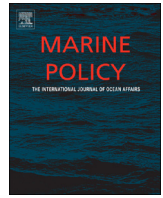




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Marine environmental governance networks and approaches: Conference report

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ABSTRACT

The development of maritime law and policy is one of the most important tasks for nation States. The implications of globalisation and the importance of the rule of law, the protection of maritime rights and interests and the marine environment should be realised through effective, reasonable and equitable legal systems, within which both public and private law can be utilised to deal with the wide range of marine governance challenges. In October 2013, Shandong University School of Law organised with the support of Zhongcheng Renhe Law Firm the “2013 International Conference on Marine Environmental Governance” to bring together academics, policy makers and maritime law practitioners to examine developments and dispute resolution mechanisms in this field of research. We provide a brief report of the key issues discussed during the workshop which may assist in developing better understanding of ocean governance approaches in different regions and their application to decision-making processes.

1. Introduction

The “2013 International Conference on Marine Environmental Governance”¹ was hosted by the School of Law, Shandong University, China October 26th and 27th, 2013. This conference explored four themes of marine environmental governance: marine law enforcement, joint efforts toward ocean governance, marine dispute settlement mechanisms and marine resource management. The development of maritime law and policy is one of the most important tasks for a nation State during the 21st century, which is regarded as “the century of the oceans” [1]. For China and many other countries, national security and economic and social development depends on the effective protection of maritime rights and interests [2]. In recognition of the importance of marine environmental protection, China has set its priorities in its National 12th Five-Year Plan to

“develop marine economy, adhere to the coordination of land and ocean, draft and implement marine developing strategy, improve the capabilities of marine development, control and integrated management, scientifically plan for the development of marine economy, develop the marine industries, such as the offshore oil and gas, transport, and fisheries, reasonably develop and exploit marine resources, strengthen the construction of the fishing ports, protect the ecological environment of the islands, coastal areas and the ocean, secure the safety of sea lanes, and safeguard China's maritime rights and interests”.

With the realities of increasing globalisation and the rule of law, [3] the protection of maritime rights and interests and the marine environment must be realised through an effective, reasonable and equitable legal systems [4], within which both public law and private law should be equipped to deal with the

challenges at hand [5–7]. Specifically, the concept of “sea power” should be emphasised in public law [8] because it largely involves State conduct. However, marine commercial interests are largely matters for private law [9,10].

The Conference provided a forum for the discussion of key conceptual and policy issues related to marine environmental governance. It was focused on promoting better marine environmental management, notably the development of recommendations and associated progress markers to improve and monitor marine environmental governance. Governance of the marine environment is evolving from being primarily top down and State directed to being more participatory and community based [11]. The main challenges are

- (1) Marine environmental protection measures: various types of prevention and remedy measures, including administrative, civil and criminal liability measures, have been adopted in marine environmental protection law in China and elsewhere [12]. All three types of liability have shortcomings: the remedy measures and refined liability types are incomplete and cannot cover all kinds of illegalities [13]. Therefore, it is necessary to examine experiences from other countries.
- (2) Joint ocean governance: to achieve a holistic approach to ocean governance it is necessary to improve marine-related legal, administrative and law enforcement systems [5–7]. Law is the foundation for governance, supported by administrative systems. An effective law enforcement system is the critical for achieving the objective of holistic ocean governance. A clear legal governance framework sets up the “rules of the game” for all parties. An important task is to revise the existing sector-based governance system [14–16].
- (3) Dispute settlement mechanisms for maritime torts: generally, the establishment of tort damages requires the plaintiff to prove a causal link between the infringing act and the damage [13]. However, in maritime tort disputes, it is often difficult for the

¹ <http://202.194.14.112:8080/child/sea/guojijhuodong/2013-05/3679.html>.

damage-claiming party to prove the existence of a causal link due to the fact that maritime torts involve complex circumstances in which harmful substances may move, spread and transform with the natural movement of water. In many cases, the damaged party may have insufficient funds to prove the existence of a causal link, and is therefore placed in a disadvantaged position to pursue compensation [14]. An examination of tort litigation experiences in other countries on this point would be instructive.

- (4) Marine resource management: many countries are struggling to sustainably manage fish stocks and protect marine biological diversity. This has sparked a significant debate about the role of ecosystem-based management and the tools available to implement it, e.g., marine protected areas/networks, ecosystem-based fishery management, etc. How much of the ocean area should be set aside in representative marine protected areas networks is hotly debated at the same time concern is being expressed about the designation of “theoretical or paper parks” [17] which lack legal, administrative or enforcement processes to ensure that they meet their objectives.

