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Should China access to the convention on the protection of underwater cultural heritage? – A SWOT analysis

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In recent years, with China's marine strength having enhanced, the discussion on whether to access to the 'Convention on the Protection of Underwater Cultural Heritage' has become increasingly prominent. A growing number of experts and scholars believe that the current domestic laws cannot meet the needs of development; thus accession to the 'Convention' may after all be accepted as a solution. Given the current development in China, it cannot be generalized whether it is appropriate to access to the 'Convention'. Indeed, based on the analysis of comparison between status quo of domestic legislation and international marine development, there is no necessity for China to eagerly access to the 'Convention', in that for many issues, the domestic laws in China have many differences with international law, and still need further development and improvement.

KEYWORDS

underwater cultural heritage, SWOT analysis, domestic law, scope of jurisdiction, international law

Introduction

As a maritime power, China possesses nearly 3,000,000 square kilometers (km) oceanic areas and 18,400 km coastlines, adjacent to the Bohai Sea, the Yellow Sea, the East China Sea and the South China Sea, thus leading to abundant marine resources (Liu and Liu, 2012). During the long historical development, China develops not only the splendid overland cultures but also the maritime cultures, such as Dong Yi Culture, Baiyue Culture and so on, among which 'Maritime Silk Road' has greatly attracted worldwide attention (Shan, 2011). Underwater cultural heritage, as the top priority in marine resources (Vrellis, 2019), also provides a rare material reference for scientific and archaeology research. Rich in archaeological value, and as a witness to history, underwater cultural heritage plays an indelible role in safeguarding China's sovereignty as well.

However recently, driven by substantial economic benefits (Beukes, 2001), underwater cultural heritage is subjected to severe damage and even the risk of extinction caused by treasure hunter (Fu, 2006).¹ Various treasure hunting events occurred near the Chinese shore, among which ‘Michelle Hatcher Affair (1985)’ is the most notable (Zhu, 2013).² Commercial theft hunting for underwater cultural heritage brings not only enormous economic losses to China, but also causes startling and catastrophic damage to cultural and historical values carried by these heritages (Zhu, 2013).³ Hence, Regulations of the People’s Republic of China on the Protection and Management of Underwater Cultural Relics (hereinafter referred to as Regulations) was formally enacted by China’s State Council on October 20, 1989, and the second revision was made in April 1, 2022 (Li, 2019). New revision of the regulations in 2022 related to the underwater archaeology in addition to retain the existing principle, also absorbed some work experiences from Measures of the people’s Republic of China on the Administration of Foreign Affairs Concerning Foreign Affairs. For example, new revision has made the detailed provisions, improved the management scope, refined and

cleared the time limit for of the examination and approved conditions. The Regulations, based on the Cultural Relics Protection Law of People Republic of China in 1982, designed to strengthen protection of underwater cultural relics, and provided legal support for scientific excavation and preservation of underwater cultural relics for the first time (Lin, 2016a).

In terms of international legislation, ‘Convention on the Protection of Underwater Cultural Heritage’ (hereinafter referred to as ‘Convention’) was formally passed by United Nations Educational Scientific and Cultural Organization (UNESCO, 2017) on November 2, 2001, as a milestone; it is also an exclusive international convention regulating underwater cultural relics (Forrest, 2002). Representing international development trend, many principles and regulations of the ‘Convention’, beneficial to the protection of underwater cultural relics, accepted by many nations (Rahardjo, 2019), provide an international law basis for theoretical and practical development of underwater cultural relics conservation (Ochoa, 2018). From the perspective of international cooperation, the ‘Convention’ stipulates multilateral agreement, sovereignty immunity, and cooperative sharing respectively, and playing an increasing role in international influence and guiding significance (Nafziger, 2018).

China has not ratified this ‘Convention’ so far, the main reason is that China used to have limited technical capacity in the area of underwater protection, and there are already a number of local laws covering this issue, so joining the convention will not bring outstanding benefits to China. However, with a growing number of underwater cultural heritages being excavated by national archaeologists in recent years, the problem of how to protect these heritages follows. Later, there have been growing calls to access to this ‘Convention’, and Chinese People’s Political Consultative Conference (CPPCC) put forward a proposal, ‘Proposal on Promoting China’s Accession to the Convention on the Protection of Underwater Cultural Heritage’, at the fifth session of the tenth CPPCC. In this proposal, it is believed that China should also ratify this ‘Convention’ in order to exercise powers sanctioned by the ‘Convention’, such as preserving underwater cultural heritage through cooperation between countries, joint training underwater archaeologists and so forth (Li, 2018). It is noteworthy that the corresponding law in China is the Regulations enacted and enforced in October 1989, and there are many similarities with the ‘Convention’. However, with social development, protection of underwater cultural heritage has gradually become internationalized and universal, but still relevant contents of Regulations seem to be unable to meet today’s domestic demands. ‘Law for the Preservation of Antiques’ covers all cultural relics, not only underwater but also on land, and the adjustment covers rules for private collections, museum collections and the entry and exit of cultural relics. ‘Regulations on the Implementation of the Cultural Relics Protection Law’ specifies how to implement this issue at a

1 After the second world war, the high return of shipwreck salvage and the application of deep-water technology in the civilian field also gave birth to the marine exploration and commercial speculation activity of shipwreck salvage or “treasure hunting”, and especially in the technologically advanced marine countries such as Europe and the United States, a commercial group specializing in the commercial salvage of marine sunken ships has formed.

