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CHINA'S MARINE LEGAL SYSTEM—AN OVERALL REVIEW

*WU Jilu**

I. INTRODUCTION

Academic analysis of China's¹ legal system has largely been segmented by disciplinary boundaries. International law scholars generally focus on China's maritime zones (e.g., China's territorial sea claims), as well as more specific issues such as innocent passage and maritime delimitation. In contrast, environmental law scholars study the development and utilization of ocean resources and environment protection, while civil law experts primarily focus on property rights issues. However, because of the breadth and complexity into which it has evolved,² the study of China's marine legal framework requires an interdisciplinary approach.

This Article will advance the study of China's marine legal regime by providing a comprehensive analysis of the regime. First, Part II provides a historical and thematic overview of China's marine legal system. Part III then addresses the issues that are likely to arise under China's marine legal system. Lastly, Part IV proffers some thoughts about future development and improvement of China's marine legal system.

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1. "China" in this thesis is limited to mainland China and does not include Taiwan, Hong Kong, or Macao.

2. *See generally* CHINA INST. FOR MARINE AFFAIRS, CHINA'S OCEAN DEVELOPMENT REPORT 122-49 (2010) (noting that China's marine legal regime involves, among other things, marine rights and interests, resource development, maritime traffic, and environmental protection and management).

II. THE HISTORICAL DEVELOPMENT OF CHINA'S MARINE LEGAL SYSTEM

The focus of China's marine legal system has evolved concurrently with the development of international and domestic maritime law. This evolution can be roughly divided into three stages of development: (1) coastal defense and security, (2) ocean resources and ecological environmental protection, and (3) integrated ocean management.

A. 1950s-1970s: Concern for National Sovereignty and Defense Security

Safeguarding national marine rights and interests while simultaneously preserving for national security is an important component of China's marine legal system.³ After the founding of the People's Republic of China in 1949, China faced a number of perceived national security threats. First, the Kuomintang armed forces maintained control over some of the islands along China's southeast coast and frequently dispatched warships and aircraft in an effort to harass Chinese activities in coastal areas.⁴ Additionally, U.S. military activity during that time period further raised national security concerns for China. U.S. military aircrafts were conducting reconnaissance missions along the Chinese coast,⁵ and, in 1950, the United States sent naval forces to the Taiwan Strait as part of U.S. combat efforts during the Korean War.⁶ The Korean War also brought U.S. forces to China's borders in great numbers in 1950.⁷ Consequently, safeguarding national sovereignty and maritime security became an important national task.⁸

As a primary means of maintaining territorial sovereignty and maritime security, China designated restricted navigation zones and closed waterways in some sea areas.⁹ For example, China delineated the Zhoushan Islands as restricted navigation zones, barring domestic and

3. *Id.* at 88.

4. FENG LIANG ET AL., CHINA'S PEACEFUL DEVELOPMENT AND MARITIME SECURITY ENVIRONMENT 76 (2010).

5. *Id.* at 75.

6. See U.S. Dep't of State, *The Korean War, 1950-1953*, OFFICE OF THE HISTORIAN, <http://history.state.gov/milestones/1945-1952/KoreanWar2> (last visited Apr. 8, 2012).

7. GREG AUSTIN, CHINA'S OCEAN FRONTIER: INTERNATIONAL LAW, MILITARY FORCE AND NATIONAL DEVELOPMENT 61 (1998).

8. YANG WENHE ET AL., MAJOR MARINE EVENTS IN CHINA IN THE 20TH CENTURY 86-87 (2003).

9. See LUO YURU & ZENG CENGKUI, CONTEMPORARY MARINE UNDERTAKINGS OF CHINA 440-41 (1985).

foreign vessels from entering the area.¹⁰ Similarly, China designated restricted navigation zones in the Miaodao Archipelago,¹¹ and promulgated regulations restricting merchant vessels in the Lao Tieh Shan Channel.¹²

