CHINA'S MARINE ENVIRONMENTAL PROTECTION LAW: THE DRAGON CREEPING IN MURKY WATERS

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CHINA'S MARINE ENVIRONMENTAL PROTECTION LAW:
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Mitchell A. Silk**

INTRODUCTION

In 1983 the People's Republic of China enacted sweeping legislation to combat China's increasing marine environmental problem. The law deals with the effects on the marine ecology of coastal construction projects, offshore oil prospecting and development, land source pollutants (e.g. sewage, waste, radioactive materials), damage by ships (e.g. oil discharges), and the dumping of wastes and toxic materials.

This paper will begin with a discussion of the PRC's previous attempts to deal with environmental problems. These include the Environmental Protection Law (1979) and the Forestry law (1979, subsequently amended 1984). This section will also outline the principles of China's environmental law, tracing its development and exposing its ideology.

Part II will examine the newly enacted Marine Environmental Protection Law (1983), analyzing it in light of international legislation dealing with marine pollution and the general principles of the law of the sea. In particular, attention will be given to the Chinese attitude...
toward the conservation of marine resources, and the Chinese concepts of jurisdiction over would-be offenders of the Law.

Part III will consider legal responsibility and enforcement issues in the Marine Environmental Protection Law. This section will explain the concepts of civil compensation, and criminal and administrative responsibility within the Chinese socialist legal system.

I. CHINA'S ENVIRONMENTAL LAW FRAMEWORK

The Development of Environmental Law in China

Concepts of environmental protection have deep roots in China. Traces of environmental laws appear in the Qin, 1 Tang, 2 and Qing codes. 3 After the fall of the Qing dynasty, the Nationalist government employed judicial and legislative means to continue efforts in resource management and environmental protection. The Republic of China

1. The Qin dynasty lasted roughly from 211 B.C. until 206 B.C. Of the Qin Code provisions dealing with environment concerns there included prohibitions against cutting trees in a forest and blocking water passage in the spring, and burning grass or straw for fertilizer, picking plants that had just sprouted, or poaching young birds in the summer. Ma, "Preliminary Discussion on the Law of Environmental Protection", Faxue Yanjiu 1979 No. 2, 40. Excavations conducted since 1975 in Hubei province have unearthed portions of the Qin Code. The first of its eighteen chapters, Tian Lu (Law on Land), contains numerous provisions on environmental management and protection. See Shuihudi Qin Mu Zhujian Zhengli Xiaozu, Shuihudi Qin Mu Zhujian [Bamboo Writings from the Qin Tombs at Shuihudi], Beijing 1978, 24-29.


2. The Tang dynasty lasted from 618 A.D. to 907 A.D. In the "Miscellaneous Articles" section of the Tang Code, there were provisions regulating, inter alia, the digging of pits (394), land use [mountainsides and lake shores (405)], and the burning of fields and wilderness lands at the wrong season (430). W. Johnson, The T'ang [Tang] Code, Princeton, N.J. 1979, 287-289.


3. The Qing dynasty lasted from 1644 A.D. to 1911 A.D. There are numerous provisions in the Qing Code related to environmental protection and conservation. See the relevant articles in "Land and Tenements" (such as secs. 97, 98), "Miscellaneous Offenses" (such as sec. 376), and "Public Ways" (such as secs. 433, 434), translated in Sir George T. Staunton, Ta Tsing Leu Lee, Taipei 1966 (reprint), 103-105, 411, 471-473.
China's Marine Environmental Protection Law

on Taiwan now boasts of a sophisticated legal framework in this area. The PRC's experience with environmental protection can be broken down roughly into three stages. The first stage may be termed as one of realization—i.e., the realization of the potential threats that rapid modernization posed on the environment—and began in 1953. After the founding of the PRC on 1 October 1949, the problem of consolidation faced the government. It was not until 1952 that China could attend to the specifics of economic development. The realization of the potential threats that rapid modernization posed to the environment brought some government officials to consider various means of environmental protection. Not much was done beyond the promulgation of some environmental standards.

Beginning in 1972 the PRC embarked upon an intensified program of managing and controlling both its domestic and the international environment. In 1972 the State Council announced a 32-
character campaign slogan on environmental protection goals which Zhou Enlai enunciated at the PRC's First National Environmental Protection Conference.\(^9\) This conference established the PRC's first national environmental protection organs (the most notable of which is the Office of Environmental Protection), and drafted numerous regulations on protecting and bettering the environment.\(^10\)

Since 1978, the PRC's environmental protection scheme has begun to reach fruition. The government included provisions in the 1978 and 1982 Constitutions on environmental protection.\(^11\) Further-


\(^9\) See B. Wen, "Notes on China's Law of Environmental Protection", *Faxue Yanjiu* 1980 No. 1, 21, 22; *op. cit.*, note 1, 42.


\(^11\) There are two articles regarding environmental protection in the 1978 Constitution. Article 6 provides:

"Mineral resources, waters, and those forests, underdeveloped lands and other marine and land resources owned by the state, are the property of the whole people."

Article 11 provides:

"The state protects the environment and natural resources, and prevents and eliminates pollution and other hazards to the public."


The 1982 Constitution likewise contains two provisions.

Article 9 provides:

"Mineral resources, waters, forests, mountainous lands, grasslands, undeveloped land, beaches, and other natural resources are owned by the state, that is by the whole people, with the exception of those forests, mountainous lands, grasslands, undeveloped lands, and beaches that are owned by collectives in accordance with the provisions of the law. The state ensures the rational use of natural resources and protects rare animals and plants. The appropriation of or damage to any natural resource by any organization or individual by whatever means is prohibited."

Article 26 provides:

more, in 1979 the PRC passed its first Environmental Protection Law\(^\text{12}\) and Forestry Law.\(^\text{13}\) These aside, countless regulations and standards have also come into effect.\(^\text{14}\)

**Guiding Ideology and Basic Principles of China’s Environmental Law**

Zhou Enlai realized the need for environmental protection as early as 1956. During an inspection at Anshan, he stressed the importance of taking care of the task of clearing up the ecology.\(^\text{15}\) Yet the motivation behind this statement did not become clear until the early 1970s.