2 In 1985, Michelle Hatcher, a famous British international treasure hunter, discovered the shipwreck “Goldmarsson” of the Dutch East India Company, which sank on the reef of Jiediyadoka, in the South China Sea during the Qianlong period of the Qing Dynasty, and he stole 150,000 blue and white porcelain, 125 gold ingots and other artifacts from the sunken ship, and 3000 pieces of porcelain were sold at a sky-high price of 20 million US dollars. This incident shocked China and foreign countries and greatly stimulated the determination of Chinese government and the archaeological community to protect underwater cultural heritage.

3 For example, in the “1985 Michelle Hatcher Incident”, the thieves adopted a brutal way of violent destruction of hull and items in the vessel in order to grab underwater cultural relics as much as possible in a short period of time, without caring about archaeological guidelines and cultural and historical value of cultural relics, which was subjected to strong dissatisfaction and severe condemnation by international archaeology community and Museum academia. That is to say, commercial thieves usually focus on underwater wrecks only for their high economic value, without conducting systematic research and analysis on the structure and construction characteristics of the sunken ship as archaeologists do. Once their robbery is completed, the academic value of that underwater cultural heritage will sleep on the bottom of the sea forever.

specific level, and 'Regulations on the Protection and Management of Underwater Cultural Relics' deals with the protection of cultural relics under water in China's internal waters and territorial waters, or cultural relics in high seas and foreign waters that originate from China (Lin, 2016b).

The 'Convention' recognizes the public's right to enjoy the educational and recreational benefits of responsible non-intrusive access to *in situ* underwater cultural heritage, and of the value of public education to contribute to awareness, appreciation and protection of that heritage. The protection and preservation of cultural heritage is sometimes perceived as a part of the safeguarding of human rights (cultural rights), however, this paper does not discuss from the perspective of human rights. The main reason is that this paper intends to analyze whether China should accede to the 'Convention' from the comparison of the 'Convention' and Regulations. Under the current trend of internationalization, the authors, in this study, compare the 'Convention' with the Regulations in the detailed provisions, analyzing the similarities and differences respectively, and rely on SWOT analysis to analyze the necessity and feasibility of whether China should ratify and access to the 'Convention' or otherwise.

Similarities between the 'convention' and the regulations

China's primary law and regulation regarding the protection of underwater cultural heritage is the Regulations enacted in October 1989, revised in April 2022. This Section compares the Regulations and 'Convention' provisions regarding their protection purposes, reporting systems, and legal sanction.

Protection purpose

For the protection measures and purpose of underwater cultural heritages, relevant provisions have been made in the 'Convention' and the Regulations. The former stipulates that underwater cultural heritages salvaged must be properly stored and kept to make long-term preservation a reality. The latter states that underwater cultural heritage should be reported in time when discovered, and the salvaged heritages should be turned in without delay. Both of them emphasize the protection of underwater cultural heritages after they have been discovered, and embody the purpose of protectionism.

Likewise, the 'Convention' and the Regulations both prohibit commercial exploitation of underwater cultural heritage to some extent. 'Convention' Article 2 forbids underwater cultural heritages exploitation (CPOCH, 2001, Article 2). Regulations Article 7 and Article 8 are similar. They require National Cultural Heritage Administration approval to conduct any

private exploration or excavation (CPAUCR, 2022, Articles 7, 8). That is to say, in terms of exploration and development, the 'Convention' is very thorough, but the Regulations are conditional on prohibition.

Discovery reporting system

The 'Convention' and the Regulations both require a timely report when underwater cultural heritages are discovered within a certain scope of application (Forrest and Gribble, 2002). In Article 9 of the former, it is stipulated that when a person in a Contracting State or a vessel flying its flag discovers or intentionally exploits underwater cultural heritage within its exclusive economic zone or on the continental shelf, the Contracting State should request the person or the vessel's owner to report his discoveries or activities (CPOCH, 2001, Article 9), which, meanwhile should be sent to the other Contracting States quickly and effectively. After that, the Contracting States should inform the head of UNESCO and Secretary-General of the International Seabed Authority of these discoveries and activities. Although there is no mutual notification among the Contracting States, the Article 9 in the latter specifies that for any entity or individual discovering underwater cultural heritages in any way, they should report to the State Administration of Cultural Heritage or the local cultural relics administration in time (CPAUCR, 2022, Article 9).

