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# THE ROLE OF LAW IN THE DEVELOPMENT AND MANAGEMENT OF CHINA'S OCEAN RESOURCES\*

ROY S. LEE\*\*

## I. INTRODUCTION

Throughout China's long history, the sea has always been regarded as a great natural resource. Our ancestors started using shells in art-work and jewelry eighteen thousand years ago. Coastal people in Shengton province boiled sea water to extract salt four thousand years ago. Seafaring peaked in the fifteenth century.

Zheng He, the Chinese navigator, made seven trips to more than thirty countries, reaching as far as the east coast of Africa, the Red Sea, Mecca, and Java. Master Zheng had a flotilla of two thousand ships manned by a crew of twenty thousand. His main purpose was to improve his understanding of the world and to establish trade with other nations. He carried gold, silver, silk, porcelain, copper, and iron wares to barter for local specialties. No territories were conquered and no colonies established. His largest ship was 469 feet long and 197 feet wide, about seven times the size of Columbus' ships, the *Nina* and the *Pinta*, and Zheng He's voyages were made one-half century before those of Columbus.

## II. THE IMPORTANCE OF OCEAN RESOURCES

There are several reasons why ocean resources are important to China. First, although China is a large continental country, only 12% of the land is arable. In view of its large population, it is only natural for China to be interested in ocean resources. Second, China has a long coastline and six thousand offshore islands. Its eighteen thousand mile coastline is encircled from north to south by the Yellow Sea, the East China Sea, and the South China Sea. Since 1958, China has maintained a twelve mile territorial sea along its coast. Today, more than one hundred states, including the United States, regard this as a rule of international law. Under international law, a coastal state also has

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\* This article was originally delivered as a speech at the Ernst C. Stiefel Symposium on China in April 1989, prior to the incidents that occurred in Tiananmen Square in June 1989. Thus, the views expressed in this article do not reflect any changes that may have occurred in China as a result of the June events.

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the right to maintain a continental shelf and an exclusive economic zone ("EEZ") off its coasts to a maximum distance of two miles. The United States claims only a 200 mile fishing zone, and seventy countries have declared EEZs. This zone gives a coastal state sovereign jurisdiction over the living and mineral resources found therein. Although China has not yet declared an EEZ, it will probably do so in the future. The ocean resources off the China coast are extremely rich, exhibiting great potential for China.

Third, the oil and gas reserves in the offshore areas are estimated to be some of the highest in the world. Fifty to eighty billion tons of oil are produced annually. The seas surrounding the eastern part of China are among the richest fishing grounds in the world. In 1982, the annual catch was approximately 3.6 million tons. Even tides have been used as a source of energy. Many large and small stations along the coast have been built. The largest ones have a capacity of three thousand megawatts ("MW"). China's production of salt from sea water is the world's largest. Recently, many of the salt production units have branched out into other enterprises, such as agriculture and orchards.

Fourth, the ocean is China's most important route of international trade. In the 1970s, China was the leading charterer on the London Market for chartered ships. Today, almost all of China's foreign trade is carried by Chinese vessels calling at approximately 425 ports in over 100 countries and regions.<sup>1</sup> China's merchant marine is the tenth largest in the world. In 1987, it had a fleet of 1773 vessels of 100 gross tons or more. By deadweight tonnage, China is the ninth largest fleet in existence and many of the vessels are modern and oceangoing; the annual growth rate is about 13.6%.

These factors demonstrate that ocean resources occupy a special position in the Chinese economy and presumably will assume an even greater place in the future. Let us now turn to questions of how these resources are managed through law in this field.

### III. CHINA'S PARTICIPATION IN LAW-MAKING AT THE INTERNATIONAL LEVEL

China is a major actor in marine affairs at the international level. It has accepted almost all the important treaties in this field. For example, it is a party to the convention establishing the International Maritime Organization (the "IMO") in London.<sup>2</sup> This organization is the principal world body in charge of promoting international stan-

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1. BRITANNICA WORLD DATA 50 (1989).

2. International Maritime Organization Convention, Mar. 6, 1948, 9 U.S.T. 623, TIAS No. 4044.

dards for shipping, transport, navigation, traffic schemes, and the marine environment. China has incorporated many of these standards into its national legislation.<sup>3</sup>

China participated actively in the Third United Nations Conference on the Law of the Sea from 1972 to 1982, and signed the Convention together with 119 states and entities in 1982. The Convention is a very complex and comprehensive instrument. It is envisaged in the Convention that once it comes into force, an International Seabed Authority would be established to manage and regulate the seabed resources.<sup>4</sup> At present, more than forty ratifications have been received. A total of sixty is required in order to bring the treaty into force.

Manganese nodules are the only resource in the international area beyond national jurisdiction that is likely to have significant economic application in the next twenty to thirty years. Cobalt, copper, nickel and manganese may be extracted from the manganese nodules which must be processed before the metals can be extracted.

In 1982, a Preparatory Commission was formed to prepare for the establishment of the Seabed Authority, and to deal with certain pending questions.<sup>5</sup> The Preparatory Commission has completed almost 75% of its work and has settled some of the pending questions. Significantly, the Commission has succeeded in registering the claims of mine sites made by France, India, Japan, and the USSR. Though this is an interim regime, the Commission creates permanent rights and obligations for the pioneer investors which will be recognized in the Convention. Not only are their claims now internationally recognized, they will be able to conduct mining activities when certain conditions are fulfilled. One of the conditions is that the claimant must accept the 1982 Convention. Thus far, none of them have.

