A Brief Analysis of the Applicability of the Archipelago Waters System in China

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Abstract: The archipelagic waters system is stipulated in the United Nations Convention on the Law of the Sea. It is closely related to China’s marine legislation and maritime law enforcement. It is not only related to the integrity of our country’s national sovereignty, but also to the maintenance of our maritime rights and interests. However, there is no comprehensive fundamental law governing the overall situation of marine development in our country, also no relevant legal code on the archipelagic waters system. Therefore, we should learn from the world’s marine legislation and practice which the archipelagic waters system was written into China’s marine legislation.

Key words: Archipelago waters system, United Nations Convention on the Law of the Sea, mid-ocean archipelagos.


1.1 The Origin of the Archipelagic Waters System

The special status of the archipelago was first proposed by the international law association in 1920, the institute of international law and the United States institute of international law, and the 1930 Hague Conference on international law also discussed the proposal, but because of the lack of technical information at the time, the problem has not been put on the agenda. After the 1959 British Norway fishery case, the island problem gradually emerged in the international community, and began to be widely concerned by the international community. At the first United Nations Conference on the Law of the Sea in 1958, several countries, represented by Indonesia, for the first time raised the “system” of the archipelago waters, raised the question of the status of the islands and the baseline of the islands, maritime law was not adopted at that time. The archipelagic waters system was confirmed to be included in the United Nations Convention on the Law of the Sea until the Third United Nations Conference on the Law of the Sea was held in 1976. At the third meeting of the Third United Nations Conference on the Law of the Sea, the question of the applicability of the archipelagic waters system in the oceanic islands of the continental countries has been controversial and the issue has finally been avoided. Ultimately, in the 1982 United Nations Convention on the Law of the Sea, the archipelagic waters regime was formally established and applied only to archipelagic countries.

1.2 The Basic Content of the Archipelagic Waters System

The United Nations Convention on the Law of the Sea, in the fourth part of the “archipelagic States”, articles 46 to 54 provide for the archipelagic waters system, including the basic concepts, the delineation of the archipelagic islands, the rights and obligations of the archipelago, and the watershed system of islands the contents are clearly defined in the Convention. In determining whether a country is an archipelagic
country or not, the particular nature of the archipelago and the division of the baseline are particularly important.

1.2.1 The Definition of the Concept Related to the Archipelago

Article 46 of the Convention provides that “archipelago means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such”. As can be seen from the provisions of the convention, the islands are a whole of islands, islands, parts of the waters, and other natural terrain. Thus, it is certain that the archipelago has a vital attribute that is vital, rather than being freely segmented.

With regard to the division of archipelagic and non-archipelagic states, there are already provisions in the convention: “Archipelagic State means a State constituted wholly by one or more archipelagos and may include other islands”. The division of archipelagic and non-archipelagic countries is only a relative concept, the main division of which is the composition of the territory and the proportion of land area and water area. The area of the waters surrounded by the archipelagic islands and the land area, including atolls, should be between 1:1 and 9:1, and the land area is completely surrounded by water. Coastal land area is land-based, landed in the land and other countries adjacent to the coastline, usually with coastal islands and oceanic islands, its archipelago is often located far from the mainland, also known as the ocean islands. From the perspective of the development of the archipelagic theory, the archipelagic countries and many continental countries with oceanic islands have advocated the principles of the archipelago, and except that the Covenant’s claim to the archipelago is affirmed in the form of the United Nations Convention on the Law of the Sea. Although the convention restricts the archipelagic system to all archipelagic islands of the Territory, it does not mean that the nature of the continental islands of continental countries is different from that of archipelagic islands. It is not so much that the convention does not make it clear that the oceanic islands of the mainland countries are excluded from the scope of application of the fourth part of the archipelagic countries. Moreover, the convention does not provide for the baselines to apply to the oceanic islands of continental countries, which also creates a legal vacuum in the international law of the sea [1].