For such a system, there are almost the same provisions in both of the regulations. Despite the difference in reporting object, the central idea of the system that underwater cultural heritages ought to be effectively protected in time *via* the reporting system as much as possible is the same. Nowadays, with relatively quickening social development, people can set foot in an increasing number of areas. Thus, it is urgent to effectively protect underwater cultural heritage, and timely reporting can identify the location, quantity, scale, etc. of a cultural heritage site in the shortest time, so that protective actions can be taken quickly and corresponding scientific researchers can be made.

Differences between the 'convention' and the regulations

As can be seen from the above analysis, there are some similarities between the 'Convention' and the Regulations. Despite many similar ideas, as an international convention and a country's domestic law, the difference between them is even more pronounced. This section compares the differences between the two in terms of definition, jurisdiction, principles,

measures and information, whereby the advantages and disadvantages of both can be seen more obviously.

Definition of underwater cultural heritage

In the ‘Convention’, underwater cultural heritage has been clearly defined by UNESCO; it refers to all relics of human existence with cultural, historical or archaeological value, which are periodically or continuously located in the underwater in part or whole, such as ruins, buildings, crafts, human remains, ships, aircraft, other environment of archaeological value and natural environment, etc. since at least 100 years ago (CPUCH, 2001, Article 1).

It is stipulated in Article 2 of the Regulations in China that underwater cultural relics refer to human cultural heritage with historical, artistic and scientific value, remaining in the following waters. Specifically, ones left in China’s internal waters and territorial waters, ones remaining outside China’s territorial waters but under the jurisdiction of China, and ones outside foreign territorial waters and on the high seas, are included. However, underwater remains unrelated to major historical events, revolutionary movements, and famous people after year 1911 are excluded (CPAUCR, 2022, Article 2). In contrast, for underwater cultural heritage, China’s definition includes not only historical, artistic cultural heritage, but also Chinese cultural relics existing in internal waters, territorial waters, and high seas. The definition in the Regulations is broader, that is, the protection scope is larger, because its content is extensive, and there are explicit regulations and restrictions in importance and time (not less than 100 years), and meanwhile, for the source and purpose of cultural relics, there are not many stipulations.

Right of jurisdiction

The ‘Convention’ does not clearly address sovereignty of underwater cultural heritage while the Regulations addresses sovereignty in detail as follows.

1. Inland waters and territorial waters

Article 7, Paragraph 1 of the ‘Convention’, states that when States Parties are exercising their sovereignty, they own exclusive rights to manage and approve the development of activities of underwater cultural heritage in their inland waters, archipelago waters and territorial waters. Also, in Paragraph 3, it is provided that when States Parties are exercising their sovereignty in their archipelago waters and territorial waters, in order to protect

their vessels and aircraft, they should inform the Flag States of States Parties to this Convention and other countries related to such underwater cultural heritages of the situation of the vessels and aircraft with recognizable nationality (CPUCH, 2001, Article 7).

In China, the Article 2 and 3 of the Regulations is a provision that China has jurisdiction over cultural relics remaining in China’s internal waters and territorial waters, originated in China and other countries and whose country of origin is unknown (CPAUCR, 2022, Article 2, 3).

It can be seen that the difference between the Regulations and the ‘Convention’ lies in that there is no obligation of notification in China, because the Regulations belongs to domestic law, without involving international cooperation issues, and there is no necessity to notify other countries when the right of jurisdiction is exercised within the corresponding scopes.

2. Contiguous zone

It is stipulated that under the second paragraph of Article 303 of ‘United Nations Convention on the Law of the Sea’, States Parties can manage and approve activities to develop underwater cultural heritage in the contiguous zone (CPUCH, 2001, Article 8).

Article 2 of the Regulations is that China governs the cultural relics that are left in China’s territorial waters and in other waters under the jurisdiction of China in accordance with Chinese law, and that originate in China and whose country of origin is unknown (CPAUCR, 2022, Article 2).

Both laws involve the jurisdiction of the contiguous zone. However, in the ‘Convention’, it is only a broad provision that States Parties can manage the corresponding heritage in the contiguous zone, without distinguishing from the perspective of the country of origin. In fact, China makes a distinction from the perspective of the country of origin, having jurisdiction over cultural relics originating in China and those of unknown country of origin, apart from those of known country of origin. Given this, in this aspect, regulations in China are more scientific and meticulous. Avoiding the excavation of cultural relics belonging to the country of origin plays a role in protecting the underwater cultural heritage of other countries (Aznar-Gomez, 2010).

3. Continental shelf and exclusive economic zone

In the Article 9 of the ‘Convention’, there is a provision that all States Parties take accountability to protect the underwater cultural heritage in their exclusive economic zone and on the continental shelf under this ‘Convention’ (CPUCH, 2001, Article 9). For States Parties who possess underwater cultural heritage in

their exclusive economic zone and on the continental shelf, any Contracting State can express willingness to provide consultations on the effective protection of these underwater cultural heritages (Varmer, 2014). In the meanwhile, it also sets some restrictions, for example, States Parties should inform the Director-General of all discoveries and activities; in turn, the Director-General should promptly notify all States Parties of relevant information (CPUCH, 2001, Article 9).

