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海洋法律、 社会与管理

第4卷

徐祥民◎主编

Ocean Law, Society and
Management (Vol. 4)

Chief Editor: Xu Xiangmin

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卷首语

在新的一卷《海洋法律、社会与管理》即将与读者见面的时刻，从北京传来一个非常响亮的声音——建设海洋强国。这是所有从事海洋管理研究的人都愿意听到的声音，也是让所有担当《海洋法律、社会与管理》编辑任务的师生都感到欢欣鼓舞的声音。胡锦涛同志在2012年11月8日开幕的中国共产党第十八次全国代表大会上代表十七届中央委员会所做的题为《坚定不移沿着中国特色社会主义道路前进，为全面建成小康社会而奋斗》的报告中，明确提出要维护国家海洋权益，“建设海洋强国”。

建设海洋强国是亿万中国人的心愿。因为中华民族在1840年之后遭受了百年的屈辱，而这屈辱是“打海上来”的殖民帝国加给我们的，是因为那时的中国有“海”无“防”，有“防”无力。今天的中国，虽然早已告别了受人欺凌的半殖民地半封建时代，但一直没有能够在海洋上证明自己，没有用海洋上的强大洗雪历史耻辱。

建设海洋强国也是中国实现自己的海洋利益，维护本国海洋主权、主权权利和管辖权的需要。不管是菲律宾对我黄岩岛等岛屿及其附近海域的覬覦，还是日本对我行使对钓鱼岛的主权的阻挠和干涉，越南通过立法事实上把对我南沙群岛众多岛屿的占有法律化，还是我南中国海周边更多邻国违反《南海各方行为宣言》擅自开发我海域油气资源，都在考验中国在海洋上是否足够强大。

建设海洋强国还是中国履行国际义务应具备的条件。中国无疑是国际社会的重要成员，不管是看国土面积、人口数量，还是看海岸线的长度、管辖的海域面积等，中国都是当之无愧的大国。是大国就应当履行大国的责任。这是国际社会共同繁荣的需要，是国际社会秩序建设的需要。不管是为应对海盗对运输船舶的袭击而实施护航行动，还是为了处理其他军事的和非军事的海上突发事变，都需要作为海洋大国的中国有所作为。公正

的海洋秩序建设、和平的海洋环境建设，都离不开中国的参与，中国也应当做出自己的贡献。

中国应当把自己建设成为一个海洋强国，研究者也应当为把中国建设成为海洋强国而贡献自己的智慧，回答如何把中国建设成为海洋强国的问题和那些与建设海洋强国有关的理论和实践问题。不过，我们认为，首先需要解决的问题就是不要把“建设海洋强国”的口号与海洋强国战略相混淆。

研究者所阐述的“海洋强国战略”大致可以概括为以下三种表述：第一，建设政策→海洋强国目标；第二，海洋（建设政策）→强大国家（目标）；第三，建设政策→海洋强大的国家→强大国家（目标）。显然，“建设海洋强国”不能被理解为第二种和第三种表述。也就是说，所谓海洋强国对于国家来说最多只是目标，而不是实现国家基本目标——强大国家的路径，从而也就不可能是以实现富强为基本目标的当今中国的国家基本战略。其次，“建设海洋强国”的口号不必然包含战略安排的含义。建设海洋强国与建设社会主义和谐社会、建设睦邻友好的国家关系、“发展体育运动，增强人民体质”等一样，都不必然地成为国家战略。战略并不是简单的一句话，但它至少要有确定的目标和用以实现目标的战略力量安排。

当然，国家完全可以把执政党确定的方针具体化为特定的战略目标，并为实现特定目标而配置国家力量。即使国家真的这样做了，“建设海洋强国”的战略也只是把“海洋强国”“列为国家战略”，就像有的研究者曾期盼的那样。被如此“列入”的“海洋强国”，不过是众多国家“战略目标”中的一个。不管是遵循十一届三中全会以来的基本方针，还是落实包含“建设海洋强国”这句话的“十八大”报告，这个“战略目标”都不会是国家的基本战略目标。确定这样的战略目标的意義只是要求国家为海军建设分拨更多的经费，而不是要求国家为了这个目标而舍弃其他目标，比如“三步走”的战略目标。

显然，今天的中国绝对不应该为了海军建设而影响国家的整个现代化建设进程，绝对不应该为了实现海军的“强”而影响“三步走”战略的实施。

我们需要心平气和地建设海洋强国，我们更需要脚踏实地地建设海洋

事业，包括海洋经济、海洋政治、海洋法制、海洋科技、海洋环保、海洋文化、海洋社会等各项海洋事业。国家各项事业的健康发展才是国家强大的根本，才能有效地支撑起一个强大的国家。在这个意义上，我们更应该为国家的海洋事业做点实实在在的事情，而不是迷恋于海洋强国战略之类大而无当的口号。