2. The conference-introductory session

The conference brought together people to exchange views on a great range of topics on marine environmental governance. Participants came mostly from China but also from across the Straits–Taiwan, the United States, Scotland and Australia. The conference commenced with a speech from Professor Feng Jiang, Deputy Dean of Shandong Law School, who explored the critical importance of the oceans to humankind and reminded us that “*we are all in the same boat.*” He was joined by Dr. Qing Kai Meng, Zhongcheng Renhe Law firm. Dr. Meng explained that everyone is in an *ocean village*, noting that “Everything comes from the ocean and belongs to the ocean”.

They were followed by two eminent keynote speakers. First, was Professor Elizabeth Kirk from the School of Law at the University of Dundee in Scotland who spoke on the topic of *The Ecosystem Approach and Holistic Ocean Governance*. The achievement of integrated and truly holistic ocean governance could be the most important challenge that we face. Professor Kirk provided a critical review of the Ecosystem Approach, which has largely come from land management or otherwise management of fisheries, and explained that the concept can be used more widely, and in fact in some cases we are using it without realising it. Professor Kirk explained the scale of the environmental challenges that we face, ranging from the location of offshore wind farms to the problem of marine debris. She argued that the Ecosystem Approach has the potential to be an overarching approach for ocean governance, but that it needs to be better articulated to enable it to be applied more widely. She suggested the development of a consistent set of elements that are indicators of the Ecosystem Approach that ideally could be applied consistently across the many marine sectors [18].

Professor David Fluharty, School of Maritime and Environmental Affairs at the University of Washington, explained that oceans governance is a challenge for all marine nations. He reflected on the experience in the United States, noting the long history of failed attempts to achieve integrated coastal and ocean management. The United States has 24 agencies with ocean management responsibilities and about 150 laws to implement, and the laws and implementation are primarily sectoral. There is fragmentation both horizontally across the different marine sectors as well as vertically in the governance arrangements. Professor Fluharty explained the background for and implementation, so far, of President Obama’s Executive Order on National Ocean Policy which encourages an

ecosystem-based approach to coastal and marine spatial planning. Professor Fluharty suggested that consideration be given to different options for improvement in the area of marine spatial planning, whether through “soft change” as seen in UN General Assembly resolutions, “enhanced change” through regional approaches (for example, strengthened best practice in Regional Fisheries Management Organisations), or “fundamental reform” (for example, to create a fisheries and oceans directorate in the UN) [19].

3. Marine environmental protection measures

Three talks covered high seas fishing, shipwrecks and the protection of China’s coastline. First, Professor Kuan-Hsiung Dustin Wang from National Taiwan Normal University examined the need for fisheries enforcement on the high seas, either by hot pursuit or by the regional fisheries management organisations (RFMOs) procedures. He contemplated whether customary international law can develop to the point where vessel inspections can be conducted on the high seas by non-flag states, based on expanding practice in RFMOs [20].

Detailed comprehensive legal analysis of historic shipwreck law was presented by Associate Professor Jie Huang from Shanghai Jiaotong University. This is a very important topic that has not attracted much attention among maritime scholars. There are many historic shipwrecks around the world and they present the potential for many disputes. Dr. Huang concluded that the current US federal civil (admiralty) procedure law has loopholes for misidentification of shipwrecks. She proposed that (1) other interested parties can use the heightened pleading rule and broad discovery to compel salvage companies to release information on the names of shipwrecks; (2) the clear and convincing evidence standard, instead of the preponderance of the evidence standard, should be applied to identify historic shipwrecks; (3) courts should ensure ongoing public disclosure of archaeology archives regarding identities of historic shipwrecks although salvage companies may hesitate to release names of shipwrecks; and (4) courts may retain maritime archaeologists to conduct peer review of evidence regarding identities of historic shipwrecks [21].

Mr. Peng Zhao, doctoral student and research assistant at the National Marine Data and Information Service Centre, State Oceanic Administration, China examined developments in coastal protection measures in China. He discussed the protection and utilisation of the natural coastline and the effects on it of over-development. The ‘red-line’ policy in natural resources protection including forest, cultivated land, freshwater and marine ecology was reviewed. It is a resource oriented policy which designates zoning lines that are not to be crossed. In order to attain its objectives, restrictions or even bans in certain areas regarding the use of natural resources are imposed. The red-line policy was recommended to be adopted in natural coastline protection, using buffer zones, regional controls and inter-region transactions as well as efficient use of coastlines and artificial coastline restoration [22].

4. Joint efforts for ocean governance

Professor Warwick Gullett, Dean of Law at the University of Wollongong, Australia, examined the obligation and challenge of conducting environmental impact assessment (EIA) for developments and activities in the marine environment which have the potential to cause transboundary environmental harm. He suggested that the nature and variety of activities at sea, coupled with the complexity of jurisdictional rights in different maritime zones,

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