It is formulated that cultural relics originated in China remaining in other jurisdictional sea areas outside foreign territorial waters and in the high seas areas are under the jurisdiction of China (CPAUCR, 2022, Article 2). In terms of the continental shelf and exclusive economic zone, compared with the 'Convention', China only has jurisdiction over cultural relics originated in China, excluding those from abroad (CPAUCR, 2022, Article 3). The contents of jurisdiction are more refined, which is also in line with China's consistent guidelines.

In respect of jurisdiction, it is clearly hoped for the Chinese government to protect every underwater cultural heritage originated in China as much as possible, wherever it is. However, this kind of legislation has been criticized from foreign scholars who argue that the law is designed to provide a basis for it to take exclusive measures, thus violating the main purpose of the 'Convention' and the Regulations, especially international cooperation in the protection of underwater cultural relics (Page, 2013). In effect, there is no legal basis for such criticism, because in the Regulations, there are different provisions for underwater cultural heritage from different sources, and the right of other countries with cultural or historical ties to underwater cultural relics can be distinguished and respected.

Protection principle method

The 'Convention' states that *in situ* conservation should be preferred before allowing or conducting any activities to develop underwater cultural heritage (CPUCH, 2001, Article 2). However, Article 7 of the Regulations in China provides that any entity or individual should report it to National Cultural Relics Administration or local cultural relics administration in time when discovering underwater cultural relics in any way, and that those relics salvaged out of the water should be handed over to National Cultural Relics Administration or local cultural relics administration (CPAUCR, 2022, Article 7). Furthermore, it is stated in Article 8 that archaeological exploration and excavation activities of underwater cultural relics shall be for the purpose of cultural relics conservation and scientific research (CPAUCR, 2022, Article 8). Any entity or individual who carries out archaeological exploration or excavation activities of underwater cultural relics in waters under Chinese jurisdiction

must apply to the State Administration of Cultural Heritage and submit relevant materials (CPAUCR, 2022, Articles 7, 8).

In comparison, the relevant provisions in the Regulations in China are more restrictive, and the principle of strictly prohibiting commercial salvage has basically formed, which only applies to the investigation and excavation stage. However, there is no explicit regulation on the legitimate business practices of the cultural relics salvaged out of water. On the protection of cultural relics out of the water, there is a provision, Article 72 of 'Law of the People's Republic of China on the Protection of Cultural Relics' (the latest version in 2017) that anyone who engages in commercial activities of cultural relics without authorization and permission but does not constitute a crime, shall be stopped by Administration for Industry and Commerce according to law, and the illegal gains shall be confiscated (CPCRL, 2017, Article 72). With the illegal turnover of more than 50,000 yuan, a fine of more than two times and less than five times of the illegal gains shall be imposed; with the amount less than 50,000 yuan, a fine of not less than 20,000 yuan but not more than 100,000 yuan shall be imposed (CPCRL, 2017, Article 72). Moreover, Article 73 of 'Law of the People's Republic of China on the Protection of Cultural Relics' (the latest version in 2017) states that if the nature of commercial activities of cultural relics by cultural relics collection units is serious, their licenses are revoked by the original issuing authority (CPCRL, 2017, Article 73).

In Regulations, China mostly takes 'application' as the protective principle, without forming the principle of *in situ* conservation, which is different from that in the scope of application in the 'Convention' (Vigni, 2015). It is indicated in the concept of *in situ* conservation that in principle, underwater cultural heritage should be left in place for protection, that is, by preserving the physical integrity of the site, the archaeological, historical or cultural information contained in it is preserved (Zhang, 2012). However, there is a slight insufficiency in China's Regulations in this regard.

Information sharing

Since there are many countries involved in the 'Convention', in order to make more effective cooperation to protect underwater cultural heritage, an information-sharing system is set up (CPUCH, 2001, Article 19). If relying solely on domestic law or the framework of an international convention is not sufficient for State Parties to preserve underwater cultural heritage, which is especially true for those heritages that are prone to disputes due to the historical, cultural, geographical or economic ties with other countries caused by their locations (Cogliati-Bant and Forres, 2013). In this case, information sharing is particularly important, which can, to the greatest extent, avoid wastage of resources (Vadi, 2009). However, the Regulations involving the sovereignty of a country is under a

unified policy and achieve relatively high real-time information, hence there is no necessity to set up such a sharing system in China specifically.

SWOT analysis of the feasibility of China accession to the 'convention'

Through the above comparison of the similarities and differences between the Regulations and the 'Convention', it can be seen that the protection of underwater cultural heritage under China's current domestic law has already been extremely strong. About whether it is feasible for China to join the 'Convention', with the SWOT analysis method of management adopted, the current situation and problems of China's laws and regulations and international conventions are analyzed, and some countermeasures on the feasibility of China's accession to the 'Convention' are proposed as follows.

