

# 中国与小岛屿国家 在构建国际海洋法律秩序中的合作潜力

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**内容摘要:** 由于现有国际海洋法律秩序主要由传统海洋强国所构建,以中国为代表的新兴发展中国家在海洋权益维护等方面适用国际法时难免处于被动地位。要改变这一现状,仅靠中国一国的努力是不够的。小岛屿国家作为发展中国家中与海洋密切相关的国家群体,与中国就构建国际海洋法律秩序具有合作基础和合作潜力。中国与小岛屿国家都是发展中国家海洋权益的坚定维护者和国际涉海法律组织的重要参与者。长期以来,中国也为小岛屿国家的可持续发展事业做出了重要贡献。从合作领域来看,除经济合作外,中国与小岛屿国家可以在全球渔业治理、海底矿产资源开发、应对海平面上升等领域加强国际法合作。为此,中国应做好涉海法律人才队伍建设,搭建海洋事务国际法交流平台,并继续深化同小岛屿国家在各领域的合作,为双方合作构建国际海洋法律新秩序创造条件。

**关键词:** 中国    小岛屿国家    国际海洋法律秩序    合作潜力

二战后,由于海洋话语权被强势垄断,“重要的海洋国际会议、海洋问题谈判、海洋条约协议签订、海洋活动纠纷和突发事件的处理,解释权和定义权完全掌握在美国为首的海洋大国手里。”<sup>1</sup> 中国则处于被动接受游戏规则的地位。2021年1月,为适应高水平对外开放工作需要,完善涉外法律和规则体系并补齐短板,进而全面提高涉外工作法治化水平,中共中央印发《法治中国建设规划(2020—2025

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1 张尔升、裴广一、陈羽逸、李雪晶:《海洋话语弱势与中国海洋强国战略》,载《世界经济与政治论坛》2014年第2期,第139页。

年)》,明确提出要“积极参与国际规则制定,推动形成公正合理的国际规则体系”。<sup>2</sup>其目标指向明确,就是要在参与国际法规则的制定过程中逐步掌握国际法的理论定义权、议题设置权、组织建构权以及规则制定权、解释权和变更权等国际法权利。<sup>3</sup>推动国际法律秩序朝着更加公正合理的方向发展,更好地维护中国的国家利益。

“中国是一个海洋大国,但还不是一个海洋强国。”<sup>4</sup>良好的国际海洋法律秩序对中国保障海洋权益、发展海洋经济、保护海洋生态至关重要。中国应积极参与到更公平、更合理、更完善的国际海洋法律新秩序的构建过程中去。需要认识到,小岛屿国家作为国际海洋事务的重要参与主体,其在国际海洋事务中的地位不容小觑。在构建国际海洋法律秩序的过程中,中国与小岛屿国家具有一定的合作潜力。

## 一、小岛屿国家概况

### (一)小岛屿国家的政治经济地位

小岛屿国家大部分都是发展中国家,国际社会常以“小岛屿发展中国家”(Small Island Developing States, SIDS)来统称那些低海岸的经济欠发达的小岛屿国家。根据联合国经济和社会理事会的最新数据,目前世界上共有 58 个小岛屿发展中国家,<sup>5</sup>其中 8 个国家仍被认为是世界上最不发达国家。<sup>6</sup>

政治上,小岛屿国家长期以来一直处于世界政治舞台的边缘位置,其利益诉求在国际社会难以得到声张。然而,随着近年来小岛屿国家联盟(Alliance of Small Island States, AOSIS)、太平洋岛国论坛(Pacific Islands Forum)等组织和平台的建立,这些小岛屿国家在国际舞台上的话语权已有所提升。尤其是在涉及海平面上升、气候变化等国际议题的讨论中表现活跃。

经济上,小岛屿国家普遍落后,发展面临着重重阻碍。首先,小岛屿国家人口和自然资源都相对较少,因此很难形成规模性产业,经济发展主要依赖进口。其次,在商品进口过程中由于距离问题,运输成本高,受国际市场的影响大。再次,小

2 《中共中央印发〈法治中国建设规划(2020—2025年)〉》,载中国政府网 2021 年 1 月 10 日, [http://www.gov.cn/zhengce/2021-01/10/content\\_5578659.htm?trs=1](http://www.gov.cn/zhengce/2021-01/10/content_5578659.htm?trs=1)。

3 参见孟于群:《国际法话语权的生成逻辑与中国构建》,载《南京社会科学》2021 年第 2 期,第 102 页。

4 伊始、姚中才、陈贞国著:《南海!南海!》,广东人民出版社 2009 年版,第 20 页。

5 参见 *Small Island Developing States*, DSDG (15 May 2021), <https://sustainabledevelopment.un.org/topics/sids/list>。

6 截至 2021 年 2 月 11 日,小岛屿发展中国家中最不发达国家包括:科摩罗、几内亚比绍、圣多美和普林西比、海地、基里巴斯、所罗门群岛、东帝汶、图瓦卢。参见 *List of Least Developed Countries*, UNLDC Data (11 Feb 2021), <https://www.un.org/development/desa/dpad/least-developed-country-category/ldc-data-retrieval.html>。

屿国家受海洋灾害的影响较大,一旦发生海啸等自然灾害,经济易受重创。最后,这些小岛屿国家人均收入普遍较低,承受自然灾害的能力较差。<sup>7</sup>对于高度依赖旅游业的国家而言,在经历极端天气事件之后如果没有他国支持,很少有国家能够独立快速恢复过来。<sup>8</sup>随着全球气候变暖的加剧,各种恶劣天气频发,小岛屿国家的生存状况愈发堪忧。

## (二) 小岛屿国家的海洋发展战略

面对全球气候变暖和海平面上升带来的威胁和挑战,小岛屿国家正积极调整其海洋发展战略以适应国家可持续发展的需要。

一是以可持续发展为目标,充分挖掘海洋资源开发潜力。为了实现国家的繁荣稳定和可持续发展,瓦努阿图制定了《瓦努阿图国家可持续发展计划(2016—2030)》。根据该计划,瓦努阿图政府希望在借鉴他国先进的科学技术和创新理念的基础上更好地利用陆地和海洋的自然资源,以确保本国的粮食和能源安全。<sup>9</sup>在土地和人口都缺乏的小岛屿国家,积极利用国外资金和技术以实现对本国海洋资源的充分利用,可以帮助这些国家解决资金和技术缺乏的困境。

二是发展蓝色经济,加强与中国等国的国际合作。长期以来,小岛屿国家一直与澳大利亚、新西兰、美国、欧盟等国保持着经济合作。但近年来,中国越来越受到小岛屿国家的欢迎。因为只有中国的经济援助和合作被认为是不具有政治野心和“无附加条件”的。<sup>10</sup>中国政府提出的“一带一路”和“21世纪海上丝绸之路”倡议完美契合了太平洋岛国在基础设施建设、改善经济发展条件和便利岛国人民生活等经济发展领域的现实需求。在此倡议推动下,中国同太平洋岛国的经贸合作呈现快速发展之势。<sup>11</sup>仅2020年一年,中国与太平洋岛国地区货物贸易额就已达到90.4亿美元,同比增长1.3%。其中,中方出口52亿美元,同比增长22.4%;中方进口38.4亿美元,同比下降17.8%。<sup>12</sup>

三是加强区域间合作,提升小岛屿国家整体国际话语权。小岛屿国家联盟、

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7 Stephen Pratt, *The Economic Impact of Tourism in SIDS*, *Annals of Tourism Research*, Vol. 52, p. 148-149 (2015).

8 Prosper F. Bangwayo-Skeete & Ryan W. Skeete, *Modelling Tourism Resilience in Small Island States: A Tale of Two Countries*, *Tourism Geographies*, Vol. 23:3, p. 454 (2021).

9 参见何广顺等编:《国外海洋政策研究报告(2018)》,海洋出版社2019年版,第227-230页。

10 YANG Jian, *China in the South Pacific: Hegemon on the Horizon?*, *The Pacific Review*, Vol. 22:2, p. 139 (2009).

11 参见陈德正、吕桂霞主编:《太平洋岛国发展报告(2020)》,社会科学文献出版社2020年版,第9-10页。

12 参见《中国与太平洋岛国贸易和投资简况》,载中华人民共和国商务部美洲大洋洲司网站2019年5月29日, <http://mds.mofcom.gov.cn/article/Nocategory/200210/20021000042986.shtml>。

太平洋岛国论坛等组织都是小岛屿国家在探索区域治理过程中的产物。2017年7月,太平洋岛国论坛秘书处发布《南太平洋岛国太平洋区域主义框架(2017)》。在该框架的指导下,南太平洋国家旨在以集体的身份,充分利用太平洋的海洋地理区位优势 and 海洋资源优势,以实现该地区的可持续发展目标。<sup>13</sup>近年来小岛屿国家以集体的身份在国际舞台上积极发声,已成为国际舞台上应对气候变化和参与海洋事务管理过程中不可忽视的一股力量。

