

# **Vessel-source Pollution and Coastal State Jurisdiction**

**The Work of the ILA Committee on  
Coastal State Jurisdiction Relating to Marine Pollution  
(1991–2000)**

*Edited by*

Erik Franckx



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# CASE STUDY OF CHINA

HUI YU

## 1 INTRODUCTION

### 1.1 General geographical context

China is a major coastal state with a continental coastline of some 18 000 km facing east and another 14 000 km of coastline around its 6 500 islands. Off the Chinese coast lie the South China Sea (3 500 000 km<sup>2</sup>), the East China Sea (770 000 km<sup>2</sup>), the Yellow Sea (380 000 km<sup>2</sup>) and in the north, virtually surrounded by the mainland, the Bohai Sea (77 000 km<sup>2</sup>). These are seas on the northwestern margin of the Pacific, enclosed or semi-enclosed between China and its neighbouring states. Along China's coastlines are hundreds of important ports and harbours that connect China to the world. China's internal straits, the Bohai strait and the Qiongzhou strait, and an international strait, the Taiwan strait, are very important shipping routes.

While China's coastal waters are rich in natural resources, the marine environmental outlook may give cause for concern. As some scholars describe it: 'First, the littoral and adjoining areas have the heaviest population concentration in the world. Second, these areas have one of the heaviest concentration of industry in the coastal zone in the world. Third, here is a heavy concentration of shipping routes of the world. Fourth, there is considerable potential for oil and gas in the offshore'.<sup>1</sup>

### 1.2 Different maritime zones claimed by China and their delimitation

China made its first claim to a territorial sea in 1958 during the Taiwan strait crisis. The government of the People's Republic of China<sup>2</sup> issued a Declaration on the Territorial Sea, which stated that: 1)The breadth of China's territorial sea was 12 nautical miles;<sup>3</sup> 2)straight baselines would be applied as appropriate for the delimitation of China's territorial sea; 3)no foreign military vessels or aircraft could enter China's territorial sea or the air above it without permission; and 4)the foregoing principles would apply to Taiwan and its surrounding islands and to all

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<sup>1</sup> Gold, E. & Johnston, D., 'Pollution Control in the Semi-enclosed Seas of East Asia', in *The Law of the Sea: Problems from the East Asian Perspective* (Park, C. & Park, J., eds), Hawaii, Law of the Sea Institute, pp. 96, 96-97 (1987).

<sup>2</sup> Hereinafter cited as PR China or China.

<sup>3</sup> Hereinafter cited as n.m.

islands belonging to China.<sup>4</sup> This Declaration has served as the basis for China's policy on the law of the sea.

China then extended its maritime jurisdiction through basic maritime laws and regulations enacted in the 1980s. The Marine Environmental Protection Law, promulgated on 23 August 1982,<sup>5</sup> and the Fisheries Law, promulgated on 20 January 1986,<sup>6</sup> apply to China's territorial sea and 'all other sea areas under China's jurisdiction'. The Maritime Traffic Safety Law, promulgated on 2 September 1983,<sup>7</sup> is 'applicable to all vessels, installations and persons navigating, berthing or carrying out operations in the coastal waters of the PR China, and to the owners and operators of such vessels and installations'. These laws do not define the meaning of the phrase 'other sea areas under China's jurisdiction' or 'the coastal waters of the PR China', but the provisions may foreshadow China's claim to an exclusive economic zone<sup>8</sup> and the continental shelf to which it is entitled in accordance with the 1982 United Nations Convention on the Law of the Sea.<sup>9</sup>

China's Law on the Territorial Sea and the Contiguous Zone, dated 25 February 1992,<sup>10</sup> defines the breadth of China's territorial sea as 12 n.m. measured from straight baselines, establishes a 12-n.m. contiguous zone adjacent to and beyond the territorial sea, and prescribes basic rights and duties in these two zones.

It was not until 1998 that China enacted its Law on the EEZ and the Continental Shelf.<sup>11</sup> Dated 26 June 1998, the provisions of China's Law on the EEZ and the Continental Shelf clearly follow those of the 1982 Convention. It establishes a 200-n.m. EEZ beyond and adjacent to the territorial sea, and a continental shelf, comprising the sea-bed and subsoil of the submarine areas, that extends beyond its territorial sea throughout the natural prolongation of its land

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<sup>4</sup> For English text of the Declaration, see 28 *Peking Review* p. 21 (9 September 1958).