The SWOT analysis method is a situation analysis based on the internal and external competitive environment and internal competition conditions. Specifically, various major internal advantages, disadvantages, and external opportunities and threats, etc. closely related to the research object, are listed through investigations. Then with the idea of the system analysis to match various factors with each other and analyze them, a series of corresponding conclusions with a certain degree of decision-making can be drawn from it. The SWOT analysis makes it possible to conduct a comprehensive, systematic, and accurate study of the current situation of the research object, so as to formulate corresponding development strategies, plans and countermeasures based on the research results. Compared with other methods, the SWOT analysis is characterized by notable structuralizing and systematizes from the very beginning, and this is why such method is used in this study to analyze the feasibility of China's accession to the 'Convention'. Starting with structural analysis, this analytical method takes a page from business management thinking to analyze the external environment and internal resources.

In addition, on the basis of the following three considerations, the authors apply the SWOT, an analytical method in management, to the analysis of legal issues. Firstly, the SWOT Analysis, namely situation analysis, is a ubiquitous scientific analysis method, which is more applied to enterprise competition and strategic analysis, and less to analysis of legal issues. However, the so-called scientific method means that the issues should be examined from different perspectives and multiple angles, so that the arguments obtained will be more adequate and complete. As a consequence, the SWOT Analysis is adopted in this paper, whereby the viewpoints of the authors can be demonstrated from the perspective of management, thus rendering the corresponding conclusion more convincing. Secondly, the SWOT Analysis is characterized by requiring

both internal elements and external conditions, where various factors can be matched to be analyzed, and then a series of corresponding conclusions which are usually equipped with a certain decision-making nature can be reached. In fact, laws of the sea, as part and parcel of international law, are conditioned by internal elements and external conditions as well. This paper primarily focuses on whether China accesses to the 'Convention' or not, involving not only the requirements of domestic law but also compliance with the restrictions of international law. Various major internal advantages, disadvantages, and external opportunities and threats that are closely correlated to the 'Regulations of the People's Republic of China on the Protection and Management of Underwater Cultural Relics' and the research objects can be listed by comparison, and then a variety of factors can be matched to be analyzed under the thought of system analysis, and thus a conclusion with strategic significance in protecting China's underwater cultural heritage can be drawn (Wang, 2013). Finally, the SWOT Analysis has been widely applied to strategic research and competitive analysis and thus become an indispensable analytical tool for strategic management and competitive intelligence since its formation. Indeed, the prominent superiority of this method lies in intuitive analysis and simple operation. To put it another way, even without accurate data support and more specialized analysis tools, convincing conclusions can be drawn as well.

There are certain advantages for China to join the 'Convention'. To be specific, in terms of the external environment, the number of States Parties is limited, among which marine powers are even rarer; in terms of internal resources, with a long history and extremely abundant underwater cultural heritage resources (Wei, 2008), China is a marine power where relevant domestic laws have been implemented. Relying on the SWOT analysis method, from four different dimensions, it is systematically demonstrated the pros and cons of joining the 'Convention'.

Strengths

The Strength section re-write as: The word 'strength' refers in a general sense to being in a more favorable situation or environment or surpassing similar situations in some respects. For China, a maritime power with a long history, there are certain natural advantages for accession to the 'Convention'.

China differs from other countries in aspect of culture. Furthermore, in the years of Yongle and Xuande of the Ming Dynasty, even the feat of Zheng He's seven voyages to the West, coupled with the Maritime Silk Road reaching the peak, led to the unprecedentedly strong cultural exchange and integration between China and foreign countries (Liu, 2013). In addition to cultural exchanges and commercial transactions, there are also countless shipwrecks of various sizes, all playing a role that

cannot be ignored in today's underwater archaeology, and leaving a strong mark for the historical study as well.

As far as laws and regulations are concerned, 'Law for the Preservation of Antiques', 'Regulations on the Implementation of the Cultural Relics Protection Law' and 'Regulations on the Protection and Management of Underwater Cultural Relics' are promulgated one after another, thus manifesting that China has accumulated some experience in the formulation of laws and regulations for the protection of underwater cultural heritage. In effect, the protection and research of cultural relics is also honored by the time.

In 2016, 'Guiding Opinions on Further Strengthening Cultural Relics Work' (National Issue [2016] No. 17) was issued by the State Council, which explicitly proposed that the revision work of laws and regulations such as the Cultural Relics Protection Law, Underwater Cultural Relics Protection Management Regulations, etc., should be further accelerated. In order to implement the deployment of the State Council, the State Administration of Cultural Heritage thoroughly studied the revision work of the Regulations, and in February 2018 formulated the 'Revision Draft of the Regulations on the Protection and Management of Underwater Cultural Relics of the People's Republic of China (Draft for Comments)', with soliciting public opinions from the whole society. To take it a step further, on July 6, 2018, the State Administration of Cultural Heritage convened an expert discussion meeting on the 'Revision Draft of the Regulations', where the participating experts put forward numerous valuable comments and suggestions to lay a more solid foundation for the further improvement of the revision work.

