On Development and Challenge of the Law of the Sea

── For the Commemoration of 70th Anniversary of the Founding of the United Nations

Yongming JIN*

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金　　永　明

Abstract: At the time of the 70th Anniversary of Founding of United Nations, to review the legislation and development of laws of the sea of United Nations is significant and meaningful for establishing ocean security order. The main contribution of United Nations to laws of the sea is the legislation of four Geneva conventions on the law of the sea and United Nations Convention on the Law of the Sea as well as establishment of its system. Their implementation contributes a lot to legal order of the sea. However, because United Nations Convention on the Law of the Sea is a product of compromise, its vagueness led to different understanding even opposite national practices during its implementation. Meanwhile, there arise some unexpected new ocean issues. All of those are challenges to United Nations Convention on the Law of the Sea. As a state party to United Nations Convention on the Law of the Sea, China faces an urgent and important task to improve its legal system of the sea according to the changed situation of the sea in order to ensure the implementation of national policies of the sea and maintenance of marine rights and interests.

Key Words: United Nations, the Law of the Sea, Development and Challenge, China's Practice

I. Introduction

At the time of the 70th Anniversary of Founding of United Nations, to review the legislation and development of laws of the sea of United Nation gives reference and enlightenment for us to correctly understand ocean order and system and deal with current disputes over the sea. The main contribution made by the United States to laws of the sea is organizing and compiling them which are marked by the legislation of four Geneva conventions on the law of the sea and United Nations Convention on the Law of the Sea and the establishment of international system of the law of the sea. Especially, the enactment and implementation of United Nations Convention on the Law of

the Sea play an irreplaceable and important role in building ocean legal order, facilitating international traffic, promoting peaceful use of the sea, fairly and effectively utilizing ocean resources, maintaining and studying biological resources of the sea, protecting and securing ocean environment, etc., so it is referred to as Charter of the Sea and becomes a general legal document comprehensively regulating the sea. However, with the implementation of United Nations Convention on the Law of the Sea, especially all countries' increasing demand of ocean space and resources as well as the development of the ocean technology, issues unpredicted or unclearly regulated by United Nations Convention on the Law of the Sea are increasingly emerge, which pose new challenges on laws of the sea, so it is necessary to continually enrich and improve such convention.

II. Process and Achievement of the United Nations in Compiling Laws of the Sea

According to the United Nations Charter, the General Assembly, one of principal organs of the United Nations, has the power to initiate and make recommendations for promoting international cooperation in the political field and encouraging the progressive development of international law and its codifications.[1)] Therefore, the tasks of developing and codifying international law in ocean field (i.e. international law of the sea) naturally become a function of the General Assembly of the United Nations.[2)]

The codification of laws of the sea refers to enacting principles, rules and regulations related to the sea as a convention (treaty) according to their natures and types to adjust rights and obligations of countries in utilizing and developing the sea and for countries to take measures to effectuate such convention or treaty according to procedures of effectuating a treaty of the international law and set forth legal systems of various sea water.[3)]

The codification of laws of the sea is mainly completed through conference discussion, review and concluding a treaty. The four important conferences are as follows: Hague Conference for the Codification of International Law held by the League of Nations in 1930 and three conferences on the law of the sea hosted by the Nations of States.

1. Hague Conference for the Codification of International Law

The conference for the codification of international law was held by the League of Nations Hague from Mar. 13, 1930 to Apr. 12, 1930 taking the territorial sea as one of three topics. Because countries held different opinions on the breadth of the territorial sea and the establishment of contiguous zone, the conference made a little achievement in codification of laws of the sea, but it is the first conference with large scale participated by governments of countries in the history of the law of the sea. Meanwhile, the draft of legal status of the territorial sea proposed by conference participants made a preliminary foundation for codifying laws of the sea, which is a first trial of codification of the law of the sea.[4)]

2. The First United States Conference on the Law of the Sea

The first United States Conference on the Law of the Sea was held in Geneva on Feb. 24, 1958, and ended on Apr.

27. The results of this conference were four conventions (Convention on the Territorial Sea and Contiguous Zone, Convention on the High Seas, Convention on Fishing and Conservation of the Living Resources of the High Seas and Convention on Continental Shelf, they are referred to as Four Geneva Conventions on the Law of the Sea) and an Optional Protocol of Signature concerning the Compulsory Settlement of Disputes possibly arising from these conventions.[5)]

However, because some Asian-African countries were not independent and did not attend such conference at that time, four Geneva conventions on the law of the sea failed to truthfully reflect reasonable requirements of most developing countries and some articles are only beneficial to a few ocean powers. For example, Article 1 of Convention on Continental Shelf adopts two standards in defining the continental shelf: the seabed and subsoil of the submarine areas to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas (i.e. the standard of being exploitable). As for the standard of being exploitable, there are different explanations on where the continental shelf can extend which is also determined by the ocean technological strength of the coastal state. Such regulation is obviously beneficial to a few ocean powers other than developing countries.

Taking the issue of innocent passage in the territorial sea as an example, Article 14 of Convention on the Territorial Sea and Contiguous Zone says in a general sense that ships from all countries enjoy the right of innocent passage, which can be explained as that a foreign warship enjoy the same right. In addition, Article 16 states that the innocent passage of a foreign ship shall not be stopped in straits used for international navigation. Besides, the biggest flaw of such four Geneva conventions on the law of the sea is its failure to reach an agreement on the breadth of the territorial sea.

3. The Second United Nations Conference on the Law of the Sea

It was held in Geneva from Mar. 17 to Apr. 17, 1960 with the aim to settle the issue of the breadth of the territorial sea and the boundary of fishing area. However, there were major differences in the breadth of the territorial sea and intensive debates over the boundary of fishing area among countries, this conference ended without any result. Meanwhile, the interval time between it and the first United Conference on the Law of the Sea and its duration were short, so it was imaginable that an agreement could not be reached among countries.

4. The Third United Nations Conference on the Law of the Sea

In order to settle unsettled issues in the former two conferences, especially the breadth of the territorial sea, the change of the standard of being exploitable of the continental shelf, meanwhile, in view of the development of technology in exploring and exploiting ocean resources and increasing improvement of the depth of exploiting submarine resources by developed countries, developing countries represented by Malta put forward a suggestion of formulating international seabed system which accelerated the third United Nations Conference on the Law of the Sea.[6)]

The third United Nations Conference on the Law of the Sea was opened on Dec. 3, 1973 in New York and

lasted nine years till the signature of United Nations Convention on the Law of the Sea. During that period, total 16 meetings of 11 sessions were held. The fruit of this conference is the United Nations Convention on the Law of the Sea (being effective as from Nov. 16, 1994, hereinafter referred to as the Convention) which includes preamble, seventeen parts with 320 articles and nine annexes with 446 articles.