1.2.2 The Delimitation of the Archipelagic Baselines

In accordance with article 47 of the Convention, the baseline of the archipelago consists of a straight line connecting the islands on the outermost islands of the islands and the outermost points of the dry reefs. The provisions of the Convention apply only to archipelagic islands, not continental islands of continental countries. In accordance with the provisions of the Convention, the baseline delineation of a country’s territorial sea can use a linear baseline method and a normal baseline method, while archipelagic countries use the archipelago of the islands. Coastal countries in the delimitation of the territorial sea baseline, we should first select the normal baseline, when the geographical characteristics lead to the normal use of the normal baseline method, you can consider the use of “the appropriate point of the line straight line method.” Broadly speaking, the baseline of the islands is also a straight line. However, there is a more stringent requirement for the application of the baseline, which includes a major island and a region, the area ratio between the waters of the archipelagic waters is between 1:1 and 1:9, the length of a single baseline does not exceed 100 nautical miles. A maximum of 3% of the total number of baselines can exceed this length and is limited to 125 nautical miles, the delineation of the baseline can not deviate from the general contours of the archipelago at any significant extent, the base point must be chosen to be able to satisfy the island that maintains human habitation. From the baseline length, the proportion of land and sea
area, the choice of the base of the island point of view,
these restrictive requirements are not available in
general linear baseline. Thus, the convention makes
separate provisions for the archipelagic baselines, and
the waters enclosed by the archipelagic basins are the
waters of the archipelago, and the waters enclosed by
normal baselines or straight lines are internal water.

2. The Practice of Applying the Archipelagic
Waters System in the World

According to statistics, as of the end of 2011, the
world has a total of 245 countries and regions, of which
44 inland countries, 48 national islands, coastal state,
including China, including 107 countries. As the
stipulates that the archipelagic waters regime applies to
archipelagic countries, there is no clear provision in the
laws of the coastal states that the waters under its
jurisdiction are divided into watershed-related
legislation. In practice, however, many countries have
decreed that they use a straight baseline for the
territorial waters of their archipelagic islands or
offshore islands and treat water within the baselines as
internal water, so that their historic waters are owned
by their own and advocate archipelago sovereignty [2].

2.1 The Application of Archipelagic
Countries to the
Archipelagic Waters System

Summing up the marine legislation and practice of
archipelagic countries, the provisions of the
archipelagic countries on the archipelagic waters
system are as follows:

- To specify the extent of the waters of the
archipelago, and to clarify that the waters of the
archipelago are any waters surrounded by the islands;
- To specify the baseline for the islands and identify
the baseline method of the archipelago;
- To define the sovereignty of the archipelago and
to clarify the legal status of the archipelago;
- To provide for the passage of the archipelago, to
clarify the island’s access system, including the right of
innocent passage of foreign ships and the right of
archipelagic sea access.

Indonesia and the Philippines were the first countries
to bring the archipelagic waters system, and following
the two countries, the archipelagic countries began to
legislate in the country to apply the system of
archipelagic waters. While some archipelagic states are
parties to the United Nations Law of the Sea, there is no
domestic provision for archipelagic waters systems,
such as Japan and the Philippines.

2.2 The Application of Coastal States to the
Archipelagic Waters System

To sum up the coastal legislation and practice of
coastal countries, it can be seen that most coastal
countries with oceanic islands do not explicitly
stipulate the application of the archipelagic waters
system in their own marine legislation, and some in
their own marine legislation, scope, and some of the
provisions of the ocean base and the baseline, and some
of the provisions of the sea passage system, and some
of the provisions of the archipelago sovereignty. Only
the Vietnamese Ocean Basic Law clearly stipulates that
Vietnam’s application of the archipelagic waters
system is a great breakthrough for the Convention,
which not only has a great impact on the countries
involved in the South China Sea, but also in the South
China Sea, which has a maritime dispute with China.
Vibration, the application of the convention in the
world, the practice of the archipelago waters system
also had a great impact.

In the light of the content of the convention, we can
see that the convention does not provide a clear basis
for international law on the application of the
archipelagic waters system to the offshore islands of
the continent. Therefore, if it is to be proved that the
archipelagic waters system can also be applied in the
continental islands of the mainland countries and to
prove that it can also be applied in our country, it is
necessary to study the application and development of
the archipelagic waters system in other countries as a
result of the application of the archipelago waters favorable evidence and support. Through the national legislation and practice of the sea, for those islands where the island is closer and closely linked to the oceanic islands, coastal countries have been drawn a straight line, the practice of these countries to the coastal countries of the oceanic islands apply to the linear baseline has become trends in international customary law rules.