In terms of learning and exploration, China has emerged in underwater cooperation with other countries in the world. In the absence of underwater archaeological talents, the National Cultural Heritage Administration sent personnel to the Netherlands, Japan, and the United States to study diving and underwater archaeology in 1987, 1988 and 1989 respectively (Gerstenblith, 2016). From 1989 to 1990, the Chinese History Museum cooperated with the Southeast Asian Ceramic Research Center of the University of Adelaide, Australia, and jointly held the first national training course for underwater archaeology professionals (XHN, 2011). Furthermore, from 2010 to 2013, China signed a cooperation agreement with Kenya for the implementation of the 'Lamu Archaeological Project' (PNW, 2013) and cooperation in underwater archaeology. From March to April 2018 and from December 2018 to January 2019, Underwater Cultural Heritage Protection Center of the State Administration of Cultural Heritage and China-Saudi Arabia Joint Archaeological Team Organized by the Saudi National Archaeological Center conducted a 50-day investigation and excavation of port ruins on the shores of the Red Sea—Saudi Salin Port Ruins in two times (XHN, 2018). This international cooperation indicate that China possesses more than a highly professional underwater archaeology team and that China

(Scovazzi, 2002), at the national level, has adopted positive attitude towards the archaeology and protection of underwater cultural heritage and conducted prudent protection.

Weaknesses

Despite abundant underwater cultural heritage resources and some relevant laws and regulations, there is still some distance for China to compare with traditional maritime powers such as Britain, France, etc. in terms of underwater archaeology (Wang and Chang, 2020). In other words, management experience is not rich, and some regulations are not in line with international standards.

For instance, on the attribution of underwater cultural heritage, there is a large discrepancy in the provisions between the Regulations and the 'Convention'. It is stipulated in Article 5 of the newly amended 'Cultural Relics Protection Law of the People's Republic of China' (fifth amendment on November 4, 2017) that "China shall own all cultural relics remaining in the underground, internal waters and territorial waters of the People's Republic of China", but there are no clear provisions on cultural relics in China's contiguous zone, continental shelf, and exclusive economic zone, which reflects one-sidedness in the protection of cultural relics (Qureshi, 2018). Likewise, there are no explicit stipulations on the cultural relics remaining in foreign territorial waters but originated in China. With a long history of civilization, China has spread across many marine areas, therefore, the distribution of underwater cultural relics in China is also extremely extensive. However, the provisions in the Regulations are incredibly different from those in the 'Convention'. The 'Convention' clearly state that all States Parties assume responsibility to preserve the underwater cultural heritage in their exclusive economic zone and on the continental shelf under this 'Convention' (CPCRL, 2017, Articles 9, 10). By contrast, there is no corresponding regulations to follow for China to conduct cultural heritage conservation in these areas, which exerts some adverse effects on the protection of China's underwater cultural heritage.

In the meantime, with a long coastline and more coastal provinces in China, in terms of local laws and regulations, each province also owns its own local regulations (Lin, 2016). To be specific, in Guangdong province, there is Measures for the Implementation of the 'Law of the People's Republic of China on the Protection of Cultural Relics' that came into effect on March 1, 2009. Also, in Guangxi province, there is 'Guangxi Zhuang Autonomous Region Cultural Relics Protection Regulations' effective on January 1, 2014. However, there is no relevant regulations in Hainan Province, considering that the 'Administrative Measures for the Protection of Cultural Relics in Hainan Province' formulated in 1994 was abolished in 2004 (RNW, 1994). In fact, 'underwater cultural relics' is solely mentioned in Article 26 and Article 27 of Implementation

Measures in Guangdong Province; ‘cultural relics buried in waters’ is merely mentioned in Article 15 of ‘Guangxi Zhuang Autonomous Region Cultural Relics Protection Regulations’ (TPN, 2015). Consequently, it can be seen that there are fewer legal provisions for the protection of underwater cultural heritage, which are general in contents and poor in operation. In addition, there are not laws and regulations specifically for the protection of underwater cultural heritage in Guangdong Province, Guangxi Province, Hainan Province. Nonetheless, as is well known to all, it is a fact that the coastlines in the above three provinces are so long that it is urgent to formulate specific laws and regulations to preserve underwater cultural heritage. This can be a unique way for China to effectively regulate and protect its underwater cultural heritage at great length.

As for specific regulations, the main theme is well reflected in the Regulations whose details are not insufficient. For one thing, provisions on Chinese-foreign cooperative exploration and excavation in the Regulations are only declarative, (Hu, 2008) whose operating procedures are too general, rough and impracticable, which is inconsistent with complex underwater excavation activities and unable to furnish specific guidance for these activities. For another, the reasonable rights and interests of foreign countries who participate in cooperation cannot be sufficiently protected, and meanwhile, the punishment for misconduct in excavation activities is extremely limited. To sum up, the provisions of the current Regulations are neither conducive to preserving underwater cultural heritage, nor can they promote the orderly development of Sino-foreign cooperation, and are urgently needed to be perfected. In addition, for now, researches on the legal protection of underwater cultural heritage by Chinese scholars mostly focus on discussion on general principles such as ownership or ‘*in situ* conservation’, and largely ignoring specific provisions (Forrest, 2003).