海洋湿地管理、海洋倾倒区选划、黄河三角洲高效生态经济区生态环境建设、海洋生态安全及其社会参与对策、国家对非领土性管辖海域的治安管辖、中国对北极事务的参与等研究，都是对海洋事业发展有帮助的实实在在的事情。

向本卷贡献文章的各位学者还真的是做了一些对海洋事业发展有帮助的实实在在的事情。海洋湿地管理（梅宏：《论澳大利亚滨海湿地法制与管理的特点》）、海洋倾倒区选划（吕建华：《美国海洋倾倒区选划原则及其对中国的借鉴意义》）、黄河三角洲高效生态经济区生态环境建设（时军：《黄河三角洲高效生态经济区生态环境建设的对策研究》）、海洋生态安全及其社会参与对策（杨振姣、罗玲云、王娟：《维护海洋生态安全的社会参与对策研究——以日本核泄漏事故为例》）、溢油造成的直接经济损失评估（Li Li, Xiaohua Wang, & Harvinder Sidhu: “Direct Economic Loss Assessment of the Oil Spill in the Gulf of Mexico”）、黄海大海洋生态系项目的区域海洋管理（Ming Yu & Ye Yuan: “Strengthening Regional Ocean Governance to Protect Marine Environment: A Case Study of the Yellow Sea Large Marine Ecosystem Project”）、应对海洋外来物种入侵（白佳玉：《我国应对海洋外来物种入侵之立法体系研究》）等是实事，国家对非领土性管辖海域的治安管辖（阮智刚：《论我国在非领土性管辖海域的治安管辖权》）、中国对北极事务的参与（孙凯：《国外学者对“中国参与北极事务”的不同解读及启示——基于三份研究报告的述评》）、对越南海洋意识的评论（刘家沂：《“走向海洋”的国家文化——评越南的海洋意识》）、东北亚地区海洋权益争端（沈海涛、李永强：《东北亚地区海洋权益争端中各国对华战略博弈辨析》）、海洋软实力（王琪、刘建山：《海洋软实力：概念界定与阐释》）等，都是实事，打击污染环境罪（李湛：《论污染环境罪在海洋溢油事件中的适用》）也是实事。自然，关于海洋文化与大陆文化的比较（宁波：《关于海洋文化与大陆文化比

较的再认识》)、对中国海洋诗赋的德育功能的探索(季岸先:《从比德到比德于海:中国海洋诗赋的德育功能探索》)也都是实事。此外,我和我的学生宋福敏也做了一件实事——寻找海洋社会(徐祥民、宋福敏:《寻找海洋社会》)。

徐祥民

2012年12月12日于青岛海滨寓所

Foreword

When the vol. 4 of *Ocean Law, Society and Management* comes, we hear a call to build strong marine country from our capital Beijing, which exactly makes us excited. Hu Jintao has mentioned clearly in the report of the 18th CPC National Congress that we should protect our national marine rights and interests, and should “build strong marine country”.

Building strong marine country is a dream of all the Chinese people, because our national humiliation since 1840 came exactly from ocean brought by colonization since we had no coast defense or no powerful coast defense at that time. Today, although it is already quite a long time since we said goodbye to the time of semi-feudal semi-colony, we still cannot prove ourselves to be strong enough in the field of ocean.

Building strong marine country also meets the need of protecting our marine interests as well as our marine sovereignty, sovereignty rights and jurisdiction. All that Philippines has done on our Huangyan Island and its surrounding waters area, and that Japan has done on our Diaoyu Islands, and that Vietnam has done on our Spratly Islands and that the countries around the South China Sea have broken “The Declaration on the Conduct of Parties in the South China Sea” and to explore for the oil and gas resources belonging to the sea area of our country are testing our marine power.

Building strong marine country is also a condition for China to fulfill international obligation. China is undoubtedly an important member of international social and should certainly perform as a big country for the prosperity of international society and for the construction of international social order in the field of pirate attack and other maritime incidents. China should participate in the

construction of fair marine order and peaceful marine environment.

China should be a strong marine country, and researchers should think about how to build our strong marine country as well as those theoretic questions and practical questions concerned with the building of strong marine country. However, we insist that what should be done first is to make clear the difference between the slogan of “building strong marine country” and the Maritime Power strategy.