<sup>5</sup> Hereinafter cited as 1982 MEPL. For English text, see Office of Laws and Regulations, Department of Ocean Management and Monitoring, State Oceanic Administration, *Collection of the Sea Laws and Regulations of the People's Republic of China*, Beijing, Ocean Press, pp. 78-83 (1991). Hereinafter cited as 1991 Collection of Sea Laws.

<sup>6</sup> *Ibid.*, pp. 290-302.

<sup>7</sup> *Ibid.*, pp. 235-249.

<sup>8</sup> Hereinafter cited as EEZ.

<sup>9</sup> Multilateral convention, signed on 10 December 1982, 1833 *United Nations Treaty Series* (hereinafter cited as *UNTS*) 3. The full text can also be found on Internet: <[www.un.org/Depts/los/losconv1.htm](http://www.un.org/Depts/los/losconv1.htm)>. The convention entered into force on 16 November 1994. Hereinafter cited as 1982 Convention.

<sup>10</sup> The official English translation can be obtained from the Legislative Affairs Commission of the Standing Committee of the National People's Congress of China. Another English translation is reprinted in 21 *Law of the Sea Bulletin* pp. 24-27 (August, 1992).

<sup>11</sup> For English translation, see 38 *Law of the Sea Bulletin* pp. 28-31 (1998). Another unofficial translation by K. Zou can be found in 7 *Maritime Institute of Malaysia (MIMA) Bulletin* pp. 27-29 (1999).

territory to the outer edge of the continental margin, or to a distance of 200 n.m. from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend that far. As China's coasts face enclosed or semi-enclosed seas, significant conflicts between China's maritime claims and those of opposite and adjacent neighbouring states remain to be settled. The related problems were among the main factors that delayed the enactment of China's EEZ and continental shelf legislation.

### **1.3 Status iuris concerning the main international conventions relating to marine pollution**

Of the fifty conventions/amendments/protocols/annexes relating to shipping, listed by the International Maritime Organization<sup>12</sup> on 29 February 2000, China is party to thirty-one of them.<sup>13</sup>

#### *1.3.1 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 29 November 1969 and Protocol of 1973<sup>14</sup>*

China is a party to the Intervention Convention as well as to the Protocol of 1973.

#### *1.3.2 International Convention for the Prevention of Pollution of the Sea by Oil, 12 May 1954<sup>15</sup>*

China, on the other hand, never became a party to the OILPOL Convention.

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<sup>12</sup> Hereinafter cited as IMO.

<sup>13</sup> See Internet: <[www.imo.org/imo/convent.index/htm](http://www.imo.org/imo/convent.index/htm)>.

<sup>14</sup> Multilateral convention, 970 *UNTS* 211. The full text can also be found on Internet: <[sedac.ciesin.org/pidb/texts/intervention.high.seas.casualties.1969.html](http://sedac.ciesin.org/pidb/texts/intervention.high.seas.casualties.1969.html)>. The convention entered into force on 6 May 1975. Convention hereinafter cited as Intervention Convention. Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil, multilateral protocol, 1313 *UNTS* 3. The full text can also be found on Internet: <[sedac.ciesin.org/pidb/texts/intervention.high.seas.casualties.protocol.1973.html](http://sedac.ciesin.org/pidb/texts/intervention.high.seas.casualties.protocol.1973.html)>. The protocol entered into force on 30 March 1983.

<sup>15</sup> Multilateral convention, 327 *UNTS* 3. The convention entered into force on 26 July 1958. Hereinafter cited as OILPOL Convention.