## 二、中国与小岛屿国家在构建国际海洋法律秩序中的合作潜力

中国与大部分小岛屿国家一样都是发展中国家,且管辖海域面积广,拥有众多岛屿。在构建良好国际海洋法律秩序的过程中,中国与小岛屿国家具有良好的合作基础。

### (一) 中国与小岛屿国家都是发展中国家海洋权益的重要维护者

中国在参与国际海洋事务的同时,也在为广大发展中国家提供着各种支持。在BBNJ国际协定谈判中,考虑到将战略环境评估作为BBNJ国际协定的一项义务会为发展中国家带来不合理的负担,让其承担不合理的环境义务,对此中方表示不支持。<sup>14</sup>为了帮助发展中国家参与国际海底管理局事务,多年来中国持续向海底管理局自愿信托基金捐款,以资助发展中国家委员出席法律与技术委员会和财务委员会会议。<sup>15</sup>无论是公开表态,还是经济资助,在参与国际海洋法律秩序构建的过程中,中国都体现了作为发展中大国的责任与担当。有学者认为,“中国正是由于在构建以[《联合国海洋法公约》(以下简称‘《公约》’)]为核心的当代海洋法律体系中话语权的缺失,才在一定程度上导致了维护海洋权益的被动局面”。<sup>16</sup>也正因为如此,近年来中国越来越重视参与国际海洋法律事务的谈判工作。

“面对海洋问题这种区域性甚至是全球性的问题,某一国家难以单独面对或解决,《公约》等海洋法律规则的变革和完善也并非一国或某些国家可以独立完

13 同前注9,何广顺等,第358-368页。

14 参见施余兵、陈帅:《论战略环境评估在BBNJ国际协定中的适用性》,载《中华海洋法学评论》2020年第4期,第16页。

15 参见国家海洋局海洋发展战略研究所课题组著:《中国海洋发展报告(2017)》,海洋出版社2017年版,第214页。

16 杨泽伟:《〈联合国海洋法公约〉的主要缺陷及其完善》,载《法学评论》2012年第5期,第64页。

成。”<sup>17</sup> 因此,中国需要更多地凝聚发展中国家的力量与声音。作为《公约》的重要缔约国,<sup>18</sup> 以及国际海洋事务中发展中国家集团海洋利益维护的排头兵,小岛屿国家在维护发展中国家海洋权益的过程中具有不可替代的作用。随着全球变暖及海平面上升问题的日益突出,基线问题、岛礁法律地位问题、边界条约以及气候难民等问题都直接关系到小岛屿国家的生存利益。如果岛屿被永久淹没即失去领土地位这一规则被国际法所认可,小岛屿国家丧失的将不仅仅是主权,更是生存权。可以预见的是,小岛屿国家在国际海洋法律秩序完善过程中对本国发展利益的维护,在一定程度上也会对中国岛礁权益的维护产生积极影响。

## (二) 中国与小岛屿国家都是国际涉海法律组织中的重要参与者

在国际海洋法的造法过程中,国际法院等官方机构无疑具有重要影响力。截至2021年2月,在国际法院现任法官中,包含一名来自小岛屿国家牙买加的法官,而在前任法官中,亦有一名圭亚那籍的法官。<sup>19</sup> 在国际海洋法法庭,佛得角、马耳他、牙买加的代表也是其现任法官成员。<sup>20</sup> 回顾历史,马耳他、特立尼达和多巴哥、格林纳达、牙买加、佛得角等小岛屿国家都在该海洋法组织中起着重要作用。<sup>21</sup> 在国际海底管理局理事会成员国中,小岛屿国家斐济、牙买加2017年以来一直是D组的成员,摩洛哥、汤加、特立尼达和多巴哥也多次为E组理事会成员国。<sup>22</sup> 未来,或许将有更多的小岛屿国家加入这些与海洋法相关的国际组织中。小岛屿国家将成为国际海洋法造法过程中不可忽视的一股力量。

在中国政府支持小岛屿国家可持续发展事业的同时,小岛屿国家也在积极支持着中国的海洋事务。据不完全统计,在南海仲裁案发生之后,有90余国的230多个政党表态支持中国南海立场。<sup>23</sup> 其中不乏科摩罗、几内亚比绍、马尔代夫、斐济、巴布亚新几内亚等小岛屿国家。<sup>24</sup> 随着中国所倡导构建的“海洋命运共同体”在小岛屿国家中逐渐被认可,将会有越来越多的小岛屿国家在各种国际场合中支持中

17 裴坤:《国际海洋法律秩序问题研究》,武汉大学2017年硕士毕业论文,第35页。

18 58个小岛屿发展中国家中有近40个国家(含38个联合国会员国)为《联合国海洋法公约》的缔约国。参见 *United Nations Convention on the Law of the Sea, UN Treaties Collection* (28 July 2021), [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en)。

19 *All Members*, ICJ (28 July 2021), <https://www.icj-cij.org/en/current-members>。

20 *Members*, ITLOS (28 July 2021), <https://www.itlos.org/en/main/the-tribunal/members/>。

21 *Members of the Tribunal since 1996*, ITLOS (28 July 2021), <https://www.itlos.org/en/main/the-tribunal/members-of-the-tribunal-since-1996/>。

22 *The Council*, ISA (28 July 2021), <https://www.isa.org.jm/authority/council/members>。

23 参见臧晓程:《90余国的230多个政党表态支持中国南海立场》,载国务院新闻办公室2016年7月13日, <http://www.scio.gov.cn/37259/Document/1597609/1597609.htm>。

24 参见《90余国表态支持中国南海立场(附部分名单)》,载第一财经网2016年7月13日, <https://www.yicai.com/news/5042113.html>。

国的主张。这对于中国参与构建国际海洋法律秩序具有重要意义。

### (三) 中国是小岛屿国家可持续发展事业的坚定支持者

在小岛屿国家谋求可持续发展的过程中,中国一直为其提供着各种形式的帮助。2013年5月,习近平在人民大会堂会见斐济总理时表示将支持斐方在能源安全、气候变化、海洋资源保护等问题上的合理诉求,推动中斐关系进一步发展。<sup>25</sup>同时,小岛屿国家也在表达着对中国参与小岛屿国家海洋可持续发展事业的欢迎。2017年9月,中国和安提瓜和巴布达、佛得角、斐济等12个国家的代表团团长在中国平潭展开对话并最终发表了《平潭宣言》。宣言表示欢迎中方帮助岛屿国家加强海洋能力建设,建立中国—岛屿国家海洋合作项目,开展技术交流与项目合作、人才培养和业务培训。<sup>26</sup>

作为最早同新中国建交的太平洋岛国,斐济与中国的交流合作堪称太平洋岛屿国家与中国合作的典范。面对新冠疫情肆虐,2021年6月,国家主席习近平再次同斐济总理姆拜尼马拉马通电话,表示愿为斐济抗击疫情继续提供疫苗等支持,设立中国—太平洋岛国应急物资储备库,帮助斐济等岛国提升应对重大公共卫生事件和自然灾害的能力。<sup>27</sup>除斐济外,中国还先后向东帝汶、塞舌尔、毛里求斯、特立尼达和多巴哥、佛得角、科摩罗、马尔代夫等小岛屿国家捐赠了疫苗等抗疫物资。无论国家大小、强弱,中国一直秉持平等的外交观念,在尊重小岛屿国家的发展利益的基础上同小岛屿国家开展合作。

广泛的共同利益为中国和小岛屿国家间的交流与合作创造了条件,但在这一过程中也存在着一些不利因素需要被重视。首先,中国与小岛屿国家在气候变化责任承担问题上曾存在分歧。在2009年哥本哈根世界气候大会上,小岛屿国家联盟要求发展中大国实施更高的温室气体减排量标准,并表达了在国际气候领域清洁发展机制和全球环境信托基金运作方式下资金和技术更多流向发展中大国的不满。<sup>28</sup>在这次分歧中,作为“基础四国”之一的中国首当其冲。其次,受地区主义和国家主义的影响,岛屿国家间“抱团合作”的同时又积极谋求本国利益的最大化,在集体决策的过程中难免存在分歧,这在一定程度上影响了太平洋岛国与大国的合作。再次,中国与岛屿国家的合作易受到域内外大国的影响。以太平洋岛

25 参见《习近平在人民大会堂会见斐济总理姆拜尼马拉马》,载中国政府网 2013 年 5 月 29 日, [http://www.gov.cn/ldhd/2013-05/29/content\\_2414007.htm](http://www.gov.cn/ldhd/2013-05/29/content_2414007.htm)。

26 参见胡美东:《平潭宣言:构建基于海洋合作的“蓝色伙伴关系”》,载中国日报网 2017 年 9 月 22 日, [http://fj.chinadaily.com.cn/2017-09/22/content\\_32326346.htm](http://fj.chinadaily.com.cn/2017-09/22/content_32326346.htm)。

27 参见《习近平同斐济总理姆拜尼马拉马通电话》,载中国政府网 2021 年 6 月 24 日, [http://www.gov.cn/xinwen/2021-06/24/content\\_5620613.htm](http://www.gov.cn/xinwen/2021-06/24/content_5620613.htm)。