However, the crux of China's early marine law came in 1958, when China issued the Declaration of the Government of the People's Republic of China on the Territorial Sea (Declaration).¹³ Although the Declaration coincided with the first United Nations Convention on the Law of the Sea (UNCLOS), China did not attend the conference and therefore did not gain a participatory seat during treaty deliberations.¹⁴ The Declaration, then, was a means for China to express to the international community its position on the main issues regarding the law of the sea, specifically with respect to the territorial sea.¹⁵ To that end, the Declaration announced that the width of China's territorial sea was twelve nautical miles and extended Chinese jurisdiction over all territories of the People's Republic of China, including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands.¹⁶ The Declaration further provided that no foreign aircraft or foreign vessels being used for military purposes may enter China's territorial sea, or its corresponding airspace, without permission of the Chinese government.¹⁷

B. 1970s-1990s: Attention to the Development of Marine Industry and Protection of Environment and Resources

In the late 1970s, China underwent rapid economic growth that was accompanied by increased exploitation of coastal zone resources.¹⁸ In

10. *Id.* at 440.

11. *Id.* at 440-41.

12. COLLECTION OF THE SEA LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA 973-74 (Office of Law and Regulation, State Oceanic Admin. eds. 2001) [hereinafter SEA LAWS AND REGULATIONS].

13. See *Resolution of the Approval of the Declaration of the Government on China's Territorial Sea*, ASIAN LEGAL INFO. INST., <http://www.asianlii.org/cn/legis/cen/laws/rotscotnpcotaotdotgocts1338/> (last visited Apr. 8, 2012).

14. China's lawful rights were not restored until 1971. See G.A. Res. 2758 (XXVI), U.N. Doc. A/L 630 (Oct. 25, 1971).

15. GAO JIANJUN, CHINA AND THE INTERNATIONAL LAW OF THE SEA 4 (2004).

16. SEA LAWS AND REGULATIONS, *supra* note 12, at 197.

17. *Id.* at 198.

18. YURU & CENGKUI, *supra* note 9, at 25-33.

response, China promulgated several regulations designed to manage resource extraction and enhance environmental protection.¹⁹

1. Fisheries Law

Although China began to regulate fisheries in the late 1970s,²⁰ China's most comprehensive effort came in 1986, with the enactment of the Fisheries Law of the People's Republic of China (Fisheries Law). The Fisheries Law delegates regulatory power to specific administrative organs and charges those organs with regulating the exploitation and utilization of China's fishery resources.²¹ Additionally, respective fisheries agreements between China and Japan, Korea, and Vietnam have also played a role in the evolution of China's fisheries law regime.²²

2. Marine Environmental Protection Law

In the 1980s, China enacted the Marine Environmental Protection Law.²³ That law reflected China's evolving view of its marine environmental protection and its gradual emphasis of conservation work. Enacted in 1982, the Marine Environmental Protection Law is China's first comprehensive law for marine environmental protection and is known as the "dragon head" of China's marine environmental laws.²⁴ The law's scope is broad, emphasizing both the prevention of pollution damage to the marine environment by specific activities (e.g., coastal engineering, offshore oil exploration and development, land-based pollution, and ship and dumping of waste), as well as macro-level management of the marine environment.²⁵ In order to implement the Marine Environmental Protection Law, China has promulgated supporting laws and regulations and a series of related standards, in addition to corresponding zoning acts, such as the National Marine Function Zoning and Offshore Environmental Function Zoning.²⁶

19. CHINA INSTITUTE FOR MARINE AFFAIRS, *supra* note 2, at 81.

20. See LIU XINSHAN, PUBLIC ADMINISTRATION OF FISHERIES 48-50 (2010).

21. See Chapters II, III, IV, *Fisheries Law*, ASIAN LEGAL INFO. INST., <http://www3.asianlii.org/cn/legis/cen/laws/fl122/> (last visited on Apr. 8, 2012).

22. For an overview of China's fishing laws and regulations, see XINSHAN, *supra* note 20, at 48-50.

23. See *The Marine Environmental Protection Law of The People's Republic of China*, ASIAN LEGAL INFO. INST., <http://www3.asianlii.org/cn/legis/cen/laws/fl122/> (last visited on Apr. 8, 2012).

24. *Id.*; CHINA INST. FOR MARINE AFFAIRS, *supra* note 2, at 90.