*1.3.3 International Convention for the Prevention of Pollution from Ships, 2 November 1973, and Protocol to the Convention, 17 February 1978*<sup>16</sup>

On 1 July 1983, the Chinese government informed the IMO of its accession to the MARPOL 73/78 Convention. However, China declared that it would not be bound by annexes III and V. The MARPOL 73/78 Convention entered into force for China on 2 October 1983. In China, it is not normally necessary to enact laws or regulations in order to implement treaties and conventions. The provisions of international treaties ratified or acceded to by China are applied if they are different from those of Chinese laws, subject to reservations made by China.<sup>17</sup>

*1.3.4 1982 Convention*

China ratified the 1982 Convention on 7 June 1996, 18 months after its entry into force. Although China had participated actively in the Third United Nations Conference on the Law of the Sea,<sup>18</sup> and had signed the 1982 Convention on the day it was opened for signature on 10 December 1982, several factors delayed China's ratification. Among them were the difficulty of reconciling China's position on passage by warships through the territorial sea with the convention's provisions on innocent passage, overlapping maritime claims with opposite and adjacent states, territorial disputes over some groups of islands, and uncertainty as to the financial obligations arising under the 1982 Convention. Ratification of latter instrument demonstrates China's willingness to protect its maritime rights and to address its maritime problems by reference to international law.

<sup>16</sup> Multilateral convention, 12 *International Legal Materials* pp. 1319-1444 (1973) and multilateral protocol, 17 *International Legal Materials* pp. 546-578 (1978), 1340 *UNTS* 61. The conventional system entered into force on 2 October 1983. Hereinafter cited as MARPOL 73/78 Convention.

<sup>17</sup> See Civil Law 1986, Art. 142 (Bureau of Legislative Affairs of the State Council of the People's Republic of China, 1 *Laws and Regulations of the People's Republic of China Governing Foreign-related Matters (1949-1990)*, Beijing, China Legal System Publishing House, p. 331, 347 (1991)), and Civil Procedure Law 1991, Art. 238 (Bureau of Legislative Affairs of the State Council of the People's Republic of China, *Laws and Regulations of the People's Republic of China Governing Foreign-Related Matters (1991-1992)*, Beijing, China Legal System Publishing House, p. 297, 334 (1994)), Maritime Code 1992, Art. 268 (Bureau of Legislative Affairs of the State Council of the People's Republic of China, *Laws and Regulations of the People's Republic of China Governing Foreign-related Matters (1991-1992)*, *ibid.*, p. 348, 389), and Marine Environmental Protection Law 1999, Art. 97 (2 *Gazette of the State Council of the People's Republic of China*, p. 5, 14 (2000), as also available in Chinese on Internet: <[www.chinainfolaw.com](http://www.chinainfolaw.com)>).

<sup>18</sup> Hereinafter cited as UNCLOS III.

## 2 PRESENT CHINESE LEGAL FRAMEWORK

## 2.1 Basic Chinese legislation relating to the oceans

China turned its attention to marine environmental protection after the 1972 United Nations Conference on the Human Environment, though environmental consciousness is deeply rooted in Chinese culture. Since the late 1970s and early 1980s, with the application of 'open door and economic reform' policy, and committed to the reconstruction of its legal system, China has adopted a series of basic laws and regulations concerning marine environmental protection and various aspects of marine activity. They include:

- Regulations on the Exploitation of Offshore Petroleum Resources in Co-operation with Foreign Enterprises, 30 January 1982;<sup>19</sup>
- 1982 MEPL;<sup>20</sup>
- Maritime Traffic Safety Law, 2 September 1983;<sup>21</sup>
- Fisheries Law, 20 January 1986;<sup>22</sup>
- Mineral Resources Law, 19 March 1986;<sup>23</sup>
- Customs Law, 22 January 1987;<sup>24</sup>
- Regulations on Management of Laying Submarine Cables and Pipelines, 11 February 1989;<sup>25</sup>
- Regulations on Protection of Underwater Cultural Relics, 20 October 1989;<sup>26</sup>
- Regulations on Investigation and Settlement of Maritime Traffic Accidents, 11 January 1990;<sup>27</sup>
- Law on the Territorial Sea and the Contiguous Zone, 25 February 1992;<sup>28</sup>
- Measures Governing the Participation of Foreign Firms in the Salvage of Sunken Ships and Objects in the Chinese Coastal Waters, 12 July 1992;<sup>29</sup>

<sup>19</sup> 1991 Collection of Sea Laws, *supra* note 5, pp. 336-348.

<sup>20</sup> See *supra* note 5.

<sup>21</sup> See *supra* note 7.

<sup>22</sup> See *supra* note 6.

<sup>23</sup> 1991 Collection of Sea Laws, *supra* note 5, pp. 358-375.

