

# International Law Analysis of Espionage at Sea and China's Response

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## ABSTRACT

Maritime espionage is a violation of international morality. In terms of the regulation of maritime espionage, there is a legal predicament at the theoretical level, with a lack of corresponding treaty law, international customary law, and international judicial precedents. At the international practice level, although all countries have domestic legislation against espionage, they hold an "ambiguous" double standard towards maritime espionage in international practice. Secondly, the principle of jurisdiction of the flag state and state immunity also bring certain difficulties to the law enforcement actions for regulating maritime espionage. This paper studies the constituent elements of maritime espionage and the legal predicament of regulating maritime espionage, aiming to provide suggestions for improving the security defense legal mechanism for regulating maritime espionage in China.

## KEYWORDS

Maritime Espionage; State Immunity; Jurisdiction of the Flag State; "Principle of Non-Abuse of Rights".

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## 1. THE CONCEPT OF ESPIONAGE

### 1.1. The Connotation of Espionage

Espionage has been prevalent in international relations since ancient times. For instance, after China opened the Silk Road, the West sent specialized personnel to China, who engaged in commercial espionage to steal the methods of producing silk and porcelain. Throughout human history, espionage has been a common activity in international relations.

[1]As long as there is interaction between nations, espionage is difficult to eradicate. With the development of globalization, espionage has become an important means for countries to obtain commercial intelligence and information for foreign negotiations. [2]Various countries have established specialized intelligence organizations, such as the CIA in the United States, MI6 in the United Kingdom, and the KGB in the former Soviet Union.

Espionage activities are organized actions by a state to obtain national security secrets from another country. During the Cold War, military and political espionage were the main types of espionage. After the Cold War, the number of economic espionage cases gradually increased, primarily because economic interests have become the core interests of nations during peacetime. Traditional maritime espionage only involved reconnaissance of coastal military facilities. However, with technological advancements, maritime espionage techniques have evolved to the point where they can illegally explore the hydrological and natural resources of other countries, posing a greater threat economically. Provisions on espionage in international law are scattered throughout the laws of armed conflict. The Hague Regulations annexed to the Convention on the Laws and Customs of War on Land and Article

46 of the Additional Protocol to the Geneva Conventions regarding the Protection of Victims of International Armed Conflicts define the constitutive elements of espionage: "A spy is someone who collects or attempts to collect information in enemy territory secretly or under false pretenses, with the intention of communicating it to the hostile party." Based on this definition, some scholars argue that civilians who gather information in enemy territory without disguise or who are responsible for openly delivering information to the enemy cannot be considered spies. [3] Indian scholar Hingorani defines "espionage" as "activities aimed at collecting or attempting to collect foreign strategic intelligence for the benefit of the sending country." He further points out that espionage personnel can be divided into three types: diplomatic representatives, citizens of the country, and foreigners. [4] Oppenheim's International Law defines a spy as a secret agent sent abroad by a country to clandestinely obtain military and political intelligence. [5]

## **1.2. Characteristics of Maritime Espionage**

Maritime espionage refers to espionage activities conducted at sea, involving the use of intelligence-gathering methods to steal military, political, and economic intelligence from other countries. With the advancement of technology, maritime espionage practices in international contexts can be broadly categorized into three types: (1) Reconnaissance by military divers: For example, in 2017, Japan deployed divers to illegally conduct reconnaissance at China's overseas support base in Djibouti. (2) Intelligence collection using unmanned underwater vehicles (UUVs): For instance, in 2016, a U.S. unmanned underwater vehicle was discovered conducting illegal reconnaissance in China's South China Sea region. [6] (3) Maritime espionage conducted by military or state vessels: This is the most common form of maritime espionage.

The differences in the constitutive elements between land-based and maritime espionage mainly lie in the following aspects: (1) Jurisdictional principles: Maritime espionage is a type of maritime crime. In areas beyond the sovereign jurisdiction of another state, the flag state jurisdiction applies. In contrast, land-based espionage is primarily governed by territorial jurisdiction, with personal jurisdiction playing a supplementary role. (2) Scope of state jurisdiction: Maritime espionage mainly occurs in a coastal state's internal waters, territorial sea, contiguous zone, and exclusive economic zone. Depending on the maritime zone, the state's jurisdiction over maritime espionage gradually decreases from internal waters to the exclusive economic zone. (3) Enforcement authority: A state's enforcement authority over maritime espionage is based on the right of visit and the right of hot pursuit as stipulated in Articles 110–111 of the United Nations Convention on the Law of the Sea (UNCLOS). However, due to the immunity granted to foreign warships and state vessels, enforcing laws against maritime espionage is more challenging than against land-based espionage. (4) Legal basis for regulation: Land-based espionage is regulated by domestic laws, while maritime espionage is governed by international maritime law, primarily under UNCLOS, and is subject to the principle of flag state jurisdiction.