3. The Necessity of Writing the Archipelagic Waters System into Our Legislation

3.1 The Provisions of the Archipelagic Waters System Are the Need to Maintain Our Maritime Rights and Interests

In accordance with the United Nations Convention on the Law of the Sea (hereinafter referred to as the “Convention”), China advocates the jurisdiction of the sea area of about 300 million square kilometers. Due to the complex reasons of history and reality, nearly half of the waters of the 3 million square kilometers are disputed, the waters are divided, the reefs are occupied, and the resources are plundered. Neighboring marine neighbors, on the marine land and rights and interests are raised to varying degrees of claims. On January 22, 2013 the Philippines filed arbitration with respect to the dispute over the South China Sea “maritime jurisdiction” to the International Tribunal for the Law of the Sea. The judicialization and internationalization of the South China Sea issue exposed China’s lack of legislation in the ocean. At present, China has promulgated a large number of single-sea laws and regulations related to the sea, which is not related to the relevant provisions of the ocean islands, and China’s maritime dispute countries have passed legislation to declare the rights of the sea. Solving maritime disputes through legal means is a universal choice of countries around the world and is a requirement of international law. The problem of archipelago waters also needs to be addressed through legal means. The provisions of the Basic Law of the archipelago waters can make our country in the international maritime dispute in the legal basis for protection, is conducive to the protection of national rights. In the face of the current complex international maritime situation, it is necessary to establish legislation to protect the national rights and interests of the archipelago. Protection of national rights and interests is necessary, so the need for legislation to be clear.

3.2 The Incorporation of Archipelagic Waters Systems into Our Legislation Is an Extension of the Relevant Principles of the Convention

The question of archipelago was not discussed at the United Nations first and second conference on the Law of the Sea in 1958 and 1960. A substantive discussion of the questionnaires was held at the Third United Nations Conference on the Law of the Sea in New York in 1973. The three most controversial aspects of the meeting were the definition of the archipelagic state, which made a simple definition of the archipelagic states in the context of trade-offs of interests, and did not provide for the islands and coastal islands belonging to the continental countries. The second is the principle of the delineation of the islands. The determination of the baseline of the archipelago affects the territorial waters, the contiguous zone, the exclusive economic zone and the width of the continental shelf, and so on. The third is the archipelagic waters system, the definition of the waters of the archipelago and the provisions of the waters of the archipelago involving the waters of the archipelago, seabed and submarine legal status and a series of national interests. The archipelagic system was established in the fourth part of the final conclusion of the convention. The system of archipelagic states is a compromise between the archipelago countries and the maritime powers. The convention stipulates only the archipelagic waters of the archipelagic countries and does not make clear provisions on the coastal islands and islands of the continental countries. What islands can be applied to the archipelago principle and the
archipelagic waters system, is the practice of different countries. Therefore, with reference to the provisions of the convention, the application of the archipelagic waters system in the oceanic islands of our country is an extension of the relevant principles of the convention.

3.3 The Archipelagic Waters System Can Provide Legal Support for the Demarcation of Our Archipelago

China’s neighboring countries such as Indonesia, the Philippines have submitted to the United Nations Island map points to declare sovereignty. China has always enjoyed sovereignty over Dongsha, Xisha, Zhongsha and Nansha, declaring the sovereignty of our oceanic islands and clarifying the scope of territorial jurisdiction is the fundamental work of safeguarding the national maritime rights and interests. Declaring sovereignty necessarily involves the question of the waters of the archipelago. China’s Diaoyu Islands and the Xisha Islands have been in accordance with the archipelago of the system model to complete the territorial sea point of the choice and territorial waters range, we must find a legal support for it, this legal support should be reflected in China’s marine legislation, that is, legislation in our country to implement the archipelagic waters system, in order to determine the scope of our Nansha Islands waters to provide more legal support.

3.4 The System of Islands Waters Is More Conducive to Safeguarding the Sovereignty of Islands in China

Archipelago is an important part of marine natural landform in China, and it is a very important part in the maintenance of marine rights and interests. According to the particularity of our country’s geography, it is necessary to set up the system of Islands waters in the marine legislation, to ensure that the sovereignty of our country is far from being infringed on the oceanic islands far from the mainland. And comprehensive investigation of China’s existing laws and regulations related to the sea, which is not the specific content of the waters of the islands, is a legal gap, but also conducive to the maintenance of maritime rights and interests in China. Marine powers need to improve laws and regulations to provide a strong legal protection, the provisions of the waters of the islands, it is necessary to protect the law.