<sup>24</sup> *Ibid.*, pp. 390-416.

<sup>25</sup> *Ibid.*, pp. 34-40.

<sup>26</sup> *Ibid.*, pp. 44-49.

<sup>27</sup> *Ibid.*, pp. 268-282.

<sup>28</sup> See *supra* note 10.

<sup>29</sup> Bureau of Legislative Affairs of the State Council of the People's Republic of China, *Laws and Regulations of the People's Republic of China Governing Foreign-related Matters (1991-1992)*, Beijing, China Legal System Publishing House, pp. 546-549 (1994).

- Maritime Code, 7 November 1992;<sup>30</sup>
- Law on the EEZ and the Continental Shelf, 26 June 1998.<sup>31</sup>

China's first legal regulations towards controlling marine pollution could date back to 1974 when the State Council enacted Temporary Regulations concerning Prevention of Pollution in Coastal Areas. These regulations mainly regulated oil pollution by ships at ports, and it signified the start of control of marine pollution by legal measures.<sup>32</sup> The 1982 MEPL is the first specific legislation and most important law addressing problems of pollution of the marine environment. The purpose of the 1982 MEPL is to protect the marine environment and resources, prevent pollution damage, maintain ecological balance, protect the health of the population and promote marine scientific research. It applies within China's internal waters and the territorial sea, and all other sea areas under China's jurisdiction, grants implementing power to relevant governmental agencies, and addresses five specific sources of pollution: Pollution by coastal construction projects, pollution from offshore oil exploration and exploitation, pollution by land-based pollutants, pollution by vessels, and pollution by dumping of wastes. It imposes administrative, civil and criminal liabilities, and provides for punishment of polluters.

In order to implement the 1982 MEPL, a number of regulations and detailed measures were later laid down to govern the various sources of marine pollution.<sup>33</sup> Of particular importance are the Regulations Concerning the Prevention of Pollution in Sea Areas by Vessels, promulgated on 29 December 1983 by the State Council.<sup>34</sup> Containing 12 chapters with 56 articles, the regulations are applicable to Chinese and foreign vessels within the sea areas and sea ports under China's jurisdiction, as well as to ship owners and other individuals. All are required to comply with the 1982 MEPL and these regulations regarding the discharge of oils, oily mixtures, wastes and other poisonous or harmful substances. Such discharge is prohibited in fresh water areas of the ports close to estuaries, in special conservation zones, and in marine nature conservation zones. Vessels must be provided with anti-pollution certificates and equipment. It should be noted that many provisions and standards of the MARPOL 73/78 Convention were taken into

<sup>30</sup> Ibid., pp. 348-390.

<sup>31</sup> See supra note 11.

<sup>32</sup> Twenty Years of China Environmental Protection Administration Edition Committee, *Twenty Years of China Environmental Protection Administration*, Beijing, China Environmental Science Press, p. 220 (1994).

<sup>33</sup> Regulations Concerning Environmental Protection in Offshore Oil Exploration and Exploitation, 29 December 1983, 1991 Collection of Sea Laws, supra note 5, pp. 101-114; Regulations Concerning the Prevention of Pollution in Sea Areas by Vessels, on 29 December 1983; Regulations Concerning the Dumping of Wastes at Sea, 6 March 1985, *ibid.*, pp. 155-166; Regulations Concerning Prevention of Pollution Damage to the Marine Environment by Coastal Construction Projects, 1 August 1990, *ibid.*, 173-184; Regulations Concerning Prevention of Pollution Damage to the Marine Environment by Land-based Pollutants, 1 August 1990, *ibid.*, pp. 192-206; Regulations Concerning Prevention of Environmental Pollution by Ship-breaking, 18 May 1988, *ibid.*, pp. 213-225.

<sup>34</sup> *Ibid.*, pp. 127-147.

account during the legislation, and some have been incorporated into these regulations.