25. CHINA INST. FOR MARINE AFFAIRS, *supra* note 2, at 83.

26. See generally SEA LAWS AND REGULATIONS, *supra* note 12.

3. Coastal Mining and Mineral Extraction

In order to regulate coastal mining and mineral extraction resources, the Chinese Government promulgated the Implementing Rules for Mineral Resources Law, the Regulations on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises, the Regulations on the Exploitation of Land Petroleum Resources in Cooperation with Foreign Enterprises, as well as twenty other supporting rules and regulations.²⁷ In addition, China has also introduced a number of specific regulatory measures for the sea sand mining industry, such as the Circular on Strengthening the Management of Sea Sand Mining. That Circular requires that the extraction of sand must meet the general principles of the National Marine Function Zoning, the Planning for Use of the Sea, and the Planning for Ocean Exploitation.²⁸

4. Other Relevant Laws

Additionally, China has implemented a suite of supporting laws and regulations. Examples include the Sea Area Use Law, the Water Pollution Prevention Law, the Air Pollution Prevention Law, the Solid Waste Pollution Prevention Law, the Environmental Impact Assessment Law, Nature Reserve Management Regulations and the Regulations on Management of Protection and Utilization of Uninhabited Islands. Collectively, these laws and regulations serve to enhance marine protection through the requirement of procedural and substantive safeguards (e.g., environmental impact assessments and emergency response plans), as well as through more industry-specific regulation of land- and shore-based activities.²⁹

C. 1990s-Today: Development Towards Integrated Ocean Management

Beginning in the 1990s, China's marine legal system began to develop in the direction of integrated ocean management, with an increased focus on comprehensively regulating sea-based activities,

27. See generally DEP'T OF MINERAL RES., DEVELOPMENT & MGMT., A COMPILATION OF LAWS AND REGULATIONS DOCUMENTS ON MINERAL RESOURCES DEVELOPMENT AND MANAGEMENT IN COMMON USE (2011).

28. *Circular on Strengthening the Management of Sea Sand Extraction*, Baidu.com, http://law.baidu.com/pages/chinalawinfo/4/89/a87718dc70647a108776ce8d78f2ce55_0.html (last visited Apr. 8, 2012).

29. See, e.g., *The Marine Environmental Protection Law of The People's Republic of China*, *supra* note 23.

coordinating conflicting uses, and safeguarding national marine rights and interests.³⁰ Three laws spearheaded this evolution: the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf, and the Law of the People's Republic of China on the Administration of the Use of Sea Areas.³¹

1. Law of the Territorial Sea and Contiguous Zone

The Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone (Territorial Sea Law), referenced above, in Part II.A, has established China's regime respecting its territorial sea and contiguous zone, including the range of the territorial sea and contiguous zone, the right of innocent passage through the territorial sea, the right of control of the contiguous zone,³² and the right of hot pursuit.³³

2. Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf

The Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf (EEZ Law) aligned Chinese domestic law with the rights and obligations of the coastal states over the exclusive economic zone and continental shelf as provided for in UNCLOS.³⁴ China enacted the law:

In order to ensure the exercise of the sovereign rights and jurisdiction over the exclusive economic zone and the continental shelf by the People's Republic of China and safeguarding its maritime rights and interests. . . . [For that reason] it is necessary to implement concretely the international marine legal systems provided by the Convention through domestic legislation.³⁵

30. CHINA INST. FOR MARINE AFFAIRS, *supra* note 2, at 84.

31. See MINISTRY OF THE INTERIOR, THE LAW ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE OF THE REPUBLIC OF CHINA AND THE LAW ON THE EXCLUSIVE ECONOMIC ZONE AND THE CONTINENTAL SHELF OF THE REPUBLIC OF CHINA (1998).

32. See *Territorial Sea and the Contiguous Zone*, ASIAN LEGAL INFO. INST., <http://www.asianlii.org/cn/legis/cen/laws/tsatz392/> (last visited on Apr. 8, 2012) (arts. 3, 4, 8 and 13).