As for the relationship between the Convention and four Geneva Conventions on the law of the sea, Paragraph 1 of Article 311 of the Convention states that the Convention shall prevail over four Geneva Conventions on the law of the sea of Apr. 29, 1958 among state members.

III. Basic Characteristics of the Convention and Its Improvement

As mentioned above, the Convention is a general legal document comprehensively regulating the sea. One of characteristics of such generality is that the number of states rectifying or acceding to the Convention is large. At present, there are 167 members (including the EU).[7] The generality of the Convention is determined by contents and characteristics of the Convention. The characteristics are mainly reflected in the following six aspects:

1. Determining the Largest Scope of the Breadth of the Territorial Sea

Article 3 states that every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention. That is to say, the state may determine the breadth of its territorial sea to the maximum extent of 12 nautical miles.

2. Specifying the Scope of Waters according to Different Status of Waters

The Convention divides waters into Internal Water, Territorial Sea, Contiguous Zone, Water of Archipelago, Exclusive Economic Zone, Continental Shelf, High Seas, International Seabed Areas and so on changing the traditional dichotomous view that the waters beyond the territorial sea are high seas.[8] The different waters set forth in the Convention enjoy different legal status and the coastal states enjoy different jurisdiction over them. In short, the water is farther away from the territorial sea baseline of land of the coastal state, the weaker or more limited the state jurisdiction is.

3. Revising the Standard or Scope of Continental Shelf System and Establishing Commission on the Limits of the Continental Shelf

Article 1 of Convention on Continental Shelf states that “continental shelf” refers to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas, which is the so-called standard of a depth of water of 200 meters or standard of being exploitable. According to Paragraph 1 of Article 76 of the Convention, the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural

prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. It is thus clear that the Convention adopts a standard of natural prolongation or a standard of a distance of 200 nautical miles in determining the scope of continental shelf, thus greatly expanding jurisdiction of the coastal state over continental shelf.

Meanwhile, the Convention makes restrictive regulations in order to limit the scope of continental shelf of the coastal state, i.e. the system of outer limits of continental shelf. It means rules and procedures which shall be obeyed by the state at the time of demarcating outer limits of continental shelf. The system is mainly reflected in three aspects: the first one is the limitation of distance of the limit; the second one is the limitation of procedures in setting the limit; the third one is the restriction on exploiting non-living resources.[9)] In addition, in order to guarantee the earnest compliance with the continental shelf system, the Convention establishes Commission on the Limits of the Continental Shelf.[10)]

4. Establishing Exclusive Economic Zone System

The system comprises main contents as follows: the first one is about the scope of exclusive economic zone. According to Article 55 and Article 57 of the Convention, the exclusive economic zone is an area beyond and adjacent to the territorial sea which shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The second one is about the delimitation of the exclusive economic zone. It is mainly provided for in Article 74 of the Convention. It may be seen from the text that the delimitation of the exclusive economic zone does not concern principle of equidistance or principle of justice, but the importance that related countries shall conduct delimitation according to agreements and guarantee the justice of the delimitating result. The third one is about rights states enjoy in exclusive economic zone. Such rights include two parts: rights enjoyed by the coastal state in exclusive economic zone and rights enjoyed by other states in exclusive economic zone.[11)] The fourth one is about the preliminary regulation of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone. Article 59 of the Convention states that in cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole. This is the so-called preliminary article on principle of resolution of conflicts of attribution of remaining rights.

5. Establishing International Seabed System and Setting up A Special Organ

The Convention establishes international seabed system based on the principle of common heritage of mankind (hereinafter referred to as the Area System). For example, Article 136 of the Convention states that the Area and its resources are the common heritage of mankind. The ‘Area’ means the sea-bed and ocean floor and subsoil

thereof, beyond the limits of national jurisdiction according to Item (a) of Paragraph 1 of Article 1 of the Convention. The 'resources' means all solid, liquid or gaseous mineral resources *in situ* in the Area at or beneath the sea-bed, including polymetallic nodules according to Paragraph 1 of Article 133 of the Convention. Of course, the establishment of the principle of common heritage of mankind in the 'Area' is a product of a battle among principle of res nullius, principle of res communes and principle of freedom of high seas and also a result of extensive solidarity and cooperation of the third world countries especially the Group of 77 in the third United Nations Conference on the Law of the Sea.

In addition, it should be pointed out that the Convention also sets up International Seabed Authority (hereinafter referred to as the Authority), an organ to administer activities in the 'Area'. For example, Paragraph 1 of Article 157 of the Convention states that the Authority is the organization through which States Parties shall, in accordance with this Part, organize and control activities in the Area, particularly with a view to administering the resources of the Area. Meanwhile, the Convention establishes parallel exploitation system for exploiting international seabed resources. The parallel exploitation system is a product after fighting against single development system, international registration system and license system. The so-called parallel development system, according to Paragraph 2 of Article 153 of the Convention, means that activities in the Area shall be carried out by the Enterprise and in association with the Authority by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements provided in this Part and in Annex III.

6. Establishing Dispute Settlement System and Setting up International Tribunal for the Law of the sea

The Convention provides a set of thorough and flexible mechanism for settling marine disputes. It not only states the method for settling disputes but also establish procedures and an organ for settling disputes, International Tribunal for the Law of the Sea, which overcomes the flaw of Four Geneva Conventions of the Law of the Sea that do not state dispute settlement mechanism but set forth dispute settlement mechanism in the affixed protocol. That is to say, the Convention successfully set forth dispute settlement mechanism in its Part XV (Settlement of Disputes). When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention: the International Tribunal for the Law of the Sea, the International Court of Justice, an arbitral tribunal, a special arbitral tribunal. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.[12)]

In other words, if relevant states choose the same method to settle a dispute, the same procedure may be applicable between them. If relevant states do not choose the same method to settle a dispute, such dispute may be settled through arbitration. But the other party's consent must be obtained if the dispute is settled through arbitration. If one party wants to choose one method and make it applicable, the other party's explicit consent

must be obtained, otherwise the dispute cannot be settled through such method.