28 参见曹亚斌:《全球气候谈判中的小岛屿国家联盟》,载《现代国际关系》2011 年第 8 期,第 41 页。

国为例,澳大利亚作为南太平洋地区的大国,中国的介入很难不受到澳方的担忧和反对。2017年,所罗门群岛宣布由华为承担其至悉尼的海底高速光缆工程,在澳大利亚向所罗门群岛施加外交压力后中国未能参与此次项目。最后,欲加强同小岛屿国家的交流合作,台湾当局是不可忽视的因素。部分小岛屿国家是台湾当局积极争取的“邦交国”,这在一定程度上阻碍了中国的正常外交。<sup>29</sup> 尽管这些挑战的存在给中国与小岛屿国家间的合作带来了阻力,但并不妨碍整体合作大局的推进。近年来,中国始终坚持在“和平共处五项”原则的基础上与小岛屿国家开展对话合作,切实帮助小岛屿国家发展经济,已经赢得了越来越多小岛屿国家的支持。

### 三、中国与小岛屿国家在国际海洋法律秩序构建中的合作领域

除了在发展蓝色经济、保护生态环境、应对气候变化等基本领域开展合作之外,在国际海洋法律秩序的构建问题上,中国与小岛屿国家在全球渔业治理、海底矿产资源开发、共同应对海平面上升带来的国际海洋法挑战等方面仍存在着合作潜力,亟需进一步深化合作。

#### (一) 全球渔业治理

虽然小岛屿国家的人口数量和土地面积相对较少,但其所管辖的海域面积总和却超过了地球表面积的五分之一,海洋渔业资源十分丰富。<sup>30</sup> 作为渔业资源消费大国,中国一直坚持在国际渔业管理框架下进行远洋渔业捕捞活动。近年来,中国正积极深化同小岛屿国家间的双边渔业合作。国家层面,农业农村部召开中国同南太平洋岛国农业部长会议和渔业合作论坛并签署《楠迪宣言》,并积极推动与基里巴斯、所罗门加强渔业合作。<sup>31</sup> 目前,中国已先后与密克罗尼西亚(2003)、斐济(2018)、瓦努阿图(2019)、巴布亚新几内亚(2019)等小岛屿国家签订了《渔业合作备忘录》,并加入《南印度洋渔业协定》和《南太平洋公海渔业资源养护和管理公约》。民间层面,中国水产集团、上海远洋渔业有限公司等企业以斐济为基

29 参见赵少峰:《从“走出去”到“一带一路”:中国与太平洋岛国四十年》,载《太平洋岛国研究》2019年第1期,第40-43页。

30 参见林香红、周通:《太平洋小海岛国家的蓝色经济》,载《海洋经济》2013年第4期,第62页。

31 参见《“十三五”渔业亮点连载 | 我国远洋渔业“十三五”发展亮点纷呈》,中华人民共和国农业农村部渔业渔政管理局网站2021年1月4日, [http://www.yyj.moa.gov.cn/gzdt/202101/t20210104\\_6359366.htm](http://www.yyj.moa.gov.cn/gzdt/202101/t20210104_6359366.htm)。

地,在南太平洋捕鱼的同时,也带动了斐济当地人员技术方面的发展和提高。<sup>32</sup>这种从政府到民间的全面合作,为中国与小岛屿国家进一步深化渔业合作奠定了基础。

IUU 捕捞是小岛屿发展中国家渔业可持续发展的一大威胁。渔业经济被认为是小岛屿国家的重要经济支柱。由于监测、控制和监视能力的不足, IUU 捕捞对于这些主要依靠渔业来获取粮食、生计和收入的发展中国家而言是无疑一种生存威胁。<sup>33</sup>小岛屿国家在促进渔业捕捞符合可持续发展要求和避免非法捕捞方面相对于海洋大国而言管理义务和管理成本相对较重。<sup>34</sup>这对于小岛屿国家参与全球渔业治理,促进渔业可持续发展而言是不利的。管辖海域面积大而管理能力不足是小岛屿国家渔业治理面临的主要难题,事关全球渔业治理能力的成效。基于此,建立健全支持小岛屿国家加强渔业治理能力的制度体系是必要的。这需要小岛屿国家与包括中国在内的各捕捞国的共同努力。

## (二) 海底矿产资源共同开发

对于海底矿产资源的合作开发,一些小岛屿国家持开放态度。根据 2006 年密克罗尼西亚联邦政府网站发布的信息,海底矿产资源的商业性开发被列入了鼓励投资的领域。<sup>35</sup>2014 年 11 月,中瓦两国签署了《中国瓦努阿图两国政府关于海洋领域合作的谅解备忘录》。该备忘录提出中瓦两国将优先推动在海洋观测预报和海洋灾害预警、海洋生态环境保护、海洋资源勘探和开发以及海洋科学研究等领域的合作。瓦努阿图是典型的小岛屿国家。国家人口少、应对气候变化能力不足、开发海洋资源能力有限是这些小岛屿国家的普遍特征,这与中国恰好形成优势互补。<sup>36</sup>类似于瓦努阿图这样海洋资源丰富但开发能力不足的小岛屿国家还有很多,帮助这些国家充分利用本国海洋资源以实现可持续发展意义重大。2018 年 9 月,《中华人民共和国自然资源部与塞舌尔共和国环境、能源和气候变化部关于面向

32 参见邓源、顾蕊、张学彪:《中国和斐济农业合作现状及前景展望》,载《农业展望》2018 年第 11 期,第 104 页。

33 Abdimalik Jama Omar, Ayub Abdirahman Mohamed & Sulaiman Abdullahi Bambale, *Impacts of Illegal, Unreported and Unregulated (IUU) Fishing on Developing Countries: The Case of Somalia*, Asian Research Journal of Arts and Social Sciences, Vol. 9:4, p. 1-2 (2019).

34 参见应晓丽、崔旺来:《太平洋小岛屿国家渔业资源区域合作管理研究》,载《太平洋学报》2017 年第 9 期,第 75 页。

35 参见王燕芳:《密克罗尼西亚联邦税收、投资、劳工和移民政策法规》,中华人民共和国驻密克罗尼西亚联邦大使馆经贸之窗 2015 年 7 月 22 日, <http://fm.mofcom.gov.cn/article/ddfg/tzzhch/200606/20060602542506.shtml>。

36 参见汪涛:《陈连增会见瓦努阿图总理萨托·基尔曼 加强两国海洋合作共同应对全球气候变化》,中国政府网 2015 年 9 月 7 日, [http://www.gov.cn/guowuyuan/2015-09/07/content\\_2926141.htm](http://www.gov.cn/guowuyuan/2015-09/07/content_2926141.htm)。



蓝色伙伴关系的海洋领域合作谅解备忘录》签署。<sup>37</sup>在 21 世纪海上丝绸之路的影响下,小岛屿国家与中国在海洋领域拥有着巨大的合作潜力。

虽然不少国家都已经尝试进行国际海底区域的矿产开发工作,如中国也获得了自己的开发区块。但海底区域矿产的开发面临的资金技术成本较大,只有少数国家能够参与其中。小岛屿国家更是无从参与。拥有广大管辖海域却无法完全开发,对这些小岛屿国家而言不免是一种遗憾。同时我们也注意到,虽然以小岛屿国家为代表的广大发展中国家缺乏独立开发海底矿产资源的能力,但不代表这些国家不能对国内海底矿产资源开发进行立法。如小岛屿国家汤加专门颁布了管制在国家管辖范围内海域以及区域部分从事海底矿产资源活动的法律,即 2014 年汤加《海底矿产资源法》。<sup>38</sup>国际海底区域是全人类共同继承财产,由于勘探开发还处于起步阶段,利益分配机制还不成熟,广大发展中国家利益难以得到有效平衡。因此对小岛屿国家而言,如果能引进具有开发能力的外国企业帮助本国在国家管辖范围内海域进行海底矿产开发,通过技术转让或者类似于国际石油开发合同制度开展合作,将形成一个双赢的局面。目前针对国家管辖范围内海底矿产资源的开发以及保护制度目前还属于待完善状态,在国际海洋法的造法过程中也是一个值得关注的领域。

### (三) 应对海平面上升带来的国际法挑战

中国与小岛屿国家之间的合作不应该只停留在经济和技术层面,还应加强在国际法领域的交流。正如有学者指出,在海平面上升背景下通过岛礁建设来实现可持续发展不仅是一个科学技术层面的问题,更是一个国际法和国际制度层面的敏感问题。<sup>39</sup>中国目前有大小岛屿共计 5400 个,总面积达 3.87 万平方公里。<sup>40</sup>面对全球气候变暖带来的海平面上升问题,小岛屿国家与中国都面临着国际法挑战。

海平面上升带给中国和小岛屿国家共同的国际法挑战主要有四个方面。一是海平面上升对基线的影响。基线的确定性是确保国家间海洋管辖权不起争端的基础,但海平面上升无疑会对原有国家管辖范围产生影响。二是海平面上升将对岛屿法律地位和海域划界产生影响。岛屿一旦永久沉没,就无法再满足《公约》所要求的岛屿基本标准,即“能维持人类居住或其本身的经济生活”。海平面上升带给

37 参见《自然资源部与塞舌尔环境、能源与气候变化部签署合作文件》,载中国政府网 2018 年 9 月 3 日, [http://www.gov.cn/xinwen/2018-09/03/content\\_5318853.htm](http://www.gov.cn/xinwen/2018-09/03/content_5318853.htm)。