33. See *id.* art. 14.

34. CHINA INST. FOR MARINE AFFAIRS, *supra* note 2, at 84.

35. Li Zhaoxing, *Description of "the Law of the People's Republic China on the Exclusive Economic Zone and Continental Shelf (Draft)"*, NPC.GOV.CN,

The EEZ Law has provisions on major issues, such as the breadth of China's exclusive economic zone and continental shelf, China's rights over its exclusive economic zone and continental shelf, measures to ensure its exercise of those rights, and principles for the delimitation of the exclusive economic zone and the continental shelf.³⁶ Taken together with the Territorial Sea Law, these two laws regulate all maritime zones under the jurisdiction of China, as well as embrace the rights given to the coastal States pursuant to UNCLOS. To that end, these two laws serve as the basic legal basis for comprehensively safeguarding China's marine rights and interests, as well as an important legal foundation for China's integrated ocean management.³⁷

3. The Law of the People's Republic of China on the Administration of the Use of Sea Areas

In 2001, China adopted the Law of the People's Republic of China on the Administration of the Use of Sea Areas (Sea Area Use Law), signaling China's efforts to implement a truly integrated ocean management regime.³⁸ Before the 1980s, no sea area management system existed in China,³⁹ rather, regulations governing ocean use were sector-specific by design and often relied upon local management methods developed by the industries or localities.⁴⁰

In 1993, with the consent of the State Council, the Ministry of Finance and the State Oceanic Administration jointly issued the National Provisional Regulations on Management of Sea Area Use, which proposed to establish "the regime on the right to use the sea area" and user-pay system for the use of sea areas.⁴¹ Since the Sea Area Use Law was adopted, the relevant state departments have issued a series of supporting regimes, and China's management system for the use of sea

<http://law.npc.gov.cn:87/page/browseotherlaw.cbs?rid=bj&bs=42206&anchor=0#go0> (last visited Apr. 8, 2012).

36. See *Exclusive Economic Zone and the Continental Shelf*, ASIAN LEGAL INFO. INST., <http://www3.asianlii.org/cn/legis/cen/laws/eezatcs443/> (last visited Apr. 8, 2012).

37. CHINA INST. FOR MARINE AFFAIRS, *supra* note 2, at 84.

38. See *Administration of the Use of Sea Areas Law*, ASIAN LEGAL INFO. INST., <http://www3.asianlii.org/cn/legis/cen/laws/aotuosal356/> (last visited Apr. 8, 2012).

39. Tian Fengshan, Minister, Land & Res., Instructions on the People's Republic of China Sea Use Management Law (June 26, 2001), *available at* <http://law.npc.gov.cn:87/page/browseotherlaw.cbs?rid=bj&bs=41976&anchor=0#go0>.

40. *Id.*

41. *Id.*

areas continues to evolve.⁴² China's management system for the use of sea areas now includes three basic regimes: (1) the marine function zoning regime, (2) the regime on the right-to-use of sea areas, and (3) the user-pay system for the sea area use.⁴³

The so-called marine function zoning is

based on the geographic conditions, the natural environment, natural resources, the status quo of exploitation and protection and the requirement of economic and social development, and in accordance with marine functional criteria of the sea areas, the sea areas are divided into different types of uses and functional areas of different environmental quality requirements, and are used to control and guide the direction of the use of the sea areas, protect and improve the marine environment, and promote sustainable use of ocean resources.⁴⁴

The marine function zoning system aims to harmonize and prevent conflicting uses between various sectors, while coordinating development and environmental protection.⁴⁵

The regime of the right-to-use of sea areas is the core of the management system for the use of sea areas.⁴⁶ The right to the use of sea area has been recognized by experts and confirmed by the Property Law of the People's Republic of China as a cognizable property right.⁴⁷ In 2006, the State Oceanic Administration, based on the Sea Area Use Law, formulated and promulgated the Regulations on Management of the Right to the Use of Sea Areas and the Method for Registration of the Right to the Use of Sea Areas and has further refined the regime for the use of sea areas in China.⁴⁸ The core of the user pays system is based on

42. For relevant documents, see *Marine Management*, STATE OCEANIC ADMIN., http://www.soa.gov.cn/soa/management/oceanmanage/A010403index_1.htm (last visited on Apr. 8, 2012).

43. See *Administration of the Use of Sea Areas Law*, *supra* note 38 (arts. 3, 4, 33).

44. SUMMARY OF THE NATIONAL MARINE FUNCTION ZONING 3 (Zhang Hongsheng ed. 2003) [hereinafter NAT'L ZONING SUMMARY].

45. *Id.* at 106-08.