In the wake of the Cultural Revolution, the First National Environmental Protection Conference was convened.\(^\text{16}\) The participants agreed that pollution interfered with the smooth progress of economic development, and bore an important relation to the masses' safety and well-being.\(^\text{17}\) At the Conference, Zhou enunciated the basic policy, later to be codified as the guiding principles, driving environmental protection. The 32-character policy espoused the following principles:

1. Comprehensive planning and rational resource allocation;
2. Multiple use and the conversion of harmful substances to beneficial uses;
3. Reliance on the masses and collective action;
4. Environmental protection and enrichment of the peo-

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13. Chinese text in *BFWH, op. cit.*, note 10; 110. *HBYWX, op. cit.*, note 7, 239; English text in FBIS-CHI, 2 March 1979, E1; For a discussion of this law, see sources cited *id*. This law was subsequently amended in 1984. The text is in *Renmin Ribao*, 23 Sept. 1984.


15. Ma, *op. cit.*, note 1, 41-42.

16. *Id.*

Zhou envisioned, however, four main problems facing progress in China’s environment work. First, no established organs for enforcement existed. Second, the authorities vested with power failed to exercise such power. Third, China lacked adequate technology required for effective resource management and control. Last, investment—both in time and money—did not meet the practical needs of pollution control. Zhou offered five suggestions: (1) mass education; (2) incorporation of environmental protection into the nation’s economic plans; (3) strengthening efforts at comprehensive planning and rational distribution of environmental protection; (4) establishing environmental protection organs; and (5) improving the legal framework.

Shortly thereafter, the government adopted the Four Modernizations as the guiding path of economic development. Hua Guofeng, the Party Chairman, pointed out that “wiping out pollution and environmental protection are important matters which affect the health of the masses, and deserve serious attention.” Moreover, he stressed that “[China should] enact rules and regulations on environmental protection in order to ensure a faithful effort at resolving problems such as these.” Officials at the Third Plenum of the XI Party Congress acknowledged that it was necessary to fit this plan in the scheme of socialist modernization since environmental protection would guarantee stable production rates, safeguard the masses’ health, and quell environmental concerns. This type of sentiment fueled China’s drive for environmental protection.

18. See Gresser, op. cit., note 5, 452. See also Ma, op. cit., note 1, 22; Wen, op. cit., note 9, 42.
20. Id., 38, 46.
22. Wen, op. cit., note 9, 22.
23. Id.
II. CHINA'S MARINE ENVIRONMENTAL LAW FRAMEWORK

The Development of Marine Environmental Law in China

The development of marine environmental protection law has largely followed work in the general area of environmental law. Naturally, a basic environmental framework had to be laid before any planning could take place in specific areas such as marine environmental protection. During the period of realization beginning in 1953, the State Council announced the first order dealing with marine resource management. Efforts to intensify marine environmental protection followed, but lagged slightly behind, the progress made in other arenas. The State Council and various Ministries, beginning in 1972, passed regulations which dealt with facets of marine environmental protection. The major steps taken in this period were the promulgation of the Environmental Protection Law (1979), which included four articles on marine pollution and resource management, and the 1978 and 1982 Constitutions, each of which contained articles on environmental

25. See op. cit., notes 5-7, and accompanying discussion.
26. See Ma & Chen, op. cit. note 7, 52.
27. See sources cited in op. cit., notes 10, 14.
28. Texts cited in op. cit., note 12. The articles dealing with marine environmental protection are Articles 9, 10, 11, and 20. They are set out below:

Article 9. Foreigners or foreign aircraft, ships, vehicles, goods, plants and animals, etc. entering or passing Chinese territory, territorial waters, or territorial air shall be subject to the present law and other regulations and rules relating to the protection of environment.

Article 10. Use the land rationally according to local conditions, improve the soil and increase the vegetation to prevent soil erosion, hardening, alkalinization, desertification, and water losses.

Comprehensive scientific surveys shall be carried out before going ahead with plans to reclaim wasteland, put up dykes along the seacoast or lakes, and construct large- or medium-sized new water conservancy facilities. Practical measures for protection and improvement of the environment shall be taken to prevent damage to the ecosystem.

Article 11. Keep the waters such as rivers, lakes, seas, reservoirs, etc. from being polluted so as to preserve the quality of water in a good state.

Protect, develop and utilize aquatic flora and fauna in a rational way. Fishing to extent of threatening extinction of, and damage to, the living resources is prohibited.

Exercise tight control over, and economize, use of water in industry, agriculture, and in daily life.

Article 20. Dumping garbage and waste residues into the waters is prohibited. Discharge of sewage shall be in compliance with the standards set down by the State.

Ships are prohibited from discharging substances containing oil or poison, and other harmful wastes into the waters protected by the law of this country.

It is strictly prohibited to discharge poisonous and harmful waste water by way of
In the international arena, China signed the United Nations Convention on the Law of the Sea (1982) in 1982 and in theory may be viewed as approving its provisions. Article 194(1) provides:

**States shall take... all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, ...**

Of such measures and means, the Convention provides further that "States shall adopt laws and regulations to prevent, reduce, and control pollution of the marine environment from land-based sources..." (Art.207(1)) "... arising from or in connection with sea-bed activities subject to their jurisdiction..." (Art.208(1)), "... from activities in the area..." (Art.209(1)), "... by dumping..." (Art.210(1)), "... from vessels..." (Art. 211(1)), or "... from or through the atmosphere..." (Art.212(1)). Soon after the adoption of the 1982 UN Convention on the Law of the Sea, the PRC promulgated the Marine Environmental Protection Law (MEPL).

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29. See op. cit., note 11.
32. The 24th Session of the Standing Committee of the 5th National People's Congress promulgated the Law on 23 August 1982. The MEPL came into effect on 1 March 1983. The Chinese and English texts are in Collection of Laws and Regulations of China Concerning Foreign Economic and Trade Relations—Zhongguo Duiwai Jingji Maoyi Fagui Huibian...
The passing of the MEPL marked the fruition of China's basic marine environmental framework. It should be noted that the PRC has also passed the Water Pollution Prevention and Control Law, and three sets of regulations which further refine three of the areas addressed in the MEPL. The MEPL has followed the spirit of previous domestic environmental legislation, but was also based on various international conventions and agreements.

The MEPL embodies all relevant provisions of UNCLOS III except for Article 212(1), which deals with marine pollution through the atmosphere. The Chinese contend that marine pollution from the atmosphere is not a serious problem in China so there is no need for such provisions.