38 参见张梓太、沈灏、张闻昭著:《深海海底资源勘探开发法研究》,复旦大学出版社 2015 年版,第 163-164 页。

39 参见马博:《海平面上升对小岛屿国家的国际法挑战与应对——“中国—小岛屿国家”合作展望》,载《国际法研究》2018 年第 6 期,第 55 页。

40 参见国家统计局、生态环境部编:《中国环境统计年鉴》,中国统计出版社 2019 年版,第 3 页。

小岛屿国家的国际法挑战对中国而言也不容小觑。岛屿一旦沉没,海域划界就更无从谈起。三是对海洋边界条约效力的影响。海平面上升使得国家间所划定的原有海洋边界条约失去《公约》对海洋权利效力的保障,国家间的海洋边界也将处于不稳定状态。四是对整个《公约》所确立的“陆地决定海洋”规则构成挑战。<sup>41</sup> 岛屿永久沉没后是否还应该承认其沉没前所拥有的法律主体地位存在争议。如果承认,那么就将与这一根本原则相悖,如果不承认,小岛屿国家和群岛国家的合法权益又该如何保障。尽管岛礁建设技术目前已经得到了不少国家的广泛应用,但从国际法角度而言,面对海平面上升这一新的热点问题,《公约》还存在着明显的滞后性。研究海平面上升对于小岛屿国家的影响和岛礁建设的意义,是国际社会为维护人类可持续发展权利所必须正视的一项重大课题。<sup>42</sup> 基于此,对海平面上升带来的国际法挑战相关问题的研究,中国与小岛屿国家应起到引领作用。

#### 四、针对与小岛屿国家合作构建国际海洋法律秩序对中国的建议

第一,全面加强涉海法律人才队伍建设,为中国政府参与国际海洋事务提供智力支持。近年来,中国政府不断加强海上力量建设。“辽宁号”和“山东号”航母相继交付海军,大幅提升了海军战斗力。《中华人民共和国海警法》的正式生效赋予海警以执法依循,使得中国的海上维权执法工作有了可靠的法律保障。但在国际海洋法律争端问题的解决上,专业法律人才仍具有较大缺口,对海洋法学科发展的重视程度仍不足。为此,中国国家自然资源部海洋发展战略研究所张海文所长“建议将国际法设为一级学科,增加学术刊物发表海洋法文章的版面和数量比例,增设国际法、海洋法专门的学术刊物。”<sup>43</sup> 其目的就是要着力培养和建立一支优秀涉海法律人才队伍。欲提高中国在国际海洋法律秩序构建过程中的参与度和参与质量,必须先培养起一批既了解中国海洋发展历史,又熟悉国际海洋法,能够在国际舞台上坚决捍卫中国海洋权益的专业复合型人才。尽管人才培养是一个长期性工程,但却是参与国际海洋法律秩序构建的一个必备要素。在涉海事务上,不论我国与其它国家是合作还是竞争的关系,专业的海洋法律人才都是不可或缺的。

第二,搭建国际海洋法交流平台,研究最新国际海洋法实践。搭建国际海洋

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41 参见冯寿波:《海平面上升与国际海洋法:挑战及应对》,载《边界与海洋研究》2020年第1期,第33-39页。

42 同前注39,马博,第46页。

43 张海文:《关于加强涉外海洋法律人才队伍建设的几点思考——兼谈涉外海洋法律“国家队”建设》,载《国际法研究》2020年第3期,第23页。

法交流平台,不仅可以帮助中国及时了解国际海洋法领域的新动态以掌握国际海洋法发展的新趋势,不至于在参与国际海洋事务时陷入被动地位。还有利于中国在国际海洋事务中发出自己的声音,参与国际海洋事务的规则制定。在与小岛屿国家就国际海洋法律秩序构建的合作过程中,中国可以举办针对海洋法热点问题的学术研讨会、高层次海洋论坛及对话会等国际海洋法领域的交流活动,邀请小岛屿国家的海洋法专家一起,为国际海洋法的新发展贡献智慧。海平面上升对基点和基线、岛屿的法律地位和划界、海洋边界条约的效力、小岛屿国家的国际法主体地位以及由此产生的“气候难民”等问题都将产生重要影响。<sup>44</sup> 这些问题都是《公约》所没有规定的,但却实实在在地影响着中国和小岛屿国家的可持续发展。随着海平面上升形势越来越严峻,对国际海洋法的新发展必将成为国际共识。从内容上看,《公约》所确立的一些基本原则本身几乎不可能改变,但在坚持这些原则的基础上对一些具体内容或规则进行修改的可能性是存在的。<sup>45</sup> 抓住主动权与小岛屿国家一起参与到国际法的创制中去,是中国掌握国际海洋法律事务主动权的一次重要机遇。

第三,继续深化同小岛屿国家在各领域的合作,扩大国际海洋事务“朋友圈”。大部分小岛屿国家因其特殊的地理特征,普遍面临着海平面上升等问题带来的生存危机。作为一个负责任的大国,中国可以继续加强同小岛屿国家的交流与合作,给小岛屿发展中国家以更多的资金和技术支持。2015年9月26日,习近平主席在联合国发展峰会上宣布:中国将免除对有关最不发达国家、内陆发展中国家、小岛屿发展中国家截至2015年底到期未还的政府间无息贷款债务。<sup>46</sup> 2017年12月8日,中国和马尔代夫联合发布新闻公报称双方将深化海洋环境、渔业和旅游等领域合作,并适时召开首届中马海洋领域合作联委会会议,进一步加强在联合国等多边组织中的协调配合,密切在气候变化等全球问题上的沟通合作。<sup>47</sup> 对小岛屿国家可持续发展事业的持续援助,体现了中国政府所倡导的“人类命运共同体”理念和共同推动全球海洋可持续发展事业的信心与决心。这有利于提升中国在参与国际海洋事务过程中的好感度,获得更多来自国际社会的认可,在国际道义上占据有利地位,从而为中国参与国际海洋法律秩序的构建奠定良好基础。

44 同前注41,冯寿波。

45 参见李双建著:《主要沿海国家的海洋战略研究》,海洋出版社2014年版,第41页。

46 参见《习近平在联合国发展峰会上的讲话》,载中国政府网2015年9月27日, [http://www.gov.cn/xinwen/2015-09/27/content\\_2939377.htm?gs\\_ws=tsina\\_635789483168014923](http://www.gov.cn/xinwen/2015-09/27/content_2939377.htm?gs_ws=tsina_635789483168014923)。

47 参见《中华人民共和国和马尔代夫共和国联合新闻公报(全文)》,载中国政府网2017年12月8日, [http://www.gov.cn/xinwen/2017-12/08/content\\_5245375.htm](http://www.gov.cn/xinwen/2017-12/08/content_5245375.htm)。

## 五、结 论

构建更符合以中国为代表的广大发展中国家利益的国际海洋法律秩序并非易事。为此中国需要继续坚持“团结一切可以团结的力量”的策略,在提升国家整体海洋“硬实力”的同时,积极构建良好的国际环境以扩大海洋事务“朋友圈”。与广大发展中国家,尤其是与小岛屿国家一起就国际海洋法律秩序构建开展密切合作。合作领域将不仅仅限于全球渔业治理、海底矿产资源开发和应对海平面上升带来的国际法挑战。随着国际社会对海洋的关注程度越来越深,将会有越来越多的国际海洋法问题暴露出来。这对于过去在以《公约》为代表的国际海洋法造法过程中处于弱势的新兴发展中国家而言将会是提高参与度的一次重要机会,中国也要抓住这个机会。作为一个崛起中的海洋大国,中国将在国际海洋法的建制和改制过程中继续发挥更大的作用。这不仅有利于中国国家海洋权益的维护,也有利于打破长期以来以美国为首的西方国家对海洋话语权的垄断。使以中国为代表的新兴发展中国家的海洋权益诉求得到充分表达,促进国际海洋法律秩序的公平、公正与合理。

# On the Potential of Cooperation between China and Small Island Developing States in the Construction of International Maritime Legal Order

LIU Xinxin, XU Peng\*

**Abstract:** As the existing international maritime legal order is mainly constructed by the traditional maritime powers, the emerging developing countries represented by China are inevitably in a passive position when applying international law to the protection of maritime rights and interests. To change this situation, it will take more than China's efforts alone. As a group of developing countries closely related to the ocean, small island developing States (SIDS) have the basis and potential to cooperate with China in building an international legal order for the ocean. Both China and SIDS are defenders of the maritime rights and interests of developing countries and important participants in the international maritime law organization. Over the years, China has also made important contributions to the sustainable development of SIDS. In terms of cooperation areas, in addition to economic cooperation, China and SIDS can strengthen cooperation under international law in global fishery management, exploitation of seabed mineral resources and response to sea level rise. To this end, China should strengthen the training of marine-related legal personnel, build a platform for international exchanges on maritime affairs, and continue to deepen cooperation with SIDS in various fields, so as to create conditions for the two sides to jointly build a new international maritime legal order.

