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教育部人文社会科学重点研究基地  
中国海洋大学海洋发展研究院  
中澳海岸带管理研究中心

资助

# 海洋法律、社会 与管理

(2011年卷 总第3卷)

徐祥民 主编

中国海洋大学公共管理硕士(MPA)教育中心

主办

中国海洋大学法律硕士(JM)教育中心

OCEAN LAW, SOCIETY AND MANAGEMENT (2011)



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## 卷首语

2010年12月,中国海洋大学举行了法学学科建设30周年庆祝活动。这是海洋大学法学学科建设历史上的一个里程碑,也是对中国海洋大学海洋法学教学、研究和社会服务30年历程的一次有意义的“回眸”。

在12月26日举行的法学学科建设30年庆典上,中国海洋大学海洋法学研究所第一任所长,也是中国海洋大学法学学科的创始人张克教授除了回顾海洋法学研究所走过的30年历程和所取得的成就外,还从我国海洋人文社会科学发展的角度和我国国家海洋利益的高度,对我校的法学研究尤其是海洋法学研究提出了宝贵的建议,对海洋人文社会科学的发展提出了殷切的希望。张先生作为一名从事海洋法学和海洋管理研究30余年的专家,他所表达的对海洋人文社会科学研究希望也是对我国海洋人文社会科学界的希望,对我国海洋人文社会科学整体繁荣的希望。

本卷《海洋法律、社会与管理》(2011年卷)的编者和他们联系的作者们的工作顺承了张先生的希望。这一卷概括起来主要有以下几个特点。

### 第一,开阔的国际视野

本卷收录的论文有曹文振、李伟强所著的《美国联邦海岸带政策及其借鉴》和梅宏、孙漪涵的《论英国海岛法律与管理及其对我国的启示》。两篇论文都对相关国家的政策、法律及其经验做了认真的总结提炼,并力图使这些经验对我国的海岸带管理、海岛管理提供借鉴。孙凯、徐厚升的论文《环境非政府组织与国际捕鲸机制的变迁——基于1982年“商业捕鲸禁令”的考查》则对“国际捕鲸机制的变迁”展开了追根溯源的考查。这些论文把研究者和读者引向美国、英国,引向国际海洋事务领域。只有我国对这些领域都做了充分的研究,我们才有可能像张克先生说的那样在相关“海洋法律问题”以及其他问题上“有更多的参与权和话语权”。

## 第二, 崭新的海洋人文社会科学研究领域

张克先生所说的“努力扩展研究领域”, 我相信既包括作为学科发展的先锋去开辟新的研究领域, 也包括跟踪海洋事业发展的需要, 在已经出现的海洋人文社会科学的新领域有所作为。本卷收录的论文反映了有关作者推动海洋人文社会科学新领域发展的努力和在海洋人文社会科学新领域里的作为。

海洋社会学在我国是新兴的学科, 是由中国海洋大学的学者们率先创立的一个新学科。经过以中国海洋大学的庞玉珍教授、崔凤教授等为首的一批学者的大力推进, 这门学科的研究已经取得了长足的发展。中国社会学学会开办海洋社会学论坛和成立海洋社会学专业委员会就是这个学科初步繁荣的标志。韩兴勇、弓卿、宁波撰写的《海洋社会管理与文化建设研讨会暨第二届中国海洋社会学论坛综述》反映了2011年7月在江西南昌举办的主题为“海洋社会管理与文化建设”的第二届海洋社会学论坛的盛况, 提供了会议就“海洋意识”、“海洋文化与社会发展”等所展开的讨论等重要信息。

文化软实力是国际社会刚刚提起不久的一个话题。一个国家、一个民族是否也可以形成或具有海洋文化这种软实力? 宋宁而、马坤的论文《海洋文化软实力研究初探》对此作了初步的研究。相信这一研究会引导更多的研究者关心海洋文化软实力问题。

## 第三, 强大的海洋综合研究优势的依托

张克先生在庆典上的讲话强调了中国海洋大学的海洋法学学科和海洋人文社会科学各学科拥有学校综合性、“涉海学科齐全”这一“得天独厚的优势和条件”。这一“优势和条件”在本卷收录的文稿中得到了体现。

宋宁而、王聪整理的《第二届海峡两岸海洋海事大学蓝海策略校长论坛暨海洋科学与人文研讨会综述》是对由中国海洋大学主办的第二届“海峡两岸海洋海事大学蓝海策略校长论坛暨海洋科学与人文研讨会”(第一届由台湾海洋大学主办)的研讨情况所作的概括。这样的盛会的召开既是对海洋领域相关研究成果的一次检阅, 同时, 对海洋人文社会科学研究来

说,也是学界制定研究规划、整合研究队伍和筹划协作研究的一次良好的机会。

时军、王昌森撰写的《海洋环境、气候变化与环境法基本理论的热点问题探讨》摘取了山东省法学会环境与资源保护法学研究会为庆祝研究会成立十周年在烟台召开的学术研讨会上的涉海研究内容等讨论要点。近年来,挂靠中国海洋大学的山东省法学会环境与资源保护法学研究会每届年会都设立与海洋有关的议题。在2011年的年会上,与会学者探讨了渔业配额制度、渤海管理立法、海洋能源开发与应对气候变化等理论和实践问题。

《海洋法律、社会与管理》(2011年卷)即将出版问世,在此,我想再次借用张克先生的话:只要我们“坚持正确的研究方向,加倍努力,抓住重点,突出特色”,繁荣海洋人文社会科学的愿望“就一定会实现”,海洋人文社会科学的未来就一定会“更加辉煌”!

