurisdictions on deeds. The General Divisions are always located in the certain area direct-controlled by the Branches and mainly exercise the specific functions of administration provided by the superior authority. The Divisions are established by

General Divisions, mainly exercising the functions of the on-scene administration under the orders issued by the higher authority. Overall, CCGA applies a vertical management system<sup>1</sup>. The order would be transmitted from superior authorities to subordinate authorities, which provides high control inside CCGA.

## **2-2 The Relation between CCGA and Other Relevant Departments**

As it was mentioned before, there are three different main pillars of maritime law enforcement in China. However, maritime affairs are complicated and varying in nature. Maritime affairs involve safety, security and environmental protection at sea. Therefore, maritime affairs will be dealt with by all the related departments effectively. Besides CCGA, MSA and PLA Navy, MPS, the Ministry of Land and Resources, the Ministry of Agriculture, the General Administration of Customs and the Ministry of Environmental Protection have related duties mentioned before as well, such as providing professional advice on making policy and laws, protecting marine environment, developing ocean economic, and providing marine public service. Dealing with the relationship with these relevant departments is a challenge CCGA is facing and this will be analysed in Chapter 4.

### **2-2-1 Relation between CCGA and Other Policy-Making Departments**

Regarding the relation between CCGA and MPS, CCGA follows professional guidance from MPS in terms of combating crime at sea and maintaining the order at sea. As it was mentioned earlier, CCGA is under a dual leadership of SOA and MPS. Because of the special leadership, CCGA could be defined as a paramilitary department, and CCGA has the right of policing law enforcement. This special status

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<sup>1</sup> Vertical Management System: With the term “vertical management system” is described that management or supervisors pass information and orders from the top of the organizational pyramid down toward the bottom. Little communication or feedback flows from the bottom up or from side to side. This creates a high control, low autonomy environment. This system is also called top-down management system or hierarchical system (Li, 2012).

of CCGA is very important for analysing the nature of CCGA and working measures conducted by CCGA. The issue about the leadership of CCGA will be analysed in chapter 4.

Then regarding the Ministry of Land and Resources, it is the direct superior authority of SOA. Meanwhile, it is the direct superior authority of CCGA. Therefore, CCGA should follow the guidelines from the Ministry of Land and Resources. In addition, the basic working rules followed by CCGA should be the administrative regulations of the Ministry of Land and Resources. In the future, the internal administrative rules of CCGA drafted by CCGA should get the permission of the Ministry of Land and Resources. Furthermore, all the significant decisions made by CCGA should take consideration of the opinions and instructions of the Ministry of Land and Resources.

As for the Ministry of Agriculture, firstly, it is responsible for making policy and strategy regarding fisheries affairs. CCGA will contribute to these policy-making activities. Secondly, CCGA is responsible for conducting the inspection of illegal fisheries activities at sea, and implementing administrative penalty about illegal fisheries activities. Thirdly, the Ministry of Agriculture is responsible for negotiating and enforcing bilateral and multilateral agreements about fisheries activities which are contributed by CCGA. Regarding the actual inspection and implementation, CCGA is responsible for cooperating with related foreign agencies to achieve the aim of bilateral and multilateral agreements.

Concerning the General Administration of Customs, CCGA and the General Administration of Customs should share intelligence regarding combating smuggling

activities. CCGA will conduct the specific law enforcement activities based on the information provided by the General Administration of Customs. To be clear, CCGA is responsible for combating smuggling activities at sea. The smuggling activities occurring in the internal waters<sup>1</sup>, boundary rivers and boundary lakes<sup>2</sup> should be combatted by the General Administration of Customs and the Public Security Border Troops of MPS. In some special circumstances, the General Administration of Customs and CCGA should conduct the joint operation to combat serious smuggling activities at sea.

Overall, the benefit of separating policy-making departments and law enforcement departments is integrating the right of maritime law enforcement as much as possible. By doing this, it can eliminate the bad influence of decentralization of powers mentioned above at least. It can improve the efficiency of law enforcement as well. However, there is also a drawback of this system. It may cause the divergence between policy-making and practical work. That is why cooperation and communication between the policing-making departments and law enforcement departments are very important in the future, which is also a significant challenge faced by CCGA, which will be analysed in Chapter 4.

### **2-2-2 Relation between CCGA and PLA Navy**

PLA Navy is the naval branch of the People's Liberation Army. In fact, the primary responsibility of the People's Liberation Army is to defend China's territory with the aim of safeguarding sovereignty and territorial integrity. Hence, PLA Navy has the

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<sup>1</sup> Internal Waters: With the term "internal water" is described that waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State, except as provided in Part IV (UNCLOS, Article 8)

<sup>2</sup> Boundary Rivers, Boundary Lakes: Oxford advanced learner's dictionary of current English (Hornby, Wehmeier, McIntosh, Turnbull & Ashby, 2005) defined the term "boundary river and boundary lake" as that the river or the lake is used to marks the boundary between the two regions.

right to perform military tasks and defend maritime areas under Chinese sovereignty. However, CCGA has dual responsibilities which are the administrative duty and policing duty. Therefore, the mandates between CCGA and PLA Navy are totally different (Qian, 2014, p.5). In addition, there is a fundamental difference in the missions carried out by CCGA and PLA Navy. In maritime areas beyond national jurisdiction, such as the high seas<sup>1</sup>, only navies can legitimately exercise authority as flag states (Hong, 2015). In maritime zones within national jurisdiction, both PLA Navy and CCGA can carry out their duties. Appendix A provides the specific articles regarding this issue such as Article 107.

Currently, PLA Navy is a solid shield for CCGA with respect to safeguarding China's marine interests. Obviously, both professional quality and equipment of PLA Navy has more advantages than CCGA, which is a new department. Meanwhile, as a paramilitary department, necessary military training and education is required by CCGA. Therefore, during the transitional period of the restructuring activities, PLA Navy can provide necessary assistance to CCGA by using their advantages, such as training staff, optimizing equipment and improving professional ability. In particular, information sharing, coordination during both peacetime and wartime is very important for both of them (Liu, 2014, p.53).

In the future, CCGA and PLA Navy will constitute two levels of support with the aim of safeguarding maritime benefits and interests. Along with the special status of CCGA and PLA Navy and their advantages, CCGA will be the soft support power in

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<sup>1</sup> High Sea: With the term "high sea" is described as all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State (Article 86 of UNCLOS).

the first level which represents the administrative law enforcement and policing power of China. Meanwhile, PLA Navy will be the hard support power in the second level representing the military power of China. Definitely, by implementing this system, it will have the positive impact on settling disputes and accidents at sea by peaceful measures.

### **2-2-3 Relation between CCGA and MSA**

Paragraph 1-1-1 introduced the status and primary responsibilities of MSA. To begin with, both MSA and CCGA are entities of maritime law enforcement; they have the right to take administrative measures to regulate domestic and foreign ships which are sailing in the Chinese coastal waters. Obviously, they have the right of administrative law enforcement. In practice, the responsibilities of CCGA and MSA will be overlapping regarding some specific areas, such as inspecting ships with different aims, dealing with affairs about marine environment, as well as affairs related to marine security. Meanwhile, there are still some differences between CCGA and MSA discussed as follows:

On the one hand, the focal point of responsibility and the nature of maritime law enforcement are different. There is a “different” nature of CCGA, which is a paramilitary department. CCGA has the right of policing law enforcement. As for MSA, it only has administrative rights. Therefore, the contents and measures of law enforcement are a little different during the process of law enforcement. In fact, CCGA focuses more on the security part by striking national or foreign crime with the aim of maintaining public security. CCGA also deals with the fisheries affairs. However, MSA focuses more on the safety of navigation and environment as it was mentioned in paragraph 1-1-1.

On the other hand, the mandate is different. Firstly, MSA carries out the responsibilities of Port State Control (*The Approval of the Main Responsibilities and Staffing on the People's Republic of China Maritime Safety Administration*, 1998). MSA conducts port state control under the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MoU) and relevant international instruments. CCGA does not have the right to conduct Port State Control operations. Secondly, because of the special status of CCGA, CCGA could use force during law enforcement operations. Although it is not clear according to Chinese legislation, this issue will be analysed in Chapter 3. As for MSA, it is just an administrative agency. Thirdly, MSA is mandated to be in charge of administration, certification and supervision of ships, and in charge of training, examining and certificating seafarers and pilots.

### **2-3 Summary of the Present Situation**

In accordance with Chapter 1, it was obvious that the old situation had a lot of disadvantages because of the decentralization of the maritime jurisdiction, and the lack of coordination. In addition, the unwieldy organizations were difficult to supply and manage, resulting in poor operation efficiency. At present, the entire maritime administration and law enforcement agencies are constituted by policy-making departments and maritime law enforcement departments. Regarding maritime law enforcement departments, MSA, CCGA and PLA Navy constitute three pillars of maritime law enforcement safeguarding China's rights and interests on the ocean with different responsibilities and legal status in different aspects. Figure 2.2 shows the structure of the maritime administration and law enforcement departments. Obviously, the current state is more feasible and efficient for the practical situation in

China, because this structure makes the relationship between entities of maritime law enforcement clear and simple. In addition, the opportunities CCGA has are the significant advantage of this structure. These opportunities are chances for CCGA to develop better and better in the future.

Regarding entities of maritime law enforcement, firstly, CCGA is an entity which has the right to both administrative law enforcement and policing law enforcement, because CCGA has dual leadership and special status. Dual leadership means CCGA is commanded by SOA and follows the professional guidance from MPS which is a drawback of CCGA in the author's opinion. This issue will be further analysed in Chapter 4. Special status means CCGA is a paramilitary department which has the right of policing law enforcement by using forces during a mission in specific situations. This issue will be analysed in Chapter 3. Secondly, MSA is an administrative department<sup>1</sup> carrying out the responsibilities to exercise administrative law enforcement regarding to paragraph 1-1-1. Thirdly, PLA Navy is a military force carrying out military missions.

It has to be mentioned that the status between a military department and a paramilitary department is different. According to the definition of paramilitary in paragraph 1-1-1, a paramilitary department should help the official army of a country. Herein, the status between CCGA and PLA Navy is different. In peacetime, the right of administrative law enforcement and policing law enforcement exercised by CCGA assure the legality of China's regular maritime law enforcement activities.

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<sup>1</sup> Administrative Department: The Free Dictionary by Farlex defined the term "administrative department" as an official governmental body empowered with the authority to direct and supervise the implementation of particular legislative acts. In addition to agency, such governmental bodies may be called commissions, corporations (e.g., Federal Deposit Insurance Corporation), boards, departments, or divisions.