## **2. CHALLENGES IN REGULATING MARITIME ESPIONAGE**

### **2.1. International Legal Basis**

The legality and constitutive elements of espionage are primarily addressed in international laws applicable during wartime. [7] For example, Article 34 of the Hague Regulations recognizes that states have the right to obtain critical intelligence through espionage during wartime. Articles 29–30 define a spy as "any person who, acting clandestinely or under false pretenses, gathers or attempts to gather information in territory controlled by an adversary with the intent to communicate it to a party to the conflict." The Hague Regulations acknowledge the legality of espionage, with Article 24 stating that gathering intelligence in enemy-occupied territory is a recognized art of war, and spies and agents may be lawfully deployed during wartime. However, the Hague Regulations do not prohibit

belligerent states from punishing spies who gather intelligence covertly under domestic or occupation laws. Additionally, the First Additional Protocol stipulates that civilians providing intelligence to the enemy, even if the occupied territory is outside the combat zone, fall outside the scope of the Protocol's provisions. This grants states the right to combat enemy espionage during wartime. The Protocol states: "Any member of the armed forces of a party to the conflict who falls into the power of an adverse party while engaging in espionage shall not have the right to the status of prisoner of war and may be treated as a spy. However, they must be treated humanely, and their trial must respect recognized judicial guarantees. Spies may not be punished without trial and conviction." Wartime international law denies captured spies the status of prisoners of war, and in practice, victorious states often prosecute enemy spies for war crimes after the conflict. Consequently, states tend to adopt an ambiguous stance of "public denial but covert protection" toward their own spies. [8] In international practice, there is no international treaty regulating maritime espionage during peacetime.

At the level of customary international law, custom is a dynamic process of creating law while also serving as a constraint on unlawful dynamics. Customary theory must balance flexibility and adaptability with sufficient stability to prevent decision-makers from exploiting loopholes in customary rules. However, finding a precise balance between the dynamic and static elements of customary theory is challenging. Law, in essence, is a collection of general rules that sacrifice precision for universal applicability. Custom is the prototype of law, and even when customs remain applicable, they can give rise to conflicting regulations, which inevitably imply the emergence of new, opposing customary rules. At this level, customary international law is a secondary rule within the international legal framework. According to the theory of Western scholar H.L.A. Hart, any developed legal system contains two distinct types of rules: primary rules, which dictate individual conduct, and secondary rules, which govern the introduction, modification, and enforcement of primary rules. [9] The validity of customary international law depends on the legitimacy of primary rules. In international practice, there is a lack of the necessary foundation—consistent state practice and *opinio juris*—to form customary international law regulating (maritime) espionage. States' anti-espionage legislation is limited to domestic laws, and no customary international law regulating (maritime) espionage has emerged. Furthermore, international courts have yet to adjudicate any cases related to (maritime) espionage. [10]

## **2.2. Realist Theory and International Dilemmas**

Chinese scholar Wang Tieya noted that, at its core, "international law is essentially the legalization of international relations." [11] After World War II, realism became the dominant framework for Western international relations. Realism, rooted in the analytical traditions of Machiavelli, Hobbes, and Locke, posits that international relations are governed by human nature and the "state of nature." From this perspective, realism presents three core tenets: First, human desires and the will to survive manifest politically as the "will to power," and state power is an extension of this human will. Second, the international system exists in a state of anarchy, where sovereign states invariably pursue power. International relations are fundamentally power relations, and international politics is a struggle for power. States seek to maximize and protect their interests, making conflict and competition the defining features of international relations. The greater a state's power, the greater its benefits, and vice versa. Third, Power and interests are the central factors influencing foreign policy, outweighing morality and ideals in decision-making. Consequently, Western scholars argue that anarchy is a defining characteristic of the international system, and the threat or use of force is a common and effective tool for states to achieve their objectives. [12] Prominent realist scholar Hans Morgenthau explicitly argued that legal obligations must yield to national interests. [13] Under the influence of realist theory, Western powers view espionage, despite its infringement on state sovereignty, as a necessary measure for national security. [14] Some scholars even argue that espionage helps states obtain foreign intelligence, enabling them to formulate strategies to prevent conflicts and thereby serving as an effective means of preventing war. [15] Moreover, realist scholars' disregard for

international law and morality has led them to oppose the creation of global or regional anti-espionage treaties.