徐祥民

2011年12月17日

## Foreword

In December 2010, the 30th anniversary celebration of legal studies was held at Ocean University of China (hereinafter called OUC). It was a milestone in the history of legal studies and also a meaningful “retrospect” to law of the sea education, research and social service in the 30 years at OUC.

At the 30th anniversary celebration of legal studies on December 26, professor Zhang Ke, the first director of the law of the sea institute and the founder of the law subject at OUC, reviewed the history and achievements through 30 years and provided some valuable suggestions to our legal studies from the point of the development of humanities and social sciences in China and the height of the national marine interests, especially the marine law research. Besides, he held much hope on the marine humanities and social science. As a specialist who has engaged in law of the sea and ocean management for more than 30 years, Mr. Zhang expressed the hope of the research on ocean humanities and social science in our country, and it's also the hope of the field in ocean humanities and social science in our country and the overall prosperity of the humanities and social science in our country.

This volume, the work of the editors and the authors they contacted of “Ocean Law, Society and Management of 2011 volume” succeeds Mr. Zhang's hope. This volume has the following features generally.

Firstly, the volume possesses the open international vision.

This volume collects CAO Wenzhen, LI Weiqiang's “American Federal Coastal Policy and Its Reference” and MEI Hong, SUN Yihan's “The Law and Management of the United Kingdom's Island and Its Inspiration to China”. The

two papers summarized seriously the policy, law and experience of the related countries, and tried to make these to provide reference for the coastal and island management in our country. In the paper of “Environmental NGOs and the Transformation of the Whaling Regime: A Case Study of the Commercial Whaling Moratorium of 1982”, SUN kai and XU Housheng made a thorough inquiry on the transformation of the whaling regime. These papers guided researchers and readers to the United States, Britain and the international marine affairs. Only have made the careful research in these fields, can we really realize Mr. Zhang’s words that “have more participation rights and discourse rights” in the “law of the sea problems” and other hot issues.

Secondly, this volume includes a new research field in the marine humanities and social science.

Mr. Zhang said that it’s necessary to strive to expand the research field. I believe the comments mean not only the necessary to open up new research area, but also to develop marine career, in order to accelerate the development of new field about ocean humanities and social science. The papers in this volume reflected the authors’ efforts and achievement to promote marine humanities and social science in the new field.

Marine sociology, which is an emerging discipline in our country, was initiated by the scholars at OUC firstly. It has made great progress through the active promotion of a group of scholars at OUC like professor PANG Yuzhen and professor CUI Feng etc. The marine sociology forum which was held by Chinese sociology committee and the establishment of marine sociology professional committee are both the symbols of its preliminary prosperity. HAN Xingyong, GONG Qing and NING Bo’s paper, “Review on the Seminar and the Second China Ocean Sociology Forum on Ocean Social Management and Culture Constructions”, reflecting the spectacular event of the second forum on China marine sociology in July 2011 in Jiangxi Nanchang whose topic is “marine social

management and culture construction” and providing some important information about the discussion of “marine consciousness” and “marine culture and social development”.

Cultural soft power is a topic that the international community has just put forward. Can a country or nationality form and have this marine culture soft power? SONG Ning'er and MA Kun's “Preliminary Study on Marine Cultural Soft Power” have a preliminary study on this. I believe that the study will lead more researchers to care for the issue of marine culture soft power.

Thirdly, this volume depends on the superiority of strong comprehensive marine research, Mr. Zhang emphasized on the speech that law of the sea subject and marine humanities and social science at OUC have the “unique advantages and conditions” of comprehensive school and “complete ocean discipline.” This “advantages and conditions” is embodied in the papers of this volume.

“The Review on the Second President's Forum on Blue Ocean Strategy of Ocean & Maritime Universities of Cross - Strait and the Symposium on Marine Science and Humanities”, finishing by SONG Ning'er and WANG Cong, is the summary of the research status on the second president's forum on blue ocean strategy of ocean & maritime universities of cross - strait and the symposium on marine science and humanities which was held by OUC (the first by ocean university of Taiwan). This pageant is a review to the research results in the field of ocean, at the same time, on the marine humanities and social science research, it is also a good opportunity to set the academic research planning, integrate research team and design collaborative study by the educational circles.

“Discussion on the Hot Issue of Marine Environment, Climate Change and Environmental Law Basic Theory”, written by SHI Jun and WANG Changlin, extracting some main points of marine contents in the academic seminar which was held by Shandong Law Institute of Environmental and Natural Resources

Law to celebrate the establishment of tenth anniversary in Yantai. In recent years, Shandong Law Institute of Environmental and Natural Resources Law, which is affiliated to OUC, will set up issues related to marine subjects at the annual meeting. At the annual meeting in 2011, the scholars discussed the theoretical and practical problems about the fisheries quota system, the legislation of Bohai Sea management, the exploitation of marine energy and the responding to the problem of climate change.

“Ocean Law, Society and Management of 2011 volume” is about to publish, here, I would like to use again Mr. Zhang’s words: as long as we “adhere to the correct direction of research, double effort, focusing emphasis, outstanding characteristic”, the wish of prosperous marine humanities and social science “will be realized”, the future of marine humanities and social science will be “more brilliant”!

XU Xiangmin

December 7, 2011

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