Of course, the Convention does not only enjoy the aforesaid characteristics but also have some flaws. For example, the attribution of remaining rights in the exclusive economic zone is not clear, the concept of Regime of Islands is too obscure, the principle of delimitation of exclusive economic zone and continental shelf lacks operability, international seabed development system are too preferential for a few industrial powers, etc. Therefore, there arise opposition and difference in national practices. It's necessary to amend and improve the Convention, but it is still a code comprehensively regulating marine issues and all countries must comply with it.

In addition, after its formulation, in order to correct its flaws including improving rules on mine exploration in deep sea, satisfying the requirement of generality of the Convention, the General Assembly of the United States adopted Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (being effective as from July 28, 1996, hereinafter referred to as International Seabed Implementation Agreement) on July 28, 1994 which has been rectified by 147 states till now; meanwhile, in order to settle the issue of overfishing living resources in high seas, the General Assembly of the United Nations adopted Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (being effective as from Dec. 11, 2001, hereinafter referred to as Fish Stocks Implementation Agreement) which has been rectified by 82 states by now.[13] Thus, the system of the Convention is improved further.

As for the relationship between the Convention and the aforesaid two implementation agreements, the first issue is the relationship between the Convention (Part XI) and International Seabed Implementation Agreement. Article 2 of International Seabed Implementation Agreement provides for that this agreement and Part XI shall be interpreted and applied as a single document. If there are any discrepancy between this agreement and Part XI, this agreement shall prevail. It is obvious that International Seabed Implementation Agreement is an amendment to Part XI of the Convention and shall prevail over the Convention. The second issue is the relationship between the Convention and Fish Stocks Implementation Agreement. Article 4 of Fish Stocks Implementation Agreement states that nothing in this agreement shall prejudice the rights, jurisdiction and duties of states under the Convention; This agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention. Article 2 states that the objective of this agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention. It is clear that Fish Stocks Implementation Agreement is a system assisting implementation of rules in the Convention and serve as a supplement.[14]

In short, the Convention, adopted in 1982 and being effective in 1994, has now become a treaty comprehensively regulating marine issues in international society and is generally abided by all countries. But it is not deniable that the Convention still has some problems and faces some challenges.

IV. Development of the Convention and Challenges after Its Effectiveness and Implementation

Because the Convention is a product of compromise and reconciliation, it is inevitable that there are many problems and flaws. Especially organizations set up by the Convention (Commission on Limits of Continental Shelf, International Seabed Authority, International Tribunal for the Law of the Sea) have been developed after the effectiveness and implementation of the Convention, but also face some problems and unconsidered and unexamined challenges.

1. Development and Challenges related to Commission on Limits of Continental Shelf

The Commission on Limits of Continental Shelf, established in 1997, is a special organization specialized in implementing uniform interpretation of regulations of the Convention on outer limits of continental shelf as the main fund for member states to delimit outer limits of continental shelf and uniformly deal with highly scientific and technological issues of regulations of the Convention on outer limits of continental shelf needing complicated methods.[15] Meanwhile, The limits of the shelf established by a coastal State on the basis of recommendations proposed by Commission on Limits of Continental Shelf shall be final and binding.[16] In order to perform the aforesaid functions and powers, Commission on Limits of Continental Shelf formulated and improved rules on how to operate such system, including Working Mode of Commission (Feb. 1997), Rules of Procedure of the United Nations Commission on the Limits of the Continental Shelf (Sept. 1998), Scientific and Technological Rules of Commission on the Limits of the Continental Shelf (May 13, 1999), Internal Code of Commission on the Limits of the Continental Shelf on Conducts (Sept. 9, 2005), Rules of Procedure of Commission on the Limits of the Continental Shelf (Apr. 17, 2008), etc., thus satisfying the condition of launching examination and review of a delimitation case of outer limits of continental shelf.

According to Article 4 of Annex II of the Convention, where a coastal state intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State. But because an application case of delimitation of limits is highly complicated and difficult, the 11th meeting of member states of the Convention (2001) adopted a resolution to extend the application time limit, i.e. for the state officially rectifying or acceding to the Convention before May 13, 1999, the time limit of 10 years of submitting an application is calculated as from that day. Therefore, since Dec. 20, 2001 when the Russian Federation submitted the first delimitation case of outer limits of continental shelf, the Commission had received 50 state application cases of delimitation of limits till May 13, 2009.[17]

Although the 11th meeting of member states of the Convention (2001) adopted a resolution to extend the application time limit, it is still a great burden for most developing countries to submit investigative data and information of continental shelf in cases of limits delimitation application. Therefore, the 18th meeting of member

states of the Convention (2008) adopted a resolution on relaxing the condition, i.e. so long as the state submits preliminary information containing unfinished data before May 13, 2009, relevant obligations may be deemed as being performed. In other words, so long as the state applying the system of delaying application submits preliminary information showing limits of continental shelf beyond 200 nautical miles and gives explanation on preparation situation and relevant plan on the date of application, the submission of those materials to the General Secretary of the United Nations is deemed as fulfillment of obligation which shall be performed.[18)]

So far, there are 77 cases of delimitation of outer limits of continental shelf submitted to Commission on Limits of Continental Shelf. Among them, 21 states have provided letters of suggestion.[19)] There are 49 states submitting preliminary information to Commission on Limits of Continental Shelf.[20)] From these cases of delimitation of outer limits of continental shelf, we can see that some of them are independent case of delimitation, some are united case of delimitation, some are cases of partial delimitation and some are case of overall delimitation. Meanwhile, Commission on Limits of Continental Shelf only reviews the submitted materials and data and establishes a usage that it does not review disputed areas or put forward recommendations. From the number, we also can see that the workloads of Commission on Limits of Continental Shelf of reviewing cases of delimitation of limits of continental shelf are large and tasks are hard.[21)] At the same time, the Convention does not have regulations on relevant review procedures regarding whether the coastal state delimits outer limits of continental shelf according to recommendations made by Commission on Limits of Continental Shelf and how to make comments on these outer limits of continental shelf. In addition, the Convention does not have relevant procedural regulations on how to deal with a case that the outer limits of continental shelf delimited by the coastal state is beyond the scope of recommendations of Commission on Limits of Continental Shelf.[22)] All of these are challenges faced by Commission on Limits of Continental Shelf.