For example, the United States enacted the Espionage Act as early as 1917 but has never ceased its foreign espionage activities, even to the extent of blatantly eavesdropping on foreign leaders. Additionally, there is ongoing debate within U.S. academic circles about the legality of espionage. For instance, Asaf Rubin's "right to spy" theory argues that, from the perspective of national survival, espionage is a crucial measure for safeguarding national security. States have the right to conduct espionage to protect their military and political security while also emphasizing domestic anti-espionage legislation. [16]Scholar Martin Libicki advocates for distinguishing between espionage that threatens national security and espionage that does not, proposing a "national security exception" that deems the former illegal while advocating minimal interference in the latter. Others support a "floating standard" approach, which evaluates the legality of espionage on a case-by-case basis. [17]

### **2.3. Immunity of Warships and State Vessels**

The immunity of state-owned vessels is closely tied to state immunity. Vessels can be categorized into non-state-owned vessels and state-owned vessels based on ownership. Non-state-owned vessels are privately or corporately owned, while state-owned vessels are owned or controlled by the state. Key international conventions addressing the immunity of state-owned vessels include the International Convention for the Unification of Certain Rules Concerning the Immunity of State-Owned Vessels, the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention on Civil Liability for Oil Pollution Damage, the International Convention on Civil Liability for Bunker Oil Pollution Damage, and the United Nations Convention on Jurisdictional Immunities of States and Their Property.

The International Convention for the Unification of Certain Rules Concerning the Immunity of State-Owned Vessels was the first attempt to limit the jurisdictional immunity of state-owned vessels. Although it has few signatories, it has significantly influenced the theory of state vessel immunity. Articles 1 and 2 of the Convention stipulate that state-owned vessels operated for non-public purposes should be subject to the same liabilities and obligations as private vessels, meaning they are equally subject to jurisdiction, litigation, and legal procedures. However, Article 3 limits the scope of Articles 1 and 2, excluding government warships, public service vessels, medical ships, or state merchant vessels engaged in public service at the time of litigation. [18]The 1982 UNCLOS grants commercial and government non-commercial vessels the right of innocent passage in territorial seas, affording them civil immunity from coastal states' enforcement measures (Articles 27–28). Articles 95 and 96 provide complete immunity to warships and government vessels used for public purposes. The International Convention on Civil Liability for Oil Pollution Damage and the International Convention on Civil Liability for Bunker Oil Pollution Damage prohibit states from claiming immunity for oil pollution damage caused by state-owned vessels. Article 11 of the former states: "Each State Party shall subject vessels owned by it and used for commercial purposes to the jurisdiction of courts under Article 9 and waive all defenses based on its status as a sovereign state." Article 4 of the latter contains similar provisions. The 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property also addresses state vessels, with Article 16 stating: "Vessels used for non-commercial government purposes cannot claim jurisdictional immunity, except for warships or auxiliary vessels."

The earliest judicial precedent on the immunity of state vessels dates to the 1812 U.S. Supreme Court case *The Schooner Exchange v. McFaddon*, which held that foreign sovereign immunity extends to foreign sovereigns, diplomats, and military forces. In the 1880 British case *The Parlement Belge*, the court ruled: "Public vessels of a foreign government, like warships, are considered public property of the foreign state. Due to the absolute independence of sovereign states and the mutual respect for their dignity, each state refrains from exercising territorial jurisdiction over such vessels through its

courts." [19]British scholar Higgins shared this view, stating: "If a foreign warship or public vessel is permitted to enter a state's territory, either explicitly or implicitly, the territorial state relinquishes jurisdiction over it. No public or private legal actions may be taken against such vessels, and they are immune from arrest or judicial interference. In cases of violations, the affected state must seek redress through diplomatic channels with the vessel's flag state." [20]

For example, in 2017, when China's first overseas base in Djibouti became operational, it was illegally surveilled by Japanese military divers. China lawfully expelled the divers and lodged a diplomatic protest. Given the divers' military status, China could not arrest them. [21]Similarly, in the 2016 U.S.-China South China Sea underwater drone incident, the U.S. claimed that the drone conducting illegal surveillance in China's South China Sea was a government vessel entitled to state immunity. [22]In summary, maritime espionage often exploits state immunity, creating challenges for states in regulating such activities.

#### **2.4. Jurisdictional Conflicts Arising from Maritime Disputes: The Case of the South China Sea**

Japanese scholar Chie Kojima argues: "Under international law, the entity entitled to freedom of navigation is not the vessel or its owner but the state. Any infringement on a vessel's freedom of navigation is considered a violation of the flag state's sovereignty and should be addressed as a matter of state responsibility.[23] " Chinese scholar Song Yunxia defines state maritime jurisdiction as "the authority of a state, based on sovereignty and international conventions and customs, to manage persons, matters, and objects in various maritime zones.[24] " She further notes that maritime jurisdiction includes supervision, boarding, inspection, arrest, detention, confiscation, and judicial proceedings.