**Key Words:** China; Small island developing States; International maritime legal order; Cooperation potential

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As a result of the strong monopoly of voice in the oceans after World War II, “the power to interpret and define important international conferences on the oceans, negotiations on maritime issues, signing of agreements on maritime treaties, and settlement of disputes and emergencies over maritime activities rested entirely in the hands of the maritime large powers led by the United States (US).”<sup>1</sup> China, on the other hand, is in the position of passively accepting the rules of the game. In January 2021, the CPC Central Committee issued the *Plan on Building the Rule of Law in China (2020–2025)* for the purpose of accommodating the needs of high-level opening-up, improving the system of laws and rules concerning foreign affairs and making up for the shortcomings, so as to comprehensively improve the level of rule of law in foreign-related work. It is explicitly proposed that China will “actively participate in the formulation of international rules and promote the formation of a fair and reasonable international legal system”.<sup>2</sup> The Plan shows a clear objective, i.e., gradually getting hold of the rights to theoretical definition, issue setting, organization construction, as well as the rights to rule-making, interpretation and change in international law in the process of participating in the formulation of rules of international law.<sup>3</sup> Meanwhile, efforts shall be made to advance the international legal order towards becoming more fair and reasonable, and to better safeguard China’s national interests. “China is a maritime large power but not a maritime great power.”<sup>4</sup> A sound international maritime legal order is crucial for China to safeguard its maritime rights and interests, develop its marine economy and protect its marine ecosystem. In this connection, China should take an active part in the building of a new international maritime legal order that is fairer, more reasonable, and more perfect. It is necessary to be aware that small island developing States (SIDS), given their status as key actors in international maritime affairs, should not be underestimated. In this regard, there lies a certain potential for cooperation between China and SIDS in the course of building an international maritime legal order.

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- 1 ZHANG Ersheng, PEI Guangyi, CHEN Yuyi & LI Xuejing, *The Weakness of Marine Discourse Power and China’s Maritime Power Strategy*, Forum of World Economics and Politics, Vol. 34:2, p. 139 (2014). (in Chinese)
  - 2 *China Issues Plan on Build Rule of Law*, GovCN (10 Jan 2021), [http://www.gov.cn/zhengce/2021-01/10/content\\_5578659.htm?trs=1](http://www.gov.cn/zhengce/2021-01/10/content_5578659.htm?trs=1). (in Chinese)
  - 3 MENG Yuqun, *The Generative Logic of Discourse Power in International Law and the Construction of China*, Nanjing Journal of Social Sciences, Vol. 32:2, p. 102 (2021). (in Chinese)
  - 4 YI Shi, YAO Zhongcai & CHEN Zhenguo, *The South China Sea! The South China Sea!*, Guangdong People’s Publishing House, 2009, p. 20. (in Chinese)

## I. Profile of SIDS

### *A. Political and Economic Status of SIDS*

As small island States are largely developing States, the economically underdeveloped small island States with flat coasts are often referred to by the international community as small island developing States (SIDS). Of the world's 58 SIDS,<sup>5</sup> eight are still considered to be among the least developed States worldwide, according to the latest figures from the United Nations Economic and Social Council.<sup>6</sup>

Politically, with a long-held position on the edge of the world's political scene, it is difficult for SIDS to have their interest appeal heard in the international community. Recent years, however, have seen a rise in the voice of these SIDS in the international arena with the establishment of organizations and platforms such as the Alliance of Small Island States (AOSIS) and the Pacific Islands Forum. In particular, they have been active in discussions on international issues such as sea level rise and climate change.

Economically, SIDS suffer from general backwardness and therefore get caught in numerous obstacles to their development. Firstly, due to the relatively small population and natural resources, SIDS have difficulties in forming large-scale industries and thus rely mainly on imports for their economic development. Secondly, there is a high cost of transportation in the process of importing commodities due to the distance problem, resulting in a high impact from the international market. Thirdly, SIDS are greatly affected by marine disasters, and their economies are vulnerable to severe damage in the event of natural disasters such as tsunamis. Finally, these SIDS are generally low in per capita income and less resilient to natural disasters.<sup>7</sup> For States highly dependent on tourism, few can recover quickly from extreme weather events on their own without support from

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5 See *Small Island Developing States*, DSDG (15 May 2021), <https://sustainabledevelopment.un.org/topics/sids/list>.

6 As of February 11, 2021, the least developed countries among SIDS include: The Comoros, Guinea-Bissau, Sao Tome and Principe, Haiti, Kiribati, Solomon Islands, Timor-Leste and Tuvalu. See *List of Least Developed Countries*, UNLDC Data (11 Feb 2021), <https://www.un.org/development/desa/dpad/least-developed-country-category/ldc-data-retrieval.html>.

7 Stephen Pratt, *The Economic Impact of Tourism in SIDS*, *Annals of Tourism Research*, Vol. 52, p. 148-149 (2015).

others.<sup>8</sup> As global warming intensifies and severe weather events occur, the survival of SIDS is becoming increasingly alarming.

### *B. Ocean Development Strategies of SIDS*

As threatened and challenged by global warming and sea level rise, SIDS are making active adjustments to their ocean development strategies to meet the needs of sustainable national development.

Firstly, SIDS aim at sustainable development and fully uncover the potential of exploitation of marine resources. With the aim of achieving prosperity, stability and sustainable development in the country, Vanuatu developed the *National Sustainable Development Plan 2016 to 2030*. According to the plan, the government of Vanuatu seeks to capitalize on other States' rapid advances in technology and innovation to better utilize their natural assets on land and at sea, in order to ensure their food and energy security.<sup>9</sup> In this sense, the active leveraging of foreign funds and technology to achieve full utilization of local marine resources can help SIDS, which are short of both land and population, to address the plight of lack of funding and technology.

Secondly, SIDS focus on developing the blue economy and strengthening international cooperation with China and other States. SIDS have long maintained economic cooperation with Australia, New Zealand, the U.S., the European Union (EU), etc. Recent years, however, have seen China becomes increasingly popular with these SIDS. This is because only China's economic aid and cooperation are considered politically unambitious with "no strings attached".<sup>10</sup> The *Belt and Road Initiative* and the *21st Century Maritime Silk Road* proposed by China are perfectly suited to the practical needs of Pacific island States in their economic development by promoting infrastructure construction, improving economic development conditions and facilitating the lives of islanders. These initiatives have boosted the rapid development of economic and trade cooperation between China and the

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8 Prosper F. Bangwayo-Skeete & Ryan W. Skeete, *Modelling Tourism Resilience in Small Island States: A Tale of Two Countries*, *Tourism Geographies*, Vol. 23:3, p. 454 (2021).

9 See HE Guangshun et al. eds, *Research Report on Foreign Marine Policies (2018)*, China Ocean Press, p. 227-230 (2019). (in Chinese)

10 YANG Jian, *China in the South Pacific: Hegemon on the Horizon?*, *The Pacific Review*, Vol. 22:2, p. 139 (2009).



Pacific island States.<sup>11</sup> The year 2020 alone witnessed a year-on-year rise of 1.3% to US \$9.04 billion in China's trade in goods with the Pacific Island region. Among them, China's exports amounted to US \$5.2 billion, up 22.4% year on year, and China's imports totaled US \$3.84 billion, down 17.8% year on year.<sup>12</sup>

Thirdly, SIDS focus on enhancing inter-regional cooperation to improve their voice internationally as a whole. Organizations such as the AOSIS and the Pacific Islands Forum are outcomes of SIDS' efforts to explore regional governance. In July 2017, the Pacific Islands Forum Secretariat released the 2017 *Framework for Pacific Regionalism*. Guided by the Framework, South Pacific States aim to work as a collective to capitalize on the advantages of the Pacific Ocean's maritime geographical location and marine resources to achieve the sustainable development goals of the region.<sup>13</sup> The voice of SIDS as a collective in the international arena has also grown in recent years, making them a force to be reckoned with in the international arena in the process of addressing climate change and participating in ocean affairs.

## II. Potential for Cooperation between China and SIDS on the Construction of an International Maritime Legal Order

China is a developing State as most SIDS, enjoying the jurisdiction over extensive sea areas and boasting a large number of islands. In the process of building a sound international maritime legal order, China has a solid foundation for cooperation with SIDS.

### *A. Both China and SIDS are Important Defenders of the Maritime Rights and Interests of Developing Countries*

In its involvement in international maritime affairs, China also renders extensive support to developing States in various ways. During negotiations

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11 See CHEN Dezheng & LV Guixia eds., *Annual Report on Development of Pacific Island Countries (2020)*, Social Sciences Academic Press (China), 2020, p. 9-10. (in Chinese)

12 See *Briefing on China's Trade and Investment with Pacific Island Countries*, MOFPRC (25 Jul 2021), <http://mds.mofcom.gov.cn/article/Nocategory/200210/20021000042986.shtml>. (in Chinese)

13 *Supra* note 9, HE Guangshun et al., p. 358-368.

on BBNJ international agreement, China expressed its non-support for the consideration that making strategic environmental assessment an obligation of the BBNJ international agreement would impose an unreasonable burden on developing States and subject them to unreasonable environmental obligations.<sup>14</sup> Aiming at facilitating developing States' engagement in the affairs of the International Seabed Authority (ISA), China has over the years continuously contributed to the Voluntary Trust Fund of the ISA to finance the participation of developing States members in meetings of the Legal and Technical Commission and the Finance Committee.<sup>15</sup> China's participation in the building of the international maritime legal order, whether in terms of public statements or financial support, has manifested China's responsibility and commitment as a large developing State. According to some scholars, "It is precisely because of the lack of a voice in the construction of the UNCLOS-centered contemporary maritime legal system that China is, to a certain extent, in a passive position in safeguarding its maritime rights and interests."<sup>16</sup> For this reason, China has been attaching increasing importance to its participation in the negotiation of international maritime legal affairs in recent years.

