



## Regulation of waste dumping at sea: The Chinese practice

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### ABSTRACT

It was common along China's coastal region to throw wastes, including domestic and industrial, to the sea at random and without care. This has caused severe environmental problems, not only harming the marine environment, but also damaging the residential habitats of the coastal region itself. Unfortunately, before 1982 offshore wastes dumping was not regulated in China. The actual regulations governing such dumping in China formally began in 1982 when the basic law on marine environmental protection, i.e., the Marine Environmental Protection Law came into being.

The significance of the regulation of wastes dumping lies in the fact that it consists of an indispensable part of the comprehensive marine environmental protection system in China. What is more significant is that under the current circumstance that China has been building a harmonious society for its people, the reach of the harmony between Nature and human beings is critical. Thus effective control of wastes dumping at sea is a necessary component in the efforts towards that reach. Since China is the biggest country and has longest mainland coastal line in East Asia, its laws and practice in this regard concerns with the marine environmental protection of the whole East Asian seas.

This paper will address the wastes dumping issue in a legal perspective, including analyzing and assessing the relevant laws and regulations, their implementation and enforcement in China. In addition, it will compare the Chinese regulations with relevant international laws to see whether the Chinese law and its implementation are in line with them. For the purpose of the better explanation of China's law and practice, some relevant cases regarding wastes dumping will be addressed.

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### 1. Introduction

Marine environmental protection is still an important and serious task in the 21st century despite efforts made earlier at the global, regional and national levels. According to a recent report published in *Science*, many fish species would be extinct by around 2050 [1], and the global ocean remains to be threatened by natural as well as human adverse environmental impacts. Dumping of wastes, though not a number one threat to the ocean ecological systems continues to remain as a visible source of pollution which needs to be effectively tackled to better protect the marine environment.

According to statistics, there are three main sources of pollution in China: (1) land-based pollution, which is the biggest source of pollution; almost half of the total wastewater of the country is discharged to the sea, which accounts to about 80% of the pollutants at sea; (2) discharge of wastewater and dumping of wastes to

the sea by marine activities and production; and (3) pollutants carried by air from various places, falling into the sea [2]. It was a common practice along China's coastal region to throw wastes, including domestic and industrial, to the sea. This has caused severe environmental problems, not only harming the marine environment, but also damaging the settlements along the coastal region itself.

Unfortunately, before 1982, offshore waste dumping was not regulated in China. Only the dredges in the port waters were managed by the Harbour Superintendence Administration [3]. The actual regulations of dumping at sea in China were formally introduced in 1982 when the basic law on marine environmental protection, i.e., the Marine Environmental Protection Law (MEPL) came into being. It entered into effect on 1 March 1983 and substantially amended in December 1999 [4].<sup>1</sup> Following this basic law, relevant regulations including the 1985 Regulations Concerning Dumping of Wastes at Sea and the 1990 Measures for

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<sup>1</sup> The English text of the 1999 amended law is available in Office of Policy, Law and Regulations, State Oceanic Administration.

Implementation of the Regulations Concerning the Dumping of Wastes at Sea were adopted. These regulations become the main legal documents governing waste dumping activities in China.

The regulations on waste dumping are important because they are an indispensable part of a comprehensive marine environmental protection system in China. What is more significant is China's goal to create a harmonious society for its people; balancing between the capacities of nature and needs of human beings. Thus effective control of waste dumping at sea is a necessary component in the efforts towards that goal. Since China is the biggest country and has the longest mainland coastline in East Asia, its laws and practices in this regard affect the marine environmental protection of the whole East Asian seas.

This paper will address the waste dumping issue in a legal perspective, including analyzing and assessing the relevant laws and regulations, their implementation and enforcement in China. In addition, it will compare the Chinese regulations with relevant international law to see whether the Chinese law and its implementation are in line with the latter. Some relevant cases regarding waste dumping will be discussed as well.

## 2. General international law

Dumping of wastes at sea has been governed by international law since the 1970s. The first international legal document in this respect is the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes at Sea and Other Matter (or more commonly known as the London Convention), which entered into force on 30 August 1975. It governs the dumping at sea of the wastes generated from land and the prevention of such activities from polluting the marine environment. It takes a so-called "black-and grey-list" approach. "The black list contains substances, the dumping of which is prohibited. The grey list contains substances the dumping of which is only permitted under strict control and provided certain conditions are met" [5].