46. CHINA INST. FOR MARINE AFFAIRS, *supra* note 2, at 85.

47. See *Property Law of the People's Republic of China*, NPC.GOV.CN, <http://law.npc.gov.cn:87/page/browseotherlaw.cbs?rid=en&bs=269573&anchor=0#go0> (last visited on Apr. 8, 2012).

48. These two documents can be found respectively at *Marine Management*, STATE OCEANIC ADMIN., <http://www.soa.gov.cn/soa/governmentaffairs/guojiahaiyangjuwenjian/hysygl/webinfo/2008/08/1270102488531588.htm> (last visited Apr. 8, 2012) and *Marine Management*, STATE OCEANIC ADMIN.,

the user fees for the use of sea areas, which aim to regulate the demand for such areas through market-driven controls and thus ease conflicts between competing uses.

III. EXISTING PROBLEMS AND FUTURE DEVELOPMENT OF CHINA'S MARINE LEGAL SYSTEM

Although China's marine legal system has substantially evolved since its inception in the 1950s, three fundamental issues still remain: (1) the concept of integrated marine and coastal management has not yet been codified into legislation, (2) marine law enforcement agencies lack adequate legal support and have not yet established a means of effective coordination, and (3) China's marine regime must increase coordination with relevant international laws (e.g., UNCLOS).

A. The Need for Integrated Management and Refinement of China's Marine Legislation

Budding issues, such as polar and seabed activities—areas that China has not yet enacted governing legislation for—underscore the need for more comprehensive management. Yet, China's marine legal framework is still largely fragmented and is therefore unable to fulfill the goals of integrated marine management. Although the Territorial Sea Law and the EEZ Law are the cornerstones of China's marine legal system, both laws announce China's sovereignty and jurisdiction only in sweeping declaratory terms—they lack specific measures to fulfill such rights.⁴⁹ Perhaps as a result, China has not developed laws relating to the construction, use, and management of man-made islands, facilities or institutions located within the exclusive economic zone and continental shelf, or the exploitation and management of ocean energy.

Further, even though UNCLOS grants the coastal state jurisdiction over marine scientific research activities conducted within the sea area under the state's jurisdiction,⁵⁰ China has not developed a law

<http://www.soa.gov.cn/soa/governmentaffairs/guojiahaiyangjuwenjian/hysygl/webinfo/2008/08/1270102488528029.htm> (last visited Apr. 8, 2012).

49. See *Territorial Sea and the Contiguous Zone*, *supra* note 32 (arts. 5, 6, 13, 14); *Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China*, NAT'L PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, <http://law.npc.gov.cn:87/page/browseotherlaw.cbs?rid=en&bs=98044&anchor=0#go0> (last visited Apr. 8, 2012) (art. 3, § 4).

50. See United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, at 448.

specifically relating to domestic marine scientific research. Rather, the Regulations of the People's Republic of China on Management of the Foreign-Related Marine Scientific Research can only be applied in foreign-related survey activities concerning marine environment and marine resources and, similarly, China's domestic marine scientific research (e.g., marine geological survey, marine surveying and mapping, marine hydrologic survey, and marine meteorological observation and forecasting) is conducted by various agencies.⁵¹ Data acquired as a result of such research is not well synthesized or shared, and, consequently, the collection, processing, transmission, and publication of marine environmental information cannot be quickly integrated to ensure efficiency due to multiple standards applied.⁵²

B. Problems Existing in China's Marine Law Enforcement

China's marine law enforcement regime has not been updated to deal with China's evolving environmental laws and, therefore, cannot meet the requirements of effective enforcement.⁵³ At present, there is no enforcement agency responsible for many marine enforcement activities (e.g., marine surveying and mapping),⁵⁴ and four out of China's five marine law enforcement institutions have not been authorized to take coercive measures such as arrest.⁵⁵

Moreover, China has yet to promulgate specific and unitary regulations to be observed by all the marine enforcement units. For example, when dealing with the hot pursuit of illegal fishing vessels, fisheries law enforcement must abide by general laws, as well as at least four regulatory papers elaborating on the exercise of the right of hot pursuit.⁵⁶

51. SEA LAWS AND REGULATIONS, *supra* note 12, at 328; WANG ZHENQING ET AL., STUDY ON MARINE LAW ENFORCEMENT 66-67 (2008).