2. Development and Challenges related to International Seabed Authority

According to Resolution I of Final Document of the Convention (On Establishment of Preparatory Commission for International Seabed Authority and International Tribunal for the Law of the Sea), Preparatory Commission for International Seabed Authority, an organization of implementing the 'Area' resources exploration and exploitation system, was established. Its main work from 1983 to 1994 was mainly reflected in the following two aspects. The first one is settlement of registration issue of 7 pioneer investors marked by Arusha Understanding in 1986 and settlement of understanding on overlapped areas in applications and mining areas distribution reached by four pioneer investors, i.e. France, Japan, the former Soviet and India. The second one is to adopt Declaration on Implementation of Resolution II. The Preparatory Commission adopted Declaration on Implementation of Resolution II in 1986 on basis of Arusha Understanding and through repeated and nervous consultation. The biggest feature is to provide for time and procedure for registration application, promote pioneer investor registration system and contribute to implementation of 'Area' resources exploitation system within the system of the Convention.[23)]

The new development of International Seabed Authority in international seabed system is mainly reflected

in the following aspects: Firstly, it adopted Rules of Exploration and Exploitation of Polymetallic Nodules in 'Area' at the 6th meeting in July 2000. Secondly, it adopted Rules of Exploration and Exploitation of Polymetallic Nodules in 'Area' at the meeting of May 2010. Thirdly, it adopted Rules of Exploration and Exploitation of Cobalt-rich Ferromanganese Crusts in 'Area' in 2012. All of the three rules have different provisions according to geological condition of various mineral resources and locating situation of resources, influences imposed by various mineral resources exploring activities on environment and requirements of technological conditions. It should be said that their formulation offer a set of systematic procedures and rules on exploration and exploitation of resources in 'Area' to make activities in 'Area' more specific and detailed. At the 19th meeting of International Seabed Authority in 2013, it discussed and adopted the amendment to Rules of Exploration and Exploitation of Polymetallic Nodules in 'Area'.[24)]

In addition, International Seabed Authority submitted an application of soliciting advisory opinion to Seabed Disputes Chamber of International Tribunal for the Law of the Sea on May 11, 2010 and requested the latter to clarify duties and obligations of a state providing guaranty for a natural person or acting entity engaging in international seabed activities.[25)] On Feb. 1, 2011, the Seabed Disputes Chamber issued the consultation opinion and held that the state offering guaranty shall take precautionary method to make sure that the contractor performs the obligation of assessing environmental influences, protecting and conserving environment.[26)] This is the first case that International Seabed Authority utilized advisory opinion system according to the Convention.

In view of the first batch of Contract on Exploration of Polymetallic Nodules awarded by International Seabed Authority will expire in 2016, according to these contracts, they will enter into the stage of business development. How to assess their working plans and renew these contract, how to formulate rules on development of these resources and how to distribute benefits of resources in 'Area' are important issues faced by International Seabed Authority.

In addition, other resources are found in international deep sea-bed area, for example, biological gene resource, then how to formulate relevant rules and how to coordinate the relations between such rules and Convention On Biological Diversity are also challenges face by International Seabed Authority.

3. Development and Challenges related to International Tribunal for the Law of the Sea

As mentioned above, the Convention offers a set of thorough and flexible mechanism for marine disputes settlement. It does not only formulate methods for dispute settlement, but also establish procedures and an organization for dispute settlement- International Tribunal for the Law of the Sea. According to relevant regulations of the Convention, the states are required to settle disputes by peaceful means, the states' choice of peaceful methods on their own to settle disputes set forth in agreement. According to the principle of equality of state sovereignty, rights to freely choose a method of dispute settlement are awarded to states.[27)] When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention: the International Tribunal for the Law of the Sea, the International Court of Justice, an arbitral

tribunal, a special arbitral tribunal. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree. Meanwhile, a member state may make a written declaration that it will not accept the compulsory jurisdiction of the court or tribunal chosen by it with regard to one or more categories of disputes listed in Article 298.[28)]

Since its establishment in 1996, International Tribunal for the Law of the Sea has not only formulated Rules of International Tribunal for the Law of the Sea according to Statute of The International Court of Justice and the rules, but also accepted 23 cases so far.[29)] In these cases, there are 9 cases regarding prompt release of vessels and crews and 5 cases regarding interim measures, a case of International Seabed Authority requesting advisory opinions (2010−2011) as well as cases of marine demarcation (cases of marine demarcation concerning Bengal and Myanmar from 2009 to 2012) and other cases including requesting advisory opinions. These changes show advantage and feature of quick trial of the tribunal, and the types of accepted cases have the trend of diversity, that is to say, the importance of International Tribunal for the Law of the Sea is increasing day by day.[30)] Meanwhile, 35 states including China have made written declaration to exclude the application of optional exception of Part XV of the Convention according to Article 298 of the Convention.[31)] For example, according to Article 298 of the Convention, on Aug. 25, 2006, China submitted a written declaration to the General Secretary of the United Nations to declare that Chinese government does not accept any international judicial or arbitration jurisdiction set forth in Section 2 of Part XV over marine demarcation, territorial disputes, disputes concerning military activities and legal enforcement activities, etc., and takes a standpoint that the above-mentioned disputes shall be settled through consultation by relevant states.

For the case of compulsory arbitration of issues over South China Sea filed by Philippines, the tribunal shall consider not only whether the premises of arbitration applied by Philippines are satisfied, but also whether issues applied for arbitration by Philippines belong to interpretation or application of the Convention, even issues applied for arbitration by Philippines are those excluded by China, that is the issue of acceptability and jurisdiction, the enforceability and effect of arbitral award if the arbitral award may be issued.[32)] Therefore, International Tribunal for the Law of the Sea faces severe challenge of how to deal with this case in order to ensure its authority, independence and reasonableness. The international society will pay close attention to this with focus on the issue of whether the tribunal has acceptability and jurisdiction over issues applied for arbitration by Philippines.[33)]

4. Issues and Challenges Related to Regime of Islands

Since Japan submitted a case of delimitation of outer limits of continental shelf including a claim based on Okinotorishima to Commission on Limits of Continental Shelf on Nov. 12, 2008, the opposition on Regime of Islands has become obvious.[34)] The case of delimitation of outer limits of continental shelf with claim of exclusive economic zone and continental shelf based on Okinotorishima is a measure taken by Japan due to its partial understanding of Regime of Islands which is naturally opposed by countries including China and South Korea.[35)] At last, Commission on Limits of Continental Shelf does not issue recommendations on outer limits of continental

shelf relevant to Japan and Okinotorishima (Apr. 19, 2012).[36)]