Meanwhile, instead of PLA Navy, CCGA could mitigate conflicts between China and neighbouring countries in order to avoid further escalation if disputes or legal cases happen. PLA Navy only takes action under special emergency circumstances when CCGA has no jurisdiction, for example, if foreign warships sail into sea areas in China, or during wartime, or performing escort missions on the high seas.

Additionally, other policy-making departments also play critical roles in safeguarding China's marine benefits. Their professional advice on maritime affairs could help maritime law enforcement departments improve the efficiency of law enforcement. Regarding the similar responsibilities between CCGA and General Administration of Customs mentioned before, necessary coordination should be conducted between them. Maritime law enforcement departments and policy-making departments should make efforts together with the aim of safeguarding China's marine benefits and interests at practical and theoretical levels.

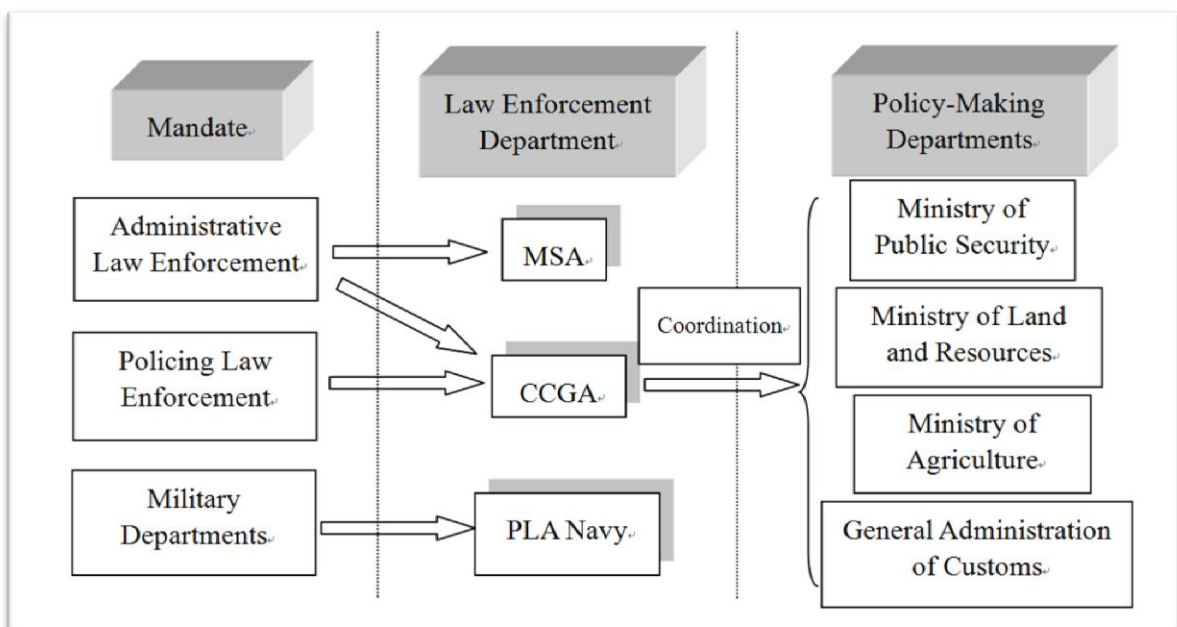


Figure 2.2 Structures of the Maritime Administration and Law Enforcement Agencies

### **3 Legal Foundations for China's Coast Guard Administration**

Chapter 2 provided the physical structure of China's Coast Guard Administration by discussing the framework, function and relations to other relevant departments of CCGA. This chapter will discuss the legal foundations of CCGA with the aim of providing a strong legal support for CCGA to fulfil its mandates. Firstly, section 3.1 will explain some basic definition of terms mentioned previously and afterwards discuss regarding law enforcement. Secondly, section 3.2 will discuss the influence of international laws on CCGA. Finally, section 3.3 will discuss the influence of domestic laws on CCGA. Analysing the legal foundations of CCGA could indicate the responsibilities and obligations undertaken by CCGA clearly and validly.

#### **3-1 Explanation of Terms Cited by this Dissertation**

- Law enforcement

Law enforcement is a very valuable term, because the enforcement of the law is vital in all societies. In a broad sense, without law enforcement, society would eventually cease to exist. Generally speaking, the function called law enforcement is a society's formal attempt to obtain compliance with the established rules, regulations, and laws of that society (Conser, Paynich & Gingerich, 2011, p.1). In the United States (US), the definition of law enforcement is one means of formally supervising human behaviour to ensure that the laws and regulations of a society are followed and that there is a certain amount of security and stability in society. According to Conser, the law enforcement in all forms is legally authorized by the concept of police powers, which are the government's lawful authority to enact regulations and laws

related to health, safety, welfare, and morals. However, the definition of law enforcement is a little different in China in a narrow sense. The right of law enforcement has a wider explanation, which is to implement the law to specific person or specific incident during the process of fulfilling functions and powers by government administrative departments or organizations legally in accordance with statutory authority and legal procedures (E, 2007, p.15). Law enforcement is made up of the right of administrative law enforcement and the right of policing law enforcement.

- Maritime law enforcement

The right of maritime law enforcement is derived from a national maritime jurisdiction<sup>1</sup>, which is on the basis of state sovereignty<sup>2</sup> and national jurisdiction<sup>3</sup>. Regarding maritime law enforcement specifically, it is the right to implement laws when the general entity of maritime administration fulfils its responsibilities and obligations in accordance with laws, regulations and international instruments; to regulate vessels, person, and activities at sovereign maritime area and other maritime area defined by international laws (Zhang, 2004, p.120). As mentioned before, the right of maritime law enforcement were decentralized by different entities of the maritime administration, which was an obstacle influencing the effectiveness of maritime law enforcement before the

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<sup>1</sup> National Maritime Jurisdiction: With the term “national maritime jurisdiction” is described that a sovereign state has the rights to regulate various maritime affairs on the basis of national sovereignty and international conventions. National marine jurisdiction is a significant component of National jurisdiction (Song, 2009, p.14).

<sup>2</sup> National Sovereignty: With the term “national sovereignty” is described the supreme, absolute, and uncontrollable power by which an independent state is governed and from which all specific political powers are derived; the intentional independence of a state, combined with the right and power of regulating its internal affairs without foreign interference (Shao, 2012, pp.167-170).

<sup>3</sup> National Jurisdiction: Encyclopedia Britannica defined the term “national jurisdiction” as a nation possesses supreme authority, or sovereignty (called jurisdiction), over all territory, things, and persons within its boundaries. It may also exercise jurisdiction over its own property and its nationals and their property in foreign jurisdictions, subject to the jurisdiction of other nations as set forth in international law or treaties.

restructuring activities. Currently, MSA and CCGA are principal entities to take the right of maritime law enforcement apart from PLA Navy, which has limited responsibilities for maritime law enforcement. The right of maritime law enforcement carried out by MSA is mainly related to ensuring the safety of transport. Other general contents of the right of maritime law enforcement are held by CCGA, such as maintaining security at sea, managing fishery activities, and protecting the marine environment. Additionally, the scope of the right of maritime law enforcement is not limited to a maritime area where China has full sovereignty; it also includes the contiguous zone<sup>1</sup>, EEZ, and the continental shelf<sup>2</sup> where China has sovereign rights, even the high seas on the basis of UNCLOS. Appendix A provides the detailed provisions regarding this issue. It is obvious that the scope of maritime law enforcement is broad.

- Administrative law enforcement

Administrative law enforcement is the power to administer or enforce a law. Administrative law enforcements can be executive, legislative, or judicial in nature. Administrative law enforcement intends to put the laws into effect, practical application of legislation and execution of the principles prescribed by the legislature. Administrative agencies exercise considerable discretion in implementing policy mandates from legislatures or other political authorities. The older idea that agencies are mere "transmission belts" that simply translate policies into action without exercising any independent judgment, is no longer

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<sup>1</sup> Contiguous Zone: With the term "contiguous zone" is described in a zone contiguous to its territorial sea, described as the contiguous zone. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured (Article 33 of UNCLOS).

<sup>2</sup> Continental Shelf: With the term "continental shelf" is described that the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance (Article 76 of UNCLOS).

accepted as accurate (Rosenbloom, 2009, p.4). The nature of administrative law enforcement is the performance of the national public authority in order to protect the public justice and the public order. Normally, administrative law enforcement is not mandated to use force in order to achieve the aim. If it is necessary, administrative agencies could call for judicial interference. The form of expression of administrative law enforcement is administrative measures applied by the administrative agency. For example, MSA has the right to inspect and detain domestic vessels or foreign vessels, and collect administrative fees based on Chinese domestic laws and regulations. Regarding MSA and CCGA, they both are administrative agencies. As mentioned before, the main difference between MSA and CCGA is the mandate authorized by laws. MSA only has the right to take administrative measures to fulfill its responsibilities, while CCGA has the right of policing law enforcement which can use forces in the course of law enforcement.

- Policing law enforcement

The right of policing law enforcement came from the term of police power which was used by the United States Chief Justice John Marshall as early as 1827 to describe the sovereign powers retained by the states when they delegated some of their authority to the federal government under the US Constitution (Neocleous, 2007, p.1). Herein, the right of policing law enforcement is a relative concept with administrative law enforcement. Policing law enforcement mainly maintains public security and safety. The aim of policing law enforcement is to prevent, detect, investigate and combat criminal activities effectively and legally. CCGA integrated CMPB and the Customs Police, which

hold the right of policing law enforcement as mentioned before (Cai, 2013). The inheritance relation provided CCGA the legal foundation for the right of policing law enforcement. However, the other two integrated departments, FLEC and CMS, only have the right of administrative law enforcement. There are no clear provisions of Chinese legislation regarding this issue whether CCGA has the right of policing law enforcement or not. Nevertheless, it was based on the fact that the right of policing law enforcement was carried out by CMPB and the Custom Police transferred to CCGA during the restructuring activities. It is appropriate and legitimate to deem that CCGA has the right of policing law enforcement.

### **3-2 International Laws**

At the international law level, UNCLOS is the principal international convention providing the legal foundation for CCGA to carry out the right of maritime law enforcement. UNCLOS was ratified by the People's Republic of China on May 15, 1996, and entered into force on July 7, 1996. UNCLOS provides the scope and legal status of internal waters, territory sea, contiguous zones, and archipelago, straits used for international navigation, exclusive economic zone, continental shelf, high sea and international seabed area<sup>1</sup>(Area), as well as the right of coastal states within these areas (Si, 2002, p.349).