52. See *About This Site*, MARINE SCIENCE DATA SHARING CTR., <http://mds.coi.gov.cn/bzjj.asp> (last visited Apr. 8, 2012).

53. For more information on Chinese enforcement agencies and their functions, see CHINA INST. FOR MARINE AFFAIRS, *supra* note 2, at 441-58.

54. See *Survey and Mapping Law of the People's Republic of China*, NAT'L PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, <http://law.npc.gov.cn:87/page/browseotherlaw.cbs?rid=en&bs=105072&anchor=0#go0> (last visited Apr. 8, 2012).

55. China's current laws only allow the border defense and maritime police to engage in enforcement measures.

56. They are *Circular on Addressing Several Issues concerning Foreign-related Cases by Ministry of Foreign Affairs, Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security and Ministry of*

Equally pressing is the fact that nearly 1.5 million km² of sea area claimed by China overlaps with claims made by neighboring nations. China needs to delimit maritime boundaries with eight neighboring countries, but so far, only 506 km in the Beibu Gulf has been delimited.⁵⁷ China has been in dispute with Japan regarding the sovereignty of the Diaoyu Islands in the East China Sea, and with Brunei, Malaysia, the Philippines, and Vietnam over the sovereignty of the Nansha Islands in the South China Sea.⁵⁸ Similarly, since 2009, China has been in dispute with South Korea and Japan over the East China Sea,⁵⁹ and with the Philippines, Vietnam, and Malaysia over the South China Sea.⁶⁰

C. Issues for Debate: Perception Gap

1. Straight Baselines

Pursuant to both the 1958 Declaration on China's Territorial Sea and the 1992 Territorial Sea Law, China applies straight baselines to Chinese territory.⁶¹ On May 15, 1996, China publicized the baseline of the territorial sea of the Chinese mainland and the Xisha Islands.⁶² On

Justice (20 June, 1995), *Interim Provisions on Management of Fishery Activities of Foreigners and Foreign Vessels within the Sea Areas under the Jurisdiction of People's Republic of China* (18th Order from Ministry of Agriculture in 1999), *Circular on Procedures for Handling Cases of Foreigner and Foreign Vessel-related Illegal Fisheries* (11th Paper from State Fisheries Administration in 1999) and *Regulations on Fisheries Cruise in Exclusive Economic Zone* (83rd Paper from State Fisheries Administration in 2005).

57. CHINA INST. FOR MARINE AFFAIRS, *supra* note 2, at 85; XUE GUIFANG, THE UNITED NATIONS CONVENTION ON LAW OF THE SEA AND THE STATE PRACTICE 221 (2011).

58. See Ministry of Foreign Affairs, *Countries and Regions*, MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE'S REP. OF CHINA, <http://www.fmprc.gov.cn/eng/gjhdq/> (last visited Apr. 8, 2012).

59. Sun-won Park, *The East China Sea Dispute: Short-Term Victory and Long-Term Loss for China?*, BROOKINGS, Nov. 11, 2010, http://www.brookings.edu/papers/2010/1101_east_china_sea_park.aspx.

60. See Permanent Mission of the Socialist Rep. of Viet Nam to the United Nations addressed to the Secretary General, U.N. Doc 86/HC-2009, *available at* http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_chn_2009r_e_mys_vnm_e.pdf; *see also* Comm'n on the Limits of the Continental Shelf, U.N. Div. for Ocean Affairs & the Law of the Sea, *Submission to the Commission: Joint Submission by Malaysia and the Socialist Republic of Viet Nam*, UN.ORG, http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (last updated May 3, 2011).

61. SEA LAWS AND REGULATIONS, *supra* note 12, at 197, 201.

62. *Id.* at 206-09.

August 21, 1996, the United States protested China's baseline system.⁶³ The United States alleged that "[m]uch of China's coastline does not meet either of the two . . . [UNCLOS] geographic conditions required for applying straight baselines [that are specified in article 7 (1) of the Law of the Sea]."⁶⁴ Although China responded to the United State's claim by arguing that its territorial sea baseline was in line with UNCLOS and state practice, "other states have sought further explanation from China";⁶⁵ thus, the issue will need further clarification.