In reality, from the structure of articles of Regime of Islands, Paragraph 1 to Paragraph 3 of Article 121 of the Convention is about Regime of Islands. To be specific, Paragraph 1 refers to the islands in broad sense, that is to say, the Convention gives a broad concept of islands. Its flaw is that it gives the concept of islands only from the perspective of natural property and such regulation on concept of islands has serious incompleteness without consideration of other qualities such as society and economy, so it is difficult to use this article to make judgment whether an island has exclusive economic zone and continental shelf. Paragraph 2 is about the islands in narrow sense, that is to say, an island with the same status as land territory may claim corresponding waters rights. Paragraph 3 is about rocks. It is not regulation directly from the perspective of the concept of rocks but regulation from the perspective of effect of rocks. In other words, Rocks which can sustain human habitation or economic life of their own will be the same as islands to have the right to claim exclusive economic zone and continental shelf. That is to say, rocks consist of two types: rocks which can claim exclusive economic zone and continental shelf and rocks which cannot claim exclusive economic zone or continental shelf. From the overall understanding of Article 121, Paragraph 3 is a kind of restraint of Paragraph 2, that is to say, not all rocks may claim exclusive economic zone or continental shelf like islands in Paragraph 2. From Paragraph 3 of Article 121, it may be shown that rocks are a kind of islands besides islands in narrow sense. From the perspective of islands in broad sense, such kind of rocks meets the required elements of islands.

It is obvious that Paragraph 1 to Paragraph 3 of Article 121 enjoys different characteristics. Regulations concerning natural property of islands (islands in broad sense), social and economic property of islands (islands in narrow sense) property of that part of islands (rocks) without social and economic property within the broad concept of islands jointly constitute all parts of regime of islands. Therefore, each paragraph cannot be interpreted or applied separately and shall be understood from the perspective of the overall meaning of three paragraphs of this article. In other words, the aim of legislation of regime of islands established by the Convention is that all three paragraphs of Article 121 of the Convention are about islands and rules with wholeness. The rocks are a special part of islands and shall meet the required elements of islands.

It may be concluded from the above that islands including rocks shall meet a certain required legal elements and then they can claim interests of exclusive economic zone and continental shelf. These elements are focused on natural property, social and economic property. From the perspective of Article 121 of the Convention, the legal elements to determine islands and rocks seems not specific, that is to say, the meaning of legal elements to determine islands and rocks are not clear, so there are different opinions and opposite practices.

Under the circumstance that the regime of islands of the Convention cannot be amended and the international society cannot reach consensus on the status of islands and rocks, we shall strictly interpret legal elements of rocks within the regime of islands to avoid amplified interpretation and damage to regime of high seas and regime of international deep sea-bed area.[37)] This is not only in compliance with the original intention and purpose of regime of islands established by the Convention, but also in compliance with content required by Article 300 of the Convention that the member state shall perform its obligation in good faith and avoid abusing rights. The strict

interpretation of rocks is mainly reflected in the following aspects: Firstly, as for the natural property, rocks are a special type of islands. Rocks must be naturally formed area of land. Such naturally formed area of land stresses the natural property of constituent materials and forming process. Secondly, as for social property, rocks must sustain human habitation for a certain long term not just for a short term. Thirdly, as for economic property, the resources needed for sustaining economic life of their own shall be limited to those produced by themselves and exclude those imputed from the territorial sea or other places, otherwise the trend of amplification will be caused, even a kind of abusing such right. Meanwhile, exploitation of resources of rocks of their own must comply with principle of economic exploitation and principle of protecting marine environment, because some states will certainly try to exploit resources of rocks of their own in order to make rocks satisfy the legal elements of economic life without consideration of the general principle of economic exploitation and resulting in pollution of marine environment and breach of obligations of member states of protecting and maintaining marine environment.[38)]

5. Issues and Challenges related to Remaining Rights

In the Convention, the representative issues of unclear attribution of remaining rights are disputes over military activities (military measurement, intelligence investigation, joint military drill) in the Exclusive Economic Zone, in other words, the opposition and difference between free use and advance consent of military activities in the Exclusive Economic Zone between the USA and China. Because the Convention does not made clear regulation on issues over military activities, there are different understandings even from the peaceful use of the sea and scientific research of the sea, thus arising different even opposite conducts in state practices. In other words, issues over military activities cannot be settled within the framework of the Convention.[39)] In view of high sensibility and practical necessity of issues over military activities, the judgment can be made according to the situation of a certain activity and in compliance with principle and aim of legislation of Paragraph 3 of Article 58 and Article 59 of the Convention.[40)]

If China and the USA cannot settle such issue within the system framework of rules of the Convention, such issue can only be settled through bilateral consultation including entry into relevant agreements, so China and the USA shall specially comply with Reciprocal Notification Mechanism for Major Military Action (November of 2014) and Sea-to-air Code of Safety Conduct (November of 2014) signed by military organs of both states to regulate sea-to-air safety conducts of military organs of both states and ensure the standard and order of military activities in Exclusive Economic Zone to jointly maintain free and safe navigation in the sea.[41)] In reality, the policy of free navigation including free navigation in South China Sea has been long advocated by the USA and is lasting. The important representative policy documents are Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, No. 2667 Presidential Proclamation (Sept. 28, 1945, hereinafter referred to as Truman Proclamation), Declaration of Policy with Respect to Nansha Islands and South China Sea published by the USA government on May 10, 1995, Declaration on South China Sea on Aug. 3, 2012 and Limits in the Seas China: Maritime Claims in the South China Sea published by the USA

Department of State on Dec. 5, 2014.[42)]

In addition, both states may formulate new rules on issues over military activities in Exclusive Economic Zone like implementation agreement to make efforts in improve regimes of the Convention. In this respect, the existing achievements in the international society may be learned, such as Action Guideline over the Navigation and Overflight in the Exclusive Economic Zone Waters formulated by Japan Ocean Policy Research Foundation in Sept. 2005 and Principles for Building Mutual Trust and Security in the Exclusive Economic Zones of the ASIA-PACIFIC in Oct. 2013, to promote the progress of negotiation and agreement on issues over military activities in Exclusive Economic Zone and make contribution to improvement of the Convention.[43)] The major challenge is whether a unified document in respect to issues over military activities in Exclusive Economic Zone may be formulated within the system of the Convention.