#### **3-2-1 Sovereignty and Sovereign Rights**

As mentioned before, the right of maritime law enforcement are on the basis of national sovereignty and national jurisdiction. UNLCOS regulates sovereignty and jurisdictions enjoyed by Member States regarding the defined maritime areas.

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<sup>1</sup> International Seabed Area: With the term "international seabed area" is described the area that means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.(Article 1 of UNCLOS)

Appendix A provides detailed provisions of UNCLOS regarding this issue:

- Internal waters and territorial sea: According to Article 2 of UNCLOS, the sovereignty of a coastal State extends, beyond its land territory, internal waters as well as the territorial sea.
- Contiguous Zone: According to Article 33 of UNCLOS, in their contiguous zone, the coastal State may exercise the control necessary in specific situations which are provided in Appendix A.
- Exclusive economic zone: The coastal State has sovereign rights and jurisdiction as provided for in the relevant provisions of UNCLOS within EEZ according to Article 56 of UNCLOS. Meanwhile, Article 73 of UNCLOS provides the coastal State may exercise their sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
- Continental Shelf: The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources according to Article 77 of UNCLOS.

Based on the provisions of UNCLOS mentioned above, China can definitely exercise sovereignty over internal waters and territorial sea, as well as sovereign rights over EEZ and continental shelf owned by China as the Member State of UNCLOS. Therefore, CCGA can represent the Chinese government to exercise the right of maritime law enforcement, to fulfil the responsibilities and obligations provided by UNCLOS because CCGA is a principal maritime law enforcement department

administered by the Chinese government. These provisions are strong legal support and evidence for CCGA to conduct patrol activities at sea, to settle disputes with neighbouring countries, to maintain security at sea, and to carry out other relevant legal activities.

### **3-2-2 National Jurisdiction**

On the international law level, apart from the legal foundation provided by sovereignty and sovereign rights, national jurisdiction could be another legal basis of the right of maritime law enforcement. The definition of national jurisdiction was mentioned before; it is a natural right enjoyed by a country. Furthermore, UNCLOS also provides some provisions related to national jurisdictions, such as the right of adopting laws and regulations to regulate certain marine affairs at certain maritime zones, the right of visit, as well as the right of hot pursuit. A coastal country can exercise its national jurisdiction by performing these rights.

Firstly, regarding the right of adopting laws and regulations to regulate certain marine affairs in certain maritime zones, there are plenty of provisions of UNCLOS indicating that the coastal State has this right. For example, Article 21 of UNCLOS provides that the coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea. Article 209, Article 210, Article 211, Article 212 of UNCLOS provide that States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area by dumping, from vessels, and from or through the atmosphere respectively. Article 213 of UNCLOS provides that States shall enforce their laws and regulations adopted in accordance with Article 207 and shall adopt laws and regulations and take



other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from land-based sources.

Secondly, regarding to the right of visit, Article 110 of UNCLOS provides that a warship or any other duly authorized ships or aircraft clearly marked and identifiable as being on government service have the right to board and inspect a foreign vessel on the high sea when there is reasonable ground for suspecting that in specific situations which are provided in Appendix A. (Zhao, 2009, p.21). Herein, besides the warship, the governmental ship of CCGA is satisfied with the definition of any other duly authorized ships or aircraft clearly marked and identifiable as being on government service. Therefore, the governmental ship of CCGA could certainly carry out this right.

Thirdly, regarding the right of hot pursuit, the hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State according to Article 111 of UNCLOS. The right of hot pursuit is a measure of maritime law enforcement widely recognized by the international community applying to internal waters, territorial sea, contiguous zone, EEZ, and continental shelf. Like the right of visit, the entity of hot pursuit should be a warship or any other duly authorized ships or aircraft clearly marked and identifiable as being on government service as well. It means the governmental ship of CCGA can carry out this right as well. It is worth mentioning that Paragraph 1 of Article 111 of UNCLOS provides the good reason

should be with the hot pursuit operations. However, there is not a uniform standard of the good reason. Normally, it is believed that the identification of illegal activities of foreign vessels should be based on strong evidence. Any loss suffered by a foreign vessel should be compensated by the coastal State that conducts hot pursuit activities without justified reasons (Jiang, 2006, p.39).

The right of adopting laws and regulations, the right of visit and the right of hot pursuit constitute the national jurisdiction provided by UNCLOS. It covers all the maritime zones owned by China. These rights not only provide the legal foundation for maritime law enforcement but also measures of law enforcement to fulfil national jurisdictions. As mentioned before, CCGA is authorized as a maritime law enforcement department by the Chinese government. Therefore, CCGA has the right to fulfil its responsibilities and obligations provided by UNCLOS based on national jurisdiction.

### **3-3 Domestic Laws**

The management of the sea in China started late. The situation of no specific department dealing with maritime affairs was ended in 1964 by the establishment of SOA since the founding of new China. Subsequently, apart from the international instruments adopted by China, a series of domestic laws and regulations have been enacted by the Chinese Government with the aim of protecting national marine benefits, regulating developing activities at sea, and protecting the marine environment. Until now, the main legal basis of maritime law enforcement in China is marine laws, marine regulations, national statement, and maritime departmental rules. These domestic legal instruments can be categorised by four aspects (Li, 2014, p.16): safeguard sovereignty and marine benefits, protect the marine environment,

develop and manage marine resources, as well as substantial and procedural law of law enforcement.

### 3-3-1 Safeguarding Sovereignty and Marine Benefits

Table 3.1 Laws and regulations regarding safeguarding sovereignty and marine benefits

Laws or Regulations	Promulgation Date
Declaration of the Government of the People's Republic of China on the Territorial Sea of the People's Republic of China	September 04,1958
Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone	February 25, 1992
Declaration of the Government of the People's Republic of China on the Baselines of the Territorial Sea of the People's Republic of China	May 15,1996
Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China	June 26, 1998
Island Protection Law of the People's Republic of China	December 26, 2009
Declaration of the Government of the People's Republic of China on the Baselines of the Diaoyu Island and its affiliated islands	September 10, 2012

(Source: Li, 2014)

Table 3.1 indicates main domestic laws and regulations regarding safeguarding sovereignty and marine benefits. These laws and regulations cover all the maritime zones such as the territorial sea, contiguous zone, EEZ, and continental shelf, where the Chinese government has jurisdiction (Ding & Li, 2010, p.143). Herein, these laws

define various Chinese maritime zones legally, as well as lay the foundation of the scope of activities performed by entities of maritime law enforcement, which are MSA and CCGA. It is worth mentioning that three declarations listed in Table 3.1 indicate China's attitude and stands regarding territory and jurisdictional maritime zones. Especially, *Island Protection Law of the People's Republic of China* indicates that China will take feasible measures to control the islands belonging to China since ancient times effectively in order to respond to the fact that some of China's islands are illegally occupied by foreign countries.

### 3-3-2 Protection of the Marine Environment

Table 3.2 Laws and regulations regarding protection of marine environment

Laws or Regulations	Promulgation Date
Marine Environment Protection Law of the People's Republic of China	August 23, 1982
Regulations of the People's Republic of China Concerning Environmental Protection in Offshore Oil Exploration and Exploitation	December 29, 1983
Regulations of the People's Republic of China on the Control over Dumping Wastes into the Sea Waters	March 06, 1985
Administrative Regulation on the Prevention and Treatment of the Pollution and Damage to the Marine Environment by Marine Engineering Construction Projects	November 01, 2006
Administrative Measures of the People's Republic of China for Marine Nature Reserves	October 09, 1994
Regulations of the People's Republic of China on the Control over Prevention of Pollution by Vessels in Sea Waters	December 29, 1983

(Source: Li, 2014)

Table 3.2 indicates main laws and regulations regarding the protection of the marine environment. These laws and regulations regulate emissions at sea and the standard of related marine operations with the aim of protecting the marine environment and keeping the seas clean. Among them, *Marine Environment Protection Law of the People's Republic of China* is one specific single law dealing with the marine environment. It provides the responsibilities and obligations of the national administration of the marine environment, as well as administrative measures that can be used by the national administration of the marine environment, which is CCGA. For example, the National Administration of the Marine Environment has the right to board and inspect foreign vessels which cause pollution in Chinese jurisdictional maritime zones according to Article 5 of *Marine Environment Protection Law of the People's Republic of China*.

### 3-3-3 Development and Management of Marine Resource

Table 3.3 Laws and regulations regarding development and management of marine resource

<b>Laws or Regulations</b>	<b>Promulgation Date</b>
Regulation of the People's Republic of China on Sino-foreign Cooperation in the Exploitation of Continental Petroleum Resources	January 30, 1982
Fisheries Law of the People's Republic of China	January 20, 1986
Mineral Resources Law of the People's Republic of China	March 19, 1986
Law of the People's Republic of China on the Administration of Sea Areas	October 27, 2001

Maritime Traffic Safety Law of the People's Republic of China	September 02, 1983
Provisions Governing the Laying of Submarine Cables and Pipelines	January 20, 1989
Provisions of the People's Republic of China on Administration of Foreign-related Marine Scientific Research	June 18, 1996

(Source: Li, 2014)

Table 3.3 indicates main laws and regulations regarding development and management of the marine resources. These laws and regulations provide a legal regime about how to develop, protect and manage natural resources in China's jurisdictional maritime zones in order to achieve the goals of sustainable development of marine economy and sustainable utilization of marine resources. In the past, fisheries affairs were supervised by FLEC. Exploitation and exploration of mineral resources, as well as administration of sea areas, were overseen by SOA. Currently, SOA is a key department which is responsible for overseeing the development activities of marine resources and administration of maritime areas after restructuring activities, which means that it is CCGA's responsibilities as well.

### 3-3-4 Substantial and Procedural Law of Law Enforcement

Table 3.4 Laws and regulations regarding substantial and procedural law of law enforcement

Laws of Regulations	Promulgation Date
Law of the People's Republic of China on Administrative Penalty	March 17, 1996

Implementing Measures for Maritime Administrative Punishments	January 06, 2003
Provisions on the Administration of Fishery Administrative Cruising within Exclusive Economic Zones	November 14, 2005

(Source: Li, 2014)

Table 3.4 indicates main laws and regulations regarding the substantial and procedural law of law enforcement. These laws and regulations provide the procedures should be followed by maritime law enforcement departments when they perform their responsibilities. It was pointed out before, that CCGA is a partial administrative department which has administrative responsibilities. Therefore, these legislation and regulations could be implemented by CCGA. Herein, the procedure of law enforcement mainly regulates administrative law enforcement. Regarding policing law enforcement, there are no specific laws or regulations providing the legal basis for CCGA. However, because of the dual leadership of CCGA, which is concurrently led by MPS, laws and regulations related to the police should be considered as legal foundations as well, such as *People's Police Law of the People's Republic of China* promulgated on February 28, 1995 and *Law of the People's Republic of China on the People's Armed Police Force* promulgated on August 27, 2009.

