

Research on China's Internal Water Law and Policy

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Abstract

The maritime situation in China's neighbourhood has undergone significant changes in recent years. This article is devoted to a systematic discussion of China's internal water legal system and its practice. From the perspective of both international law and domestic law, it is expected to argue that China's legal regime on internal water is in conformity with international law, and that even some of the special institutional arrangements and legal practices in the light of China's national conditions are well-intentioned interpretations and applications of international law, which have enriched and developed international law.

Keywords

Internal water, China's legal regime for internal water, legal status of internal water.

1. Basic Features of China's Legal Regime on Internal Water

1.1. Concept and definition of internal water in the People's Republic of China

Article 2 of the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone (hereinafter referred to as the Law on the Territorial Sea and the Contiguous Zone), promulgated and implemented in 1992, stipulates that: "The waters on the landward side of the baselines of the territorial sea shall be the internal waters of the People's Republic of China". Article 2 of the Law on the Administration of the Use of Maritime Areas stipulates: "The maritime areas referred to in this Law refer to the water surface, the water body, the seabed and the subsoil of the internal waters and the territorial sea of the People's Republic of China. The internal water referred to in this Law means the sea area from the baseline of the territorial sea of the People's Republic of China to the coastline on the landward side".

The importance of the baselines of the territorial sea as the threshold of the territorial sea, the contiguous zone, the exclusive economic zone and the "internal waters" can be seen. In the Convention, the methods of delineating the baselines of the territorial sea are defined as normal baselines, straight baselines and mixed baselines, but there is no stipulation on which method is required to be used by coastal states to delineate the baselines of their territorial sea. For example, the United States adopts the normal baselines method to delineate the baselines of the territorial sea, whereas China adopts the straight baselines method to delineate the baselines of the territorial sea.

1.2. Sovereign rights of the People's Republic of China over internal waters

After the founding of the People's Republic of China, a series of legal regimes on the management of internal water, such as ports, customs and the management of foreign vessels, were promulgated: for example, the 1954 Interim Regulations of the People's Republic of China on Harbour Management, the 1957 Measures of the People's Republic of China for the Import and Export Administration of Foreign Vessels, the 1961 General Rules for the Joint Inspection of Imported and Exported Vessels, the 1979 Notice on Procedures and Precautions for Conducting Joint Import and Export Inspections of Vessels on International Vessels and the Circular on Measures for Simplifying Border Inspection of Foreign Vessels, and the 1987 Customs Law. General Provisions on Joint Inspection of Import and Export Ships of 1961, the

1979 Circular of the Ministry of Public Security on the Procedures for Conducting Joint Inspection of International Vessels for Import and Export and Precautions to be Taken and the Circular on the Measures for Simplifying Border Inspection of Foreign Vessels and the 1987 Customs Law of the People's Republic of China.

According to the provisions of these decrees: the entry of foreign ships into ports is subject to the prior permission of the relevant port authorities of the People's Republic of China. Foreign ships are allowed to enter the port, but before entering the port, they should wait for inspection and go through the required formalities at the designated berths. When foreign ships need to enter our ports in case of special circumstances, they are limited to open ports, and in addition to going through the application and approval procedures, they should also abide by certain rules and accept the inspection and enquiry of the relevant authorities and follow the instructions; without approval, the people on board are prohibited from going ashore and loading and unloading goods.

2. Some issues in China's Legal Regime for Internal Water

Although China has made great progress in the field of marine legislation since the founding of New China, and the legal system in the field of internal waters has become more standardized and enriched, it cannot be denied that there are still some problems in the field of internal waters that need to be further improved by the legal system.

2.1. Port State jurisdiction systems remain inadequate

The port State is a concept derived from the coastal State. The so-called port State jurisdiction is the jurisdiction of the State of the port or offshore facility where the ship calls on the ship, is "another name for the jurisdiction of the coastal State over internal water and the territorial scope of the port as a special man-made facility." As the right of the coastal state to security of traffic is limited by the principle of freedom of navigation, in recent years some countries have begun to take advantage of their status as the country where their port facilities are located to supplement or even extend the jurisdiction of the coastal state through the setting of port access conditions. In the case of large trading and port States, their port State jurisdiction legislation can have a significant impact on the global shipping industry. There are also successful cases of banning technically defective foreign ships from entering ports in China's maritime management practice. However, compared with the legislation of shipping developed countries, the provisions of China's law are still imperfect in applying port state jurisdiction to safeguard the interests of national traffic safety.

All along, the acceptance of flag state jurisdiction by ships is the core of international maritime rules, and the conditions of ship registration, safety standards and other matters are traditionally entrusted to the responsibility of the flag state, even if the ship sails into the waters under the jurisdiction of other countries, it can also rely on the freedom of navigation to fight against the jurisdiction of the coastal state. However, as a maritime utilising state, the flag state's concern for the traffic safety rights and interests of the coastal state has natural limitations, especially when the freedom of navigation conflicts with the safety of maritime traffic, and it is not difficult to imagine the result of the trade-off. Coastal States urgently need other means to strengthen their maritime traffic safety governance capacity, and port State jurisdiction is gradually gaining importance.