6. Issues Unexpected or Unclarified in the Convention and Challenges

As for issues over demarcation of waters, especially limits of Exclusive Economic Zone and Continental Shelf, the Convention only states results of fair settlement in Article 74 and Article 83 which fail to clarify the method and standard of demarcation. In order to realize the purpose of fair settlement, it can only be developed and established through practice of international society especially the practice of international precedents. In the practice of international precedents till now, the model of fair settlement has been formed. That is a comprehensive judgment after considering specific situations of various different waters. To be specific, it includes the following aspects: firstly, to delimit the temporary equidistance line; secondly, in order to realize fair result, to consider relevant situations and discuss whether it is necessary to adjust the temporary equidistance line; thirdly, to check the proportion of the length of coastline versus the distributed waters area and then decide whether it brings unfair result for correction.[44)]

In addition, after adoption of the Convention, the discussion on protecting diversity of marine living resources is increasingly active. However, during the discussion and review of the Convention, the diversity of marine living resources was not thoroughly understood, so there is no such term as diversity of marine living resources in the Convention,[45)] not to mention methods helpful for conservation of diversity of marine living resources such as marine protection zone. Meanwhile, there exists Convention on Biological Diversity adopted in June 1992 in international society, so how to coordinate and supplement the relations between the two treaties to conserving diversity, sustainable development and other issues of marine living resources attracting common attention from the international society is a challenge faced by the Convention.[46)]

What kind of international law shall be applied to the investigation, exploitation and research of issues over marine genetic resources emerging in the high seas including international deep sea-bed area has become a focus attracting attention from the international society. The disputed issue is whether the principle of common heritage of mankind as the basis of international submarine areas system or the principle of freedom of marine scientific research in high seas is applicable.

In short, in order to conserving diversity and sustainable use of marine living resources including marine

gene the specific issues which shall be considered include how to distribute interests, how to formulate area administration rules and environment influence assessment system including marine protection zone, as well as capacity construction and transfer of marine technology and other aspects.[47] All these are issues that the Convention cannot avoid.

V. China's Practice and Future Tasks

China is one of important countries firmly maintaining the Convention system and regime. Especially after the General Assembly adopted No. 2758 Resolution on Oct. 25, 1971 to make a decision on restoring China's lawful seat in the United States, China paid more attention to system construction of the Convention with the mark that China participated all process of discussing and reviewing the Convention and adopted Decision on Rectifying the Convention on May 15, 1996.[48] Meanwhile, according to relevant regulations and systems of the Convention, China Ocean Mineral Resources Research and Development Association applied for polymetallic nodule mining area (1997), Polymetallic sulfide mining area (2010), cobalt-rich crust mining areas (2012) in 'Area' to International Seabed Authority and these applications were approved respectively in 1997, 2011 and 2013, so China becomes one of states enjoying priority in exploring and exploiting resources in many mining areas.[49] In addition, under the guaranty of Chinese government, China Minmetals Corporation submitted an application for exploration for polymetallic nodule resources in mining area to International Seabed Authority on Aug. 8, 2014 and the Council of International Seabed Authority adopted a resolution to approve the application for exploration for polymetallic nodule resources in mining area in seabed of East Pacific on July 20, 2015. Such mining area is located in Clark, um - Clipperton fracture zone of East Pacific and occupies 73000 square kilometers.[50]

In addition, Chinese government submitted Preliminary Information of China on Delimiting Outer Limits of Continental Shelf beyond 200 Nautical Miles to Commission on Limits of Continental Shelf on May 11, 2009 and Case of Delimiting Outer Limits of Partial Continental Shelf of East China Sea on Dec. 14, 2012.[51]

In addition, China formulates legal systems related to the sea and preliminarily establishes its legal system of the sea according to principles and guidelines of the Convention.[52] Nonetheless, there is not a basic law comprehensively regulating the sea in China such as the basic law of the sea, nor supporting regulations such as the Law of China on Exclusive Economic Zone and Continental Shelf, new specific rules such as the Law of Marine Safety, Coastal Zone Management Act, Law on Development of Deep-sea Mineral Resources. The enactment and improvement of these laws and regulations are significant and important for the harmonious ocean, ocean power and new outlook on the sea advocated by China. At the same time, the enactment and improvement of these laws and regulations should be China's major tasks and projects in the future in order to really realize the aim of harmonious ocean and building a new marine order and make contribution to maintaining state marine rights and interests and ensure state marine safety.

(Translated by Chen Lin)

Notes

* Profile of the Author: Jin Yongming, Professor of Institute of Law of Shanghai Academy of Social Sciences (SASS), Director of China's Ocean Strategy Studies Center of SASS. This thesis is a phasic achievement of Research into Legal System Guaranty for Building An Ocean Power (14AFX025), a major national social science Fund project, Research into Improvement of Legal System of China during Its Promotion of Marine Strategy (CAMAZDA201501), a major project of China Association of Marine Affairs. The author assumes total liabilities for any errors in this article.