### **3-4 Summary of Legal Foundations**

Overall, the legal foundations for CCGA are constituted by two levels, which are international laws and domestic laws. Regarding international laws, the main convention is UNCLOS which lays the foundation of legality for China to govern jurisdictional maritime zones based on sovereignty, sovereign rights and national jurisdictions at the international law level. It provides the principles that should be

applied to the delimitation of maritime zones and stresses the rights exercised by a sovereign country within different maritime zones. Regarding domestic laws, it covers almost all aspects which are related to maritime affairs, such as safeguarding sovereignty and marine benefits, protection of marine environment, development and management of marine resources, as well as the substantial and procedural law of law enforcement. Each domestic law has its emphasized points and has an important impact on the governance of different maritime affairs. The domestic laws are based on the principles provided by related international laws which are ratified by China and combine with the actual situation of China, as well as providing comprehensive protection of Chinese maritime affairs. The most important thing is these domestic laws lay the specific legal foundations for CCGA and other related departments. For example, Article 6 of *Fisheries Law of the People's Republic of China (2013 Amendment)* identifies the department of fishery administration under the State Council should be in charge of the administration of fisheries throughout the country. Now the department of fishery administration is CCGA. Apparently, all these legal instruments formulate a relatively complete legal system regarding Chinese marine affairs. However, the flaws of the legal foundation are also significant challenges for CCGA in the future. This issue will be further analysed in Chapter 4.



## **4 Challenges and Opportunities**

The previous discussion covered the former situation of Chinese maritime law enforcement, the present situation of China's Coast Guard Administration and the legal foundations for CCGA, which indicated that CCGA has solid organizational foundations and legal foundations. These organizational foundations and legal foundations can help CCGA to overcome many problems. For example, a great many former professional law enforcement personnel can work directly without too much training. Furthermore, all the original governmental vessels can be used by changing the hull number to China Coast Guard. However, theoretically and practically, a new department will still face considerable challenges and have many opportunities no matter how to solidify the foundations it has. Therefore, the author intends to identify the major challenges and significant opportunities CCGA will be facing in this chapter.

### **4-1 Challenges**

The challenge is something new and difficult, which requires greater efforts and determination (Xiao, 2000, p.61). Because IISS 2013 is a general guiding document which just states nature, the structure and the responsibilities of CCGA briefly, some challenges have occurred when the restructuring activities are in practice. Challenges CCGA has can be recognized by two levels, which are internal challenges and external challenges. On the one hand, internal challenges mainly come from the capability of law enforcement, management of staff and equipment, as well as challenges of the leadership of CCGA. Internal challenges are mainly drawbacks within CCGA which should be overcome in future work step by step. On the other hand, external challenges mainly come from the law of legal foundations, the stress

of relevant departments, as well as the specific issues dealt with by CCGA. External challenges cannot be solved by CCGA unilaterally. It will change in times of special circumstances.

#### **4-1-1 Internal Challenges**

- Challenges of the leadership of CCGA

Regarding the framework of CCGA as mentioned before, CCGA has dual leadership. According to Eckman (2006), the weakness that was identified most frequently of dual leadership was the perception of the co-principals that they were “being played off one another.” To be specific, dual leadership is manifested by the two superior authorities and the titles owned by the main leaders. The two superior authorities are MPS and SOA as mentioned before. About the titles of the core leaders, the director of CCGA is the deputy director of SOA and the deputy minister of MPS. The administrative rank of the director of CCGA is a minister. The political commissar of CCGA is the director of SOA. The administrative rank of SOA is assisting roles of ministries or equivalents. It is reasonable because it happens in Chinese administrations that the leader of one department has a higher rank than the department itself. However, the leadership of CCGA is complicated because it is difficult to recognize who the real leader of CCGA is in fact. On the other hand, CCGA is one part of SOA in a sense because SOA perform duties in the name of CCGA as mentioned before. However, because of the complicated leadership, within CCGA, it easily results in conflicting guidance and interests between SOA and CCGA, and even MPS, which has a disadvantageous influence on law enforcement activities. To some extent, dual leadership can assist CCGA to get through the transitional period by drawing support from other departments. Nevertheless, in the long run, dual leadership will lower efficiency of law enforcement in the future.

Therefore, dual leadership is a principal challenge in the future.

- Challenges of the management of staff

Restructuring activities put the former staff from different departments under CCGA's administration. In the meantime, CCGA has recruited new staff who just graduated from university as reserve officers. These two parts of staff are the structure of the staff of CCGA. Among them, four main challenges can be summarized: 1. The coordination of the relationship among previous staff in order to make them work together effectively; 2. The quality of recruiting new staff; 3. The establishment of training and re-training mechanism in order to provide proper training for staff; 4. The management of the size of staff in order to carry out the responsibilities properly.

- a. Coordinating previous staff

Previous staff is from different departments with different specialization and experiences. Currently, they are the main human resources in CCGA to perform missions of CCGA. During the transitional period, they have carried out their previous different responsibilities respectively in the name of CCGA, for example, during the patrol mission of islands that belong to China. The officers on board are mainly from CMS because the patrol mission of the islands belongs to China was carried out by CMS. Officers from FLEC are primarily sent to deal with the mission related to fishing.

There are two main problems related to previous staff. On the one hand, the question of coordinating the working relationship between previous staff should

be solved. One aim of establishing China's Coast Guard Administration is to improve the efficiency of law enforcement by making one entity perform different missions as many as it possibly can. This requires the officers on board should have the ability to deal with all the missions they are assigned to perform. In fact, previous staff has only focused on their original responsibilities in the past; they have to be retrained to perform more duties in order to fulfil that aim in the future. Therefore, at the present stage, coordinating the working relationship between previous staff is one challenge faced by CCGA.

On the other hand, the problem about work status of previous staff is another important challenge. In the past, besides the staff of CMPB, who were in active service of armed police, the staff belong to other departments were civil servants. The official status of CCGA officers is related to the legitimacy of law enforcement activities when they perform their duties. However, the official status of CCGA officers does not have a specific status at present. Whether the official status of CCGA officer is defined as civil servant or active service officer, the change of official status among previous staff is related to procedure problems, law application problems and competent ability problems. Therefore, not only defining the official status of a CCGA officer is one challenge, but also the real work of changing the official status.

b. Recruiting new staff

Regarding the new staff, the main challenge for them is they lack practical experiences. Most of the new staff has been recruited from the university when they graduate. In fact, not too many people have the experience to command a

general maritime law enforcement department. Therefore, even after training, they still need to accumulate experience in practice in order to make themselves competent. These new officers will be the first real generation CCGA commanders who have general practical experiences in the future. It is worth mentioning that, their training is consistent with the requirements of the active service officer at present. Their official status is not a significant challenge herein, because no matter what kind of official status is decided by the Chinese government eventually, they do not need to change their official status.

c. Establishing training and re-training mechanism

It mentioned before, both previous staff and new staff needs to be trained in order to become more competent. In addition, new staff needs more practical training because of lack of experience. Today, the training provided to all staff is temporary as there is no specific training and education program for CCGA officers. Regarding school education, China Maritime Police Academy (CMPA) was the only one university with the aim of educating reserved competent officers for CMPB in the past. CMPA which was founded in 1983 and approved by the Ministry of Education directly belongs to MPS. The CMPA website has information relating to this (<http://www.gahjxy.com/>). However, some countries that have a long history of coast guard administration have a special academy for educating officers. For example, the United States Coast Guard Academy (USCGA) is the military academy of the United States Coast Guard, which was founded in 1876. The former Korea Coast Guard founded Korea Coast Guard Academy (KCGA) in 2004. All officers of former Korea Coast Guard should be trained in half year to one year before they go to work (Zheng, Yin, Tian, Li &

Yu, 2014, pp.53-54). Law enforcement ability and law enforcement experience of CCGA staff is an essential element, which influences the efficiency of law enforcement significantly. Therefore, establishing a feasible training and re-training mechanism is one major challenge.

d. The size of staff

China has eighteen thousand kilometres of land coastline, fourteen thousand kilometres of island coastline, and three million square kilometre maritime areas, which need to be safeguarded. Law enforcement activities performed by CCGA are arduous. The number of staff of CCGA is not enough to carry out the arduous work effectively (Han, 2014, p.27). According to IISS 2013, the number of staff of CCGA is 16,296. Correspondingly, the US Coast Guard had 42,190 military active officers, 7,899 military reserve officers, 8,722 civilians and 32,156 auxiliary staff in 2012 (Coast Guard Snapshot, 2012). The size of personnel of the US Coast Guard is obviously huger than CCGA. Taking into consideration the high risk of work in CCGA, as well as the dull work because of long time navigation, the size of CCGA staff will pose a negative impact on the efficiency of law enforcement activities. Therefore, the inadequate size of staff in CCGA is also an influential challenge.

- Challenges of the management of equipment

Before the restructuring activities, the distribution of law enforcement equipment was unbalanced. For example, at the end of 2012, CMS was the strongest force in those departments. Totally, CMS had more than 400 governmental vessels, including 29 governmental vessels with a displacement of more than 1000 tonnes and six

governmental vessels with a displacement of more than 3000 tonnes. In addition, CMS had ten aircraft. Comparatively, CMPB had the advantages of weapons. However, the patrol vessels owned by CMPB had lower tonnage. They could not even proceed with patrol missions within the territorial sea independently. Regarding the Custom Police, most of their governmental vessels were lower than 300 tonnes (Dong, 2014, p.70). Resulting from the different mission carried out by different departments in the past, the design and equipment on board these governmental vessels were different. It is difficult to reconstruct all these governmental vessels to make them satisfy the working requirements in the future. Compared to CCGA, the US Coast Guard had 244 cutters, 1,776 boats and 198 aircraft in 2012 (Coast Guard Snapshot, 2012). The US Coast Guard is also equipped with adequate weapons. Whether it is technology or quantity, the US Coast Guard has appropriate and competent equipment to perform their duties. The military power of the US Coast Guard is even greater than a navy in some countries.