Its unique advantage lies in the fact that, based on a State's absolute sovereignty over its internal waters, there are fewer constraints under international law on the jurisdiction of foreign ships calling in port waters. Ports in the Convention, together with rivers, bays and other waters that are also within the baselines of the territorial sea, constitute the internal waters of the coastal State. "Just as States are in principle free to dispose of territorial matters,

so they may choose to dispose of internal water matters freely." Under article 25, paragraph 2, of the Convention, for example, the coastal State has the right to take the necessary steps to prevent any damage to internal waters or harbour conditions by ships. Also, under article 211, paragraph 3, of the Convention, States shall give due publicity and notify the competent international organisations if they make the prevention of pollution of the marine environment a condition for the entry of foreign ships into their ports, whereas, by contrast, under paragraph 5 of the same article, the enactment by States of legislation on the prevention of pollution of the marine environment in the exclusive economic zone is subject to "generally accepted international rules and standards". The difference in formulation suggests that the port State may adopt more stringent jurisdictional measures than would be the case under a general international convention.

2.2. Legal status of the internal waters of the South China Sea break line to be clarified

The Declaration on the Baselines of the Territorial Sea of the People's Republic of China of 15 May 1996 proclaimed 49 baselines of the territorial sea of the mainland, from the Shandong Peninsula to Hainan Island, and 28 baselines of the territorial sea surrounding the Xisha Islands. The act of announcing the baselines of the territorial sea of the Xisha Islands had a decisive impact on the study and determination of the breaklines and historical rights in the South China Sea.

In addition, the concept of "historical rights" appears for the first time in Chinese legislation in the EEZ and Continental Shelf Law. Article 14 of the Law states: "The provisions of this Law shall not affect the historical rights enjoyed by the People's Republic of China." Although the South China Sea break line is still not mentioned, the provisions of the Law on Historical Rights clearly indicate the position of the Chinese government. The Exclusive Economic Zone and Continental Shelf Act confirms China's historical rights in the South China Sea in the form of domestic law.

The successive Chinese governments have never defined the interrupted line of the South China Sea as the "boundary between China and foreign countries", nor have they ever regarded all the maritime spaces within the line as internal water or territorial sea, nor have they exercised sovereignty over them as if they were land territories; The jurisdiction and management practice of the successive Chinese governments has not exercised the line as a relevant national boundary, and has never been used as the boundary of the South China Sea. exercise the relevant rights by treating the line as a national boundary. The island attribution line suggests that it represents China's sovereignty over the islands and reefs and sands within the line, as well as the sovereignty derived therefrom over the islands in the South China Sea and their adjacent waters, ignoring the historical rights to the internal waters within the line. China does not claim, and in reality does not treat, the waters within the broken line as historic waters of a sovereign nature.

3. Reflections on and Suggestions for Improving China's Internal Water Legal Regime

3.1. The legal regime of internal water in the People's Republic of China is generally consistent with modern international law.

China's relevant legislation and practice are consistent with existing customary international law and take into account the prevailing trends in the legislative practice of many coastal States. The United Nations Convention on the Law of the Sea has had a significant impact on the development of Chinese legislative practice in this area. In the context of globalisation, the

development of China's legal regime on internal water should take care to balance the dual perspectives of domestic law and international law.

3.2. On the basis of a State's absolute sovereignty over its internal waters, the jurisdictional function of the port State should be actively broadened.

As the maritime administration is the main department in China exercising port State jurisdiction, the provisions on port State jurisdiction should be expanded and improved in the Maritime Safety Law. Port State supervision should be added, so that ships of foreign nationality and offshore installations calling at China's ports are subject to supervision and inspection in accordance with China's laws and the international treaties to which it is a party. At present, "Flag of Convenience" ships are prevalent in the international shipping field, and their flag states often lack the motivation to supervise safety due to economic and tax factors, thus port state supervision is to a large extent tasked with discovering technical defects and other violations of law, and safeguarding the safety of maritime traffic. The discovery of illegal acts through port state supervision also creates conditions for port state jurisdiction. This also helps to clarify the legal basis for the implementation of port State control by China's maritime administration.

At the same time, the design of port State jurisdiction rules should pay attention to marine environmental factors. Against the background that developed countries in Europe and the United States have been using port state jurisdiction to expand their jurisdiction over the marine environment, and even to promote unilateral environmental standards, the 2021 MSC Law undoubtedly restricts its own governance capacity by making security only a condition for port access. Since the present amendment takes the marine environment as a limiting condition for the right of innocent passage in the territorial sea, it is all the more important that the port state access conditions, which have a greater impact on the coastal state and should have been more strictly regulated, should not give up the consideration of the marine environment.