1) Please see Paragraph 1 of Article 7 and Paragraph 1 of Article 13 of the United Nations Charter.
2) In 1947, the General Assembly of the United Nations decided to establish International Law Commission (ILC) to specially take charge of promoting progressive development of international law and its codifications. The ILC may codify issues it considers suitable for codification. The treaty draft after study is submitted to the General Assembly of the United Nations. If the General Assembly considers it suitable, the General Assembly may hold a diplomatic conference of the United Nations or the General Assembly of the United Nations may review the drafted treaty. The ILC has made a certain achievement in codification. For example, four Geneva conventions on the law of the sea in 1958, Convention on the Reduction of Statelessness and Vienna convention on diplomatic relations in 1961, Vienna Convention on consular Relations in 1963, Vienna Convention on The Law of Treaties and Convention on Special Missions in 1969, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents in 1973, Vienna Convention on Succession of States in Respect of Treaties in 1978, Vienna Convention on Succession of States in Respect of State Property, Archives and Debts in 1983, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations in 1983, ICC Statute in 1998, etc.
3) See Wei Min (Chief Editor), *The Law of the Sea*, Law Press, 1987 Edition, p. 12.
4) See Wei Min (Chief Editor), *The Law of the Sea*, Law Press, 1987 Edition, pp. 13−15. Zhou Zhonghai, *International Law of the Sea*, China University of Political Science and Law Press, 1987 Edition, p. 2, p. 6.
5) The dates of effectiveness of four Geneva conventions on the law of the sea and their protocol are as follows: Sept. 30, 1962 for Convention on the High Seas and Optional Protocol of Signature concerning Compulsory Settlement of Disputes, Sept, 30, 1962 for Convention on Continental Shelf, June 10, 1964 for Convention on the Territorial Sea and Contiguous Zone, and Sept. 10, 1964 for Convention on Fishing and Conservation of Living Resources in High Seas. See Wei Min (Chief Editor), *The Law of the Sea,* Law Press, 1987 Edition, p. 17.
6) On Aug. 17, 1967, Pardo, the ambassador of Malta in the United States proposed to add an issue in agenda of the 22nd UN General Assembly Meeting which was declaration and treaty on conserving seabed and ocean bed beyond state current jurisdiction for peaceful purpose and using their resources for human beings' interests and there was an explanatory memorandum. Therefore, the General Assembly adopted Resolution No. 2340 (Dec. 18, 1967) to establish a special commission consisting of 35 state members to study peaceful use of seabed and ocean bed beyond state jurisdiction launching the process of the United States of studying international seabed system. On the 25th UN General Assembly Meeting in 1970, Resolution No. 2750 was adopted. The Resolution consists of three parts, i.e. Resolution No. 2750A, Resolution No. 2750B and Resolution No. 2750C. Among them, Resolution No. 2750C decided to hold the third UN Conference on the Law of the Sea in 1973 to comprehensively study many issues of the law of the sea. For the above-mentioned contents, see Jin Yongming, *Study on International Seabed System*, Xinhua Press, 2006 Edition, pp. 7−23.
7) See http://www.un.org/depts/los/reference_files/chronological_list_of_ratification.htm, visited on Apr. 14, 2015.
8) For example, Article 1 of Convention on the High Seas states that the term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.
9) See Paragraph 2−7 of Article 76 of the Convention, Paragraph 8 of Article 76 of the Convention, Annex 2 of the Convention (Commission on the Limits of the Continental Shelf), Article 82 of the Convention.
10) For example, Article 1 of Annex II of the Convention states that according to Article 76, the Commission on the Limits of the Continental Shelf beyond 200 nautical miles shall be established according to articles under this annex.
11) See Article 56 and Article 58 of the Convention.
12) See Article 287 of the Convention.
13) See http://www.un.org/depts/los/reference_files/status2010.pdf, visited on Apr. 14, 2015.

14) For whether rules of a treaty can be severable, issues over the implied termination or implementation ceasing of a treaty due to signature of a new treaty, see Article 44 and Article 59 of Vienna Convention on The Law of Treaties.
15) See Kuen-chen Fu, *Legal Issues over Marine Administration*, Wensheng Book Store, 2003 Edition, p. 218.
16) For example, Paragraph of Article 76 of the Convention states that information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
17) See http://www.un.org/Depts/los/clcs_new/commission_submission.html, visited on May 14, 2009.
18) Decision regarding the workload of the Commission on the Continental Shelf and the ability of States, particularly developing States, to fulfill the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, SPLOS/183.
19) See http://www.un.org/Depts/los/clcs_new/commission_submissions.htm, visited on Apr. 14, 2005.
20) See http://www.un.org/Depts/los/clsc_new/commission_premissions.htm, visited on Apr. 14, 2005.
21) In preparatory discussion of 1978 during the third United Nations Conference on the Law of the Sea, it was estimated that 33 states may be related to outer continental shelf. However, it was found in a study in 2009 that there will be related to outer continental shelf and nearly 80% of these countries belong to developing countries. In view of the complexity and difficulty of issues over outer continental shelf, a trust fund was established in 2001 with contribution from state members willfully in order to pay expenses for participation of Commission on Limits of Continental Shelf and ensure the implementation of outer continental shelf system. See Sato Susumu, United Nations Convention on the Law of the Sea and Japan-Writing for 30th Anniversaries of Being Open for Signature and Focusing on Development of Two Systems, *The Journal of international law and diplomacy*, Volume 112, Issue2, 2013, pp. 89−91.
22) See Koga Mamoru, Activities and Function of Commission on Limits of Continental Shelf-Development of the Law of the Sea Promoted by An International Institution, *The Journal of international law and diplomacy*, Volume 112, Issue2, 2013, pp. 46−47.
23) See Jin Yongming, *Monograph on Marine Issues* (Volume I), Ocean Press, 2011 Edition, pp. 220−222.
24) See Project Team of China Institute for Marine Affairs of State Oceanic Administration of the People's Republic of China (Editor), *Research Report on China's Ocean Development (2014)*, Ocean Press, 2014 Edition, pp. 21−24.
25) Article 191 of the Convention states that the Seabed Disputes Chamber shall give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities.
26) Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber) (Case No. 17), Advisory Opinion of 1 February 2011, Seabed Dispute Chamber of International Tribunal for the Law of the Sea. See https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/17_adv_op_010211_en.pdf, visited on Apr. 27, 2015.
27) For example, Article 279, Article 280 and Article 282 of the Convention, etc.
28) See Article 287 and Article 298 of the Convention.
29) See http://www.itlos.org/en/cases/, visited on Apr. 27, 2005.
30) See Project Team of China Institute for Marine Affairs of State Oceanic Administration of the People's Republic of China (Editor), *Research Report on China's Ocean Development (2014)*, Ocean Press, 2014 Edition, pp. 24−26.
31) See http://www.un.org/depts/los/settlement_of_disputes/choice_procedure.htm, visited on Apr. 14, 2015.
32) For details of standpoint document of Chinese government on jurisdiction over the arbitration case over South China Sea submitted by Philippines published by Ministry of Foreign Affairs upon authorization. see http://www.gov.cn/xinwen/2014−12/07/content_2787666.htm, visited on Dec. 8, 2014.
33) For contents of whether the tribunal has acceptability and jurisdiction, see Michael Sheng-ti GAU, On Jurisdiction and Acceptability of Sino- Philippines Arbitration Case on South China Sea, *China Oceans Law Review*, 2015(1), pp. 64−65.
34) For details on the case of delimiting outer continental shelf of Japan, see Jin Yongming, the Meaning of the Case of

Delimiting Outer Continental Shelf of Japan, *China Oceans Law Review*, 2009 (1), pp. 28−39.