During the transitional period, all these previous governmental vessels have changed their hull number to China Coast Guard. However, CCGA needs professional vessels with applicable design and equipment, as well as auxiliary facilities to exercise their functions effectively. Especially, a reasonable number of helicopter and other shore-based equipment are needed. Therefore, problems about how to coordinate and improve current equipment, how to purchase new professional vessels and equipment, as well as how to maintain and update equipment are challenges.

- Challenges of capability of law enforcement

In the past, the previous departments had enough experience to carry out specific

missions. After the restructuring activities, as a new general maritime law enforcement department, CCGA requires a higher capability of law enforcement for CCGA staff, whether they are previous staff or new staff. One of the main aims of restructuring China's maritime law enforcement forces is to optimize the structure of departments, improve the efficiency of law enforcement. Considering the challenges discussed above and the higher requirements now, challenges of capability of law enforcement to CCGA displays in the following two aspects apart from the capability of CCGA staff and the condition of equipment:

a. Lack of departmental rules

According to Article 90 of Constitution of the People's Republic of China: The ministries and commissions issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with the law and the administrative rules and regulations, decisions and orders issued by the State Council (Wu, 2005, p.74). Herein, each ministry can issue their departmental rules to enforce laws and regulations specifically, as well as the coordinate relation between internal departments and authorities. Departmental rules are a feasible way to solve real problems because they are formulated on the basis of industry realities (Jin, 2001, p.50).

CCGA is attached to the Ministry of Land and Resources. The Ministry of Land and Resources has the right to formulate departmental rules to provide clearly working standards and regulations. Before the restructuring activities, previous departments under previous ministries had different departmental rules in order to regulate respective work in detail. For example, as mentioned before,



*Provisions on the Administration of Fishery Administrative Cruising within Exclusive Economic Zones* is one departmental rule promulgated by Fisheries Management Bureau under the authority of the Ministry of Agriculture. Presently, the previous departmental rules formulated by other ministries are not applicable to CCGA because of the subordinate relationship. In addition, previous departmental rules focused on a particular area, which does not apply to CCGA because of the synthetical responsibilities CCGA has. In addition, not only can departmental rules provide a legal basis for CCGA, but they can also guide and standardize law enforcement actions of CCGA. Given the previous reasons, CCGA needs new feasible departmental rules in the future to regulate and improve their capability of law enforcement. Therefore, formulating feasible departmental rules is a big challenge for CCGA.

b. Lack of foreign affairs experience

As mentioned in section 1-2, disputes with neighbouring countries resulted in the restructuring activities of maritime law enforcement entities. Dealing with all these disputes with neighbouring countries requires CCGA to communicate and cooperate with neighbouring countries' maritime and diplomacy authority. Actually, not only neighbouring countries, the nature of work of CCGA determines that CCGA will carry out many communication and cooperation activities in the future with other countries' maritime authority all over the world. However, before the restructuring activities, foreign affairs related to maritime were mainly dealt by MSA. Since the foundation of MSA in 1998, MSA has been a strong maritime law enforcement department with much experience in international maritime affairs (Dong & Wang, 2014, p.69).

If considering the discussion before about the past situation in Chapter 1, the responsibilities of previous departments were mainly concentrated on domestic maritime affairs which do not involve international communication and cooperation too much. Especially, during the transitional period, CCGA should strengthen international communication in order to learn progressive and mature maritime law enforcement experience from other countries. In addition, crime at sea is an international issue which needs all countries to make an effort to combat. Combatting crime at sea also requires CCGA to cooperate with other countries. Maintaining maritime security at sea is a significant international duty of China as a powerful maritime country. Therefore, after the restructuring activities, the lack of foreign affairs experience is also a big challenge for CCGA in the future.

#### **4-1-2 External Challenges**

- Challenges of clear legal foundations

Current legal foundations of CCGA were discussed in Chapter 3. In this paragraph, the challenges of legal foundations mainly concentrate on domestic laws which can be modified by the Chinese legislature. Legal foundations determine the nature of CCGA, the mandates of CCGA, as well as the procedure of law enforcement of CCGA. Legal foundations are direct support for CCGA to enforce the law. Before the restructuring activities, the previous departments have their legal foundations respectively, especially administrative regulations. Some of these respective legal foundations are not applicable to CCGA until now because of the subordinate relationships and national authorisation. Therefore, CCGA are facing four challenges regarding legal foundations as follows:

a. Lack of support of constitution and fundamental maritime law

The marine benefits are not reflected in China's Constitution (Li, 2014, p.21). Marine benefits are an essential interest of a sovereign country. Based on the discussion in Chapter 3, regarding the Chinese legislation on maritime issues, most of them are laws and administrative regulations. Even laws about maritime issues are special legislation related to specific maritime affairs, such as delimitation of the maritime zone and environmental protection. Although China already has many types of legislation related to maritime issues as discussed in Chapter 3, there is not a fundamental maritime law until now. The function of fundamental maritime law is the same as with civil law in the field of regulating civil relationships and criminal law in the field of regulating criminal law, which poses a significant impact on regulating maritime relationships and safeguarding marine benefits. Compared to China, the nature of the US Coast Guard, the functions and power of the US Coast Guard and the structure of the US Coast Guard are regulated in Title 14 of US Code. Japan has the Basic Act on Ocean Policy and the Act for the Establishment of the Japan Transport Safety Board to facilitate the development of Japan Coast Guard (Zheng, 2014, p.53).

On the one hand, the current maritime legislation cannot satisfy the requirements of CCGA. The conflicts between different departments in the past are convincing evidence about the drawback of the lack of support of the constitution and fundamental maritime law. Even after the restructuring activities, when CCGA is dealing with specific affairs without clear legal support, CCGA is required to ask guidance from superior authority. It will reduce the efficiency

of law enforcement significantly. On the other hand, the legislative hierarchy of current maritime legislation in China is lower because most of them are specific laws and administrative regulations. The feasible maritime legal system requires that the maritime legislation should have a clear legislative hierarchy from the constitution to fundamental maritime law, then to specific laws and regulations (Li, 2014, p.20). On December 26<sup>th</sup>, 2014, SOA convened an expert's symposium in Beijing. SOA got authorization by the 12th NPC to draft fundamental maritime laws. The SOA website has information relating to this ([http://www.soa.gov.cn/english/201409/t20140926\\_33679.html](http://www.soa.gov.cn/english/201409/t20140926_33679.html)). In the future, it is challenge for CCGA to overcome the lack of support from the constitution and the fundamental maritime law.

b. Lack of the law enforcement entity and auxiliary law

Regarding the entity of law enforcement, IISS 2013 is the direct legal document to mandate SOA for enforcing the law in the name of CCGA. IISS 2013 is an administrative regulation which does not properly comply with the requirements of *Organic Law of the State Council of the People's Republic of China* (Dao, 2014, p.15). Therefore, until now, Chinese legislature has not formulated a special law for CCGA, which the US and Japan already did. This is one of the main reasons SOA enforced the law in the name of CCGA instead of establishing CCGA independently. Meanwhile, apart from the law clarifying the entity of maritime law enforcement, auxiliary laws are needed as well. Especially the clear mandates and procedure of law enforcement should be provided by laws. Although China has *Law of the People's Republic of China on Administrative Penalty*, it provides general principles when authorities are

enforcing the administrative law. It does not consider the characteristics of maritime law enforcement.

Considering the special status of CCGA, CCGA has the right of policing law enforcement; China has *People's Police Law of the People's Republic of China* and *People's Police Law of the People's Republic of China*. As mentioned before, the status of CCGA staff has not yet been regulated. It is not the right time to determine which one applies to CCGA. Apart from the status of CCGA staff, all these laws do not consider the characteristics of maritime law enforcement. If it will apply to CCGA in the future, the Chinese legislature still needs to modify current laws. Overall, drafting specific laws about the entity of maritime law enforcement and auxiliary laws is a challenge for CCGA.

- Challenges of cooperating with other relevant departments

Based on the discussion in Chapter 2, CCGA has to cooperate with other departments in the future, such as PLA Navy, MSA and other policy-making departments. Timely and effective communication and cooperation between CCGA and other departments can improve the efficiency of law enforcement sensibly. Especially between CCGA and MSA, regarding the overlapping responsibilities such as maritime safety and environmental protection, CCGA and MSA should clarify their respective duties and cooperate with each other when necessary. During the transitional period, all the work has been prepared step by step. Compared to CCGA, the US Coast Guard established a marine information and intelligence processing system within law enforcement branches, between law enforcement branches, and between governmental departments in order to exchange information and intelligence (Chen,

2013, p.60).

With the establishment of CCGA, a Marine Committee was established during the NPC in 2013. Although the responsibilities of the Marine Committee are to make strategies for the development of the National Ocean and coordinate significant maritime affairs, the details of the actual work are carried out by SOA. It means SOA and CCGA have to perform the actual work of coordinating significant maritime affairs (Du, 2014, p.59). Until now, the Marine Committee does not have the function of coordinating departments that have the responsibilities related to maritime affairs. In general, lack of experience and lack of a mechanism of communication and cooperation with other departments are challenges for CCGA.

- Challenges of disputes about territory and discrimination of maritime zone

Regarding the legal issues, MSA will carry out the responsibilities to deal with them. After the restructuring activities, CCGA is the only entity who can safeguard China's islands and maritime zone in practice. The primary method used by CCGA is to patrol Chinese maritime zones and China's islands regularly. In the beginning phases of restructuring activities, carrying out these responsibilities is one extraordinary challenge for CCGA with limited human resources and equipment resources. The main disputes and the main responsibilities of CCGA can be divided into three areas respectively, which are the Yellow Sea, the East China Sea, and the South China Sea (Wang, 2013, p.16). The details are as follows:

Firstly, disputes in the Yellow Sea are mainly related to the delimitation of maritime zones between China and the Democratic People's Republic of Korea, as well as

between China and the Republic of Korea. Because the disputes in this area do not involve territorial disputes, the conflicts do not occur very often. The main responsibilities of CCGA in this area are mainly protecting Chinese fishing boats far away from interference by other countries, protecting the right of innocent passage of foreign ships, as well as protecting scientific activities and exploitation activities far away from interference and detection by other countries.