China favors the 1982 Convention and the establishment of an International Seabed Authority. The internal procedure for the ratification of the Convention has almost reached its final stage. Most of the industrialized countries have not yet taken steps to ratify the Convention, although most of them are in favor of it. These countries have been influenced by the negative attitude of the United States towards the Convention. They are also worried that, if no major industrial countries become parties to the Convention, the final burden for setting up and running the International Seabed Authority would be too

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3. See Mingfun, *Some Basic Problems of China's Marine Environmental Protection Law*, in 3 *MARINE DEVELOPMENT* 35 (1987).

4. *Id.*

5. See DANGDAI ZHONGGUO DE HAIYANG SHIYE (CURRENT CHINA'S OCEAN AFFAIRS) 412-13 (1985) (published in Chinese by the China Social Science Publications Co.) [hereinafter CHINA'S OCEAN AFFAIRS].

heavy to bear. There seems to be a general feeling that every effort should be made to attract the industrialized countries to join the Convention so as to make this an effective international legal system. China shares this goal and participates actively in the Preparatory Commission.

Between 1976 and 1978, China conducted a research program in the northern Pacific in search of manganese nodules. The program lasted 265 days and samples were collected. Further investigations were conducted in 1983 and a greater quantity of samples was obtained at a five thousand meter depth. The area investigated was between 167 and 178 degrees longitude and seven and eleven degrees latitude,<sup>6</sup> covering an area of eighty thousand square miles. The purpose of these activities is to increase China's database in order to analyze nodule distribution, nodule grade, and metal content. China has not yet applied for a pioneer status in the international system.

The ecological importance of Antarctica has long been recognized by China. China has conducted scientific research in Antarctica and the southern ocean in cooperation with Australia, New Zealand, Argentina, Chile, and Japan.<sup>7</sup> In 1984, a Chinese team was organized and China's first scientific research station was established in Antarctica.<sup>8</sup> China is a party to the Antarctic Treaty and became a consultative party in 1985.<sup>9</sup> It is also a party to the relevant international treaties dealing with living and mineral resources in Antarctica.<sup>10</sup>

China has entered into numerous bilateral agreements for dealing with such matters as fishing, maritime transport, registration of ships, taxation and ship survey and inspection.<sup>11</sup> The maritime transport agreements are most important. They deal with the following issues:

- (i) conditions for the recognition of seamen's identity documents and ship's documents;
- (ii) conditions for the recognition of the nationality of vessels;
- (iii) co-operation in rescue, hospitalization and repatriation of crews in case of accident;
- (iv) facilitation of maritime traffic in each other's ports;
- (v) mutual tax exemption; and
- (vi) criminal jurisdiction over crimes committed on board of vessels in the territorial sea of the other party.<sup>12</sup>

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6. *Id.* at 80-81.

7. *Id.* at 82-83

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

In 1983, China issued its first comprehensive law on maritime traffic safety, the Maritime Safety Law.<sup>13</sup> It determines and establishes the principal organ responsible for maritime safety.<sup>14</sup> The law regulates such matters as inspection and registration of vessels,<sup>15</sup> qualification of personnel,<sup>16</sup> navigation,<sup>17</sup> safety protection,<sup>18</sup> rescue from disasters at sea,<sup>19</sup> salvage,<sup>20</sup> liability,<sup>21</sup> and investigation of accidents.<sup>22</sup> In 1983, a law was introduced for the examination of crew members. Certificates are issued only to those who have succeeded in the examination.

#### IV. FISHERIES, OIL AND GAS

##### A. Fisheries

For a long time, fishing in Chinese waters was free from regulation. The result was overfishing, loss of some very valuable species, and destruction of coral reefs and spawning areas. Since 1979, fishing and related activities have been subject to a fairly comprehensive set of rules and regulations<sup>23</sup>—approximately 100 laws and regulations exist today.

A permit system exists for all fishing activities in China. The law sets the allowable catch, the method to be used, and the seasons and areas in which fishing is permitted or prohibited. Protected species are also established on the basis of scientific findings. Fishing vessels must comply with standards provided by law. It appears that all these are enforced to the extent possible, however, because of the size of the areas involved, there is always room for improvement. Violators are subject to fines and criminal prosecution.

In 1986, a new fisheries law was issued.<sup>24</sup> It contains general principles for the regulation of aquaculture,<sup>25</sup> fishing,<sup>26</sup> and fish produc-

12. *Id.* at 243-44; 428.

13. Maritime Traffic Safety Law of the People's Republic of China, *translated in* LEGISLATIVE AFFAIRS COMM'N OF THE STANDING COMM. OF THE NAT'L PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, *THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA*, 1983-86, at 3 (1987) [hereinafter PRC LAWS].

14. *Id.* arts. 1-3.

15. *Id.* arts. 4-5.

16. *Id.* arts. 6-9.

17. *Id.* arts. 10-19.

18. *Id.* arts. 20-31.

19. *Id.* arts. 34-39.

20. *Id.* arts. 40-41.

21. *Id.* arts. 44-47.

22. *Id.* arts. 42-43.