The State Council more recently on 6 March 1985 promulgated the Regulations of the People's Republic of China on the Control of Marine Dumping. The Chinese text is in 9 XRGGG 1985, 222.
General Principles

The general principles guiding China’s MEPL advocate increased economic use of the sea’s resources. Yan Hongmo, deputy director of the State Bureau of Oceanography, explained that “[t]he aim [of the law] is to bring people’s economic activities into conformity with marine ecological balance so as to better utilize the marine resources.” The Chinese prescribe three means to achieve this end.

First, there must be a movement toward preventing marine environmental pollution. The fact that the dangers of marine pollution already confront China illustrates the urgency of a legal framework on which to rely in carrying out the tasks of prevention and control. Thus, the MEPL supplies the genesis of providing such prophylactic guidelines.

Second, the marine environment must be enhanced both quantitatively and qualitatively. This means that the thrust of China’s pro-
gram should not focus on specific problems, but rather should be geared toward overall progress in striving for ecological balance, and environmental, resource, and health protection.\footnote{41}

Third, progress should be made in the overall development of China’s marine industry.\footnote{42} This guideline seems, however, to contradict the basic goals of the MEPL. Increased production escalates pollution, while depleting evermore resources. Pursuing this line of reasoning, environmental protection ought to fetter economic development. Yet the Chinese take a different stand. As a developing country, China cannot concern itself solely with the task of environmental control, but rather must balance the need for marine development with the concern for protecting the marine environment.\footnote{43}

Vessel Source Pollution

Vessels pose a great threat on the marine environment.\footnote{44} They discharge oil, waste, radioactive, and other harmful materials into the water. The Torrey Canyon, Metula, Argo Merchant, and Amoco Cadiz incidents are but a few of the major disasters that have taken place.\footnote{45}

The probability of an accident rises with increases in the number of ships and amount of tonnage. China’s shipping industry already

\footnote{41. Id., 25.}
\footnote{42. Id.}
\footnote{43. See id., 14; “Develop the Ocean, Protect the Ocean”, op. cit., note 36, 39. The Chinese contend they have achieved this balance in three regards. First, the environmental standards set by the MEPL accommodate development in marine industries (i.e. they are not overly stringent). Second, the MEPL protects equally all marine resources so as to allow overall development in marine industry. Third, the MEPL had combined a progressive approach to marine protection with its probable capabilities, thereby allowing simultaneous protection and development of the ocean.}
\footnote{44. On the general threat of vessels, see R.M. M'Gonigle & M.W. Zacher, Pollution, Politics, and International Law—Tankers at Sea, Berkley, CA. 1979; Schneider; “Pollution from Vessels”, in The Environmental Law of the Sea, (D.M. Johnston, ed.), Berlin (West) 1981.}
weighs in at over 7,000,000 tons.\textsuperscript{46} In 1981 China’s seven major ports (Dalian, Qinhuangdao, Tianjin (Xingang), Qingdao, Shanghai, Huangpu (Guangzhou), and Zhanjiang) handled over 196,840,000 metric tons of trade.\textsuperscript{47} Thus, vessel source pollution remains a primary concern to the Chinese.

China has not been without its troubles. Ships and oil tankers discharge annually from five to six million tons of oil into the sea.\textsuperscript{48} Furthermore, there was one oil spill in the Bohai area which left many hundred thousand jin (a Chinese pound, equivalent to 1 1/3 lb. or 1/2 kg.) of marine produce unfit for consumption.\textsuperscript{49}

The provisions of China’s MEPL dealing with vessel source pollution conform with the relevant international legislation. Article 211 of UNCLOS III provides:

1. States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce, and control pollution of the marine environment from vessels . . .

The International Maritime Organization (IMO) is the main international organization that deals with marine pollution.\textsuperscript{50} The IMO’s two main treaties dealing with vessel source pollution are the 1969 International Convention on Civil Liability for Oil Pollution Damage (the Brussels Convention on Civil Liability),\textsuperscript{51} and the International Convention for the Prevention of Pollution by Ship (MARPOL).\textsuperscript{52} China has acceded to both of these conventions.\textsuperscript{53}


\textsuperscript{47} Pisani, “The Big Seven”, \textit{op. cit.}, note 46, 18.

\textsuperscript{48} Yang \textit{et al.}, \textit{op. cit.}, note 32, 3. See also E. Shih \textit{et al.}, “Seawater Pollution on the Nearshore of China”, 4 Zhongguo Huanjing Kexue 1984, 72, 1; D.A. Wolfe \textit{et al.}, “Marine Pollution in China”, 26 Oceanus 1983/84, 40, 43.

China has witnessed recently two oil spills off the coast. The collision of Dutch and Chinese tankers caused the first accident. In October 1983, an Indonesian freighter sank a Chinese tanker and brought about the second incident. Epstein, “Pollution Law Laid Down”, \textit{op. cit.}, note 34, 6.

\textsuperscript{49} See Yang \textit{et al.}, \textit{op. cit.}, note 32, 4.

\textsuperscript{50} The IMO (formerly IMCO) was established in 1946. For details, see Max Planck Institute for Comparative and International Law, \textit{5 Encyclopedia of Public International Law}, Amsterdam 1983, 104-108; M’Gonigle & Zacher, \textit{op. cit.}, note 44, 51-77; G.J. Timagenis, \textit{1 International Control of Marine Pollution}, Dobbs Ferry, NY. 1980, 44-45.

\textsuperscript{51} See \textit{op. cit.}, note 35.

\textsuperscript{52} \textit{Id.}

\textsuperscript{53} “China Accedes to MARPOL”, \textit{op. cit.}, note 35, 71; H. Chiu, \textit{Agreements of the People’s Republic of China—A Calendar of Events 1966-1980}, New York 1981 219; Epstein,
The MEPL provisions on vessel source pollution synthesize, albeit ever so broadly, the thrust of these two Conventions. The 1969 Brussels Convention deals mainly with imposing and apportioning liability upon the owners of ships spilling or discharging oil, and providing compensation. In terms of ensuring financial security, Article 28(2) of the MEPL is a mirror image of Article VII(1) of the Brussels Convention:

1969 Brussels Convention on Civil Liability

Article VII.1. The owner of a ship registered in a contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, ... to cover his liability for pollution damage under this Convention.

China’s MEPL

Article 28 ... Any vessels carrying more than 2,000 tons of oil in bulk shall have a valid “Certificate of Insurance or other Financial Security in respect of Civil Liability for Oil Pollution Damage”, or a “Credit Certificate for Civil Liability Against Oil Pollution Damage”, or hold other financial credit guarantees.