3.3. China's territorial sovereignty over the islands in the South China Sea and its historical right of ownership over part of the South China Sea waters

The South China Sea median line is related to the issue of historical rights, and the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone and the 1998 Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf include the four groups of archipelagos in the South China Sea median line, which covers all the jurisdictional sea areas of China, including all the rights conferred on the coastal states by the international law of the sea as well as the relevant claims of the Chinese government, and confirms China's historical rights in the South China Sea. It confirms China's historical rights in the South China Sea. The Declaration on the Baselines of the Territorial Sea of the People's Republic of China of 15 May 1996 declared the baselines of the territorial sea of the mainland portion and the Xisha Islands, which had a decisive impact on the study and determination of the continuous line and historical rights in the South China Sea.

The broken line represents China's territorial sovereignty over the islands in the South China Sea within the line, and its historical rights over the waters within the line. There are sufficient historical and legal grounds to support China's territorial sovereignty over the islands in the South China Sea, its historical ownership of part of the South China Sea, as well as its traditional fishing rights over fishery resources and its historical right of navigation in the entire sea area. On the basis that sovereignty over the islands and reefs in the South China Sea has long belonged to China, the South China Sea break line confirms and declares the four groups of archipelagos in the South China Sea as an integral part of China's territory. Based on the principle of international law that land rules the sea, the inter-archipelagic waters and

territorial waters of the four groups of archipelagos in the South China Sea are also an integral part of China's territory, to which China enjoys historical rights of ownership.

4. Conclusion

The legal regime for internal water under the framework of the existing Chinese legal system is generally favourable to the maintenance of maritime rights and interests, security and development. At the same time, in order to more effectively protect the marine environment, maintain maritime security and fulfil the role of a port State, it is necessary to take measures to improve the norms of the regional legal system for internal waters, as well as to strengthen the legal basis for the mechanism and to enhance the benefit of international experience.

References

- [1] Quan Hongxue. The preliminary exploration of China's marine administrative law enforcement system [D]. Southwest University of Political Science and Law,2016.
- [2] Li Jianfei. Research on Legal Issues of Maritime Transport Facilitation and Port State Control [D]. East China University of Political Science and Law,2019.DOI:10.27150/d.cnki.ghdzc.2019.000065.
- [3] Wang Pei. Research on the special internal water regime of the United Nations Convention on the Law of the Sea [D]. Hainan University,2019.DOI:10.27073/d.cnki.ghadu.2019.001037.
- [4] Wang Yan. Research on the problems and countermeasures of marine administrative law enforcement[C]//. Proceedings of the 2018 Annual Meeting of the Ocean Rights Maintenance and Law Enforcement Research Branch of the Pacific Society of China and the Marine Law Research Society of Liaoning Province Law Society. [Publisher unknown],2018:20-26.
- [5] Ren Xiaofeng. Research on China's "Historical Rights" in the South China Sea - "Cutting the Foot to Fit the Foot" or "Tailoring the Body"[J]. Boundary and Ocean Research,2022,7(04):3-25.
- [6] Song Peijun. The Discourse System of "Historicity" of the Convention on the Law of the Sea and the Significance of the Cognition of Historical Rights in the South China Sea[J]. Ideological Front, 2020,46(01):126-139.
- [7] Yan Ziwei. On the Legal Attributes of Historical Rights within the Discontinuous Line of the South China Sea[D]. Graduate School of Chinese Academy of Social Sciences,2019.
- [8] Shin Jong-soo. Research on the legal issues of the application of straight baselines[D]. Wuhan University,2019.DOI:10.27379/d.cnki.gwhdu.2019.000650.
- [9] Jia Yu. China's historic rights in the South China Sea[J]. Chinese Law,2015,No.185(03):179-203.DOI:10.14111/j.cnki.zgfx.2015.03.010.
- [10] Xing Houqun. On China's maritime traffic safety legislation under the perspective of international maritime rule of law [J]. Social Science, 2021(06): 99-109. DOI:10.13644/j.cnki.cn31-1112.2021.06.011.
- [11] Jiang Dongmei, Ning Jiuming. Discussion and Suggestions for Revision of the Concept of "Internal Water" in the Textbook of International Law[J]. Journal of Examination,2007(05):29-30.
- [12] Qian Mai. Meaning of "internal water" on the landward side of the baseline of China's territorial sea[J]. Oceanography,2010,28(02):36-44.
- [13] Hu Bin: "On the Impact of the Abuse of "Port Access Right" on the Legal System of Ship Jurisdiction", China Maritime Law Research, No.4, 2014.

- [14] Qu Yanan, Chi Jiajun. Research on the system of innocent passage regime under the framework of the United Nations Convention on the Law of the Sea]]. Journal of Xingtai College, 2021,36(01):114-118.