23. CHINA'S OCEAN AFFAIRS, *supra* note 5, at 170.

24. Fisheries Law of the People's Republic of China [hereinafter PRC Fisheries Law], *translated in* PRC LAWS, *supra* note 12, at 207.

25. *Id.* arts. 9-13.

tion.<sup>27</sup> In addition, it contains a chapter on the question of responsibility and liability of persons violating any provisions of the law.<sup>28</sup> The law further mandates the authorities competent to issue detailed rules and regulations for the implementation of its provisions.<sup>29</sup>

### B. Oil and Gas

Since 1979, foreign oil companies have been permitted to form joint ventures with China to conduct offshore oil and gas exploration activities. Bidding of the offshore areas began in 1982. In 1983, twenty-three joint exploration contracts covering a total area of ninety thousand square miles were conducted with thirty-one oil companies from nine Western companies. In 1985, a second bidding was offered covering a total area of 106,300 square miles.

A special law was promulgated in 1982 on the subject of cooperation with foreign companies on the exploration and exploitation of offshore oil and gas.<sup>30</sup> Article 3 states that the Chinese Government protects the investments, profits and legal interests of foreign companies and their exploitation activities.<sup>31</sup> This means no confiscation or requisition by China. Indeed, this basic principle is applied to all foreign investments in China. Articles 7 through 15 define rights and duties of the parties concerned as follows:<sup>32</sup>

- (i) A foreign contractor may conduct exploration activities at its own risk and cost;
- (ii) Upon discovery of oil and gas, a joint venture contract will be concluded with financial contributions by both parties. The foreign contractor is responsible for the exploration and production activities;
- (iii) A foreign contractor may deduct its investment and expenses from the sales of the product; and
- (iv) The foreign contractor may export its share of the product or the product it purchased. It may also transfer its profit, interest or reimbursement of its investment outside of China.<sup>33</sup>

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26. *Id.* arts. 14-18.

27. *Id.* arts. 19-27.

28. *Id.* arts. 28-33.

29. *Id.* arts. 34-35.

30. Regulations of the People's Republic of China on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises, *reprinted in CHINA'S OCEAN AFFAIRS*, *supra* note 5, at 503.

31. *Id.* art. 3.

32. *Id.* arts. 7-15.

33. *Id.*

Articles 16 through 26 set forth requirements for the conduct of exploitation activities.<sup>34</sup> All relevant laws and regulations in the field of safety and environmental protection must be strictly observed.<sup>35</sup> In addition, the Maritime Environmental Protection Law was adopted in 1983.<sup>36</sup> Chapter II of the law is devoted to the question of regulating oil exploration and exploitation activities,<sup>37</sup> and detailed regulations have been issued for the implementation of Chapter III.<sup>38</sup>

## V. COASTAL AREA DEVELOPMENT AND MANAGEMENT

For quite a number of years, China has focused its attention on the question of coastal area development and management. This is primarily in recognition of two important factors: coastal resource utilization, and characteristics of the coastal area.

The coastal area in China is biologically rich, fertile, aesthetically pleasing, and known for its mineral deposits, particularly oil and gas. Furthermore, large populations are concentrated in the coastal areas. It possesses some of the highest grades of agricultural land, and is the growth pole of expanding economic activity. Thus, a great demand exists for the use of the coastal area, resulting in competitive claims and conflict of uses. Pollution, waste discharge, and mismanagement in the coastal area have been the major problems. For example, in 1974 near the river mouth in the area of Tiengian, the discharge of waste from inland along the river killed fisheries offshore along a path of four meters wide and eight miles long. In southern China, near Gionchao Bay, one billion dollars was lost due to the destruction of lobster and shrimp nurseries caused by shipyard waste and discharge. In 1963, 170 species of marine life discovered in Gionchao Bay. One hundred and fifty species have since disappeared because of pollution in the water caused by waste discharges from human settlement.

Like most countries, the coastal areas in China were subject to numerous single-purpose laws and regulations executed by different agencies and institutions, ranging from the central and provincial governments to the towns and villages. Hardly any horizontal links existed between those laws, regulations, and the executing agencies. This situation often resulted in lacunae, conflicts, and overlapping jurisdiction.

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34. *Id.* arts. 16-26.

35. *Id.* art. 24.

36. Marine Environmental Protection Law of the People's Republic of China [hereinafter Marine Environmental Protection Law], translated in PRC LAWS, *supra* note 13, at 296.

37. *Id.* arts. 6-9.

38. *Id.* arts. 10-17.



An urgent need to introduce new legislation existed to fill the gaps, and to provide coordination between various executive agencies, the single-purpose laws, and the regulations. This could only be accomplished by a scientific, multi-disciplinary approach taken at the highest level. These considerations prompted China to introduce its Coastal Area Development and Management Act in 1983, which was later promulgated in 1985 (the "Chinese Act").<sup>39</sup>

The United States issued its Coastal Zone Management Act in 1972 (the "United States Act").<sup>40</sup> The purpose of the United States Act is to provide nationwide guidelines for the establishment of state management programs in the coastal area.<sup>41</sup> This Act deals with the process of developing a program and it provides various elements which a coastal state must examine in structuring its management program.<sup>42</sup> The Act focuses on the process and leaves the substance of the management program to each state to define.<sup>43</sup> It requires a state to commit itself to the management of the coastal area on a coordinated and comprehensive basis.<sup>44</sup> The federal government provides financial aid and encourages each state to establish management programs on the basis of the guidelines provided in the Act.<sup>45</sup>