Moreover, so much importance has not been attached to the underwater cultural heritage among the public. Actually, conservation of underwater cultural heritage is not only confined to the national level, but also requires the participation of the masses (Huang and Nan, 2019). At present, there is also a conspicuous gap in raising the awareness of protecting underwater heritage in the whole society and actively engaging in the protection of underwater cultural heritage.

Opportunities

Accession to the ‘Convention’ is of great significance for China to build a maritime power, which can also bring the theory and practice in this area in line with international standards. To this end, China can participate in a broader international cooperation platform (Risvas, 2013). For

example, as is mentioned in the above analysis of advantages, China has successively taken part in some international underwater archaeological cooperation projects since last century. Despite accumulating certain experience, it is still required to improve the depth and breadth of cooperation technology. Becoming a member of the ‘Convention’ can take cooperation level a step further, especially in aspects of information sharing, underwater archaeology training, technology transfer, cooperative development and management, and so on (Huang and Nan, 2019).

Up to now, reliable international customary laws have not been formed in the international field of underwater heritage protection (Nor and Zahid, 2016), nor has China signed any formal agreements in this regard with other countries. Hence the basis of protection mainly comes from domestic law, without support in international law (Dunlap, 2018). However, underwater cultural heritage conservation may involve the interests of other countries for the most part. For instance, vessels of other countries sank in China’s territorial waters (Hernandez, 2017), which in the absence of an international agreement cannot be effectively and reasonably solved in by depending solely on domestic law. As a result, it is of necessity to seek international cooperation and support. With the increasing international exchanges of underwater cultural heritage protection, it is particularly critical to look for a basis in international law to preserve these cultural heritages. Thus, accession to the ‘Convention’ can also be counted as an approach, whereby there are laws to follow in international law for China to protect underwater cultural heritage, and which also facilitates China’s conservation of underwater cultural heritage internationally.

It has been controversial for recent years that there is abundant underwater cultural heritage in Chinese waters, which is also highly politically sensitive. Meanwhile, legislative policies for the protection of underwater cultural heritage in neighboring countries are also not exactly the same (Li, 2011). Therefore, promoting international cooperation *via* accessing to the ‘Convention’, which not only can contribute to learning advanced underwater archaeological technology from developed countries, but more importantly can actively carry out cooperation in ‘low sensitive areas’, so that joint efforts can be made to promote the protection of underwater cultural heritage in the South China Sea in aspects of information sharing, technology promotion, archaeological personnel training, and underwater cultural heritage conservation (Li, 2011).

Finally, it is an opportunity for China to access to the ‘Convention’ to preserve the underwater cultural heritage outside the jurisdiction. It is stipulated in the Regulations that there is a claim to ‘the right to identify the owner of the utensil’ in the underwater cultural heritage in the waters outside its jurisdiction, but there is no obligation for other countries to inform China about the underwater cultural heritage they

discovered (Sarid, 2017). Consequently, it is rather difficult for China to obtain relevant information on such kind of underwater cultural heritage, and thus to afford them timely and effective protection. Comparatively, the 'Convention' states that States Parties have obligations of mutual reporting and notification, that is, for many signatories to this 'Convention', information of underwater cultural heritage in waters outside the jurisdiction can be available in time, which is an opportunity to be involved in the protection of China's underwater cultural heritage and a platform for participating in the preservation of the world's underwater cultural heritage (Dromgoole, 2010).

Today, in the 21st century, the accelerated dissemination of information, the increase in the amount of information and the closer cultural and technological exchanges among countries—all bring about a favorable opportunity to enhance and supplement the law of the sea (Hernandez, 2017). Hence, accession to the 'Convention' is of great significance for China's construction of a maritime power. Not only is it conducive to China's engagement in the protection of international underwater heritage and creating a good international environment, but it also enables China to be in line with international standards in terms of theory and practice in this field.

Threats

One challenge the 'Convention' is exposed to is how to approach the relationship between these private rights. Once the 'Convention' improperly handled it and deprived the original owners of rights, that may violate the Constitution of member states. Given all, it is agreed in the early drafts by both the International Law Association and UNESCO that the 'Convention' merely applies to underwater cultural heritage that has been abandoned (Beukes, 2001). However, the 'abandonment' standard set in the draft has aroused a high degree of controversy and thus is not accepted by many countries. Therefore, such a standard is abandoned by the 'Convention' whose application, by doing so, does not take account of whether the underwater cultural heritage is abandoned or not, and does not involve any ownership issues. Superficially, this is the simplest solution on the grounds that the unsettled issue of ownership and abandonment do not seem to exert an influence on the preservation of underwater heritage. But after all, it is not a long-term solution, because there will eventually be conflicts between ownership and the basic principles of the 'Convention' (Dunlap, 2018). For example, is it possible to prohibit all people from salvaging their property when preservation *in situ* is considered the best option? Or should everyone abide by the regulations in the annex to the 'Convention' during the salvage operation? If an affirmative answer were provided, the rights of all people are impaired

(Blake, 1996). In fact, plenty of provisions of the 'Convention' produce a potential consequence on ownership.