35) Chinese Mission to the United Nations submitted the written declaration on Okinotorishima to the General Secretary of the United Nations on Feb. 6, 2009, see http://www.un.org/Deps/los/clcs_new/submission_files/jpn08/chn_6feb09_c.pdf, visited on Mar. 12, 2009. South Korea submitted the written declaration on Okinotorishima with the same content as Chinese declaration to the General Secretary of the United Nations on Feb. 27, 2009. see http://www.org.un/Deps/los/clcs_new/submission_files/jpn08/kor_27feb09.pdf, visited on Mar. 12, 2009.

36) Commission on Limits of Continental Shelf only made recommendations on 31 square kilometers within the outer continental shelf beyond 740000 square kilometers held by Japan and made no recommendation on the part related to Okinotorishima opposed by China and South Korea because there were different opinions. The commission did not review relevant areas. However, this does not mean denial of recommendation of claiming such area but a decision of reservation, that is to say, it is possible to make recommendation in the future. See Koga Mamoru, Activities and Function of Commission on Limits of Continental Shelf-Development of the Law of the Sea Promoted by An International Institution, *The Journal of international law and diplomacy*, Volume 112, Issue2, 2013, p. 42.

37) From the regulations on amending system of the Convention, the amendment shall be made through agreement after negotiated consensus. Even though there is proposal on adopting simplified procedures to amend the Convention, it is quite difficult to substantially amend and improve the Convention. See Article 312 and Article 313 of the Convention.

38) For details on analysis of legal elements of islands and rocks, see Jin Yongming, On Analysis of Legal Elements of Islands and Rocks — Taking Issues over Okinotorishima as the Research Perspective, *Political Science and Law*, 2010 (12), pp. 99−106.

39) For details on disputes over military activities in the Exclusive Economic Zone between China and the USA, see Jin Yongming, On dissection of Disputes Between China and the United States over Military Activeities in EEZ by the Law of the Sea, *Pacific Journal*, 2011 (11), pp. 74−81.

40) Paragraph 3 of Article 58 of the Convention states that in exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part. Article 59 of the Convention states that in cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

41) For details of Reciprocal Notification Mechanism for Major Military Action made by military organs of China and the USA, see http://www.defense.gov/pubs/141112_MemorandumOFoundation erstandingOnNotication.pdf, visited on Feb. 10, 2015. For details of Sea-to-air Code of Safety Conduct made by military organs of China and the USA, http://www.defense.gov/pubs/141112_MemorandumOFoundation erstandingRegardingRules.pdf, visited on Feb. 10, 2015.

42) For example, Truman Proclamation points out that the waters over the continental shelf enjoy the property of high seas and the right to free navigation will not impaired. See Teaching and Research Office of International Law of Department of Law of Peking University (Editor), *Compiled Materials of the Law of the Sea*, Renmin Press, 1974 Edition, pp. 386−387. For details of Declaration of Policy with Respect to Nansha Islands and South China Sea, see Wu Shicun (Chief Editor), *Compiled Documents on Issues over South China Sea*, Hainan Press, 2001 Edition, pp. 377−378. For details of Declaration on South China Sea, see http://www.state.gov/r/pa/prs/ps/2012/08/196022.htm, visited on Aug. 8, 2012. For details of Limits in the Seas China: Maritime Claims in the South China Sea, see http://www.state.gov/e/oes/ocns/opa/c16065.htm, visited on Jan. 8, 2015.

43) See Japan Ocean Policy Research Foundation (Editor), *White Book of the Sea: Trend in Japan, Trend in the World (2006)*, Mar. 2006, pp. 195−197. Ocean Policy Research Foundation (Editor): *Principles for Building Mutual Trust and Security in the Exclusive Economic Zones of the ASIA-PACIFIC*, 30th October 2013, pp. 1−12.

44) See Tanaka Norio, Achievements and Projects of the United Nations Convention on the Law of the Sea — Based on the time point of the 30th anniversaries of the Convention, *The Journal of international law and diplomacy*, Volume 112, Issue2,

2013, p. 17. Also see Mariko Kawano, International Courts and Tribunals and the Development of the Rules and Methods Concerning Maritime Delimitation, *The Journal of international law and diplomacy*, Volume 112, Issue2, 2013, p. 14.

45) For example, Paragraph 5 of Article 194 of the Convention states the measures taken in accordance with this Part (Part XII) shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

46) See Tanaka Norio, Achievements and Projects of the United Nations Convention on the Law of the Sea — Based on the time point of the 30th anniversaries of the Convention, *The Journal of international law and diplomacy*, Volume 112, Issue2, 2013, p. 17.

47) See Sato Susumu, United Nations Convention on the Law of the Sea and Japan-Writing for 30th Anniversaries of Being Open for Signature and Focusing on Development of Two Systems, *The Journal of international law and diplomacy*, Volume 112, Issue2, 2013, p. 102.

48) For details of Decision of the Standing Committee of National People's Congress on Rectifying the United Nations Convention on the Law of the Sea, please see Policy, Law and Regulaiton Office of State Oceanic Administration of the People's Republic of China (Editor), *Selected Collection of Laws and Regulations of the Sea of the People's Republic of China (3rd Edition)*, Ocean Press, 2001 Edition, p. 3.

49) See Project Team of China Institute for Marine Affairs of State Oceanic Administration of the People's Republic of China (Editor), *Research Report on China's Ocean Development (2014)*, Ocean Press, pp. 22−23.

50) See Chinese Enterprise Awarded Special Exploration Mining Area in East Pacific, *Jiafang Daily*, July 22, 2015, p. 7.

51) See http://www.un.org/depts/los/clcs_new/commission_primitary.htm, and http://www.un.org/depts/los/clcs_new/commission_documents.htm, visited on Apr. 14, 2015.

52) The content of legal system of the sea of China is mainly as follows: Declaration of Chinese Government on the Territorial Sea (Sept. 4, 1958), Law of China on the Territorial Sea and Contiguous Zone (Feb. 25, 1992), Law of China on Protection of Marine Environment (Aug. 23, 1982), Law of China on Marine Traffic Safety (Sept. 2, 1983), Law of China on Fishery (Jan. 20, 1986), Law of China Mineral Resources (Mar. 19, 1986), Law of China on Surveying and Mapping (Dec. 28, 1992), Law of China on Water Use Administration (Oct. 27, 2001), Law of China on Island Protection (Dec. 26, 2009), Declaration of China on the Territorial Baselines of Diaoyu Islands and Affiliated Islands (Sept. 10, 2012).