4. The Feasibility of the Islands Waters in Spratly Islands

4.1 The Domestic Legal Basis for the Application of the Territorial Waters of Spratly Islands

The relevant provisions on the islands in China, mainly reflected in 1992, “People’s Republic of China territorial sea and the contiguous zone” and “statement” in 1996 in People’s Republic of China and 1973 “on the baselines of the territorial waters under the jurisdiction of the state within the scope of work document”, which has been defined as our baselines delineation of the baseline of the territorial sea, and has been published the Diaoyu Islands and Paracel Islands baselines. So far, China has not yet announced the baselines of the territorial waters of Spratly Islands. There is no doubt that China on the South China Sea Islands has indisputable sovereignty, but the water is connected with these islands and other natural terrain of the relationship between rights and obligations, and the legal attribute of China in the South China Sea delimitation of the intermittent line, there is no confirmation at the legal level. China’s territorial claims only provisions applicable to straight baseline four South China Sea Islands, the islands of straight baselines delineation of no specific explanation, with each island as a whole, connecting the outer islands proper connection as a baseline point, or in the islands of each island region delineated baseline, China has not made clear [3]. For the four islands of the South China Sea, China should advocate the islands as a whole, with a straight baseline to delineate the scope of unified territorial waters.

China’s Spratly Islands as a group of islands with integrity in history has been regarded as “a geographic,
economic and political entity”, and was named and described in many foreign maps, in fact it has a significant feature of the integrity of the islands. According to the convention, the composition of the islands includes not only the islands in the archipelago, but also other natural terrain and the waters of the islands. China’s Spratly Islands including reef, shoal etc. natural terrain, is an indivisible whole, our country should have the right to designate the waters under the jurisdiction. In addition, China has clearly defined baselines as the delineation of China’s territorial sea baseline, we advocate, in accordance with the method of straight baselines, break the convention on Islands waters system only applies to the provisions applicable to islands, Islands waters system is reasonable and legitimate in China Ocean islands.

4.2 The International Legal Basis for the Application of the Archipelago Waters System in the Nansha Islands

At the international level, at the second part of the Third Conference on the Law of the Sea, the representatives of the participating states disagreed on the scope of application of the archipelagic regime, namely, whether the archipelagic waters system applied to islands that form part of the territory of the mainland which was debated [4]. Countries such as Indonesia and the Philippines, such as the archipelago-based territories, are actively promoting the archipelagic system under the convention at the Third Conference on the Law of the Sea. There have been many new independent countries between 1970 and 1980 in the development of the Convention. And most of the archipelagic States are new independent states whose future development depends to a large extent on the development and use of marine resources, which they consider to reflect their fundamental interests [5].

In the debate on the second United Nations Conference on the Law of the Sea (1974), several states suggested that certain archipelago provisions should apply not only to archipelagic states but also to non-archipelagic countries.

At the third session of the Third United Nations Conference on the Law of the Sea (1975), the second part of the single negotiating text contained in its seventh section on “islands” the words “islands” and “islands” and their application of the two sections. The first section of the archipelago, the provisions of this section apply to the archipelago. For the purposes of this convention ... Section 2 of the text, that is, the Oceanic Islands of the continental State, states: “The provisions of section I shall not prejudice the position of the oceanic islands which form part of the territory of the State of origin.” Thus, it is clear that archipelagic countries have implemented the archipelagic waters system, but that does not mean that the archipelagic system cannot be applied to the continental islands of continental countries, it can only be said that the question of whether the continent’s application of the archipelago system is a blank in the convention [6]. The continental states have provided space for the archipelagic system, and at least the convention does not specify that the archipelagic system cannot be applied to the continental islands of continental countries. Moreover, the practice of the coastal states on the archipelagic waters system has also provided the experience of international law for the application of the archipelagic waters system in China.

5. Conclusions

At present, the situation in the South China Sea is more and more tense, it is very necessary to discuss the island system that is suitable for our country or not in jurisprudence, and proper and legal interpretation in China belongs to the legal status of the islands and adjacent waters and other natural terrain and the corresponding relationship between rights and obligations. We should accelerate the development of China’s marine basic law, and the Islands waters system written into China’s maritime legislation, the basic principles of international law and this is consistent with the requirements, and is the extension
and development of “Convention” the relevant principles, to ensure that the sovereign rights of islands away from mainland China Ocean, maintain in China the maritime rights and interests, improve marine legal system of our country, consolidate and enhance China’s international status.

References