It may be said that the 'Convention' does not afford a satisfactory and effective compromise on the issue of sovereign immunity, which constitutes one of chief reasons why the 'Convention' is not admitted by lots of countries (Scovazzi, 2012). From the purpose of issuing the 'Convention', national shipping in the sense of underwater cultural heritage should not be excluded from the 'Convention'. As a matter of fact, there exist, in practice, a number of difficulties in applying the principle of State Immunity to ancient ships as well (Nafziger, 2018).

In addition, up to now, there are 60 Contracting States to the 'Convention', 90% of who are developing countries, and only France, Italy, Portugal, Spain, and Belgium are developed countries. It can be seen from the fact that the 'Convention' has not been widely recognized all over the world, especially for the maritime powers among the developed countries (Bowman, 2004). The number of Contracting States to the 'Convention' is limited, which has resulted in a circumstance where some disputes cannot be effectively resolved merely by the mechanism furnished by the 'Convention' and when necessary, bilateral or multilateral agreements must be signed for specific affairs as the supplement (Li and Chang, 2019). Joining the Convention cannot quickly improve China's international maritime status, cannot learn more excellent technology and management experience from developed countries. On the contrary, it is likely that China will have to bear more obligations due to lack of overall economic strength and marine technology of the contracting states (Sarid, 2017). Finally, the number of signatories to the 'Convention' is limited, and the number of maritime powers is even more limited, and most of them are developing countries. As a result, China's accession to the 'Convention' does not enormously contribute to the rapid improvement of comprehensive maritime strength.

Under the premise of ensuring that the most appropriate protection can be granted to the underwater cultural heritage, the interests of different countries including the country of origin in culture, history and archaeology should be guaranteed (Ma and Ma, 2019). In most cases, a country is entitled to the right of jurisdiction over the underwater cultural heritage within its waters due to the territorial principle, but it does not mean to exclude the legal rights enjoyed by other countries. However, the scopes of jurisdiction of the underwater cultural heritage delineated by the domestic laws of various countries are not consistent, and so do the protection initiatives adopted (Gereliuk, 2016). Hence, the relevant countries are prone to conflicts in the specific protection measures and procedures. Regarding this issue, if countries cannot reach a consensus or sign an agreement, the legal effect of the 'Convention' will be dramatically influenced, which will be even more detrimental to the protection of underwater cultural heritage (Hoeffly, 2016).

Results

On the whole, the protection of China's underwater cultural heritage has always maintained a good cooperative relationship with its international counterparts, with continuously absorbing and learning the advanced protection concepts and technologies of international counterparts in strengthening exchanges and cooperation with relevant countries, international organizations, and professional institutions (Shan, 2011), which is fully embodied in the legislation of China's underwater cultural heritage. In this study, the authors compare the similarities and differences between the Regulations and the 'Convention', and meanwhile, make use of SWOT analysis to analyze the feasibility of China's accession to the 'Convention' from four different perspectives: strengths, weaknesses, opportunities, and threats.

Firstly, The feasibility and necessity of China's accession to the 'Convention' are relatively weak. For problems encountered in practice, it is possible to promote international cooperation by signing bilateral or multilateral agreements, and to manage underwater cultural relics through a cooperative model. We can actively carry out cooperation with neighboring countries in "low-sensitivity areas" and jointly promote the protection of China's underwater cultural heritage in information sharing, technology promotion, archaeological training and underwater cultural heritage conservation.

Secondly, it can be seen in the revised draft of the Regulations in early 2019 that the regulations have been modified in many clauses, such as having added explicit *in-situ* protection and prohibition of commercial salvage, strengthening various protection management measures, and initially establishing public participation channels. As can be seen from these revisions, China has adjusted some laws and regulations on the protection of underwater cultural heritage to meet the development demands of the new era, and meanwhile it is also in line with the current urgent situation of underwater cultural heritage protection task in China. There are more developing countries than developed countries in the 'Convention', and China cannot quickly learn more advanced experience and technology after joining. As mentioned above, although there exists a certain degree of feasibility and scientificity, but when viewed more comprehensively, the necessity of accession to the 'Convention' for China is not sufficient, and in fact, it is entirely possible to manage and regulate the underwater cultural heritage conservation under Chinese domestic legislation. As time goes on,

the States Parties have changed, and the underwater archaeological technology in the world has improved. China did not join the 'Convention', mainly because of there are some differences between China's current law and 'Convention'. The government official did not offer a clear signal to join 'Convention', and scholars also did not form a unified opinion, but the latest revision of the regulations in 2022 has changed some provisions which is closing the gap between 'Convention', such as business development problems. In a word, China may access to the 'Convention' in the future, but from analyzing the current situation, it is still too early now.

Author contributions

WY designed and conducted the study. WY drafted the manuscript and contributed to the article and approved the submitted version. The author confirms being the sole contributor of this work and has approved it for publication. All authors contributed to the article and approved the submitted version.

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Conflict of interest

The author declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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