## 2.2 Chinese regulations governing foreign vessels

China's long and eventful history as a sovereign state has made it sensitive to the need to protect its national security and maritime interests, and to ensure traffic safety and good order on the sea. This is reflected today by its adoption of specific regulations governing foreign ships. These are:

- Regulations Governing Foreign Vessels' Entry into and Departure from the Ports of China, 12 March 1957;
- Regulations Governing Non-military Foreign Vessels Passing Through the Qiongzhou Strait, 8 June 1964;<sup>35</sup>
- Regulations Governing Supervision and Control of Vessels of Foreign Registry Sailing in the Yangtze River, 20 April 1983;<sup>36</sup>
- Regulations Governing Supervision and Control of Foreign Vessels, 22 August 1979.<sup>37</sup>

Regulations Governing Supervision and Control of Foreign Vessels 1979 replaced the previous Regulations Governing Foreign Vessels' Entry into and Departure from the Ports of China 1957. The new regulations were enacted with the purpose of 'safeguarding the Chinese sovereignty, maintaining traffic order in port areas and coastal waters, ensuring safety of navigation and preventing pollution of waters' (Art. 1). All foreign ships 'navigating in port areas and China's coastal waters' must comply with these regulations. The term 'coastal waters' means 'inland waters and territorial sea of the PR China as well as water areas officially defined as coming under the jurisdiction thereof' (Art. 2). Further, 'vessels shall be subject to inspections by the Harbour Superintendency Administration set up in the port by the Government of the PR China where the latter deems such inspections necessary' (Art. 2). Clearly, China exercises a strict port and coastal-state jurisdiction over foreign ships. Chapter 6 of the regulations deals with 'prevention of pollution'. Art. 35 provides that 'no vessel shall wilfully discharge oils, oily mixtures or other harmful pollutants or wastes within port areas and coastal waters of the PR China'. Art. 36 provides that '[i]f any ballast water, tank washings or bilge water is to be discharged from any vessel, application shall be made to the Harbour Superintendency Administration for approval'. While the regulations do not define the meaning of 'wilfully discharge', it is clear that the Chinese competent authority has the power to deal with the applications of foreign vessels to enforce pollution control.

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<sup>35</sup> Ibid., pp. 59-63.

<sup>36</sup> Ibid., pp. 254-259.

<sup>37</sup> Ibid., pp. 14-29.

### 2.3 China's emphasis on coastal-state jurisdiction

Chinese laws and regulations have not explicitly prescribed the act of marine pollution as non-innocent passage through the Chinese territorial sea. China's Law on the Territorial Sea and the Contiguous Zone very generally provides that 'foreign ships passing through the territorial sea of the PR China must comply with the laws and regulations of the PR China and shall not act in a manner prejudicial to the peace, security and good order of the PR China', and 'the Government of the PR China has rights to take all necessary measures to prevent and stop non-innocent passage through its territorial sea' (Art. 8). This provision may imply that if Chinese laws and regulations on marine environmental protection are violated, the passage of a foreign ship in the Chinese territorial sea can be regarded as no longer innocent, and that the Chinese competent authority would have the right to board that ship to examine and deal with the case. The ship can be warned or fined, or the case may be transferred to the judicial authorities.<sup>38</sup>

Chinese laws and regulations applicable to foreign ships in the Chinese territorial sea apply also in the other sea areas under China's jurisdiction, in the sense that all Chinese laws and regulations must be obeyed in all those areas. As mentioned above, until promulgation of China's Law on the EEZ and the Continental Shelf in 1998, there had been no clear delimitation of China's EEZ and the continental shelf. But Chinese laws had repeatedly used the term 'other sea areas under China's jurisdiction' in prescribing their application and scope. With the adoption of China's Law on the EEZ and the Continental Shelf in 1998, China clarified the sea areas to which it is entitled and its legislative and enforcement authority over them. Art. 10 of the Law provides that 'the competent authorities concerned of the PR China have the right to take necessary measures for the purpose of prevention, reduction and control of marine pollution and of protection and preservation of the marine environment in the EEZ and the continental shelf'.

Further, according to Art. 2 (3) of the 1982 MEPL, discharges of harmful substances and dumping of wastes outside the waters that are under Chinese jurisdiction are also to be regulated and controlled, if such activities cause pollution damage to China. In such cases, criminal or administrative proceedings can be instituted according to the relevant provisions of Chinese laws.<sup>39</sup>

The provisions of Chinese laws and regulations conform with the Chinese position on coastal-state jurisdiction in UNCLOS III. As early as the 1970s, the Chinese delegation submitted to the United Nations Seabed Committee several working papers, some of the contents of which were related to conservation of marine resources and marine environmental protection.<sup>40</sup> At UNCLOS III, China supported provisions for coastal-state jurisdiction for the prevention of marine

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<sup>38</sup> See 1982 MEPL, Art. 37 and Regulations Governing Supervision and Control of Foreign Vessels 1979, Art. 50.