"When it comes to ocean issues, which are regional or even global in nature, any State can hardly face or solve them alone. And it is not possible for one or some States to complete the change and improvement of the legal rules of the ocean, such as UNCLOS, on their own."<sup>17</sup> It is therefore essential for China to pool more strengths and voices of developing States. As important States Parties to the United Nations Convention on the Law of the Sea (UNCLOS)<sup>18</sup> and leaders in safeguarding the maritime interests of developing States in international ocean affairs, SIDS play an irreplaceable role in safeguarding the maritime rights and interests of developing States. As global warming and sea level rise become increasingly prominent, issues concerning baselines, legal status of islands

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14 SHI Yubing & CHEN Shuai, *On the Applicability of Strategic Environmental Assessment in BBNJ International Agreement*, China Oceans Law Review, Vol. 16:4, p. 16. (in Chinese)

15 Research Group of Institute of Marine Development Strategy, State Oceanic Administration, *Report on the Development of Ocean Society of China (2017)*, China Ocean Press, 2017, p. 214. (in Chinese)

16 YANG Zewei, *Deficiency and Improvement of UNCLOS*, Law Review, Vol. 33: 5, p. 64 (2012). (in Chinese)

17 PEI Kun, *Research on the International Maritime Legal Order*, Master's Dissertation, Wuhan University, 2017, p. 35. (in Chinese)

18 Nearly 40 of the 58 SIDS (including 38 UN Member States) are parties to UNCLOS. See UN Treaties Collection (28 July 2021), [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en).

and reefs, boundary treaties and climate refugees bear directly on the survival interests of SIDS. Once the rule that an island loses its territorial status upon being permanently submerged is recognized by international law, SIDS will suffer more than a loss of sovereignty; they will lose their right to survival. It is foreseeable that SIDS' efforts to safeguard their own development interests in the process of improving the international maritime legal order will, to some extent, also have a positive impact on the protection of China's rights and interests of islands and reefs.

### *B. Both China and SIDS are Important Participants in the International Maritime Law Organization*

Official bodies such as the International Court of Justice (ICJ) hold undoubtedly an important influence in the law-making process of the international law of the sea. As of February 2021, among the current ICJ judges, there is one from the small island State Jamaica, and among the former ICJ judges, there was one from Guyana.<sup>19</sup> In the case of the International Tribunal for the Law of the Sea (ITLOS), its current judges also include representatives from Cape Verde, Malta, and Jamaica.<sup>20</sup> Historically, SIDS such as Malta, Trinidad and Tobago, Grenada, Jamaica, and Cape Verde have all played a significant role in the ITLOS.<sup>21</sup> Among the Member States of the Council of the ISA, SIDS such as Fiji and Jamaica have remained members of Group D since 2017, while Morocco, Tonga, and Trinidad and Tobago have repeatedly joined the Council as members of Group E.<sup>22</sup> The future may see more SIDS join these international organizations related to the law of the sea. SIDS will constitute a force to be reckoned with in the law-making process of the international law of the sea.

In parallel with the Chinese government's support for the cause of sustainable development in SIDS, the latter also provide active support for China's ocean affairs. According to incomplete statistics, more than 230 political parties from over 90 States have expressed their support for China's position on the South China

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19 *All Members*, ICJ (28 July 2021), <https://www.icj-cij.org/en/current-members>.

20 *Members*, ITLOS (28 July 2021), <https://www.itlos.org/en/main/the-tribunal/members/>.

21 *Members of the Tribunal since 1996*, ITLOS (28 July 2021), <https://www.itlos.org/en/main/the-tribunal/members-of-the-tribunal-since-1996/>.

22 *The Council*, ISA (28 July 2021), <https://www.isa.org.jm/authority/council/members>.

Sea since the South China Sea Arbitration took place.<sup>23</sup> They include many SIDS such as the Comoros, Guinea-Bissau, Maldives, Fiji, and Papua New Guinea.<sup>24</sup> With the gradual recognition of the “maritime community with a shared future” advocated by China among SIDS, there will be an increasing number of these States supporting China’s proposition on various international occasions. This is of great significance to China’s participation in building an international maritime legal order.

### *C. China is a Firm Supporter of the Sustainable Development of SIDS*

China has been supporting SIDS in various ways throughout their quest for sustainable development. When meeting with Fijian Prime Minister at the Great Hall of the People in May 2013, President Xi Jinping stated that China will support Fiji’s reasonable appeals regarding energy security, climate change and the protection of maritime resources and will join the efforts with Fiji to promote further development of bilateral relations.<sup>25</sup> In parallel, SIDS are also embracing China’s participation in the cause of their marine sustainable development. In September 2017, heads of delegations from 12 States, including Antigua and Barbuda, Cape Verde, and Fiji, opened a dialogue in Pingtan, China and culminated in the *Pingtang Declaration*. The Declaration expressed the desire for China to help island States in strengthening maritime capacity building, establishing China-island States maritime cooperation projects, and carrying out technical exchanges and project cooperation, personnel training and operational training.<sup>26</sup>

The exchanges and cooperation between Fiji—the first Pacific island State to establish diplomatic ties with the People’s Republic of China—and China can be considered a model for cooperation between Pacific island States and China. Amidst the ravages of the COVID outbreak, President Xi Jinping had another phone

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23 See ZANG Xiaocheng, *More than 230 Political Parties from over 90 States Expressed Their Support for China’s Position on the South China Sea*, Scio (20 Apr 2021), <http://www.scio.gov.cn/37259/Document/1597609/1597609.htm>. (in Chinese)

24 See *Over 90 States State Their Support for China’s Position on the South China Sea (partial list attached)*, Yicai (20 Apr 2021), <https://www.yicai.com/news/5042113.html>. (in Chinese)

25 *Xi Jinping Meets with Prime Minister of Fiji Bainimarama at the Great Hall of the People*, GovCN (29 May 2013), [http://www.gov.cn/ldhd/2013-05/29/content\\_2414007.htm](http://www.gov.cn/ldhd/2013-05/29/content_2414007.htm). (in Chinese)

26 See HU Meidong, *Pingtang Declaration: Building a “Blue Partnership” Based on Maritime Cooperation*, China Daily (22 Sep 2017), [http://fj.chinadaily.com.cn/2017-09/22/content\\_32326346.htm](http://fj.chinadaily.com.cn/2017-09/22/content_32326346.htm). (in Chinese)

conversation with Fijian Prime Minister Bainimarama in June 2021, conveying that China is ready to continue to provide vaccines and other supports for Fiji in the fight against the pandemic, and will set up a China-Pacific Island Countries reserve of emergency supplies to help Fiji and other island States improve their ability to cope with major public health events and natural disasters.<sup>27</sup> In addition to Fiji, China has also made donations of vaccines and other epidemic prevention supplies to Timor-Leste, Seychelles, Mauritius, Trinidad and Tobago, Cape Verde, Comoros, Maldives and other SIDS. China has always upheld the concept of equal diplomacy to cooperate with all SIDS, big or small, strong or weak, on the basis of respecting their development interests.

Sharing extensive common interests has set the stage for exchanges and cooperation between China and SIDS, during which, however, there still exist unfavorable factors that need to be taken into account. First, there were once disagreements between China and SIDS over the issue of climate change responsibility. At the Copenhagen Climate Change Conference in 2009, the AOSIS demanded that large developing States implement higher standards for reducing greenhouse gas emissions and raised discontent about the increased flow of funds and technologies to large developing States under the Clean Development Mechanism (CDM) and Global Environment Facility (GEF) in the international climate sector.<sup>28</sup> China, one of the “BASIC” States, has borne the brunt of this discontent. Second, subject to the influence of regionalism and nationalism, island States actively seek to maximize their own interests while engaging in “group cooperation”, which inevitably leads to differences in the process of collective decision-making, thereby posing a certain degree of influence on the cooperation between Pacific island States and large States. Third, China’s cooperation with island States is vulnerable to the influence of large States both inside and outside the region. In the case of the Pacific island States, for example, Australia is a major power in the South Pacific region, so any involvement by China is hardly free from the concerns and opposition of the Australian side. In 2017, Solomon Islands announced that Huawei would undertake its submarine high-speed cable project to Sydney, a project in which China failed to participate after Australia exerted diplomatic pressure on Solomon Islands. Finally, China’s Taiwan region is a factor

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27 See *Xi Jinping Speaks with Fijian Prime Minister Bainimarama on the Phone*, GovCN (24 June 2021), [http://www.gov.cn/xinwen/2021-06/24/content\\_5620613.htm](http://www.gov.cn/xinwen/2021-06/24/content_5620613.htm). (in Chinese)

28 CAO Yabin, *The Alliance of Small Island States in Global Climate Negotiations*, *Contemporary International Relations*, Vol. 31:8, p. 41 (2011). (in Chinese)

that cannot be ignored in China's efforts to strengthen exchanges and cooperation with SIDS. Some of the SIDS are "diplomatic allies" that the China's Taiwan region authority actively strives for, which to some extent hinders China's normal diplomacy.<sup>29</sup> These challenges, albeit posing resistance to cooperation between China and SIDS, do not impede the promotion of overall cooperation. In recent years, China has maintained dialogue and cooperation with SIDS on the basis of the "Five Principles of Peaceful Coexistence" and has earnestly helped them develop their economy, which has won the support of increasingly more SIDS.