2. Innocent Passage of Warships

Pursuant to the 1958 Declaration on China's Territorial Sea and the Territorial Sea Law, China has maintained that foreign military vessels may only enter China's territorial waters subject to Chinese government approval.⁶⁶ However, under international law, there are differing views, both in theory and in practice, with regard to the innocent passage of warships and whether prior approval from the coastal State must be obtained.⁶⁷ China and some other countries require prior notice, which in the opinion of the United States and other states amounts to an "excessive maritime claim."⁶⁸ Some scholars believe that, because China has ratified UNCLOS, it is obliged to bring its relevant domestic laws in line with the corresponding provisions of the convention.⁶⁹

3. Military Activities in the EEZ

The issue of jurisdiction of the coastal state over the activities of foreign military vessels and aircraft within China's EEZ may be more complicated than the above issues.⁷⁰ Further complicating this issue,

63. See generally BUREAU OF OCEANS & ENVTL. & SCIENTIFIC AFFAIRS, U.S. DEP'T OF STATE, LIMITS IN THE SEAS NO. 117, STRAIGHT BASELINE CLAIM: CHINA 4 (1996), available at <http://www.state.gov/documents/organization/57692.pdf>.2012-01-19.

64. *Id.* at 4.

65. J. Ashley Roach & Robert W. Smith, *Straight Baselines: The Need for a Universally Applied Norm*, 31 OCEAN DEV. & INT'L L. 47, 63 (2000).

66. SEA LAWS AND REGULATIONS, *supra* note 12, at 197, 202.

67. See, e.g., ZOU KEYUAN, CHINA'S MARINE LEGAL SYSTEM AND THE LAW OF THE SEA 53-80 (2005).

68. See J. Ashley Roach & Robert W. Smith, *Excessive Maritime Claims*, 66 INT'L L. STUDIES 1, 154-59 (1994).

69. See, e.g., ZOU, *supra* note 67, at 53-80.

70. See, e.g., Mark J. Valencia & Kazumine Akimoto, *Guidelines for Navigation and Overflight in the Exclusive Economic Zone*, 30 MARINE POL'Y 704 (2006); Sienho Yee,

and U.S.-China relations, is the relatively recent air collision incident in the South China Sea in 2001 and the USNS *Impeccable* incident in 2009.⁷¹ The contents included in the concept of military activities at sea are extremely complex,⁷² and also involve significant legal differences.

Chinese law enforcement agencies exercise jurisdiction over the U.S. survey activities based on China's relevant laws on marine scientific research.⁷³ Because military survey is only one type of military activity occurring at sea, China does not seem to rely entirely on its laws and regulations related to marine scientific research to exercise jurisdiction on foreign military activities in its exclusive economic zone. It seems that China and the United States cannot reach a consensus on the provisions in UNCLOS because military activities at sea, including the military activities carried out in EEZ, is an issue that the drafters of UNCLOS avoided intentionally.⁷⁴

4. U-shaped Line

A final issue remains with regard to China's traditional maritime boundary line, commonly known as the U-shaped line in the South China Sea.⁷⁵ In 1998, China officially promulgated the EEZ Law, which

Sketching the Debate on Military Activities in the EEZ: An Editorial Comment, 9 CHINESE J. OF INT'L L. 1 (2010).

71. Peter Dutton, *Introduction* in 7 CHINA MARITIME STUDIES: MILITARY ACTIVITIES IN THE EEZ: A U.S.-CHINA DIALOGUE ON SECURITY AND INTERNATIONAL LAW IN THE MARITIME COMMONS 2 (Peter Dutton ed., 2010).

72. For the purpose of this paper, "military surveys" refers to activities conducted "in the ocean and coastal waters involving marine data collection (whether or not classified) for military purposes, and can include oceanographic, marine geological, geophysical, chemical, biological and acoustic data. Equipment used can include fathometers, swath bottom mappers, side scan sonars, bottom grab and coring systems, current meters and profilers." Moritaka Hayashi, *Military and Intelligence Gathering Activities in the EEZ: Definition of Key Terms*, 29 MARINE POL'Y 123, 131 (2005).