<sup>39</sup> See 1982 MEPL, Art. 37, Civil Procedure Law 1991, Art. 262, and Regulations Concerning the Prevention of Pollution in Sea Areas by Vessels 1983, Art. 53.

<sup>40</sup> Department of Law, Peking University, *Collected Materials on the Law of the Sea* [in Chinese], Beijing, People's Press, pp. 73-76 and 81-82 (1974).

pollution. As declared by the Chinese delegate to the Conference, 'each State has the right to formulate its environmental policy and take all necessary measures to protect its marine environment and prevent pollution in the sea areas under its national jurisdiction. In so doing the coastal States should of course have regard for the interests of all and those of its neighbouring countries'.<sup>41</sup>

### 3 THE REVISED MARINE ENVIRONMENTAL PROTECTION LAW

*China Ocean Agenda 21* requires the state to 'establish and improve the legal and standards system for marine environmental protection'.<sup>42</sup> More than 15 years have passed since China's promulgation of the 1982 MEPL, and many developments and changes have occurred. China has ratified the 1982 Convention and acceded to more marine environmental protection treaties.<sup>43</sup> This may require further action to

<sup>41</sup> Luo Y., A/CONF 62/C3/SR6 (1974), p. 2, 3; as cited in Greenfield, J., *China's Practice in the Law of the Sea*, Oxford, Clarendon Press, p. 107 (1992).

<sup>42</sup> State Oceanic Administration, *China Ocean Agenda 21*, Beijing, Ocean Press, p. 94 (1996).

<sup>43</sup> China's ratification of international treaties with respect to the marine environment: Convention on the International Regulations for Prevention Collisions at Sea, 20 October 1972, 1050 *UNTS* 16. The convention entered into force on 15 July 1977. Ratified by China on 7 January 1980; International Convention on Civil Liability for Oil Pollution Damage, 29 November 1969, 973 *UNTS* 3. The convention entered into force on 19 June 1975. Ratified by China on 30 January 1980; International Convention for the Regulation of Whaling, 2 December 1946, 161 *UNTS* 72. The convention entered into force on 10 November 1948. Ratified by China on 24 September 1980; Antarctic Treaty, 1 December 1959, 402 *UNTS* 71. This treaty entered into force on 23 June 1961. Ratified by China on 8 June 1983; MARPOL 73/78 Convention, *supra* note 16 and accompanying text, ratified by China on 1 July 1983; Convention on Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 29 December 1972, 1046 *UNTS* 120. The convention entered into force on 30 August 1975. Ratified by China on 6 September 1985; Intervention Convention, *supra* note 14 and accompanying text, ratified by China on 23 February 1990; Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, 11 February 1971, 955 *UNTS* 115. This treaty entered into force on 18 May 1972. Ratified by China on 31 October 1990; Convention on the Control of Transboundary Movement of Hazardous Waste and Their Disposal, 22 March 1989, 28 *International Legal Materials* pp. 657-686 (1989). The convention entered into force on 5 May 1992. Ratified by China on 17 December 1991; United Nations Convention on Biological Diversity, 5 June 1992, 31 *International Legal Materials* pp. 818-841 (1992). The convention entered into force on 29 December 1993. Ratified by China on 7 November 1992; International Convention for the Unification of Certain Rules of Law with Respect to Collision Between Vessels, 23 September 1910, *Consolidated Treaty Series* (Parry, C., ed.), New York, Dobbs Ferry, pp. 178-186 (1980). The convention entered into force on 1 March 1913. Ratified by China on 5 March 1994; Protocol on Environmental Protection to the Antarctic Treaty, 4 October 1991, 30 *International Legal*

harmonize Chinese law with such treaties. With the adoption of market economy policies, economic activities in China's coastal areas have boomed, and the marine environment faces greater pressure. Some of the recent ocean development activities could not be regulated or properly dealt with under the existing 1982 MEPL. After years of work, a revision of the 1982 MEPL was promulgated on 25 December 1999. It became effective on 1 April 2000.<sup>44</sup>

The 1999 MEPL contains ten chapters with 98 articles, including: 1) General provisions, 2) marine environmental supervision and management, 3) marine ecological protection, 4) prevention of pollution damage to the marine environment by land-based pollutants, 5) prevention of pollution damage to the marine environment by coastal construction projects, 6) prevention of pollution damage to the marine environment by marine construction projects, 7) prevention of pollution damage to the marine environment by dumping of wastes, 8) prevention of pollution damage to the marine environment by vessels and relevant operating activities, 9) legal liabilities, and 10) supplementary provisions.