### **III. Cooperation areas between China and SIDS on the Construction of an International Maritime Legal Order**

Besides cooperation in basic areas such as developing blue economy, protecting ecological environment and coping with climate change, there still exists a potential for cooperation between China and SIDS on the building of international maritime legal order in such areas as global fisheries governance, exploitation of seabed mineral resources and joint response to the international law of the sea challenges brought about by sea level rise, and further deepening of cooperation is urgently needed.

#### *A. Global Fisheries Governance*

SIDS, albeit with relatively small population size and land area, have a combined sea area of more than one-fifth of the earth's surface area under their jurisdiction and are rich in marine fishery resources.<sup>30</sup> As a major consumer of fishery resources, China has been adhering to the framework of international fisheries management in conducting distant-water fishing activities. Recent years have seen China's active efforts to deepen bilateral fisheries cooperation with SIDS. At the national level, the Ministry of Agriculture and Rural Affairs held the Agriculture Ministers' meeting and fishery cooperation forum between China and South Pacific

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29 ZHAO Shaofeng, *From "Going Global" to "the Belt and Road Initiative": China and Pacific Island Countries in Four Decades*, Research on Pacific Island Countries, Vol. 2:1, p. 40-43 (2019). (in Chinese)

30 See LIN Xianghong & ZHOU Tong, *Blue Economy in Pacific Small Island Countries and Territories*, Blue Economy, Vol. 3:4, p. 62 (2013). (in Chinese)

Island States and signed the Nadi Declaration, and actively pushed to strengthen fisheries cooperation with Kiribati and Solomon.<sup>31</sup> China has successively signed the *Memorandum of Understanding on Fisheries Cooperation* with Micronesia (2003), Fiji (2018), Vanuatu (2019), Papua New Guinea (2019) and other SIDS, and has acceded to the *Southern Indian Ocean Fisheries Agreement* and the *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean*. At the non-governmental level, such Chinese enterprises as China National Fisheries Corporation and Shanghai Fisheries have taken Fiji as their base to fish in the South Pacific and boost the development and improvement of local personnel and technology.<sup>32</sup> Such comprehensive cooperation from the government to the non-government level has laid a foundation for further deepening fisheries cooperation between China and SIDS.

The illegal, unreported and unregulated fishing (IUU) activities constitute a major threat to the sustainable development of fisheries in SIDS. The fisheries economy is seen as an important economic pillar for SIDS. In this regard, IUU activities in the absence of adequate monitoring, control and surveillance capabilities are undoubtedly an existential threat to these developing States that depend primarily on fisheries for food, livelihoods, and income.<sup>33</sup> SIDS have relatively higher regulatory obligations and costs than maritime large powers in promoting fisheries in line with sustainable development requirements and avoiding IUU activities.<sup>34</sup> This is detrimental to the participation of SIDS in global fisheries governance and the promotion of sustainable development of fisheries. SIDS currently face a major challenge in fisheries governance due to the lack of management capacity over a large sea area, which has a bearing on the effectiveness of global fisheries governance capacity. For this reason, it is necessary to establish a sound institutional system to support SIDS in strengthening their

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31 See *Highlights of the 13th Five-Year Plan for Fisheries | Highlights of the 13th Five-Year Plan for China's Distant-Water Fisheries*, MOAPRC (4 Jan 2021), [http://www.yyj.moa.gov.cn/gzdt/202101/t20210104\\_6359366.htm](http://www.yyj.moa.gov.cn/gzdt/202101/t20210104_6359366.htm).

32 DENG Yuan, GU Rui & ZHANG Xuebiao, *Status Quo and Outlook of China-Fiji Agricultural Cooperation*, *Agricultural Outlook*, Vol. 14:11, p. 104 (2018). (in Chinese)

33 Abdimalik Jama Omar, Ayub Abdirahman Mohamed & Sulaiman Abdullahi Bambale, *Impacts of Illegal, Unreported and Unregulated (IUU) Fishing on Developing Countries: The Case of Somalia*, *Asian Research Journal of Arts and Social Sciences*, Vol. 9:4, p. 1-2 (2019).

34 See YING Xiaoli & CUI Wanglai, *An Evaluation of Regional Cooperation on Fisheries Management of Small Island Countries in the Pacific Ocean*, *Pacific Journal*, Vol. 46:9, p. 75 (2017). (in Chinese)

fisheries governance capacity. This requires the joint efforts of SIDS and fishing nations, including China.

### *B. Joint Exploitation of Seabed Mineral Resources*

Some SIDS are open to joint exploitation of seabed mineral resources. The commercial exploitation of seabed mineral resources has been included in the areas where investment is encouraged, according to information published on the government website of the Federated States of Micronesia in 2006.<sup>35</sup> In November 2014, China and Vanuatu signed the *Memorandum of Understanding on Cooperation in the Marine Sector between the Governments of China and Vanuatu*, which proposes that China and Vanuatu will prioritize the promotion of cooperation in the areas of marine observation and forecasting and early warning of marine disasters, marine ecosystem conservation, exploration and exploitation of marine resources, and marine scientific research. Vanuatu is a typical case of SIDS, which are generally characterized by small population, insufficient capacity to cope with climate change, and limited capacity to exploit marine resources. These are precisely complementary to China's strengths.<sup>36</sup> Given the fact that there are many SIDS like Vanuatu that are rich in marine resources but less able to exploit them, it is of great significance to help these States fully leverage their marine resources to achieve sustainable development. September 2018 saw the signing of the *Memorandum of Understanding on Cooperation in the Marine Sector between the Ministry of Natural Resources of the People's Republic of China and the Ministry of Environment, Energy and Climate Change of the Republic of Seychelles for the Blue Partnership*.<sup>37</sup> In the context of the *21st Century Maritime Silk Road*, there is a great potential for cooperation between SIDS and China in the maritime sector.

A number of nations have made attempts to exploit mineral resources in the international seabed area (hereinafter "the Area"), with China, for example, also

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35 See WANG Yanfang, *Tax, Investment, Labor and Immigration Policies and Regulations of the Federated States of Micronesia*, MOFCOM (22 July 2015), <http://fm.mofcom.gov.cn/article/ddfg/tzzhch/200606/20060602542506.shtml>. (in Chinese)

36 See WANG Tao, *Chen Lianzeng Meets with Prime Minister Sato Kilman of Vanuatu to Strengthen Bilateral Maritime Cooperation to Tackle Global Climate Change*, GovCN (7 Sep 2015), [http://www.gov.cn/guowuyuan/2015-09/07/content\\_2926141.htm](http://www.gov.cn/guowuyuan/2015-09/07/content_2926141.htm). (in Chinese)

37 See *Cooperation Document Signed between the Ministry of Natural Resources of China and the Ministry of Environment, Energy and Climate Change of Seychelles*, GovCN (3 Sep 2015), [http://www.gov.cn/xinwen/2018-09/03/content\\_5318853.htm](http://www.gov.cn/xinwen/2018-09/03/content_5318853.htm). (in Chinese)



obtaining its own development blocks. Nevertheless, subject to the relatively large financial and technical costs, there are only a few nations able to participate in the exploitation of minerals in the seabed area. SIDS are even less able to participate. It is really a pity for these SIDS possessing vast sea areas under their jurisdiction but unable to fully exploit them. In the meantime, we also observe that the lack of capacity to independently exploit seabed mineral resources in the vast number of developing States represented by SIDS does not disqualify these States from legislating for domestic seabed mineral resources development. The small island State Tonga, for example, has enacted a law specifically to regulate the engagement in seabed mineral resource activities in the sea area under national jurisdiction as well as in the regional part, namely the *Seabed Minerals Act 2014*.<sup>38</sup> The Area is the common heritage of all mankind, on which the majority of developing States have difficulties in striking a balance for their interests due to the infancy of the exploration and exploitation and the immaturity of the mechanism of benefit distribution. As a result, for SIDS, it will be a win-win situation if foreign enterprises with exploitation capabilities can be brought in to help them exploit seabed minerals in areas under their national jurisdiction and cooperate through technology transfer or a regime similar to international oil exploitation contracts. The current regime for the exploitation and protection of seabed mineral resources under the jurisdiction of a State remains to be improved and is also an area of concern in the law-making process of international law of the sea.

### *C. Addressing International Law Challenges Posed by Rising Sea Levels*

China's cooperation with SIDS should not be limited to the economic and technical aspects; exchanges should be enhanced in the field of international law. As pointed out by some scholars, realizing sustainable development through the construction of islands and reefs in the context of sea level rise is more than an issue of science and technology, which also involves sensitive issues concerning

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38 See ZHANG Zitai, SHEN Hao & ZHANG Wenzhao, *Research on the Law on Exploration and Exploitation of Deep Seabed Resources*, Fudan University Press, 2015, p. 163-164. (in Chinese)

international law and regime.<sup>39</sup> China is currently home to 5,400 islands, both large and small, covering a total area of 38,700 square kilometers.<sup>40</sup> With the rising sea level caused by global warming, SIDS and China share the challenges in international law.