The UNCLOS, the 1966 International Convention on Load Lines, the 1972 International Regulations for Preventing Collisions at Sea, and the 1974 International Convention for the Safety of Life at Sea provide detailed provisions on flag state jurisdiction. UNCLOS divides the world's oceans into nine zones: state jurisdictional waters and non-state jurisdictional waters. State jurisdictional waters, in descending order of jurisdictional authority, include internal waters (full jurisdiction), territorial seas (jurisdiction except for innocent passage), contiguous zones (jurisdiction over customs, finance, immigration, and health), and exclusive economic zones (jurisdiction over economic matters). Non-state jurisdictional waters include the high seas and the continental shelf. Under UNCLOS, states enjoy freedoms of navigation, fishing, overflight, constructing artificial islands, laying submarine cables, and scientific research on the high seas. Jurisdiction on the high seas is governed by universal jurisdiction and flag state jurisdiction. Universal jurisdiction covers issues such as slavery, piracy, illegal broadcasting, drug trafficking, stateless or flag-of-convenience vessels, and environmental protection, as outlined in UNCLOS and polar treaties. Flag state jurisdiction is primarily addressed in the aforementioned conventions.

In the context of the South China Sea, since the 2016 South China Sea Arbitration, Western countries led by the U.S. have intervened in the disputes. The ambiguity of UNCLOS provisions on islands and reefs, coupled with conflicting claims over historical waters, has made regulating espionage in the South China Sea particularly challenging for China. The Memorandum on Historic Bays was the first UN legal document to address historic rights, incorporating the concept into treaty law. The Convention on the Territorial Sea and the Contiguous Zone and UNCLOS provide specific provisions on historic rights and dispute resolution. Chinese scholars argue that the concept of historic bays, as introduced in the North Atlantic Fisheries Case, follows a similar logic: "Bays under long-term occupation and jurisdiction by a state are considered internal waters and part of the state's territory, with such claims being recognized through the acquiescence of neighboring states." [25]The disputes between China and Southeast Asian coastal states primarily revolve around whether China's long-standing jurisdiction over the U-shaped line in the South China Sea constitutes historic rights under

customary international law. The South China Sea Arbitration has further complicated China's enforcement efforts in the region: First, the vague definition of "islands" and "rocks" under Article 121 of UNCLOS has led to differing interpretations by China and its neighbors. Post-arbitration, overlapping claims in exclusive economic zones have created jurisdictional conflicts. Second, China's enforcement actions in certain areas based on "historic rights" are challenged by neighboring states due to the lack of clear provisions on historic rights in UNCLOS. These factors collectively contribute to the difficulties in regulating maritime espionage and enforcing jurisdiction in the South China Sea.

### **3. THE SIGNIFICANCE AND SUGGESTIONS OF PERFECTING THE LEGAL MECHANISM OF SECURITY DEFENSE FOR REGULATING MARITIME ESPIONAGE IN CHINA**

#### **3.1. The Significance of Perfecting the Legal Mechanism of Security Defense to Regulate Maritime Espionage in China**

First, improving the legal mechanism of maritime espionage security defense is a necessary move to implement our country's strategy of "offshore defense, ocean protection". The Defense White paper "China's Military Strategy" issued by the Ministry of National Defense in 2015 put forward the strategic requirements of "offshore defense and ocean-going protection" for the Chinese navy. [26]The South China Sea and other sea areas are important positions of maritime defense in China's Southern Theater Command, and important battlefields for deterring and rapid operations against the enemy. In particular, the unique geographical environment of the South China Sea provides a natural barrier for China to break the blockade of the island chain. To improve the legal mechanism of maritime espionage security is a necessary move to maintain the military security of the southern Theater command and implement the strategy of "offshore defense, ocean protection". Secondly, improving the security and defense legal mechanism of maritime espionage is an important guarantee for the transformation of China's navy. The strategic transformation of the navy refers to the major adjustment of the existing state of the navy in response to changes in the external environment, so that it can better cope with today's challenges. [27]After the "Maritime Silk Road" initiative was proposed and implemented in 2013, it was inevitable for the Navy to begin the transformation in response to the requirements of escorting the "Maritime Silk Road" initiative. Chinese scholars believe that the transformation of our navy mainly includes the transformation of strategic objectives, the transformation of strategic tasks and the transformation of strategic system. As far as strategic tasks are concerned, in addition to the traditional maritime law enforcement tasks, the Chinese Navy is also burdened with maritime counter-terrorism and maritime counter-espionage tasks in the non-traditional security sense. [28]Third, improving the anti-espionage mechanism in the South China Sea is not only an important task for the transformation of our navy, but also an important guarantee for ensuring the intelligence security of our Navy. Homeland security and national security; Traditional and non-traditional security; Development issues and security issues; Our own security and our common security." Maritime espionage, as a non-traditional security risk, poses a significant threat to China's territorial sovereignty and national military security. Improving the legal mechanisms for safeguarding against maritime espionage aligns with the concept of national security and represents a major practice in implementing the holistic approach to security.