The first chapter of the 1999 MEPL sets out the principles and scope of application. It incorporates the term 'sustainable development' in prescribing the purpose of the legislation, and clearly defines the scope of its application as covering internal waters, the territorial sea, the contiguous zone, the EEZ and the continental shelf, and other marine areas under China's jurisdiction. The law explicitly spells out that activities outside the waters under Chinese jurisdiction which cause pollution damage to China shall be subject to the law, and clarifies the responsibilities of different ministries competent to deal with marine affairs. Chapter 2 'marine environmental supervision and management' is a new chapter, as compared with the 1982 MEPL. It lays down a system of co-responsibilities for marine environmental protection activities that are of a cross-regional or cross-departmental nature, and sets out principles for adoption of marine environment quality standards, for maritime monitoring and inspection of incidents, etc. Chapter 3 deals with the protection of marine ecology and the establishment of special marine protection zones, a subject not covered by the 1982 MEPL. The fourth, fifth, sixth, seventh and eighth chapters, dealing with different pollution sources, have been substantially revised. The chapter on liability provides for strict

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*Materials* pp. 1461-1486 (1991). The protocol entered into force on 14 January 1998. Ratified by China on 2 August 1994; International Convention for the Safety of Life at Sea, 1 November 1974, 1184 UNTS 2. The convention entered into force on 25 May 1980. Ratified by China on 9 December 1994; Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, 16 June 1994, *United States Treaty and Other International Acts Series* 11465. The convention entered into force on 8 December 1995. Ratified by China on 16 June 1995; 1982 Convention, *supra* note 9 and accompanying text, ratified by China on 7 June 1996; International Convention for the Conservation of Atlantic Tunas, 14 May 1966, 673 UNTS 63. The convention entered into force on 21 March 1969. Ratified by China on 15 June 1996. These agreements are listed by Zou, K., 'Implementing Marine Environmental Protection Law in China: Progress, Problems and Prospects', 23 *Marine Policy* p. 220 (1999).

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See Internet: <[www.chinainfolaw.com](http://www.chinainfolaw.com)>. Hereinafter cited as 1999 MEPL.

liability and the polluter-pays principle. Its rules on punitive measures are more detailed and precise than before. The last chapter contains definitions and explanations of some of the terms and rules in the law. It declares also that the international treaties ratified or acceded to by China shall be applied where their provisions are different from the provisions of the law, except where reservations have been made by China (Art. 97).

Chapter 8 on 'prevention of pollution damage to the marine environment by vessels and relevant operating activities' deals with vessel-source pollution. Unlike the 1982 MEPL, which mainly regulates oil tankers of 150 tons gross tonnage and above, and other ships of less than 400 tons gross tonnage, the revised law does not classify ships. It regulates all kinds of ships, imposes higher standards and thus strengthens the protection of the marine environment from vessel-source pollution. The new law also contains stricter provisions requiring ships to possess anti-pollution equipment and capacities, and all ports, harbours, loading stations and shipyards are required to be equipped with anti-pollution facilities. While the 1982 MEPL contained only very general principles on pollution prevention, the 1999 MEPL contains a list of ship-operating activities that cannot be carried out without express approval. The new law provides, for example, that carriage of hazardous goods must be notified to, and be approved by the competent authority. A new article requires arrangements for oil pollution insurance and compensation funds in accordance with international custom. Detailed policy and rules on the subject are to be formulated. As was the case with the 1982 MEPL, the revised law prescribes that if accidents should occur on the high sea and cause serious pollution damage consequences or pose the threat of pollution damage to sea areas under Chinese jurisdiction, the competent Chinese authority is empowered to take necessary enforcement measures against the ships and marine installations concerned. As in the case of the 1982 MEPL, the new law provides that all ships have the duty to be on the lookout for pollution and to report to the relevant authorities.