Sea level rise poses common challenges in international law to China and SIDS in four main ways. First, the impact of sea level rise on baselines. The certainty of baselines makes the foundation for securing no dispute over maritime jurisdiction between States, but the rising sea level will undoubtedly exert an impact on the original national jurisdiction. Second, the impact of sea level rise on the legal status of islands and maritime delimitation. An island, once permanently submerged, can no longer meet the basic criteria for islands as required by UNCLOS, which is to be “able to sustain human habitation or economic life of their own.” The challenges in international law posed by sea level rise to SIDS cannot be underestimated for China. The delimitation of maritime boundaries will be even more impossible once the islands are sunk. Third, the impact on the effectiveness of maritime boundary treaties. The sea level rise leads to a loss of the guarantee of the effectiveness of UNCLOS on maritime rights in the maritime boundary treaties among States, leaving the maritime boundaries among States in an unstable state. Fourth, the challenge posed to the principle that “the land dominates the sea” established by UNCLOS.<sup>41</sup> It is controversial whether the island should be recognized as a legal subject after its permanent sinking. If it is recognized, it will go against the aforesaid fundamental principle; if not, this leads to the question of how the legitimate rights and interests of SIDS and archipelagic States can be safeguarded. In spite of the widespread application of techniques for the construction of islands and reefs by many States, there is still an obvious lag in UNCLOS from the perspective of international law with regard to the new hot issue of sea level rise. In this regard, research on the impact of sea level rise on SIDS and the significance of the construction of islands and reefs is a major issue facing

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39 See MA Bo, *Rising Sea Levels: Challenges and Responses for Small Island Developing States from the Perspective of International Law—The Prospect of Cooperation between China and Small Island States*, Chinese Review of International Law, Vol. 5:6, p. 55 (2018). (in Chinese)

40 National Bureau of Statistics & Ministry of Ecology and Environment of People's Republic of China eds, *China Statistical Yearbook on Environment*, China Statistics Press, 2019, p. 3. (in Chinese)

41 FENG Shoubo, *Sea-level Rise and the International Law of the Sea: Challenges and Responses*, Journal of Boundary and Ocean Studies, Vol. 5:1, p. 33-39 (2020). (in Chinese)

the international community in order to safeguard human rights to sustainable development.<sup>42</sup> Therefore, China and SIDS should play leading roles in the research of issues related to the challenges of international law posed by sea level rise.

#### IV. Suggestions for China to Cooperate with SIDS to Build International Maritime Legal Order

Firstly, China should strengthen the training of maritime legal personnel in an all-round way to provide intellectual support for the government's participation in international maritime affairs. Recent years have witnessed the Chinese government's constant efforts to strengthen maritime force building. The Aircraft Carriers Liaoning and Shandong have been successively delivered to the PLA Navy, significantly enhancing the navy's combat capability. The official entry into force of the *Coast Guard Law of the People's Republic of China* has empowered the Coast Guard with a reliable legal guarantee for the law enforcement of China's maritime rights protection. However, there is still a large shortage of professional legal personnel in the settlement of disputes over international law of the sea, as well as insufficient attention to the development of the discipline of maritime law. For this reason, as stated by ZHANG Haiwen, Director of China Institute for Marine Affairs, Ministry of Natural Resources, "[i]t is proposed to set up international law as a first-class discipline, increase the proportion of space and quantity of articles on the law of the sea published in academic journals, and establish additional academic journals specializing in international law and the law of the sea".<sup>43</sup> The purpose is to put efforts into cultivating and establishing a team consisted of excellent marine-related legal personnel. To raise the degree and quality of China's involvement in the process of building the international maritime legal order, there must first be a group of professional and inter-disciplinary talents who master the history of China's maritime development, are familiar with the international law of the sea, and can resolutely defend China's maritime rights and interests in the international arena. Personnel training is a long-term project, but it is a necessary element for participation in the building of the international maritime

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42 *Supra* note 39, MA Bo, p. 46.

43 ZHANG Haiwen, *Strengthening the Capacity Building of Legal Service Teams on the Law of the Sea: the Issue of Construction of "National Teams"*, Chinese Review of International Law, Vol. 7:3, p. 23 (2020). (in Chinese)

legal order. Professional maritime legal personnel are indispensable in maritime affairs, regardless of whether China is in a cooperative or competitive relationship with other countries.

Secondly, China should build a platform for exchanges on the international law of the sea to study the latest practices regarding the international law of the sea. Building a platform for exchanges on the international law of the sea can update China on the latest developments and new trends in the field of international law of the sea, thereby avoiding being caught in a passive position in participating in international maritime affairs. It can also facilitate China to make its voice heard in international maritime affairs and to engage in the rule-making of international maritime affairs. During the cooperation with SIDS on building international maritime legal order, China can hold academic seminars, high-level maritime forums, and dialogues on hot issues concerning the law of the sea and other exchange activities on the international law of the sea, so as to contribute wisdom to the new developments of international law of the sea together with the law of the sea experts invited from SIDS. Sea level rise will exert an important impact on basepoints and baselines, the legal status and delimitation of islands, the effectiveness of maritime boundary treaties, the status of SIDS as subjects of international law, and the resulting “climate refugees”.<sup>44</sup> These issues, though not covered by UNCLOS, have real implications for the sustainable development of China and SIDS. In view of the increasingly serious situation of sea level rise, new developments to the international law of the sea will be bound to become an international consensus. Judging from the content, there is little possibility of changing some of the fundamental principles per se established by UNCLOS, as opposed to the existing possibility of making modifications to some specific contents or rules on the basis of adhering to the aforesaid principles. Seizing the initiative to participate in the law-making of international law with SIDS is an important opportunity for China to seize the initiative in international maritime legal affairs.<sup>45</sup>

Thirdly, China should pursue deeper cooperation with SIDS in various fields to expand our “circle of friends” in international maritime affairs. Most SIDS, subject to their special geographical characteristics, suffer from a general survival

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44 *Supra* note 41, FENG Shoubo.

45 LI Shuangjian, *On Marine Strategy of Major Coastal States*, China Ocean Press, 2014, p. 41. (in Chinese)

crisis caused by issues such as sea level rise. In our role as a responsible power, China can proceed to strengthen exchanges and cooperation with SIDS and offer more financial and technical support to SIDS. On September 26, 2015, President XI Jinping announced at the UN Sustainable Development Summit that China will write off the debt on outstanding intergovernmental interest-free loans due by the end of 2015 owed by designated least-developed countries, landlocked developing countries, and small island developing countries.<sup>46</sup> On December 8, 2017, China and Maldives issued a Joint Press Communiqué stating that the two sides will deepen cooperation on a wide range of areas including in the fields of marine environment, fisheries and tourism, hold the inaugural meeting of China-Maldives Joint Committee on Marine Cooperation in due time, further strengthen coordination and cooperation in the United Nations and on other multilateral fora, and enhance cooperation on global issues including climate change.<sup>47</sup> Our continuous assistance to the cause of sustainable development of SIDS has demonstrated the Chinese government's vision of "a community with a shared future for mankind" and our confidence and determination to jointly promote sustainable development of the global ocean. This is conducive to enhancing the favorable perception of China in international maritime affairs and the recognition of China from the international community, thus enabling China to hold a favorable position in international morality. This will lay a good foundation for China's engagement in building an international maritime legal order.

## V. Conclusion

It is not an easy task to build an international maritime legal order that better suited to the interests of developing States represented by China. For this reason, we should, by insisting on the strategy of "uniting all forces that can be united", actively build a favorable international environment to expand our "circle of friends" in maritime affairs while improving our overall maritime "hard power". We should engage in close partnership with developing States, in particular SIDS,

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46 *XI Jinping's Speech at the UN Sustainable Development Summit*, GovCN (27 Sep 2015), [http://www.gov.cn/xinwen/2015-09/27/content\\_2939377.htm?gs\\_ws=tsina\\_635789483168014923](http://www.gov.cn/xinwen/2015-09/27/content_2939377.htm?gs_ws=tsina_635789483168014923). (in Chinese)

47 *Joint Press Communiqué between the People's Republic of China and the Republic of Maldives (full text)*, GovCN (8 Dec 2017), [http://www.gov.cn/xinwen/2017-12/08/content\\_5245375.htm](http://www.gov.cn/xinwen/2017-12/08/content_5245375.htm). (in Chinese)

on the building of an international maritime legal order. Moreover, the collaboration can extend beyond global fisheries governance, exploitation of seabed mineral resources, and addressing the challenges of international law posed by sea level rise. The increasing focus of the international community on the oceans will expose a growing number of issues concerning the international law of the sea. This will serve as an important opportunity for emerging developing States, which were previously disadvantaged in the law-making process of international law of the sea represented by UNCLOS, to increase their participation. China should also seize this opportunity. China, being an ascendant maritime large power, will keep playing a greater role in the law-making and transformation process of the international law of the sea. This will serve both to safeguard China's national maritime rights and interests and to shatter the long-standing monopoly of the U.S.-led Western States on maritime voice. It will enable the emerging developing States, represented by China, to fully express their demands for maritime rights and interests, and push for a fair, just, and reasonable international maritime legal order.

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