A number of differences exist between the Chinese approach and the United States' approach. First, emphasis on development is an important difference between the Chinese Act and the United States Act. In the United States Act, the major intent was to protect the unique coastal environment.<sup>46</sup> As a result, most of the state programs involve marine reserves, bird sanctuaries, and marine parks. Although resource development was recognized, protection of the coastal area dominated the United States' concept. The opposite emphasis can be found in the Chinese Act. Development rather than conservation is the goal.<sup>47</sup> Great attention is paid to the harmonization of conflicting uses.<sup>48</sup> This difference in concept is largely due to the fact that China needs to develop its coastal areas for economic reasons, and as a result, conservation is a secondary consideration.

Second, the definition of coastal area is different in the Chinese

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39. CHINA'S OCEAN AFFAIRS, *supra* note 5, at 445.

40. 16 U.S.C. §§ 1451-1464 (1982).

41. *Id.* §§ 1451-1452.

42. *Id.* § 1454(b).

43. *Id.*

44. *Id.* § 1455 (c).

45. *Id.* § 1455.

46. *Id.* § 1451.

47. CHINA'S OCEAN AFFAIRS, *supra* note 5, at 444-45.

48. *Id.*

and United States Acts. In the United States Act, the term "coastal zone" refers to a strip of land along the coast.<sup>49</sup> No specific seaward or landward distance is given.<sup>50</sup> Each state has the distinction to delineate the zone when it establishes a management plan.<sup>51</sup> Practice shows that in most cases, a narrow strip is applied. In the Chinese Act, a nationwide definition of the coastal area exists — a landward strip of ten miles wide and a seaward strip to fifteen meters of water.<sup>52</sup> When the coastline is eighteen thousand miles long, this definition covers a vast area.

Third, the process of implementing the plan is also different under the Chinese and United States Acts. The Chinese program is nationwide.<sup>53</sup> It is an integrated program, which was established by the central government in various stages.<sup>54</sup> Comprehensive surveys and investigations over the entire coastal area of China began in 1980.<sup>55</sup> Because the area to be covered was vast, surveys and investigations were conducted on a section-by-section basis.<sup>56</sup> Once a section was completed, a plan was prepared.<sup>57</sup> Before implementing the plan, certain test spots were identified and prototype plans were introduced to verify the worthiness of the plan.<sup>58</sup> On the basis of the tests, the section plan was then improved upon.<sup>59</sup> Gradually and empirically, an overall plan was introduced.<sup>60</sup>

Some of the test spots at the section plans have proven very successful.<sup>61</sup> For example, in Souchow Province, one test spot area has succeeded in converting heavy salty water land into arable land in three years instead of ten years. In Canton Province, five hundred thousand acres of dunes and sandy wasteland were converted into forest and orange groves. In Shanton peninsula, four hundred thousand hectares of windbreakers were created and the coastal areas were used for cultivating oysters, clams, and shrimp. Today, ten million hectares of land are used for aquaculture producing algae, shellfish, and seaweed. A number of coastal cities such as Shanghai, Canton, and Tsing-

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49. 16 U.S.C. § 1453 (1).

50. *Id.*

51. *Id.* § 1454 (b)(1).

52. CHINA'S OCEAN AFFAIRS, *supra* note 5, at 50.

53. *Id.* at 48.

54. *Id.* at 37.

55. *Id.* at 49.

56. *Id.*

57. *Id.* at 50.

58. *Id.* at 53-64.

59. *Id.*

60. *Id.*

61. *Id.* at 443.

tao have developed successful tourist activities.

About twenty billion tons of sediment are brought down from rivers into the coastal areas in China. Tide land reclamation has been widely practiced. Four to five hundred thousand hectares have been reclaimed for agricultural or aquacultural purposes. In recent years, the government has made large investments in plants for treating polluted waters in the coastal areas. For example, six thousand tons of oily water were treated annually and in 1984, thirty thousand tons of oil were recovered from the treatment plants.

## VI. MARINE ENVIRONMENT PROTECTION

### A. *The 1982 Law*

Protection of the marine environment is a subject of great importance in China. In 1982, comprehensive legislation was introduced in the form of the Marine Environmental Protection Law (the "Marine Law").<sup>62</sup> A signatory to the 1982 Convention on the Law of the Sea, China has embodied into the Marine Law sections of the Convention dealing with marine pollution.<sup>63</sup> The measures taken under the Marine Law are consistent with those provided in the 1982 Convention and the Marine Law takes into account the relevant international legal instruments promulgated by the IMO. The Marine Law provides an institutional framework for the implementation, supervision, enforcement, and coordination of the law, and establishes a chain of command for actions to be taken from the national level down to the harbor level.<sup>64</sup>

The purpose of the Marine Law is to protect marine environment and resources, prevent damage from pollution, maintain ecological balance, safeguard human health, and promote the development of marine programs.<sup>65</sup> The Marine Law applies to the internal seas, the territorial seas, and "all other sea areas under the jurisdiction" of China.<sup>66</sup> The last phrase includes any other zones which China may declare to be outside its territorial seas, in accordance with international law. This may include an exclusive economic zone or contiguous zone which may be established in the future. The law also provides that when necessary, special marine reserves, sanctuaries, and scenic areas may be established.<sup>67</sup> Indeed, pursuant to this provision, certain marine reserves and sanctuaries have been established.