MARPOL, along with its two protocols, on the other hand, is concerned mainly with the elimination of marine pollution through prophylactic measures. This goal parallels the desires of China’s environmental planners. Again, there is a striking similarity in the two laws’ provisions as set out below.

MARPOL (73/78)

Regulation 4
Surveys and Inspections

1) Every oil tanker of 150 tons cross tonnage and above, and every other ship of 400 tons gross tonnage and above shall be subject to the surveys specified below;

   a) This survey shall be such as to ensure that the structure, equipment, systems, fittings, arrangements, and material ... [and] c) ... equipment and associated pump and piping systems, including oil discharge monitoring and control systems, crude oil washing systems, oily-water separating equipment and oil filtering systems, fully comply with the applicable requirements of this annex and are in good working order.

The MARPOL and MEPL provisions vary, however, in two regards. First, the MEPL requires a mere fitting of anti-pollution devices, whereas MARPOL requires inspection. Arguably, however, regardless of the difference in language, the goals of the provisions coincide in that they require all vessels of the provided weights to be equipped with anti-pollution devices of some sort. The question regarding the exact sort of devices marks the second deviance. That is, the MEPL is not as specific as MARPOL as to the exact equipment required. The MEPL’s gap in equipment prescription is filled in part by the recently enacted Regulations of the People’s Republic of China on Prevention of Marine Pollution by Vessels (hereinafter referred to as “Vessel Regulations”).54 Article 15 of the Vessel Regulations requires the installation of many of the devices provided in MARPOL’s Regulation 4. Thus, the MEPL provisions on vessel source pollution stand as the incorporation into Chinese domestic law of selected provisions of the 1969 Brussels Convention on Civil Liability and

54. See op. cit., note 34.
Consideration of Jurisdiction

As will be set out below, the Chinese have a broad conception of the scope of jurisdiction over vessels. The threshold issue to be considered with regard to vessel source pollution is over what vessels does China have jurisdiction. That is, on what vessels are obligations conferred under the MEPL? Article 26 of the MEPL provides:

No vessel shall discharge oils, oily mixtures, wastes and other harmful substances into the sea areas under the jurisdiction of the People's Republic of China in violation of the provisions of this Law.

The operational language of this article is "the sea areas under the jurisdiction of the PRC." Thus, it is necessary to determine China's views on the jurisdictional regime under the law of the sea. Article 2 of the MEPL implies that the Chinese have three jurisdictional schemes: the internal sea, the territorial sea, and all other seas under the jurisdiction of the PRC.56

China's perception of internal seas encompasses all waters up to the baseline.57 This area includes all ports, territorial bays, and territorial straits. It is a recognized principle of international law that countries enjoy absolute sovereign rights over their internal waters.58

55. Epstein argues that it would be constitutionally redundant to actually incorporate either of the treaties into China's domestic law. Since China is a party to both of the agreements, they should automatically apply to situations where there are gaps in the MEPL or the 1983 Regulations. Epstein, "Pollution Law Laid Down", op. cit., note 34, 4. It is generally recognized under international law that self-executing treaties have the weight of a statute in the domestic legal system. Although in theory the Chinese view on the relation between international law and municipal law is fuzzy, in practice the Chinese seem to accept international law as applicable domestically. See J.A. Cohen and H. Chiu, 1 People's China and International Law, Princeton, N.J. 1974, 104-105.

56. See the MEPL, Article 2, op. cit., note 32.


The Chinese adhere to the straight baseline. See note 59, infra.

Therefore, vessel violators of the MEPL within China's internal waters would certainly carry liability under Chinese law.

China's territorial sea extends out twelve nautical miles. China established the breadth of its territorial sea, and adopted the straight baseline method by declaration in 1958. The exact contours of China's territorial sea are still, however, a matter of conjecture since China has yet to publish its straight baseline scheme. International law has long recognized that, innocent passage rights aside, state sovereignty extends to the outer limit of the territorial sea and includes
the air space above it, as well as its bed and subsoil.62 Exact delineation of these rights will remain a mystery until the Chinese define clearly the “outer limits” of the territorial sea. Nonetheless, violations by vessels of the MEPL occurring within China’s “territorial sea” will be subject to the PRC’s jurisdiction.

Questions arise, however, as to jurisdiction over vessels which pollute outside of China’s territorial sea. While there is no steadfast rule for operators to follow, the trends indicate that China has an extremely expansive view of the reaches of its jurisdiction beyond the territorial sea. Chinese writers have stated that if any vessel discharges or dumps oil, waste, or other harmful substances in the waters outside of China’s jurisdiction, but the act pollutes China’s marine environment, then the MEPL can still be invoked to confer liability.63

China’s views on jurisdiction over vessels outside of its territorial sea contradict general principles of international law, manifest China’s protectionist attitude toward sovereignty,64 and evidence China’s expansive view of its jurisdictional reach. Article 26 of the MEPL provides that: “No vessel shall discharge oils, oily mixtures, wastes and other harmful substances into the sea areas under the jurisdiction of the People’s Republic of China in violation of the provisions of this law.” This provision clearly applies, under Article 2, to ships in China’s internal waters and territorial sea. Article 2 continues, however, to provide that: “This Law also applies to the discharge of harmful substances and the dumping of wastes done beyond the sea under the jurisdiction of the People’s Republic of China but causing pollution damages to such areas.”65 (emphasis added) China, then, may, under this provision, assert jurisdiction over foreign vessels beyond its territorial sea.66 Unfortunately for the Chinese, there are only special cir-

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64. China’s views on sovereignty are to be expected after dealing with the “Unequal Treaty” system for one hundred years. For recent treatments of Chinese concepts of sovereignty, see Cohen & Chiu, People’s China and International Law, op. cit., note 54; A. Dicks, “Treaty, Grant, Usage or Sufferance? Some Legal Aspects of the Status of Hong Kong”, 95 China Quarterly 1983, 425-455; D. Salem, The People’s Republic of China, International Law and Arms Control, Baltimore, MD. 1983, 9-11, 240-241.
65. See MEPL, op. cit., note 32.
66. China has yet to declare an EEZ; however, the PRC most certainly recognizes the concept. See Wang et al., op. cit., note 57, 189-193; Zhu et al., op. cit., note 56, 246-250; sources cited in op. cit. notes 57, 59; relevant sections of Y.J. Ma, Legal Problems of Seabed Boundary Delimitation in the East China Sea, Baltimore, MD. 1984; relevant sections of C.H. Park, East Asia and the Law of the Sea, Seoul 1983; P.C. Yuan, “China’s Jurisdiction
cumstances in international law to support such an expansive application of coastal state jurisdiction.