73. Interview by Ma Zhaoxu, Spokesmen, Ministry of Foreign Affairs of the People's Republic of China (May, 6, 2009), available at <http://www.fmprc.gov.cn/chn/gxh/wzb/fyrbt/t560803.htm>.

74. See ROBIN R. CHURCHILL & A. VAUGHN LOWE, *THE LAW OF THE SEA* 307 (2d ed. 1988) (noting that UNCLOS "consciously avoided negotiation of the rules applicable to military operations on the seas.").

75. For additional information on China's U-shaped line, see CHI-KIN LO, *CHINA'S POLICY TOWARDS TERRITORIAL DISPUTES: THE CASE OF THE SOUTH CHINA SEA ISLANDS* (1989); MARK J. VALENCIA, JON M. VAN DYKE, & NOEL A. LUDWIG, *SHARING THE RESOURCES OF THE SOUTH CHINA SEA* (1997); GREG AUSTIN, *CHINA'S OCEAN FRONTIER: INTERNATIONAL LAW, MILITARY FORCE AND NATIONAL DEVELOPMENT* (1998); Zou Keyuan, *The Chinese Traditional Maritime Boundary Line in the South China Sea and its*

provides that, "the provisions in this Law shall not affect the rights that the People's Republic of China has been enjoying ever since the days of the past."⁷⁶ Some scholars believe that "[i]t is the People's Republic of China's clear intention that the historic claim applies to the water areas in the South China Sea wherever China could not establish its 200-nm exclusive economic zone."⁷⁷ China has stated that it has an "indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof"⁷⁸ Thus, although China does not explicitly refer to the Chinese historic right, China continues to refuse to abolish the U-shaped line.

IV. CONCLUSION

The establishment and development of China's marine legal system has been sharply impacted by three factors: (1) China's maritime security, (2) the development of the international law of the sea, and (3) the need to strengthen the economic and social development of marine management in the coastal regions of China.

From the 1950s to the 1970s, China focused on the recovery and development of traditional marine industries, giving environmental protection laws and regulations a limited role. During this period, the focus of the few documents of a legal nature promulgated by China has been maritime safety, serving the safeguarding of national sovereignty and marine rights and interests. Beginning in the 1980s, China began to enter large-scale coastal marine development activities.⁷⁹ Since the signing of UNCLOS in 1982, China has recognized the need for a legal system that regulates marine affairs.⁸⁰ Accordingly, China has

Legal Consequences for the Resolution of the Dispute over the Spratly Islands, 14 INT'L J. MARINE & COASTAL L. 27 (1999).

76. *Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China*, NAT'L PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, <http://law.npc.gov.cn:87/page/browseotherlaw.cbs?rid=en&bs=98044&anchor=0#go0> (last visited (Apr. 8, 2012)).

77. Zou Keyuan, *Historic Rights in International Law and in China's Practice*, 32 OCEAN DEV. & INT'L L. 149, 149 (2001).

78. Permanent Mission of the People's Republic of China, Letter dated May, 7, 2009 from People's Republic of China to U.N. Secretary General, U.N. Doc. CML/17/2009 (May 7, 2009), available at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf.

79. LUO & ZENG, *supra* note 9, at 25-33.

80. See *Mineral Resource Law*, ASIAN LEGAL INFO. INST., <http://www3.asianlii.org/cn/legis/cen/laws/mrl212/> (last visited on Apr. 8, 2012).

introduced a wide breadth of environmental laws and regulations regulating marine industry and activity. The 1990s marked another period in the evolution of China's marine legal system, as the country began to move from sector-specific management to integrated management.

In short, the past sixty years have laid the basic foundation for China's marine regulatory regime. This regime is a complicated mixture of various laws, regulations, and regulatory documents, all possessing different legal effect. On one hand, the marine regulatory regime demonstrates a distinctly creative approach to marine regulation and, in general, has improved marine environmental protection. Taken as a whole, however, China's marine legal system is still under development. The introduction of legislation dealing with maritime law enforcement, Antarctic activities, and deep-sea mining is still needed. And, at the same time, China should seek to harmonize existing and future legislation with corresponding international law and custom.