#### **3.2. Issues with the Legal Mechanisms for Safeguarding Against Maritime Espionage in China**

##### **3.2.1. Issues with Criminal Jurisdiction over Maritime Law Enforcement**

As previously mentioned, general international law does not provide specific regulations for maritime espionage activities. The "Convention" only addresses international crimes such as piracy, without touching on the constitutive elements of maritime espionage. In practice, it is somewhat forced for

coastal states to regulate maritime espionage by referring to "harmful acts" in various maritime zones as outlined in the "Convention." Moreover, there are significant gaps in the arrest, detention, and trial processes for maritime espionage. China's "Anti-Espionage Law" and "National Security Law" target espionage activities on land, whereas maritime espionage occurs across different maritime zones. While China's territorial law can apply to espionage in inland waters, foreign warships enjoy the right of innocent passage in territorial seas under the "Convention." Whether it is espionage conducted by frogmen or illegal reconnaissance by military spy ships, it is challenging to directly apply the criminal jurisdiction of territorial law. In the contiguous zone, the "Convention" only grants coastal states criminal jurisdiction over customs, fiscal, immigration, and sanitary matters. Although China's domestic law adds national security to these matters based on the "Convention," there is no corresponding provision in domestic law that aligns with the "Convention" regarding the constitutive elements of maritime espionage. Lastly, Article 6 of China's "Criminal Law" applies to "crimes committed within the territory of China," where the territory is limited to China's territorial seas and inland waters, excluding the contiguous zone and the exclusive economic zone. Meanwhile, maritime espionage often occurs on ships, leading to a concurrence of flag state jurisdiction and the territorial jurisdiction under Article 6 of China's "Criminal Law."

### 3.2.2. Issues with the Judicial Jurisdiction of Maritime Courts

Chinese law grants maritime courts jurisdiction over maritime torts such as ship collisions but does not include exclusive jurisdiction over maritime espionage that threatens national security. If maritime tort disputes arise due to espionage activities by other countries, there will inevitably be jurisdictional conflicts between China's maritime courts and other domestic courts.

### 3.2.3. Unclear Constitutive Elements of Maritime Espionage

As mentioned earlier, maritime espionage is typically conducted using state vessels, warships, unmanned vessels, and frogmen. However, international law does not provide a legal definition for unmanned vessels and frogmen. Moreover, flag state jurisdiction and universal jurisdiction are the primary principles for regulating maritime crimes during peacetime. The former mainly applies to crimes on national vessels, while the latter focuses on combating international crimes like piracy. Due to the unique nature of maritime espionage and the lack of treaty law and customary international law to regulate it, coupled with some countries' ambiguous attitudes towards maritime espionage, regulating such activities is extremely challenging.

### 3.2.4. Issues with Law Enforcement Authority in Highly Sensitive Maritime Areas of the South China Sea

As previously mentioned, there are overlapping exclusive economic zones in the South China Sea between China and other countries. Implementing coercive measures against maritime espionage in these highly sensitive overlapping areas can easily lead to diplomatic disputes. Additionally, since the South China Sea arbitration case, neighboring countries have disputed China's jurisdiction over historical waters in the South China Sea, further complicating China's efforts to regulate maritime espionage.

## 3.3. Recommendations for Improving China's Legal Mechanisms to Regulate Maritime Espionage

### 3.3.1. Utilize International Law Principles Effectively

Article 38 of the Statute of the International Court of Justice categorizes the sources of international law as international treaties, international customs, general principles of law, and the teachings of the most highly qualified publicists. Professor Chen Zhishi from Taiwan, China, believes that this provision encompasses international law, statutory law, customary law, legal principles, case law, and scholarly opinions, thereby preventing situations where the International Court of Justice has no applicable law for international legal disputes. [29] From the perspective of legislative interpretation,

Article 38 of the Statute of the International Court of Justice includes general principles of law, affirming that in the absence of international treaties and customary international law, general principles of law can serve as judicial bases with the same effect as international treaties and customary international law. Article 21, paragraphs 1(b) and (c) of the Rome Statute of the International Criminal Court also contains similar provisions, stating that "in the absence of applicable provisions in the Statute, Elements of Crimes, and Rules of Procedure and Evidence, the Court shall apply general principles of law derived from national laws of legal systems of the world, including, as appropriate, the national laws of states that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with the Statute, international law, and internationally recognized norms and standards." Judge Liu Daqun of the International Criminal Tribunal for the former Yugoslavia commented on this provision, stating that general principles of law are an independent source of international law, allowing the International Criminal Court to adjudicate based on general principles of law in the absence of international treaties and customary international law. [30] In response to maritime espionage, China can argue that such activities violate the principles of "due regard," "residual rights," and "non-abuse of rights" as stipulated in the Convention. As previously mentioned, general principles of law can serve as the basis for determining whether a state's actions constitute an internationally wrongful act in the absence of international treaties and customary international law. The principles of "due regard," "residual rights," and "non-abuse of rights" in the Convention require states to consider the interests of other states when exercising their maritime rights under the law of the sea. Maritime espionage undoubtedly poses a threat to the national security and sovereignty of coastal states. China can use these principles of the law of the sea to expel or obstruct maritime espionage activities or engage in diplomatic negotiations.