First, while under Article 211, section 5 of the 1982 United Nations Convention on the Law of the Sea, "[c]oastal States . . . may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels . . . ," these regulations are subject to Article 211, section 6 and Article 220, sections 5 and 6 of the Convention, and must conform to and give effect to "generally accepted international rules and standards established through the competent international organization or general diplomatic conference."67 However, China's views on coastal state jurisdiction neither comply with Article 211, section 6 nor conform to rules and standards set by the IMO.


The PRC, along with many other countries, has not declared an EEZ in the main because it finds the conventional provisions on EEZ delimitation unacceptable. Chiu, "China's Maritime Boundary Dispute", op. cit., note 31, 192-194.

Applying the reasoning in op. cit., note 31, it may be possible to infer through customary international law an EEZ for China.


Article 211, section 6 of UNCLOS III allows coastal states, where the coastal state believes that international rules and standards are inadequate, to protect an area of its EEZ, to submit requests to the competent international organization for a determination that special conditions exist which merit additional coastal state regulation of vessel source pollution in that area. Upon a finding that such a condition exists, the coastal state may enact laws governing the area.

Article 220, sections 5 and 6 provide:

5. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

6. Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its law.
MARPOL contains two articles dealing with jurisdiction, Articles 4(2) and 9. Article 4(2) provides that: "Any violation of the requirements of the present Convention within the jurisdiction of any Party to the Convention shall be prohibited and sanctions shall be established therefore under the law of that Party." (emphasis added) Article 9 refines this provision, providing:

2) Nothing in the present Conventions shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction;
3) the term "jurisdiction" in the present Convention shall be construed in light of international law in force at the time of application or interpretation of the present Convention. These provisions have been interpreted as denying absolute rights in asserting coastal state jurisdiction. Thus, MARPOL at least can be invoked to fetter China’s expansive views on coastal state jurisdiction.

The Chinese have presented only one argument supportive of their position that coastal states should enjoy full sovereignty over the Exclusive Economic Zone (EEZ). This argument does not, however, seem valid under international law. At the Law of the Sea Conference, PRC delegate Lo Yuru suggested that under the blanket of self-defense, coastal states have the right to "take measures to protect their marine environment and natural resources against pollution from outside sources." The Chinese have yet to define what they mean by "self-defense" in this context. In all likelihood, Lo was referring to

68. See Article 4(2) of MARPOL, op. cit., note 51.
69. See Article 9, id.
70. Normally, coastal states may regulate with regard to discharges or navigational practices, but not design, construction, manning or equipment standards, other than generally accepted international standards. Timagenis, op. cit., note 50, 522.
72. Statement at the 6th plenary meeting of the Second Session, held on 17 July 1974, in 2 UNCLOS III, Official Records, 1974, 328-329. This statement has been buttressed by other delegates' statements, and extended to take into account activities in the EEZ. For example, An Zhiyuan stated, that the relevant provisions in Articles 212, 221, and 231 should not unduly restrict the right of coastal States to exercise their sovereignty and jurisdiction within their territorial sea and exclusive economic zones in order to prevent pollution from vessels. When a coastal State faced the threat of significant pollution from a maritime casualty, it had the right to take all necessary measures to diminish or alleviate
“self-reservation” and not to the standard set out in *The Caroline* case and its progeny. Even so, the Chinese would have to meet a stringent test in order to assert jurisdiction.

In conclusion, the MEPL provisions on vessel source pollution for the most part accord with international legislation in the area. The plaguing issue of jurisdiction beyond the territorial sea remains, however, problematic. The remedy to this situation will come when the 1982 Convention takes effect, and China, a signatory, ratifies and binds itself to uniform standards. Until that time there will be a conflict between advocates of flag state jurisdiction, and the Chinese view that it has the right to take measures to prevent pollution up to the 200-mile limit.

**Land-based Pollutants**

While the provisions on the prevention of pollution damage to the marine environment by land-based pollutants have little impact on foreign organizations and investors, the issue remains an important one to the Chinese. Each year almost two billion tons of land-based pollutants contaminate China’s waters. The major pollutants are oil, mercury, bronze, zinc, lead, cadmium, chromium, arsenic, radioactive matter, medical sewage, thermal wastes, solid wastes, and chemical the danger from such pollution. That was not only in the interests of the coastal State itself but also in the interest of the flag State.

Statement of An Zhiyuan at the 101st plenary meeting of the Seventh Session, held on 17 May 1978, in *9 UNCLOS III, Official Records 1978*, 53; Yu Mengjia stated, that some improvements had been made in the provisions concerning marine pollution. While the exclusive economic zone, unlike the territorial sea, did not come under a coastal State’s full sovereignty, it did nevertheless come within its jurisdiction. The convenience of international interests had to be considered with due regard for the need to ensure a proper balance. There should be no undue restriction on a coastal State’s control either of the territorial sea or of the exclusive economic zone.


73. To invoke the right of self-defense under *The Caroline* the threat has to be “instant, overwhelming, and leaving no choice of means, and no moment for deliberation”. *The Caroline*, in J.B. Moore, 2 *Digest of International Law*, Washington, DC. 1906, 412.


75. See op. cit., note 72.

76. Two billion seems surprisingly to be a conservative estimate. Shi et al., op. cit., note 48, 71. See also Orleans and Suttmeier, op. cit., note 1; Weil, op. cit., note 14; Wolfe et al., op. cit., note 48; Yang et al., op. cit., note 32, 2-7, 43.
pesticides. The MEPL has codified a number of measures to deal with the situation.

First, the MEPL allows only land-based pollutant discharge that complies with uniform standards. Article 18 of the MEPL provides that:

The discharge of harmful substances into the sea by coastal entities must be conducted in strict compliance with the standards for discharge and relevant regulations promulgated by the state or the people’s governments of provinces, autonomous regions, and municipalities directly under the Central Government.

The “relevant regulations” to which Article 18 is referring are the Provisional Standards for the Discharge of the “Three Industrial Wastes.”

Second, the MEPL has codified a panoply of measures to deal with the major sources of land-based pollutants. Article 19 is aimed at containing the level of radioactive material discharged into the sea. Article 20 deals with the control and treatment of disease-causing agents discharged into the water. Article 21 adopts measures to combat the eutrophication of sea water. Article 22 focuses on avoiding damage to aquatic resources by thermal pollution. Article 23 requires all chemical pesticide use in coastal farmlands to conform to relevant state regulations and standards. Article 24 deals with solid wastes.