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62. Marine Environmental Protection Law, *supra* note 36.

63. *Id.* arts. 6-40.

64. *Id.* arts. 1-5.

65. *Id.* art. 1.

66. *Id.* art. 2.

67. *Id.* art. 4.

The Marine Law delineates the responsibilities of the various agencies which are involved in the marine environment.<sup>68</sup> The Harbor Superintendent Administration is responsible for overseeing and investigating the discharge of pollutants from vessels in port areas.<sup>69</sup> The state agency in charge of fishery administration is responsible for supervising the discharge of wastes by vessels in the fishing harbors.<sup>70</sup> The environmental protection departments of the coastal provinces and municipalities are responsible for organizing, coordinating, overseeing, and checking marine environmental protection against pollution caused by coastal construction projects and land-based pollutants.<sup>71</sup>

The Marine Law establishes a general framework for the protection of the marine environment. It sets out measures and standards for dealing with different sources of pollution—coastal construction projects,<sup>72</sup> offshore oil exploration and exploitation,<sup>73</sup> land-based pollutants,<sup>74</sup> vessel-based pollutants,<sup>75</sup> and dumping of wastes.<sup>76</sup> The State Council is to issue rules and regulations for dealing with each of these matters.<sup>77</sup> The State Ocean Administration, for example, has prepared draft regulations on oil exploration and exploitation, and on dumping of wastes at sea.

The Marine Law attempts to protect the marine environment in the following manner. For every proposed project of coastal construction (including offshore oil platforms and terminals), an environmental impact statement must be submitted for examination.<sup>78</sup> This statement must be prepared on the basis of scientific investigations of the affected marine environment.<sup>79</sup> The site must be selected in the light of the natural and social conditions.<sup>80</sup>

Under Article 6, detailed regulations on these matters are to be issued by the state agency concerned.<sup>81</sup> Under Article 8, ports and oil terminals are required to install facilities to receive and treat oil resi-

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68. *Id.* art. 5.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* arts. 6-9.

73. *Id.* arts. 10-17.

74. *Id.* arts. 18-25.

75. *Id.* arts. 26-37.

76. *Id.* arts. 38-40.

77. *Id.* art. 47.

78. *Id.* art. 10.

79. *Id.*

80. *Id.* art. 6.

81. *Id.*

dues and wastes, along with antipollution equipment, and monitoring and warning devices.<sup>82</sup>

Regarding oil exploration and exploitation, Article 13 provides that oily water and mixtures may not be directly discharged into the sea.<sup>83</sup> This article also sets the treatment standards; only after treatment may waste water be discharged into the sea.<sup>84</sup> Antipollution facilities and equipment are mandatory for any offshore, exploration, and exploitation oil activities.<sup>85</sup> Under Article 17, effective technical measures must be taken to prevent blow-out or oil-spill<sup>86</sup> and should such an accident take place, immediate report to the competent agency concerned is required.<sup>87</sup>

Pollutants from land had been a major source of pollution in China. The Marine Law prescribes special measures for dealing with these pollutants as follows:<sup>88</sup>

- (i) Detailed regulations are to be issued to establish standards for determining what kind of substance may be discharged into the sea;<sup>89</sup>
- (ii) Special regulations are to be issued for the discharge of waste containing radioactive matter;<sup>90</sup>
- (iii) The discharge of medical sewage and industrial waste water is controlled by special measures;<sup>91</sup>
- (iv) The use of chemical pesticides in coastal farmlands must conform to state regulations and standards;<sup>92</sup> and
- (v) State agencies are to ensure the water quality in the estuaries.<sup>93</sup>

The Marine Law provides various measures to combat pollution from vessels.<sup>94</sup> For example, any oil tanker over 150 gross tons, or any other vessel over 400 gross tons, must be fitted with appropriate antipollution equipment and facilities.<sup>95</sup> They must carry on board an oil

82. *Id.*

83. *Id.* art. 13.

84. *Id.*

85. *Id.* art. 17.

86. *Id.*

87. *Id.*

88. *Id.* arts. 18-25.

89. *Id.* art. 18.

90. *Id.* art. 19.

91. *Id.* art. 20.

92. *Id.* art. 23.

93. *Id.* art. 25.

94. *Id.* arts. 26-37.

95. *Id.* art. 27.

document book to document any discharge.<sup>96</sup> Any vessel carrying over two thousand tons of oil must have valid insurance certificates.<sup>97</sup> Although the law does not specify the amount insured, it should be consistent with international standards.

If a pollution accident occurs, a vessel must take immediate measures to control and eliminate such pollution, and to report to the nearest harbor authority for investigation and settlement.<sup>98</sup> The harbor authority has the power to compel action in order to avoid or minimize damage from pollution of a serious nature.<sup>99</sup> The Marine Law does not specify what type of action could be compelled. Presumably, this would include arrest of the vessel and its crew members. It is also stipulated in the Marine Law, that if pollution is caused by a vessel "in the sea area under the jurisdiction" of China, the Chinese officials have a right to board the vessel in question "to examine and to handle the case."<sup>100</sup> This provision applies to foreign vessels, provided that the pollution occurs within the sea area under Chinese jurisdiction.