### 3.3.2. Establish a Civil-Military Joint Anti-Maritime Espionage System

As previously mentioned, maritime espionage activities often use state vessels or warships as cover, making it time-consuming to gather evidence under China's Anti-Espionage Law. In such cases, maritime espionage activities have ample time to withdraw and destroy evidence. This paper recommends establishing a civil-military joint anti-maritime espionage system. In addition to routine naval patrols, China could create a reward and subsidy system for fishermen and maritime militias to conduct regular anti-espionage reconnaissance. Economic rewards and honorary titles could motivate civilian organizations to actively participate in anti-maritime espionage efforts. Additionally, improving the reporting channels for civilian vessels to report maritime espionage activities and promptly verifying and regulating such reports is essential.

### 3.3.3. Persist in Building the Maritime Silk Road and Constructing a Maritime Community with a Shared Future

In the context of the prevailing (neo)realist theories in Western countries, maritime espionage, though violating international ethics, is seen as an effective and low-cost means for states to maximize their maritime power. Early realists considered maritime power a crucial component of national interests. For example, the United States' maritime hegemony theory evolved through three stages: the first stage was marked by the publication of Mahan's "The Influence of Sea Power upon History," which argued that control of the sea was a decisive factor in national prosperity and a means to counterbalance land powers. [31] The second stage was characterized by Lehman's maritime theory, which emphasized the unrestricted use of the sea as a criterion for global maritime dominance. The third stage emerged after the Cold War, with the U.S. military's transformation theory to maintain global dominance. All three stages were deeply influenced by American realist political thought. As previously mentioned, under this international trend of thought, maritime espionage is viewed by realists as a legitimate means of pursuing international power. In response, this paper advocates for the concept of a "maritime community with a shared future" in legal and diplomatic activities to counter the realist claims of countries like the United States.

The concept of a maritime community with a shared future embodies the fundamental values of modern maritime law. The history of maritime law shows that its rules and principles are the result of the interests and needs of different countries at various historical stages. The "community with a shared future for mankind" is the developmental goal of the "maritime community with a shared future," and the latter is the practical implementation of the former. From the "maritime community with a shared future" to the "community with a shared future for mankind," it is necessary to abandon hegemonic actions and jointly promote maritime governance, maintain maritime order, and ensure maritime security. [32]Implementing the concept of a maritime community with a shared future can help eliminate the "prisoner's dilemma" in international security caused by realist international relations theories.

#### 3.3.4. Establish a Transnational Joint Law Enforcement Cooperation Mechanism

Article 19 of the Draft Articles on State Responsibility categorizes state responsibility into four types: acts of aggression violating international security, breaches of international obligations to uphold the self-determination of peoples, breaches of international obligations of fundamental importance to humanity, and breaches of international obligations to protect the human environment. As previously mentioned, although general international law lacks conventions to hold maritime espionage accountable, such activities undoubtedly violate the principles of peace in the UN Charter and the United Nations Convention on the Law of the Sea. This paper recommends that China actively establish an international accountability mechanism for maritime espionage. Key measures include: First, actively collaborating with neighboring countries in the South China Sea to formulate an anti-maritime espionage convention. This convention should clearly define state responsibility for maritime espionage and establish a cooperative system for the right of visit and hot pursuit among South China Sea states. In low-sensitivity maritime areas or overlapping exclusive economic zones, a "visit first, notify the flag state later" approach could be adopted. Ships engaged in maritime espionage could have their espionage tools confiscated, face state responsibility, and be required to issue diplomatic apologies and compensation. The procedures for visit and compensation for wrongful visits should follow the specific provisions of the Convention. Second, explicitly listing maritime espionage as an internationally wrongful act violating regional security in the "Code of Conduct in the South China Sea" and affirming its illegality. Finally, signing joint anti-espionage patrol agreements with friendly countries in the South China Sea with minimal or no maritime boundary disputes, forming a comprehensive anti-maritime espionage intelligence mechanism covering the entire South China Sea.