#### 4 CHINESE NATIONAL IMPLEMENTATION PRACTICE

In China, several governmental administrative departments are responsible for marine environmental protection.

The Environmental Protection Ministry is responsible for directing, co-ordinating and supervising national marine environmental protection activities. It is specially responsible for marine environmental protection against land-based pollutants and pollution from coastal construction projects.

The State Oceanic Administration is responsible for supervising activities in the marine environment, and for organizing investigation, monitoring and surveillance, and evaluation of the marine environment. It has a primary role in protection against marine pollution damage caused by offshore oil exploration and exploitation and by the dumping of wastes into the sea.

The State Fishery Administration is responsible for supervising the discharge of wastes by vessels in fishing harbours and for keeping harbour waters under surveillance.



The Environmental Protection Department of the Armed Forces is responsible for supervising the discharge of wastes by naval vessels and keeping under surveillance the waters of the naval ports.

The Maritime Agency of the Ministry of Communication (or the Harbour Superintendency Administration as it was called in the past) is responsible for overseeing, investigating and dealing with the discharge of pollutants from vessels and for keeping under surveillance the waters of the port areas. It exercises the following powers relating to control of foreign ships: 1)Supervising the implementation of marine traffic regulations by foreign ships; 2)issuing authorisations to foreign ships to enter or depart from Chinese ports; 3)appointing and arranging pilotage for foreign ships which are permitted to enter or leave Chinese ports; 4)supervising the technical status of foreign ships, and maintaining traffic order and security; 5)investigating and dealing with issues arising from marine accidents, including pollution damage. The 1999 MEPL provides that 'the Chinese competent authority has the right to board foreign ships navigating, berthing and operating in the sea areas under Chinese jurisdiction for investigation and settlement of cases of pollution damage caused by such ships' (Art. 5 (3)). In practice, many marine pollution cases relating to foreign ships have been properly handled by the relevant harbour administrations.<sup>45</sup> As to marine environmental monitoring and surveillance, during 1985-1995, the State Oceanic Administration of China provided patrol ships and aircraft for that purpose. The extent of the inspected areas under the Chinese jurisdiction was 600 000-700 000 km<sup>2</sup>. From 1990 to 1995, there were 741 aircraft sorties and 1 691 patrols by ships. They discovered 1 014 violations and 149 red tides.<sup>46</sup>

In recent years many other reforms have taken place. For example, since 1984 China has set up and progressively brought into operation vessel traffic services in its major ports, greatly improving vessel traffic safety control and marine environment protection.<sup>47</sup> In May 1999, the Ministry of Communication issued a Programme for the Implementation of the Water Traffic Safety Supervision and Management System.<sup>48</sup>

## 5 CONCLUSIONS

China has established a comprehensive marine legal system. It ratified the 1982 Convention in 1996, and has now formally claimed the maritime zones it is entitled to in accordance with that convention. China has acceded to a number of international treaties in relation to the marine environment, and has incorporated many rules and provisions of these treaties into its legislation. The protection of marine environment, in particular against vessel-source pollution, has been secured

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<sup>45</sup> See Xiz, Z., *Outline on China Important Environmental Cases and Legal Implementation*, Beijing, China Environmental Science Press, pp. 300-322 (1994).

<sup>46</sup> As cited in Zou, K., *supra* note 43, p. 212.

<sup>47</sup> Lu, S., *Marine Legal System*, Beijing, Guangming Daily Press, p. 247 (1992).

<sup>48</sup> 22 *Gazette of the State Council of the People's Republic of China* pp. 917-920 (1999).

by the adoption and enforcement of the 1982, and later the 1999 MEPL, as well as its implementing regulations and measures. All ships, Chinese and foreign, navigating in the sea areas under China's jurisdiction must comply with China's laws and regulations. According to these laws, China can also exercise its jurisdiction over foreign ships and installations that are outside areas of Chinese jurisdiction, but have caused marine pollution damage to China. With the recent amendment of the 1982 MEPL in 1999 and its effective enforcement in the new century, it is believed that the goal of sustainable use of the oceans set forth in *China's Ocean Agenda 21* will be realised.

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