The Marine Law sets forth a permit system for the dumping of wastes.<sup>101</sup> Unless a permit is obtained, no dumping may occur.<sup>102</sup> This applies equally to foreign vessels navigating within the Chinese marine jurisdiction.<sup>103</sup>

The Marine Law also contains provisions regarding legal responsibility.<sup>104</sup> If the law is violated, the competent authority may impose a fine, order the alleged offender to clean up the pollution, or to pay compensation.<sup>105</sup> Within fifteen days, the alleged offender may contest the order in a peoples' court.<sup>106</sup> If the order is ignored, the competent authority may refer the case to a peoples' court for enforcement.<sup>107</sup>

Similarly, any entity or individual whose interest has been injured because of a violation of the Marine Law has a right to claim compensation.<sup>108</sup> Any dispute over the question of liability or the sum to be

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96. *Id.* art. 28.

97. *Id.*

98. *Id.* art. 36.

99. *Id.* art. 35.

100. *Id.* arts 38-40.

101. *Id.* arts. 38-44.

102. *Id.* art. 38.

103. Regulations of the People's Republic of China Concerning Waste Dumping at Sea [hereinafter Waste Dumping Regulations], reprinted in CHINA'S OCEAN AFFAIRS, *supra* note 5, at 520-21, art. 9.

104. Marine Environmental Protection Law, *supra* note 36, arts. 41-44.

105. *Id.* art. 41.

106. *Id.*

107. *Id.*

108. *Id.* art. 42.

paid as compensation is to be settled either by resorting to measures referred to in the civil procedure law or by referring it directly to the People's Court.<sup>109</sup>

*B. 1983 Regulations Concerning Environmental Protection in Offshore Oil Exploration and Exploitation*

In 1983, the Regulations of the People's Republic of China Concerning Environmental Protection in Offshore Oil Exploration and Exploitation<sup>110</sup> (the "Offshore Regulations") were issued to supplement the 1982 Marine Law. The regulations set forth in detail the contents of a marine environmental impact statement which must be submitted for examination by an operator wishing to conduct offshore exploration and exploitation.<sup>111</sup> The impact statement must contain information on the type, composition, quantities and method of disposal of waste, and the possible and ultimate effects on the surrounding environment and resources, fisheries, shipping, and other offshore activities.<sup>112</sup> In addition, the impact statement must set forth the measures to be taken to avoid and mitigate adverse effects, including such aspects as planning, personnel, technical equipment, communication, and liaison.<sup>113</sup> The operator must prepare a contingency plan and provide oil-recover facilities, as well as enclosure and elimination equipment and materials commensurate with the size of the proposed operation.<sup>114</sup>

The Offshore Regulations enumerate various compulsory conditions for antipollution equipment in fixed and mobile platforms.<sup>115</sup> For example, oil and water separators and monitoring devices must exist for oil discharge.<sup>116</sup> Furthermore, operators must carry adequate insurance or other financial guaranties,<sup>117</sup> although the Regulations do not explain details of such insurance or guaranties. Detailed rules exist for waste disposal and discharge of oily waters.<sup>118</sup>

Under the Offshore Regulations, if explosives are used, they must be kept away from the spawning, breeding, and fishing seasons so as to minimize damage to the species.<sup>119</sup> Such operations must also be re-

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109. *Id.*

110. *Reprinted in CHINA'S OCEAN AFFAIRS, supra* note 5, at 526-33.

111. *Id.* art. 5.

112. *Id.*

113. *Id.*

114. *Id.* art. 6.

115. *Id.* art. 7.

116. *Id.*

117. *Id.* art. 9.

118. *Id.* arts. 11-12.

119. *Id.* art. 13.

ported to the competent authorities in advance.<sup>120</sup> If an oil spill or leakage occurs, an operator is required to take "prompt measures to enclose and recover the oil" so as to control, mitigate, and eliminate pollution.<sup>121</sup> Such accidents must immediately be reported to the competent authority.<sup>122</sup> The use of chemical dispersant is under special control and may only be used in the manner prescribed in Article 17.<sup>123</sup>

The officials of the competent authority have the right to board any platform and related installation for the purpose of inspection to ensure that all requirements set out in the Offshore Regulations are complied with.<sup>124</sup> Finally, Articles 22 to 25 deal with the questions of civil liability and responsibility regarding pollution,<sup>125</sup> and they further elaborate upon those provisions contained in the 1982 Marine Law.

### C. *The 1985 Regulations on the Dumping of Wastes at Sea*

Detailed regulations were issued in 1985 to implement the provisions regarding dumping of wastes at sea in the 1982 Marine Law.<sup>126</sup> Under the regulations, permits may be issued to applicants who have complied with the requirements set forth therein.<sup>127</sup> An applicant must file an application along with a certified report of the test result on the characteristics and composition of the wastes in question.<sup>128</sup> The competent authorities examine the application and act within a specified time period.<sup>129</sup> If approved, the permit must specify the waste, quantity involved, and the method of dumping.<sup>130</sup> The issuance of a permit is strictly controlled in accordance with the regulations and may be withdrawn or changed should the marine ecology so require.<sup>131</sup>

Approved dumping is to be conducted in the presence of a competent authority who shall verify that all conditions specified have been complied with and that the material dumped is the same as stated in the permit.<sup>132</sup> Approved dumping may only be made in areas specially designated by a competent authority in consultation with the depart-

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120. *Id.*

121. *Id.* art. 16.