Pollution from Seabed Activities and Coastal Projects Subject to National Jurisdiction

Industrial development plays an important role in China’s modernization. With increased coastal development, coastal projects pose a substantial threat to China’s marine environment and ecosystem.

Coastal projects have varying impacts on the marine environ-

77. Id. See also, V. Smil, “Rivers of Waste”, 10 China Business Review 1983 No. 4, 18.
78. Yang et al., op. cit., note 32, 43-44.
79. See Article 18 of the MEPL, op. cit., note 32.
80. Yang et al., op. cit., note 32, 43.
81. Yang et al., op. cit., note 32, 44-45.
82. See Article 19 of the MEPL, op. cit., note 32.
83. See Article 20 of the MEPL, id.
84. See Article 21 of the MEPL, id.
85. See Article 22 of the MEPL, id.
86. See Article 23 of the MEPL, id.
87. See Article 24 of the MEPL, id.
ment. Article 6 thus requires all contractors involved in coastal projects to submit Environmental Impact Assessments before proceeding with any work. The Assessments must adhere to relevant state regulations, which in this case are the Measures for Regulating Environmental Protection in Basic Construction Activities.

Aside from altering geographic features and disrupting the ecosystem, coastal construction also has the propensity to affect adversely aquatic resources by drastically changing the marine environment, disrupting food chains, and obstructing fish and crab migration among other things. Article 7, therefore, requires that “[m]easures must be taken to protect the aquatic resources when building harbors and oil terminals, as well as water conservancy facilities and tidal-power stations in estuaries . . .” and that corresponding fish ladders must be constructed where dams are built across fish and crab migration routes.

Ports and oil terminals are another source of pollution from coastal projects. A number of incidents have occurred recently at the Huangdao Port in Jiauzhouwan. These incidents’ repercussions have been far-reaching, affecting the coast of Jiaunan County and Haibin in Qingdao. With the aid of monitoring and processing devices, the ports of Dalian, Qingdao, and Qinhuangdao have attained remarkable results in improving the marine environment by processing tankers’ discharged ballast water. Thus, Article 8 of the MEPL requires that “[t]here shall be installed at ports and oil terminals facilities to receive and treat oil residues and wastes, oily water and other wastes, along with necessary anti-pollution equipment and monitoring and alarm devices.”

Tideland development and use give rise to the last of environmental concerns connected with coastal development. Article 9 deals with the economic use of tidelands and also requires Environmental Impact Assessments for any tidelands projects. Article 9 further requires absolute protection of all seashore shelterbelts, scenic forests, scenic

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88. Incidents in Xiamen and Ningbo are two recent examples. Coastal construction affected tidal movements so that sand and silt was not being carried away, thereby clogging harbors or waterways, and hampering navigation. See Yang et al., op. cit., note 32, 32-33.
89. See Article 8 of the MEPL, op. cit., note 32.
91. See Article 7 of the MEPL, op. cit., note 32.
92. Yang, et al., op. cit. note 32, 34.
93. Id.
94. See Article 8 of the MEPL, op. cit., note 32.
95. See Article 9 of the MEPL, id.
rocks, mangroves, and coral reefs. 96

Pollution by Offshore Oil Exploration and Exploitation

The potential for marine pollution from offshore oil exploration and exploitation has risen with the increased testing and drilling activities off China’s coast. 97 Pollution from offshore oil exploration and exploitation comes in many forms. 98 Operations using explosives disrupt fishery resources. Oil leaks into the water, while waste and other pollutants are disposed and discharged directly into the sea from mobile and fixed platforms. Activities involved in the actual testing for and mining of oil further exacerbate the situation. And, oilspills and other such incidents pose the most serious threat to the marine environment. Thus, the MEPL has written into it measures to control the situation. The State Council also recently enacted a set of regulations—the Regulations of the People’s Republic of China on Marine Environmental Protection from Oil Exploration and Exploitation—to supplement the MEPL. 99

The provisions cover five general areas. First, all organizations

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96. Id.
98. See Manners, North Sea Oil and Environmental Planning 1982, 94-160.
99. See op. cit., note 34.
engaged in offshore oil exploration must submit an Environmental Impact Assessment.\textsuperscript{100} The Assessment must include, \textit{inter alia}: (1) the oil field's name, geographic position, the probable types of pollutants to which it will give rise, and their quantity and method of discharge; (2) the condition of the natural marine environment and resources in the area surrounding the oilfield; (3) the impact on waterways, scenery, and tourism in the surrounding area; and (4) the impact on the natural environment and resources, the fishing and shipping industries, and other marine activities, as well as comments on preventive measures and comments on severe and unavoidable impacts of oil exploration and exploitation.\textsuperscript{101}

Second, all enterprises must take measures to protect fishery resources when using explosives.\textsuperscript{102} Explosives are commonly used in oil exploration. However, they can cause serious adverse effects on the marine ecosystem. Thus, since no explosive operations may take place during the fishing or spawning season, or in spawning grounds, all operators must take relevant time and geographic circumstances into account when planning blasting.\textsuperscript{103}

Third, all operations must follow relevant regulations when discharging pollutants into the water. In the course of retrieving oil, oil and other industrial wastes are leaked, discharged, and disposed of from platforms. Thus, articles were enacted to alleviate this problem. Article 12 orders strict control of exploration and exploitation to prevent leakage.\textsuperscript{104} Articles 13 and 15 forbid the direct discharge of pollutants into the sea, and allows discharge only in accordance with state standards.\textsuperscript{105} Article 14 prohibits the disposal of oily industrial wastes into the sea, and other wastes may be disposed of into the water only when fishing grounds and waterways will not bear damage.\textsuperscript{106}

Fourth, measures must be taken to prevent oil pollution stemming from actual offshore exploitation activities. Article 16 therefore requires that "offshore oil pipelines and oil storage installations shall always be kept in good condition fulfilling requirements against seep-
age, leakage, and corrosion . . .”