Secondly, disputes in the East China Sea are mainly related to the territorial disputes between China and Japan regarding Diaoyu Island. Since 2006, CMS had carried out regular patrolling missions in the East China Sea. After the restructuring activities, these responsibilities were transferred to CCGA. On July 24<sup>th</sup>, 2013, Japanese media reported that seven CCGA governmental vessels were patrolling around Diaoyu Island, which is just two days after the establishment of CCGAS. The patrolling mission started immediately after the restructuring activities to express the confidence of CCGA to safeguard China's territorial sea and islands. By July 3<sup>rd</sup>, 2015, China Coast Guard Fleet has patrolled the territorial sea of Diaoyu Island 19 times this year (Wang, 2015).

Thirdly, the disputes in the South China Sea are mainly related to the territorial disputes between China and Southeast Asian countries, such as Vietnam and the Philippines. Especially, oil and gas exploitation plans in the South China Sea have been obstructed by Southeast Asian countries. Until now, the number of Chinese islands and reefs occupied by other countries is 39 (Jiang, 2006, p.7). Taking into consideration the practical solution of territorial disputes, the longer a country occupies the disputed islands, the more advantages it has. Regarding the islands and

reefs controlled by China, CCGA should strengthen the control of them. Therefore, both enhancing the control and taking back the right of control of islands and reefs belonged to China are huge challenges for CCGA.

- Challenge of using force

In order to solve the problem of whether forces can be used or not when CCGA enforces the law, the status of CCGA and the official status of CCGA officer should be clarified first. Apart from that, the following paragraphs will discuss the issue of equipping vessels with weapons from a practical point of view. It is worth mentioning that CCGA has the right of policing law enforcement which succeeded from CMPB and the Customs Police. In this point of view, CCGA should be equipped with weapons in order to fulfil their duties as police at sea. However, legal foundations are needed to support their rights. This paragraph just discusses the necessity of using force during activities performed by CCGA.

Compared to CCGA, the former Korea Coast Guard, Japan Coast Guard and US Coast Guard already have been defined as paramilitary departments. The US Coast Guard is even known as the fifth military force in the US. UNCLOS does not have clear provisions regulating whether forces can be used or not when the authority performs the right of visit and the right of hot pursuit. However, it cannot be assumed that force cannot be used in situations as mentioned previously. Actually, in international practice, the principle of using force has been clarified, which is necessary and reasonable (Lu, 2013, p.5). “I’m alone” case happened in 1929 also revealed that force could be used with the restriction of necessary and reasonable principle. According to Joint Interim Report of Commissioners (1933), use necessary



and sensible force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port the suspected vessel, and if sinking occurred incidentally, as a result of the exercise of necessary and reasonable force for such purpose, the pursuing vessel might be entirely blameless.

Although policing law enforcement at sea has a foreign-related characteristic, it is still a feasible method to safeguard benefits of a sovereign country. Compared to policing law enforcement on land, policing law enforcement at sea should be restricted by international law and international practice (Fu & Xu, 2011, p.16). Essentially, policing law enforcement at sea still belongs to national jurisdiction as discussed above; it should also be restricted by domestic legislation. In international practice, as well as based on the international law, the right of policing law enforcement at sea should be carried out by coastal States in order to safeguard their benefits and maintain the order at sea.

Overall, both taking into consideration the international practice and the requirements of policing law enforcement at sea with the actual conditions in China, CCGA should be allowed to use force in order to safeguard China's marine rights and interests effectively. When CCGA performs activities of law enforcement at sea, such as visiting vessels, pursuing vessels, inspecting vessels or combating crime at sea, using force is a feasible and safe way to complete missions successfully. In general, how to use force appropriately and legally is a challenge for CCGA in the future work.

## **4-2 Opportunities**

Each coin has two sides, so as a result of challenges, opportunities will finally show

up. After discussion of challenges CCGA is facing, CCGA provides many opportunities for the development of China, especially regarding maritime affairs. Establishing CCGA is a meaningful step in China's reform path. In the past, CCGA has overcome many drawbacks whereby five different departments suffered the consequences. Moreover, CCGA provides plenty of advantages for Chinese maritime law enforcement. These advantages influence many aspects, such as improving the efficiency of law enforcement, enhancing maritime legislation and dealing with international affairs. This section will discuss the opportunities CCGA has.

#### **4-2-1 Improving efficiency of law enforcement**

- Integrating law enforcement entities and streamlining administrative structure

On the one hand, based on the discussion before, the decentralization of maritime jurisdiction was a principal drawback of the previous situation. By unifying the previous four law enforcement entities into one can improve the efficiency of law enforcement properly. For example, in the past, if a governmental vessel of CMS found a fishing vessel which was fishing illegally when patrolling around the Chinese maritime area, this governmental vessel of CMS did not have the right to arrest this fishing vessel. This governmental vessel of CMS would contact FLEC through their superior authority, which would take time for communication. However, after integrating the responsibilities of CMS and FLEC into CCGA, the governmental vessel of CCGA has the right to patrol around Chinese maritime areas and punish illegal activities immediately without contacting other authorities. The efficiency of law enforcement is improved obviously. Overall, CCGA has more rights than other previous departments. In the future work, CCGA will optimize the rights it has and find a feasible and efficient way to enforce the law in the Chinese maritime area. Therefore, unifying law enforcement entities is an opportunity for

CCGA to improve the efficiency of law enforcement within the Chinese maritime area.

On the other hand, the administrative structure of China's maritime law enforcement department was streamlined by restructuring activities. It changed the situation of "five dragons that govern the Sea". Considering the case that a foreign vessel was sunk by a Japanese vessel in China's EEZ of the East China Sea in 2002 happens again in the future, the Chinese government does not need to send five different governmental vessels from various departments to handle this case. The efficiency of law enforcement is improved markedly. That is an advantage of streamlining the administrative structure of China's law enforcement entity. In addition, the present management mode of CCGA is advanced and efficient due to the special status of CCGA, which is beneficial for the development of a law enforcement group. The training for new staff of CCGA is consistent with the requirements of active service officers at present, which is in accordance with the paramilitary status of CCGA. The training received by CCGA officers has high standards and are strict, which can improve the law enforcement ability of CCGA officers properly. Both the efficiency of the department and the ability of staff are improved by restructuring activities. This is an opportunity for CCGA to improve efficiency of law enforcement within the Chinese maritime area.

- Simplifying the procedure of law enforcement

Based on the previous discussion, the main difference between CCGA and MSA is the focus. CCGA mainly focus on the security part at sea, such as the regular patrolling mission, combating crime at sea and anti-smuggling. Meanwhile, MSA

mainly focuses on the safety party, such as issuing and checking the certificate of commercial vessels, port state control and environmental protection. Regarding security at sea, the first advantage of the restructuring of CCGA is integrating maritime law enforcement entities as discussed before, which avoids overlapping governance by different departments. The second advantage of the restructuring of CCGA is simplifying the procedure of law enforcement by assigning one department carrying more responsibilities. For example, in the past, all departments would organize joint manoeuvre in order to combat smuggling at sea or illegal fishing. Normally, each department should dispatch governmental vessels and officers on the scene to coordinate with each other. The procedure of law enforcement was complex. By integrating the different departments, the procedure of law enforcement has been simplified as well because it saves resources and avoids coordinating with various law enforcement entities. Therefore, the simplifying procedure of law enforcement can increase the efficiency of law enforcement which is an opportunity provided by establishing CCGA.

- Optimizing equipment

The good condition of equipment owned by CCGA is another influential element to the effectiveness of law enforcement. Regarding equipment owned by CCGA, it was discussed before as an internal challenge. In addition, restructuring activities provide an opportunity to optimize equipment owned by CCGA. In the past, the financial support was divided into different departments. Each department just built their governmental vessels with a single function (Cheng, 2013, p.61). However, all the financial support is invested in CCGA today. In the near future, CCGA can build more professional governmental vessels with multi-functions. As for the previous

governmental vessels, those vessels which are still useful can be rebuilt, such as the governmental vessels that originally belonged to CMS were equipped with proper equipment. As for those previous governmental vessels which cannot be used in the future, CCGA can sell them through the official channels. The money can be reinvested in building new governmental vessels and equipment. Therefore, optimizing equipment properly is another opportunity CCGA has.

- **Optimizing the governmental functions**

In the past, the right of policing law enforcement at sea existed and was carried out by CMPB. However, this right could not be exercised properly because of the limited resources CMPB has. That was a blank area of governmental functions, which should be fulfilled. The establishment of CCGA highlighted the special status of CCGA. Furthermore, CCGA succeed the right of policing from CMPB, although the law should clarify the mandate in the future. At least, CCGA has adequate equipment and condition to exercising the right of policing law enforcement at sea. It has fulfilled the emptiness of exercising the right of policing law enforcement at sea properly. At the same time, it has optimized the governmental functions.

#### **4-2-2 Enhancing and improving maritime legislation**

Paragraph 4-1-2 discussed the lack of legal foundation of CCGA which should be overcome by CCGA. However, this challenge provides a very appropriate opportunity to enhance and improve Chinese maritime legislation. In the past, there was not a unified, qualified and experienced department that was competent to give advice on formulating Chinese maritime legislation. That is the reason why previous Chinese maritime legislation focused on a particular area, as well as the reason why

China has not yet formulated fundamental maritime law. After the restructuring activities of CCGA, the legislation work regarding Chinese maritime affairs will start comprehensively. It can be reflected by three aspects as follows:

Firstly, CCGA gets the authority to draft Chinese fundamental maritime law, which is an opportunity provided by that challenge. Drafting fundamental maritime law needs considerable practical and theoretical experience which can be accumulated by CCGA in the future. After restructuring activities, the main law enforcement entities which have the right of administrative law enforcement in China are MSA and CCGA. Among them, MSA is mainly dealing with the international law and has much experience in drafting industrial regulations regarding shipping. Hence, MSA has not paid too much attention to the fundamental maritime law. CCGA will make up the unoccupied area of maritime legislation instead of MSA. Certainly, the experience of MSA also plays a critical role in formulating fundamental maritime law. By drafting fundamental maritime law, the core benefits of China will be emphasized. It will provide a sound basis for all the related maritime departments to perform their duties. Guided by the fundamental maritime law, other auxiliary laws related to maritime affairs will be formulated correctly and satisfy the real situation in China.

Secondly, restructuring activities of CCGA filled the absence of the right of policing law enforcement at sea. The right of policing law enforcement at sea is a principal right regarding guaranteeing the safety and security at sea. In the past, because of the limited human and equipment resources, the right of policing law enforcement at sea could not be exercised properly. Currently, CCGA has more professional equipment,

more professional and organized staff, more financial investment, as well as solid legal foundation in the future. The restructuring activities provide CCGA an opportunity to perform the right of policing law enforcement properly in the future.