122. *Id.*

123. *Id.* art. 17.

124. *Id.* art. 20.

125. *Id.* arts. 22-25

126. Waste Dumping Regulations, *supra* note 103.

127. *Id.* art. 6.

128. *Id.*

129. *Id.*

130. *Id.* art. 10.

131. *Id.*

132. *Id.* arts. 13-14.



ments concerned on the basis of scientific, safety, and economical principles; such area must first be approved by the State Council.<sup>133</sup> Any violator of the regulations may be fined up to one hundred thousand RMB.<sup>134</sup> Criminal proceedings may also be brought against an offender of the regulations.<sup>135</sup> Any individual who on his own initiative has reported, exposed violations, or has taken effective measures to reduce pollution, may be commended or rewarded.<sup>136</sup>

## VII. SETTLEMENT OF MARINE DISPUTES

There are basically three alternatives for settling disputes in the marine sector. One is to refer the case to a peoples' court pursuant to the Chinese Civil Procedure Law of 1982. Another way is to refer the case to a maritime court which exists only in the major port cities. Finally, a case may be referred to the Maritime Arbitration Commission which was especially created for settling disputes involving a foreign (non-Chinese) party.

### A. Maritime Courts

In 1984, China established maritime courts located in such large sea ports as Dalian, Tianjin, Qingdao, Shanghai, and Guangzhou. These courts were created to handle maritime cases promptly "so as to safeguard the lawful rights and interests of both Chinese and foreign litigants."<sup>137</sup> These courts have jurisdiction over maritime trade cases of the first instance.<sup>138</sup> The higher court in the locality where a maritime court is located has jurisdiction over appeals from the judgments and orders of the maritime court.<sup>139</sup>

In this connection, a reference should be made to the *George Washington* case in which a Chinese corporation brought suit against the government of the United States in order to recover losses caused by the United States submarine, the *George Washington*.<sup>140</sup> One of the

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133. *Id.* art. 5.

134. *Id.* art. 17.

135. *Id.* art. 21.

136. *Id.* art. 23.

137. Decision of the Standing Committee of the National People's Congress on the Establishment of Maritime Courts in Coastal Ports Cities, *translated in PRC LAWS, supra* note 13, at 151.

138. *Id.*

139. *Id.*

140. In April 1987, the *George Washington* (equipped with Polaris missiles) collided in the East China Sea with a Japanese freighter which had valuable Chinese cargo aboard. The United States Government paid \$2.6 million in November 1987 as a settlement for the claims of the victims, their families, and the Japanese cargo owners. A year

principal issues in the case, which is relevant here, was whether reciprocity exists between the two countries so as to permit a United States national to bring suit against the Chinese Government in China.

The United States Government also claimed immunity under the Public Vessels Act which bars suit by nationals of foreign governments if United States nationals do not enjoy a similar privilege to sue in that country's courts.<sup>141</sup> Finally, a jurisdictional stipulation and consent order was filed in December 1982, wherein it was agreed that reciprocity existed. As a result, the United States Government paid the undisputed part of the claims. This is a landmark case and provides an important basis for dealing with litigations in this field in the future.

### B. *The Maritime Arbitration Commission*

A Maritime Arbitration Commission ("MAC") was established in 1958 to deal exclusively with maritime disputes involving foreign parties.<sup>142</sup> Its creation represented China's policy of encouraging foreign participation in its effort to expand activities in the marine sector. MAC is intended to provide assurances to foreign parties that disputes will be settled according to standards and procedures familiar to them.<sup>143</sup> Like the Foreign Economic Trade Arbitration Commission (the "FETA"), MAC is a specially created legal regime, distinct from the normal arbitration and judiciary systems in China.<sup>144</sup>

MAC has its own rules of procedure which are modelled on current international practice.<sup>145</sup> In 1983, the Commission published a collection of fifteen arbitral awards and seven conciliation cases settled by the Commission before June 1983.<sup>146</sup> The purpose of the publication was to publicize the principles and practice followed by the Commission.

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later, the China National Technical Import Corporation brought suit against the United States Government (No. 82 Civ. 2205 (S.D.N.Y.)) claiming \$4.4 million in damages.

141. 46 U.S.C. § 785.

142. The Commission was created by a decision of the 82nd session of the State Council. Decision of the State Council of the People's Republic of China Concerning the Establishment of a Maritime Arbitration Commission within the China Council for the Promotion of International Trade, November 21, 1958, *reprinted in* CHINA INVESTMENT GUIDE 762-63 (1986) [hereinafter MAC Decision]; *see also* Pew, Jarvis, & Sidel, *The Maritime Arbitration Commission of the People's Republic of China: options and strategies*, 18 J. MAR. L. & COMM. 351 (1987); Lockett, *Dispute Settlement In the People's Republic of China: The Developing Role of Arbitration in Foreign Trade and Maritime Disputes*, 16 GEO. WASH. J. INT'L L. 239 (1982).

143. Lockett, *supra* note 142, at 256-64.

144. *Id.* at 256-57.

145. *Id.* at 256.

146. *See* MARITIME ARBITRATION COMMISSION, A COLLECTION OF AWARDS AND CONCILIATION STATEMENTS (1985).