Last, and most important, measures must be taken to prevent and, in the case of actual occurrence, handle blow-outs and oil spill accidents. Oil spills and blowouts in connection with offshore oil exploration have devastating effects on the marine environment. Two illustrative examples are the January 1969 spill off Santa Barbara, California, where over 13,000 tons of crude oil poured into the ocean, and the Ekofisk incident of April 1977 in the North Sea, where over 28,000 tons of crude oil polluted over 300 square kilometers. Article 17 thus requires “. . . appropriate anti-pollution facilities and equipment [to be available] and effective technical measures be taken to prevent blow-out or oil spill accidents.” Should a blow-out or oil spill occur, Article 17 continues to require the organization to file a report immediately and to take effective measures to control and eliminate the pollution.

Pollution from Ocean Dumping

Ocean dumping has developed into one of the more serious types of marine pollution. For years the transportation to and disposal into the sea of undesirable land-generated wastes went unmonitored. National outcries against this practice in the early 1970s advocated legislation in this area. This pressure gave rise to a spate of national and international legislation. The MEPL provisions on ocean dumping are China’s first attempt to deal with this looming problem.

The MEPL places stringent restrictions on dumping in China’s waters. First, entities must gain permission through application to the relevant state administrative department, in this case the State Bu-

107. See Article 16 of the MEPL, id.
108. Yang et al., op. cit., note 32, 41-42.
111. See Article 17 of the MEPL, op. cit., note 32.
112. Id.
114. Id.
115. See Article 38 of the MEPL, op. cit., note 32.
The application must contain, *inter alia*: (1) the location of dumping; (2) the name, quantity, and form of substance being dumped; (3) the type and specifications of packing; and (4) the means of transport.117

Second, Article 39 places loading, location, and time restrictions on all dumping activities.118 These particulars will be set forth on the dumping permit.119

Last, after the dumping is completed, Article 40 requires all entities engaged in dumping to submit a detailed report of the operation.120 Reports should include transportation conditions, the actual time—both beginning and end—of dumping, the actual position of dumping, whether or not the packing stayed intact, and whether or not any waste leaked out.121

As with the provisions on vessel sources pollution, the murky jurisdictional issue also haunts entities involved in dumping activities. Article 38 makes it clear that “[n]o entity may dump any kinds of waste into the sea areas *under the jurisdiction of the People’s Republic of China* without the permission” of the relevant agency.122 (emphasis added) However, Article 2 states that “[t]he Law also applies to . . . the dumping of wastes *beyond the sea areas under the jurisdiction of the People’s Republic of China* but causing pollution damage to such areas”.123 (emphasis added) One lawyer noted that “[u]nder a literal reading of this provision, China would be asserting jurisdiction over activities in other countries if such activities had an impact on China”.124 Yet, China would be justified in taking such bold action in only a few exceptions, such as those provided in Article 211 and 220 of UNCLOS III.125 Even under these exceptions, China’s outright declaration of an EEZ would be a condition precedent to asserting jurisdiction. Furthermore, such an assertion would have to be grounded on the objective theory of territorial jurisdiction.126 Thus, it is probably

116. Yang et al., *op. cit.*, note 32, 60.
117. *Id.*
118. See Article 39 of the MEPL, *op. cit.*, note 32.
119. *Id.*
120. See Article 40 of the MEPL, *id.*
121. Yang et al., *op. cit.*, note 32, 61.
122. See Article 38 of the MEPL, *op. cit.*, note 32. Under Article 45, this also applies to planes, platforms, and other vehicles and structures.
123. See Article 2 of the MEPL, *op. cit.*, note 32. See discussion at *op. cit.*, notes 56-75, and accompanying text.
125. See Articles 211, 220 of UNCLOS III, *op. cit.*, notes 30 and 67.
126. Under the objective territorial principle, a State may assert jurisdiction when a
safe to say that China will adhere to the limits of international law and apply these provisions of the MEPL at most up to a 200-mile limit. In such cases, China should do so with strict scrutiny.

III. LEGAL RESPONSIBILITY UNDER AND ENFORCEMENT OF THE MARINE ENVIRONMENTAL PROTECTION LAW

Chapter 7 of the MEPL deals with legal responsibility. Liability is broken down into three types—civil, administrative, and criminal.

Civil Liability

Article 42 requires violators to compensate any “units and individuals” who have suffered damage caused by marine environmental pollution. The measure of damages will be based on three elements: (1) actual losses caused by the pollution; (2) costs incurred in eliminating the pollution; and (3) the injured party’s loss of any income. While the MEPL cites no ceiling on civil damages, a Chinese commentator stated that China will adhere to the relevant provisions of any international conventions to which it is a party.

The MEPL deals with violators harshly since the Law adheres to the principle of strict liability. Thus, absent any act of war, force majeure, or “negligence or other wrongful acts on the part of the departments responsible for [lighthouses] or other navigational aides”, all violators will be held strictly liable for any damages incurred. A violator’s only recourse under the MEPL would be to contest liability for the amount of damages pursuant to the Law of Civil Procedure of

127. Goodwin, op. cit., note 35, 11. One Chinese writer stated recently that with regard to jurisdiction under the MEPL, where the MEPL conflicted with international legislation to which the PRC is a party, China would not transgress the letter of the latter. Fei, “On Administrative Jurisdiction in Cases over Economic Disputes Involving Foreigners”, Zhongguo Fazhi Bao, 8 February 1985, 3.
128. See Article 42 of the MEPL, op. cit., note 32.
130. Id. See also on the calculation of damages under the MEPL, Ni, “Reparations Problems in Marine Environmental Pollution Accidents”, 1 Huanjing Guanli 1985, 35-36.
131. See Article 43 of the MEPL, op. cit., note 32.
132. He, op. cit., note 129. See also Goodwin, op. cit., note 35, 10.
the People's Republic of China.\textsuperscript{133}

**Administrative Responsibility**

In order to protect the state's natural resources, the MEPL imposes administrative sanctions to collect compensation for state losses.\textsuperscript{134} Article 41 stipulates that "... the relevant supervising departments ... may order the violator involved to remedy the pollution damage within a definite time, pay a discharging fee, pay the cost for eliminating the pollution and compensate for the loss sustained by the state, and may give the said violator a warning or impose a fine upon him".\textsuperscript{135} The Law provides for appeal to a people's court within fifteen days.

**Criminal Responsibility**

Civil and administrative sanctions aside, Article 44 also imposes criminal responsibility for violations "resulting in pollution damage to the marine environment and causing heavy losses of public or private property or deaths or injuries to persons ..."\textsuperscript{136} This provision, along with Article 32(2) of the PRC Environmental Protection Law (dealing with the question of how to determine the criminality of those who seriously pollute and damage the environment),\textsuperscript{137} is the subject of

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\textsuperscript{134} See discussion in He, \textit{op. cit.}, note 129.