The second most important international legal document is the 1996 Protocol to the London Convention. It came into force on 24 March 2006. It is regarded as a significant milestone for the protection of the marine environment since it has made "a major change of approach to the question of how to regulate the use of the sea as a depository for waste materials in that, in essence, dumping is **prohibited**, except for materials on an **approved** list. This contrasts with the 1972 Convention which **permitted** dumping of wastes at sea, except for those materials on a **banned** list" [6]. The wastes contained in the approved list include: dredged material; sewage sludge; fish wastes; vessels and platforms; inert, inorganic geological material (e.g., mining wastes); organic material of natural origin; and bulky items primarily comprising iron, steel and concrete. Based on the new Protocol, guidelines for the assessment of wastes or other matter that may be considered for dumping have been prepared for the States Parties to follow. It is expected that the 1996 Protocol will finally replace the London Convention.

The 1996 Protocol redefines the term "dumping" to mean: "(1) any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other manmade structures at sea; (2) any deliberate disposal into the sea of vessels, aircraft, platforms or other manmade structures at sea; (3) any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other manmade structures at sea; and (4) any abandonment or toppling at site of platforms or other manmade structures at sea, for the sole purpose of deliberate disposal." However, "dumping" does not include: "(1) the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other manmade structures at sea

and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other manmade structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other manmade structures; (2) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and (3) notwithstanding paragraph 4.1.4, abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof."<sup>2</sup> In comparison, this definition has enlarged and stated in more detail the original definition provided by the London Convention.

The third important international treaty is the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which came into force on 14 November 1994. It has a whole chapter (Part XII: Protection and Preservation of the Marine Environment) regarding the protection of the marine environment. It lists six sources of marine pollution and dumping of wastes is one of them. Accordingly, States should adopt laws and regulations to prevent, reduce and control pollution by dumping and ensure that no dumping is carried out without the permission of the competent authorities of States.<sup>3</sup> The Convention encourages States Parties to adopt national laws and regulations which should be more effective than global rules and standards. It is noted that UNCLOS contains the same definition of "dumping" as in the 1972 London Convention.

China acceded to the 1972 London Convention in November 1985. On 29 June 2006, China ratified the 1996 Protocol to the London Convention<sup>4</sup> which began to bind China on 29 October 2006. Since 1984, China has attended the annual Consultative Meeting of the Treaty Parties to the London Convention. During the period of 1984–1985, China participated as an observer and after China acceded to the Convention, it has taken its role, beginning 1986, as a formal treaty party. At these meetings the Chinese Delegation stated that the dumping of strong radioactive material and other hazardous substances at sea should be banned. (China had never dumped such materials at sea nor did China have such dumping plan.) China has called for international, regional and bilateral cooperation to coordinate the prevention and control of marine pollution and disposal and transport of wastes at the global level [8]. The competent authority in charge of the dumping at sea is the State Oceanic Administration (SOA) which reports annually to the Secretariat of the London Convention about the categories and quantity of dumped materials.

At the 16th Consultative Meeting in 1993, China accepted, without reservation, three resolutions concerning disposal at sea of radioactive wastes, incineration at sea of industrial wastes and sewage sludge, and sea disposal of industrial wastes, as amendments to the Annexes to the London Convention: Doc LC.51 (16) (1993), Doc LC. 50 (16) (1993), and Doc LC.49 (16) (1993); these amendments came into force on 20 February 1994. However, China had to modify its relevant domestic regulations related to these amendments for the purpose of bringing its domestic law in line with international law. For example, industrial wastes without hazards or low hazards are permitted to be dumped at sea in accordance with the Chinese Regulations on the Dumping of Wastes at Sea in 1985. Thus the acceptance of the above resolutions by the Chinese government necessitates revisions to the relevant domestic laws and regulations [8].

After the United Nations Conference on Environment and Development (UNCED) held in Rio in 1992, environmental

<sup>2</sup> Article 1 of the 1996 Protocol.

<sup>3</sup> Article 210 of UNCLOS.

<sup>4</sup> Text of the ratification decision by the Standing Committee of the National People's Congress is available at [7].

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