#### 3.3.5. Improve the Legal Mechanisms for Safeguarding Against Maritime Espionage Through Domestic Legislation

**Legislative Level:** China could refer to the United Nations Convention on the Law of the Sea and anti-espionage legislation from other countries to specifically define the constitutive elements of maritime espionage in the "Basic Law of the Sea." Additionally, Article 38 of the Anti-Espionage Law could be amended to include "espionage activities conducted within the maritime areas under national jurisdiction." China should also actively participate in international legislation and sign joint anti-maritime espionage treaties with neighboring maritime countries.

**Judicial Level:** It is recommended to amend the Maritime Code to assign the judicial authority over maritime espionage cases to maritime courts. As intermediate-level courts with experience in handling foreign-related criminal cases, maritime courts, along with public security and procuratorial organs, could establish specialized anti-maritime espionage mechanisms similar to the railway public security and judicial system. This would involve setting up anti-espionage divisions within maritime courts, specialized departments in municipal procuratorates, and dedicated anti-maritime espionage task forces within maritime law enforcement agencies. Maritime police would collect intelligence on maritime espionage, and once confirmed, the cases would be reviewed by the procuratorate's anti-maritime espionage division. If the cases meet the case filing standards, they would be submitted to

the maritime court's anti-espionage division for trial. If the defendant disagrees with the first-instance verdict, they could appeal to the provincial high court. [33]

Enforcement Level: China could align the United Nations Convention on the Law of the Sea with the ongoing drafting of the "Basic Law of the Sea" to grant maritime law enforcement agencies criminal jurisdiction over maritime espionage activities. The "Basic Law of the Sea" could include provisions such as "the state has criminal jurisdiction over the following maritime espionage activities: violations of innocent passage in territorial seas; violations of customs, fiscal, immigration, and sanitary matters in contiguous zones; illegal exploration of natural resources and destruction of artificial islands and other infrastructure in exclusive economic zones." Additionally, the Supreme People's Procuratorate and the Supreme People's Court could issue judicial interpretations to extend the application of Article 6 of the Criminal Law to contiguous zones and exclusive economic zones.

#### **4. CONCLUSION**

In conclusion, maritime espionage has become a significant non-traditional threat to international security and national sovereignty. Due to the lack of specific provisions in international law during peacetime, China faces considerable challenges in combating maritime espionage, including insufficient legal foundations, ambiguities in judicial application, and limitations in enforcement authority. These challenges are particularly acute in sensitive maritime regions such as the South China Sea, where ambiguous interpretations of historic rights and competing sovereignty claims further complicate jurisdictional enforcement. Against this backdrop, improving China's legal mechanisms for regulating maritime espionage is of strategic necessity. It aligns with the nation's maritime defense strategy of "offshore defense and far-sea protection," supports the strategic transformation of the navy, and is critical for safeguarding national security interests in complex maritime environments. Maritime espionage not only threatens the military security of the Southern Theater Command but also endangers the broader objectives of national development and regional stability. To address these challenges, this paper proposes a series of institutional and legal recommendations. These include invoking general principles of international law in the absence of explicit treaty or customary rules, establishing a civil-military joint anti-espionage system, promoting the concept of a "maritime community with a shared future," fostering multilateral law enforcement cooperation, and improving domestic legislation through targeted amendments to the Anti-Espionage Law, the Maritime Code, and the Criminal Law. By coordinating reforms across legislative, judicial, and enforcement levels, China can establish a comprehensive legal framework to regulate maritime espionage with greater precision and authority. Ultimately, strengthening China's legal and institutional capabilities in countering maritime espionage will enhance its maritime rule-making power and contribute to a more stable, lawful, and cooperative global maritime order. This is not only a necessary response to realist-driven maritime power competition but also a proactive step toward building a more secure and just maritime future.

#### **REFERENCES**

- [1] Ernest Volkman, *The History of Espionage*, translated by Liu Bin et al., Shanghai: Wenhui Publishing House, 2009, p. 54.
- [2] Christopher Baker, *Tolerance of International Espionage: A Functional Approach*, *American University International Law Review*, p.1094-1095(2004).
- [3] Han Qiuming, Zhou Xiping, Xie Xiaozhuan, "Role Analysis and Prevention Strategies of Cyber Espionage," *Journal of Intelligence*, No. 6, 2014, pp. 10–16.
- [4] Hingorani, *Modern International Law*, translated by Chen Baolin et al., Chongqing Publishing House, 1988, pp. 237–239.
- [5] Jennings et al., *Oppenheim's International Law*, translated by Wang Tieya et al., Encyclopedia of China Publishing House, 1998, p. 134.