\textsuperscript{135} See Article 41 of the MEPL, \textit{op. cit.}, note 32. Cases of violations stemming from oil exploration and exploitation, and dumping fall under the jurisdiction of the State Bureau of Oceanography. Cases of violations stemming from vessel pollution fall under the jurisdiction of the Harbor Superintendency Administration. Cases of violations stemming from coastal construction or land source pollution fall under the jurisdiction of the respective coastal provincial, autonomous region, or city environmental protection agency. Yang \textit{et al.}, \textit{op. cit.}, note 32, 63.

\textsuperscript{136} See Article 44 of the MEPL, \textit{op. cit.}, note 32.

\textsuperscript{137} Article 32(2) of the Environmental Protection law provides:

Unit leaders, persons directly responsible or other citizens who have caused serious pollution and damage to the environment resulting in casualties or substantial damage to farming, forestry, animal husbandry, side-line production, and fishery shall be held responsible administratively, economically, \textit{and even criminally}, as the case may be, according to the law. [emphasis added]

See \textit{op. cit.}, note 12.
much debate.

The debate centers around the fact that no provisions were written into the PRC's Criminal law on environmental crimes. The Criminal Law notes three elements of a crime: (1) it is harmful to society; (2) it constitutes an offense, either intentional or negligent; and (3) it violates the criminal law and is subject to punishment. One is thus led to reason that those acts which are not prohibited by the criminal law should not carry criminal sanctions. And, any criminal punishment for an act not written into the Criminal Law would be in total contradiction to the principle *nulla poena sine lege*. However, scholars in the PRC discard this theory, contending it is contrary to Marxism. Rather, they apply a dialectical approach to criminality, and advocate punishment for crime by analogy.

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140. The Criminal Law still retains the principle of crime by analogy. Article 79 provides: “A crime that is not explicitly defined in the specific provisions of the Criminal Law may be determined and punished according to the most closely analogous article in the
Those jurists espousing punishment of environmental crimes by analogy do, however, put forth some logical arguments supporting their stand. First, given the serious degree of intentional environmental pollution, criminal sanctions should be meted out selectively as a deterrent.\(^{141}\) Also, they still support an emphasis on civil and administrative sanctions. Thus, while the ends of criminal sanctions for environmental violations seem legitimate, it is questionable whether the means are justifiable.

**Enforcement**

Enforcement of the MEPL deals to the Chinese yet another problematic issue. Three State Bureau of Oceanography vessels and one airplane now patrol China’s seas for environmental violations.\(^{142}\) The “Zhongguo haijian” (China’s marine surveillance vessels), based in Qingdao, Shanghai, and Guangzhou, have the right *inter alia* to issue warnings, assess fines, and claim damages.\(^{143}\) Despite their expansive powers, the patrols’ task seems near futile. Four vessels simply are not enough to patrol the sea under China’s jurisdiction effectively, which spans over 18,000 kilometers of coastline, and stretches out—according to the Chinese—at least 200 miles.

**CONCLUSION**

The enactment of the Marine Environmental Protection Law marks a positive step in China’s development. First, China’s environ-

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Criminal Law . . .” China is one of the few countries which retains this principle. Most countries, including the Soviet Union, recognize that crime by analogy is in derogation of general legal principles. On the Soviet abolition of this principle, see H. Berman *et al.*, “A Comparison of the Chinese and Soviet Code of Criminal Law and Procedure”, 72 *Journal of Criminal Law and Criminology* 1982, 249. Note, also, that such provisions would not withstand the specificity requirements under the laws of the United States and other countries. In the US such statutory provisions are held void-for-vagueness on the grounds of denying due process and failing to provide fair notice. See United States v. Cadiff, 344 US 174 (1952); Papachristou v. City of Jacksonville, 405 US 156 (1972); Amsterdam, “The Void-for-Vagueness Doctrine in the Supreme Court”, 109 *University of Pennsylvania Law Review* 1960, 67-116.

Jurists cite numerous provisions of the Criminal Law which relate to the environment, such as: Articles 105, 106, and 115 (crimes endangering public security); Articles 128, 129, and 130 (sabotage against the socialist economic order); Article 156 (trespass); Articles 174 and 178 (disturbance of the administrative order of society); and Article 187 (misconduct in office). Jin and Cheng, *loc. cit.*, 73-74.


mental law framework has entered into a new stage of sophistication, bringing it closer to fruition. The MEPL combats the major sources of marine pollution: coastal construction projects, land source pollutants, offshore oil prospecting and exploitation, leakage and discharges by ships, and the dumping of wastes and toxic materials. The State Council also enacted three related sets of regulations and a number of pollution standards. This refined legislation manifests China's awakening to the dangers to its marine and the international environment—dangers posed by intensive offshore oil exploration and coastal development, depletion of fisheries, and increased shipping in Chinese waters.

Second, developments in marine protection law illustrate China's great commitment, both as a developing and as a socialist state, to legality and environmental protection within the evolving international regime of resource management and preservation. China, by promulgating the MEPL, fulfilled its treaty obligations under the 1982 UN Convention on the Law of the Sea, MARPOL, and other legislation. Thus, China now joins the community of nations in its fight against pollution.

The benefits of the law should, however, be viewed in light of its shortcomings. First, China's adamant stand on coastal state jurisdiction conflicts with existing international law and the 1982 LOS Convention. This position will only serve to discourage foreign investment in the area and harbor an atmosphere of insecurity and trepidation since investors will be unaware of actual responsibilities. Second, the criminal punishment of environmental crimes contradicts general principles of law recognized by civilized nations—namely the principle of *nulla poena sine lege*. Last, the MEPL may be of little real utility in terms of bettering environmental quality. The value of a law can be judged through the ability to enforce it. Yet, owing to economic constraints, only limited forces now patrol China's extensive coastline.

In sum, the MEPL has the potential to be of great utility to the Chinese. However, at least three requirements must be met. First, China must bring its views on coastal state jurisdiction in line with the accepted international law norm. Second, while Chinese jurists advocate a restrictive use of crime by analogy, further reform is needed in this area of criminal law. The Chinese must weigh the costs and benefits of imposing criminal sanctions on environmental violators. If there is a need, then it is time to amend to Criminal Law to include the necessary provisions. Last, China must continue efforts in pragmatic economic development. Prosperity will bring increased revenues for effective enforcement of the MEPL.
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