While MAC is physically part of the China Council for the Promotion of International Trade (the "CCPIT"), it is an autonomous body.<sup>147</sup> It is not controlled by that body, nor does it share the same outlook of attracting foreign participation.<sup>148</sup> MAC consists of a panel of between twenty-one and thirty-two members, selected on the basis of their special knowledge in navigation, sea transportation, foreign trade insurance, and foreign law.<sup>149</sup> They are appointed for a term of two years, with reappointment being common.<sup>150</sup> So far, only Chinese citizens have been appointed to the panel.

Although MAC's jurisdiction is limited to disputes arising from salvage, collision and damage to ports, charter, transport and marine insurance,<sup>151</sup> it has been interpreted in a broad manner to cover all kinds of disputes relating to merchant shipping. Indeed, in 1982, the State Council expanded the scope of MAC's jurisdiction to include all maritime disputes which the parties have stipulated as arbitrable in their agreement.

As in most arbitration cases, a submission of a case to MAC is based upon the consent of the parties.<sup>152</sup> In practice, however, if a submission is not objected to by the other party, MAC presumes the consent of the other party. A distinctive feature of MAC is that after a case has been submitted, MAC may still try to settle the case by conciliation.<sup>153</sup> Conciliation is a traditional method of conflict resolution. The result is not very different from an out-of-court settlement. In conciliation, fairness, and equity play an important role. Difficulties may arise when MAC offers a solution on the basis of conciliation which is rejected by one party. Could this be prejudicial to the interest of the party? Could this be prejudicial to the interest of the party who rejected the conciliation? Presumably not, since the arbitration award must be based on applicable Chinese law, provisions of the contract in question, and relevant international practice.

Failing conciliation, an arbitration will begin. The procedure for appointing the arbitrators is identical to most current arbitration procedures. Each party chooses an arbitrator from among the membership, and the two party-selected arbitrators (or, in the case of a disagreement, the MAC Chairman), in turn, choose a third arbitrator from

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147. See MAC Decision, *supra* note 142.

148. *Id.*

149. *Id.* art. 3.

150. *Id.*

151. *Id.* art. 1.

152. *Id.*

153. *Id.*

the remainder of the MAC members.<sup>154</sup> According to the rules of procedure, the claimant appoints, or requests the chairman to appoint, an arbitrator.<sup>155</sup> The respondent then has fifteen days to accept the claimant's arbitrator as sole arbitrator, or select its own arbitrator.<sup>156</sup> Under the rules, a respondent is prevented from frustrating the arbitration by refusing or delaying to act.<sup>157</sup> If such a delay occurs, the MAC Chairman is authorized to appoint an arbitrator on behalf of the respondent.<sup>158</sup>

Under Article 7 of the MAC decision, the parties may have "representatives" who are not necessarily Chinese nationals.<sup>159</sup> It has been argued that under Article 191 of the Civil Procedure Law of 1982, foreign lawyers are no longer permitted to act as attorneys. It seems that Article 191 only applies to proceedings in the People's Court. MAC arbitration is not part of the judiciary, thus that provision does not automatically override Article 7 of the MAC decision. Even if this were the practice of MAC, the practice may still be contested legally. It should, however, be pointed out that the MAC rules permit the use of "expert consultants," who need not be Chinese nationals.<sup>160</sup>

An arbitration award made by MAC is final and both parties are barred from bringing an appeal for revision before a court of law or any other institution or organ.<sup>161</sup> The intention is to reduce the number of lawsuits and prevent delaying tactics. It is also expressly provided in the MAC rules that the award may be enforced by law if the party responsible for the execution does not do so within the prescribed time period.<sup>162</sup> Since the award is final, the court is legally bound to execute the award. Unlike many arbitration rules, the MAC Rules require the panel to announce its award, orally, at the closing session and render a written award within fifteen days of the final hearing.<sup>163</sup>

The MAC arbitration fee is reasonable—a maximum of 2% of the award<sup>164</sup>—and the MAC arbitration procedure is simple, efficient, and economical. This general theme is the "golden thread" which may be

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154. *Id.* arts. 5-8.

155. Provisional Rules of Procedure of the Maritime Arbitration Commission of the China Council for Promotion of International Trade, *reprinted in* NATIONAL COUNCIL FOR U.S.-CHINA TRADE, SPECIAL REPORT NO. 4, at 62-68 [hereinafter MAC Rules].

156. *Id.*

157. *Id.*

158. *Id.*

159. MAC Decision, *supra* note 142, art. 7.

160. MAC Rules, *supra* note 155.

161. MAC Decision, *supra* note 142, art. 7.

162. MAC Rules, *supra* note 155.

163. *Id.*

164. *Id.*

traced through all Chinese arbitration rules, whether they are designed for trade, contract, or joint venture.

### VIII. CONCLUSION

An attempt has been made to identify what laws exist in the marine sector. China has participated in law-making activities at the international and domestic levels in the fields of fisheries, oil and gas, marine environment, coastal area development, and dispute settlement. This is only a very limited selection, however, within this selection there exists a general legal framework covering most activities in those sectors. Furthermore, these laws are supplemented by fairly detailed rules and regulations. Thus, it is clear from this brief survey that a conscientious effort is being made in China to conduct marine affairs in a rational and orderly manner. The best way to achieve that goal is to continue to create an effective legal framework to deal with problems in this field.