In addition, restructuring activities promote the standardization of Chinese maritime law enforcement. Apart from PLA Navy, MSA is an important functional department of the Ministry of Transport, and its officers are civil servants. The recruitment and dismissal of MSA officers should satisfy *the Civil Servant Law of the People's Republic of China*. All the recruited officers must pass a civil servant exam uniformly. As for law enforcement officers, they should get a certificate when they are qualified as a law enforcement officer. MSA also has departmental rules published by the Ministry of Transport to standardize the procedure of maritime law enforcement. As for CCGA, the status of CCGA officers is not defined until now. However, the new staff of CCGA is mainly from qualified universities with good educational background. Training provided to new CCGA officers is consistent with the requirements of active service officers at present. The high standards of recruiting new staff and training new staff play an important role in promoting standardization of maritime law enforcement. In the near future, accompanied by the solid legal foundation and departmental rules, CCGA will be a high quality, high standard and high-efficiency maritime law enforcement department.

#### **4-2-3 Dealing with international affairs more effectively**

MSA mainly deals with international affairs. Admittedly, the responsibilities of CCGA are tightly related to international affairs, especially regarding territorial disputes between China and neighbouring countries. Currently, the establishment of

CCGA is beneficial for dealing with international affairs properly. MSA and CCGA can work together instead of five departments. On the one hand, regarding the territorial disputes with neighbouring countries and the discrimination of the maritime zone, CCGA is a unique department which performs their duties on the scene. CCGA is responsible for dealing with practical problems on the scene. Comparatively, MSA is responsible for the legal issue regarding territorial disputes and discrimination of the maritime zone. Unambiguous discrimination of responsibilities between MSA and CCGA reflects the advantages of these two departments of dealing with international affairs. In the future, MSA and CCGA should work together to establish a normal mechanism to handle international affairs.

On the other hand, maintaining security at sea is a core responsibility of CCGA. Not only within the Chinese maritime areas, as a powerful maritime country, has China also needed to be involved in the international issues regarding security at sea. In the future, with the distinguished ability of law enforcement and adequate equipment, CCGA can establish an effective patrolling scheme within the Chinese maritime zone to maintain security at sea. Meanwhile, CCGA can cooperate with other countries with the aim of maintaining regional security at sea. Both strengthening communication with other States and organizing the joint manoeuvre with neighbouring countries are a feasible way to cope with possible regional security issues and international security issues at sea. Overall, considering the opportunities mentioned above, the improvement of ability and equipment provides an opportunity for CCGA to deal with international affairs effectively and efficiently.



## **5 Conclusion and Recommendations for Further Improvement**

### **5-1 Conclusion**

China's Coast Guard Administration has been established in just a few years. The establishment of CCGA changed the previous situation. Details of further restructuring activities have been in a process by several preparatory groups step by step. Today, the fundamental functions of CCGA have been performed by current CCGA staff. Taking into consideration making some contributions to the restructuring activities, this dissertation is based on the actual conditions of CCGA, and then discussed the previous situation and current situation. After that, some the challenges and opportunities CCGA has were discussed. From the previous chapters, it is now possible to draw some conclusions.

Firstly, establishing CCGA solved the previous drawbacks of “five dragons that govern the Sea” effectively. The restructuring activities were discussed by the highest legislature of China, which is the National People's Congress of the People's Republic of China, and were performed by the supreme organ of the State administration, which is the State Council of the People's Republic of China. The primary objective of establishing CCGA is to safeguard China's marine benefits effectively and efficiently. The restructuring activities are suited to China's national condition and in the interests of China.

Secondly, the new structure of China's maritime law enforcement forces was formed after the restructuring activities. In addition to PLA Navy, which is the only one force

having the right of military law enforcement, both CCGA and MSA have the right of administrative law enforcement. CCGA also has the right of policing law enforcement, which was not performed properly in the past. Restructuring activities made the structure of China's maritime law enforcement forces more feasible and efficient. Furthermore, the restructuring activities also play a positive role in improving the efficiency of law enforcement, enhancing and improving maritime legislation, as well as dealing with international affairs.

Thirdly, there are a few challenges in front of the future road of CCGA. Regarding the internal challenges, the drawbacks of leadership in the future, the difficulties of managing staff and equipment, as well as the problem of improving the capacity of law enforcement should be highlighted. Moreover, external challenges also provide a lot of tough tasks for CCGA, such as the lack of clear legal foundations, the cooperation with other departments, as well as the disputes with neighbouring countries. These challenges should be paid more attention to in the future CCGA work.

Regarding the deficiencies of this dissertation, the data were not sufficient to do a thorough research on the situation of CCGA because some data were related to the national secrets. Discussion and conclusion just provide the basic information of CCGA and some issues at the public level. In addition, because of the limited capacity of the author and time limitation, it was not possible to conduct extensive research regarding the experiences and opinions of CCGA staff in order to back some opinions of this dissertation. The practical challenges should be identified in practical work in the future.

The voyage of discovery of CCGA just begins. In the future, the restructuring activities will still have a long way to go. Future research should be done by taking into account the real experiences and opinions of CCGA staff, even the objects of law enforcement in order to make CCGA's work better and improve the quality and efficiency of maritime law enforcement. With a firm determination of the Chinese government and the support of the people, CCGA will shoulder its glorious mission, and become a powerful entity of maritime law enforcement in China. Apart from that, the international responsibilities regarding safeguarding marine safety can be carried out by CCGA as well.

## **5-2 Recommendations for the Future**

At present, establishing activities of CCGA are in a transitional period. The specific challenges and opportunities are changed on demands. Herein, the author would like to put forward recommendations regarding the challenges and opportunities CCGA is facing. Recommendations mainly concentrated on formulating legal foundations, optimizing the organizational structure, improving the efficiency of management, as well as enhancing cooperation with other departments. The details are as follows:

- **Accelerating legislative work**

According to the previous discussion, it can be summarized that China needs fundamental laws regarding maritime affairs; CCGA needs legal foundations regarding its status and mandates, even internal administrative rules are needed by CCGA. In addition, the establishing of CCGA has had and will have a positive influence on accelerating legislative work. Concerning the legislative work, on the one hand, the legislature should be made clear. According to the

Constitution of the People's Republic of China, NPC is the supreme legislature. Therefore, the fundamental maritime law should be issued by NPC. As for laws of CCGA's status and mandates, normally the legislature should be the State Council because CCGA is an organ of the State Council. Concerning the internal rules of CCGA, the legislature should be the direct superior authority, which is the Ministry of Land and Resources. On the other hand, the contents of this legislation should be considered thoroughly. Herein, the author will put forward some recommendations regarding the contents of these three levels of legislative work.

Firstly, a fundamental maritime law is needed for China. The reasons were discussed in Chapter 4. The main principles of fundamental maritime law should focus on safeguarding sovereignty and national marine benefits, promoting marine economy, as well as protecting the marine environment. By establishing a stable marine order, the Chinese government can manage the Chinese maritime area effectively. By analysing the fundamental maritime law of the US, Japan, and the United Kingdom (UK), the main contents include maritime policy, maritime plans, governmental maritime areas, maritime rights and interests, as well as maritime law enforcement, although the structure of the fundamental maritime law of these countries is different (Li, 2014, p.39). Therefore, the Chinese fundamental maritime law should include these contents. Especially, maritime areas governed by China and the rights within these areas should be clarified. Meanwhile, the rights enjoyed by other countries should be included in order to show that China is willing to take the international legal obligations. In addition, the principle of sustainable development should be specified regarding

the exploration and exploitation of living resources and mineral resources (Xue, 2011, p.427). Last but not least, the entities of maritime law enforcement should be clarified, which namely CCGA, or MSA, or SOA in specific circumstances instead of unclear terms like related departments.

Secondly, the legal foundation of CCGA as an external challenge was discussed in Chapter 4. The other countries, such as Japan and the US already issued laws regarding the responsibilities and obligations of the entity of maritime law enforcement. They manage the entity of maritime law enforcement from the legal point of view. The formulation of fundamental maritime law is an evidence of that point. Therefore, in the future, a specific law regarding the mandates, responsibilities and obligations, law enforcement area, as well as the procedure of maritime law enforcement should be incorporated into these laws. Especially, when it is necessary, some contents should be included in the fundamental maritime law, such as the different mandates between CCGA and MSA, as well as the conditions for using force. In addition, some auxiliary laws should be formulated in the future. These auxiliary laws should include a regular scheme of the patrolling maritime boundary, a dispute settlement mechanism and a coordination mechanism. The most important thing is to establish a regular scheme of the patrolling maritime boundary with limited human and equipment resources. It is the best way to safeguard the rights and interests of China within the Chinese maritime area.

Thirdly, regarding internal administrative rules within CCGA, CCGA needs administrative rules regarding internal management. Any organization should

have internal control rules as a solid support during their daily work. These internal control rules can provide high efficiency for daily work, as well as pre-arranged planning for a sudden incident (Zhang, 2007, p.1). The administrative rules should include an internal management code, such as how to manage equipment and staff. Regarding the rules of management of equipment, it should include the rules of the period and the responsible officer of maintenance of equipment, and the requirement of the record of using the equipment. Regarding the rules of management of staff, it should include rewards and punishment mechanisms, dress code, working procedure, and a code of conduct. Apart from the internal administrative rules, other recommendations about improving the efficiency of management will be put forward in the following paragraphs.

- Optimizing organizational structure

On the one hand, within CCGA, CCGA should establish independent command and management system instead of integrating the branches into SOA. For example, the Command of Coast Guard is the Division of Coast Guard of SOA; the Political Department of Coast Guard is the Personnel Division of SOA and the General Logistics Department of Coast Guard is the Finance and Equipment Division of SOA. This is an interim action during the transitional period in order to ensure the legality of CCGA (Guo & Zhang, 2014, pp.109-110). However, when the legislative work is finished in the future, those departments should be independent from the divisions of SOA. In the future, CCGA can even be separated from SOA and be established as an independent department. The superior authority should be a ministry who has the administrative status and

security status instead of the Ministry of Land and Resources, such as MPS and the Ministry of State Security. By changing the subordination relationship and being independent, CCGA could have a reasonable statutory authority and legal status, which is important for CCGA to enforce the maritime law.