The strategy of strengthening nation with ocean interpreted by researchers could be concluded into three expressions as follows: First, using a series of construction policies to achieve the goal of “building strong marine country”; Second, having ocean as the approach to achieve the goal of strengthening our nation; Third, building our country to be a strong marine country by some construction policies so as to achieve the goal of strengthening our nation. Obviously, “building strong marine country” does not include the second and third expression. It means that “strong marine country” is at most a goal of our country, but not the approach to achieve the basic national goal of strengthening our country. Therefore, “strong marine country” could not be the basic national strategy of our country today, because our basic goal is to make our country to be prosperous and strong. Then, the slogan of “building strong marine country” does not necessarily include the meaning of strategic arrangement, just as “building harmonious socialist society”, “building good-neighbourly and friendly relations with nearby countries” and “promoting physical culture and building up the people’s health”. Strategy is not simply a slogan, but should include at least determined goal and the strategic arrangement to achieve this goal.

A country could of course take the policy of governmental party as a certain strategic goal, and provide national power to achieve the goal. But even in the case of this, the strategy of building strong marine country still just means having “strong marine country” as one goal among a series of national strategic goals. “Building strong marine country” will not become the basic strategic goal of our country taking the place of other goals such as the “three-step strategy”, but just be used to ask for more fiscal funds for navy construction.

It's obvious that China should not change the process of our modernization construction because of navy construction. Strong navy construction should never influence the implementation of the "three-step strategy".

We need to build our strong marine country calmly, and to work for our marine business practically, including marine economic, ocean politics, ocean legislation, marine technology, marine environment protection, marine culture, ocean society and other marine business. To build a strong country, we should first have all kinds of business of our country develop healthily, so as to support a strong country effectively. In this meaning, we really need to do something for our marine business practically instead of being interested in big slogans such as the strategy of strengthening nation with ocean.

Actually, the writers of the vol. 4 of *Ocean Law, Society and Management* have done something useful for the development of marine business, including coastal wetland management (Mei Hong, "The Characteristics of the Legal System of Australian Coastal Wetland Management"), delimit of marine dumping area (Lv Jianhua, "The United States Marine Dumping Area Delimit Principle and Its Significance to China"), construction of the ecological Environment in Yellow River Delta efficient ecological economic zone (Shi Jun, "The Ecological Environment Construction Countermeasure Research of Yellow River Delta High-Efficiency Ecological Economy Zone"), the social participation countermeasures of the marine ecological security (Yang Zhenjiao, Luo Lingyun, & Wang Juan, "The Social Participation Countermeasures of the Marine Ecological Security—Take the Japanese Nuclear Leak Accident for Example"), direct economic loss assessment of the oil spill (Li Li, Xiaohua Wang, & Harvinder Sidhu, "Direct Economic Loss Assessment of the Oil Spill in the Gulf of Mexico"), regional ocean governance of the Yellow Sea Large Marine Ecosystem (Ming Yu & Ye Yuan, "Strengthening Regional Ocean Governance to Protect Marine Environment: A Case Study of the Yellow Sea Large Marine Ecosystem Project"), prevention from marine alien species' invasion (Bai Jiayu, "Research on the Legislation System about Prevention from Marine Alien Species' Invasion in China"), jurisdiction of public security within non-territorial jurisdictional waters (Ruan Zhigang,

“Discussion on China’s Jurisdiction of Public Security within Non-territorial Jurisdictional Waters”), China’s coming to the Arctic (Sun Kai, “Different Interpretations by Foreigners of China’s Coming to the Arctic—Research based on Three Recent Reports”), assessment of Vietnam’s maritime awareness (Liu Jiayi, “The National Culture of “Heading for the Ocean” —Assessment of Vietnam’s Maritime Awareness”), ocean legal right dispute of the Northeast Asia region (Shen Haitao & Li Yongqiang, “The Strategic Game towards China in the Ocean Legal Right Dispute of the Northeast Asia Region”), marine soft power (Wang Qi & Liu Jianshan, “Marine Soft Power: Definition and Interpretation”), the application of crime of environmental pollution (Li Zhan, “The Application of Crime of Environmental Pollution in the Marine Oil Spill Events”), the comparison between ocean culture and mainland culture (Ning Bo, “Further Comparison Understanding on Ocean Culture and Mainland Culture”), the discussion on the moral metaphor in the Chinese marine poetry (Ji Anxian, “The Extended Moral Metaphor in Ocean Culture: An Exploration of Moral Education Function in the Chinese Ocean Poetry”). My student and I have also done something practically to look for the ocean society (Xu Xiangmin & Song Fumin, “Looking for the Ocean Society”).

Xu Xiangmin

2012 - 12 - 12

Qingdao

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