- [6] Liu Dan, "China's Navy Seizes U.S. Unmanned Underwater Vehicle: Who Has the Legal High Ground in International Law?" *The Paper*, [http://www.thepaper.cn/newsDetail\\_forward\\_1585150](http://www.thepaper.cn/newsDetail_forward_1585150), accessed March 1, 2022.
- [7] UK Ministry of Defence, *Manual of the Law of Armed Conflict*, translated by the General Staff Department of the People's Liberation Army, Oxford University Press, 2009, pp. 36–37.
- [8] Huang Zhixiong, "On the Regulation of Espionage in International Law: A Commentary on the 2014 U.S. Indictment of Chinese Military Personnel," *Contemporary Law Review*, No. 1, 2015, pp. 140–141.
- [9] Anthony D'Amato, *The Concept of Custom in International Law*, translated by Jiang Shibo, Shandong Literature and Art Publishing House, 2012, p. 32.
- [10] Huang Zhixiong, Sun Yunyun, "The Legal Declaration and Practical Application of the Principle of Cyber Sovereignty: Revisiting the Regulation of Cyber Espionage in International Law," *Yunnan Social Sciences*, No. 6, 2021, p. 74.
- [11] Wang Tieya (ed.), *International Law*, Law Press, 1995, p. 1.
- [12] Ni Shixiong, *Contemporary Western International Relations Theory*, Fudan University Press, 2005, pp. 68–69.
- [13] Morgenthau, Hans, *Politics Among Nations: The Struggle for Power and peace*, Knopf, 1978.p10.
- [14] Huang Zhixiong, "On the Regulation of Espionage in International Law: A Commentary on the 2014 U.S. Indictment of Chinese Military Personnel," *Contemporary Law Review*, No. 1, 2015, pp. 138–139.
- [15] Hingorani, *Modern International Law*, translated by Chen Baolin et al., Chongqing Publishing House, 1988, p. 238.
- [16] Asaf Lubin, *The Liberty to Spy* *Harvard International Law Journal*, Vol.61 ,Issue 1 ,p.237–238(2020).
- [17] Ashley S.Deeks, *Confronting and Adapting: Intelligence Agencies and International Law* ,*Virginia Law Review* ,Vol.102 ,No.3 ,p.677(2016).
- [18] Xu Shu, "On the Limited Jurisdictional Immunity of State-Owned Ships," *Chinese Journal of Maritime Law*, No. 2, 2012, p. 47.
- [19] Gong Renren, *Comparative Study on State Immunity*, Peking University Press, 1994, p. 18.
- [20] Higgins et al., *Maritime International Law*, translated by Wang Qiangsheng, Law Press, 1957, p. 183.
- [21] Zou Ligang, Wang Zhangping, "Research on Legal Issues of Security and Defense of China's Overseas Military Bases," *Journal of Ocean University of China (Social Sciences Edition)*, No. 3, 2020, p. 101.
- [22] Chief Journalist Douglas H.Stutz, *U.S.Navy, UUV Use in Support of Operation Iraqi Freedom Recounted*, *Nav Sea News Wipe*, Aug.22, 2003, at B1.
- [23] Mizukami Chiyuki, *Ship Nationality and Flags of Convenience*, translated by Quan Xianshu, Dalian Maritime University Press, 2000, p. 19.
- [24] Song Yunxia, *Theory and Practice of National Maritime Jurisdiction*, Ocean Press, 2009, p. 4.
- [25] Jia Yu, "China's Historic Rights in the South China Sea," *China Legal Science*, No. 3, 2015, p. 183.
- [26] Zhang Chi, "The Deployment Models of Major Powers' Overseas Forces and Their Implications for China," *Social Sciences*, No. 6, 2018, pp. 15–26.
- [27] Elinor Sloan, *Military Transformation and Modern Warfare: A Reference Handbook*, London: Praeger Security International, p. 2(2008).
- [28] He An, "The '21st Century Maritime Silk Road' and the Transformation of China's Naval Strategy: Focusing on the South China Sea," *Asia-Pacific Security and Ocean Studies*, No. 5, 2020, p. 75.
- [29] Chen Zhishi, *The International Court of Justice*, Taiwan Commercial Press, 1983, p. 281.
- [30] Li Shiguang, Liu Daqun, Ling Yan, *Commentary on the Rome Statute of the International Criminal Court (Volume I)*, Peking University Press, 2006, p. 249.
- [31] Geoffrey Parker, *Western Geopolitical Thought in the Twentieth Century*, translated by Li Yiming et al., People's Liberation Army Press, 1992, p. 15.
- [32] Zhu Feng, "From 'Community with a Shared Future for Mankind' to 'Maritime Community with a Shared Future': Concepts and Pathways for Promoting Global Ocean Governance and Cooperation," *Asia-Pacific Security and Ocean Studies*, No. 4, 2021, p. 2.
- [33] Zhu Feng, "From 'Community with a Shared Future for Mankind' to 'Maritime Community with a Shared Future': Concepts and Pathways for Promoting Global Ocean Governance and Cooperation," *Asia-Pacific Security and Ocean Studies*, No. 4, 2021, p. 2.