On the other hand, outside CCGA, distinguishing of responsibilities between CCGA and MSA is another problem regarding optimizing the organizational structure. In China, opinions are different among scholars. Some scholars think that CCGA and MSA should be independent because MSA has played a very important role in dealing with maritime affairs in the past 30 years (Guo et al, 2014, p.110). Both staff and equipment of MSA have a high condition. However, the author recommends that some responsibilities should be transferred from MSA to CCGA, especially those responsibilities which are overlapping in practice, such as inspecting the ship and dealing with marine pollution accidents. It is even possible to integrate MSA into CCGA in the future. Afterward, the right of maritime law enforcement will be incorporated into CCGA. If the most maritime affairs are carried out by one entity, there are more advantages than those conducted by multiple entities (Guo et al, 2014, p.110). That is also one reason for conducting restructuring activities.

- Improving efficiency of law enforcement

Initially, apart from external influences like legal foundations, the driving forces of the effectiveness of law enforcement are the staff and the equipment of CCGA. On the one hand, regarding the staff, CCGA should strengthen training and education of staff in CCGA. Some specific specializations should be established

in universities with the aim of educating potential officers of CCGA both in non specialized university and in CMPA. In addition, CCGA should establish a training program for those excellent candidates, who did not graduate from specific specializations. This training could provide a systematic training for those candidates and train them as qualified CCGA officers as soon as possible. At the same time, the professional background of the Ministry of Land and Resources and MPS should be used in the future. On the other hand, these universities and CMPA should also carry out the responsibilities to do more research about how to optimize functions of CCGA, how to improve the efficiency of law enforcement and so on with the practical education experiences.

Then, the equipment owned by CCGA also plays a significant role in the efficiency of maritime law enforcement. Firstly, the Department of managing equipment should be independent from SOA's division. Furthermore, the General Logistics Department of the Coast Guard is a division with managing equipment and finance. It can easily result in corruption within this division (Dao, 2014. p.39). Therefore, the author recommends that the division of managing equipment and the division of finance should be separated. Secondly, not only off-shore equipment but also the shore-based equipment should be updated. CCGA should control the finance and make sure that sufficient budget is invested into purchasing and maintaining equipment. Thirdly, with the development of technology, informatization has been the primary method to improve the efficiency of work. Therefore, CCGA should facilitate to establish a system of informatization in the future. This system can increase the equipment



and staff of CCGA in order to manage equipment and staff effectively. Further, the daily work can also be recorded by this system in order to share information immediately between different divisions of CCGA and between CCGA and related departments. Finally, formulating the scheme of maintaining, repairing and updating equipment is an important work in the future.

- Enhancing cooperation with other departments

In order to fulfil the goal of enforcing the maritime law effectively and efficiently at sea, the independent mandate is needed. The cooperation with other policy-making departments is also important (Zhou & Zhang, 2013, p.27). The author recommends that a cooperation mechanism should be established between CCGA and other entities. To be specific, the Marine Committee can carry out this function. All the related departments can assign directors who are responsible for maritime affairs to be a member of the Marine Committee. The significant work regarding maritime affairs should be discussed within the Marine Committee, and the Marine Committee should make the final decision. This is the most direct way and the most efficient method to cooperate with each other at the level of leadership. As for the practical area, a working group can be established under the Marine Committee. This working group should consist of experienced officers from different departments to harmonize the conflict and interest between various departments. This working group can also provide professional recommendations to the Marine Committee in order to help the Marine Committee to make appropriate decisions.

In addition, cooperation between entities of law enforcement should especially

be focused on. In the current circumstance, cooperation between CCGA and MSA is related to administrative law enforcement. In some particular areas, overlapping responsibilities and actions occur during the practical work (Wang & Chen, 2015, p.114). Herein, the author recommends that MSA and CCGA should establish a special cooperation mechanism regarding the overlapping responsibilities. For example, CCGA and MSA can inspect vessels at the same time to reduce the pressure of masters and crews. CCGA and MSA can conduct joint drills regularly regarding emergency accident treatment at sea, such as environmental pollution at sea, illegal fishing vessels, as well as vessel security issues. On the other hand, apart from the operational guidance from MPS, cooperation between CCGA and PLA Navy is also important. PLA Navy should provide military training for CCGA staff to improve the professional quality of CCGA officers. In some specific circumstances, CCGA needs the help from PLA Navy to combat crime at sea, for example the piracy issues outside the Chinese maritime area. Finally, CCGA and PLA Navy should cooperate with each other in order to combat crime within the Chinese maritime area. An information sharing system can be established between PLA Navy and CCGA to discover and deal with crimes at sea immediately. Therefore, this information sharing system regarding crime at sea can also include the General Administration of Customs and MSA. By doing this, the speed of reaction to crimes at sea can be improved significantly.

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## **Appendix A Related Articles of UNCLOS**

### *Article 1*

#### *Use of terms and scope*

1. For the purposes of this Convention:

(1) "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;

(2) "Authority" means the International Seabed Authority;

(3) "Activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;

(4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

(5) (a) "dumping" means:

(i) Any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

(ii) Any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;

(b) "Dumping" does not include:

(i) The disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures

at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

(ii) Placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

2. (1) "States Parties" means States which have consented to be bound by this Convention and for which this Convention is in force.

(2) This Convention applies mutatis mutandis to the entities referred to in article 305, paragraph 1(b), (c), (d), (e) and (f), which become Parties to this Convention in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

## *Article 2*

### *Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil*

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, escribed as the territorial sea.

2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

## *Article 8*

### *Internal waters*

1. Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.
2. Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

#### *Article 21*

##### *Laws and regulations of the coastal State relating to innocent passage*

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:
  - (a) The safety of navigation and the regulation of maritime traffic;
  - (b) The protection of navigational aids and facilities and other facilities or installations;
  - (c) The protection of cables and pipelines;
  - (d) The conservation of the living resources of the sea;
  - (e) The prevention of infringement of the fisheries laws and regulations of the coastal State;
  - (f) The preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
  - (g) Marine scientific research and hydrographic surveys;
  - (h) The prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.
2. Such laws and regulations shall not apply to the design, construction, manning or

equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

3. The coastal State shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

### *Article 33*

#### *Contiguous zone*

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

(a) Prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

(b) Punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

### *Article 55*

#### *Specific legal regime of the exclusive economic zone*

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

*Article 56*

*Rights, jurisdiction and duties of the coastal State in the exclusive economic zone*

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) Jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) The establishment and use of artificial islands, installations and structures;

(ii) Marine scientific research;

(iii) The protection and preservation of the marine environment;

(c) Other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

*Article 73*

*Enforcement of laws and regulations of the coastal State*

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit,

conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

#### *Article 76*

##### *Definition of the continental shelf*

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The continental margin comprises the submerged prolongation of the land mass of

the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) A line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) A line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin,

such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

#### *Article 77*

##### *Rights of the coastal State over the continental shelf*

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal



State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The right of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

#### *Article 86*

##### *Application of the provisions of this Part*

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

#### *Article 107*

##### *Ships and aircraft which are entitled to seize on account of piracy*

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

#### *Article 109*

*Unauthorized broadcasting from the high seas*

1. All States shall cooperate in the suppression of unauthorized broadcasting from the high seas.
2. For the purposes of this Convention, "unauthorized broadcasting" means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.
3. Any person engaged in unauthorized broadcasting may be prosecuted before the court of:
  - (a) The flag State of the ship;
  - (b) The State of registry of the installation;
  - (c) The State of which the person is a national;
  - (d) Any State where the transmissions can be received; or
  - (e) Any State where authorized radio communication is suffering interference.
4. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

*Article 110*

*Right of visit*

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:
  - (a) The ship is engaged in piracy;

- (b) The ship is engaged in the slave trade;
  - (c) The ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
  - (d) The ship is without nationality; or
  - (e) Though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.
2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.
3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.
4. These provisions apply *mutatis mutandis* to military aircraft.
5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

### *Article III*

#### *Right of hot pursuit*

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be

continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

6. Where hot pursuit is effected by an aircraft:

- (a) The provisions of paragraphs 1 to 4 shall apply mutatis mutandis;
- (b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.
7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.
8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

#### *Article 207*

##### *Pollution from land-based sources*

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.
2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.

4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing States and their need for economic development. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

5. Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1, 2 and 4 shall include those designed to minimize, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment.

#### *Article 209*

##### *Pollution from activities in the Area*

1. International rules, regulations and procedures shall be established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area. Such rules, regulations and procedures shall be re-examined from time to time as necessary.

2. Subject to the relevant provisions of this section, States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be. The requirements of such laws and regulations shall be no less effective than the

international rules, regulations and procedures referred to in paragraph 1.

*Article 210*

*Pollution by dumping*

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping.
2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
3. Such laws, regulations and measures shall ensure that dumping is not carried out without the permission of the competent authorities of States.
4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.
5. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.
6. National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.

*Article 211*

*Pollution from vessels*

1. States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.

2. States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

3. States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such cooperative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such cooperative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such cooperative arrangements and, if so, to indicate whether it complies with the port



entry requirements of that State. This article is without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of article 25, paragraph 2.

4. Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.

5. Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

6. (a) Where the international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and coastal States have reasonable grounds for believing that a particular, clearly defined area of their respective exclusive economic zones is an area where the adoption of special mandatory measures for the prevention of pollution from vessels is required for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources and the particular character of its traffic, the coastal States, after appropriate consultations through the competent international organization with any other States concerned, may, for that area, direct a communication to that organization, submitting scientific and technical evidence in support and information on necessary reception facilities. Within 12 months after receiving

such a communication, the organization shall determine whether the conditions in that area correspond to the requirements set out above. If the organization so determines, the coastal States may, for that area, adopt laws and regulations for the prevention, reduction and control of pollution from vessels implementing such international rules and standards or navigational practices as are made applicable, through the organization, for special areas. These laws and regulations shall not become applicable to foreign vessels until 15 months after the submission of the communication to the organization.

(b) The coastal States shall publish the limits of any such particular, clearly defined area.

(c) If the coastal States intend to adopt additional laws and regulations for the same area for the prevention, reduction and control of pollution from vessels, they shall, when submitting the aforesaid communication, at the same time notify the organization thereof. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards; they shall become applicable to foreign vessels 15 months after the submission of the communication to the organization, provided that the organization agrees within 12 months after the submission of the communication.

7. The international rules and standards referred to in this article should include inter alia those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges or probability of discharges.

*Article 212*

*Pollution from or through the atmosphere*

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation.
2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
3. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution.

*Article 213*

*Enforcement with respect to pollution from land-based sources*

States shall enforce their laws and regulations adopted in accordance with article 207 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from land-based sources.