Research on the Status of International Soft Law in the Field of the Law of the Sea

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Abstract. Soft law is a concept opposite to hard law. It is not legally binding in principle, but it has the same effect as hard law. The diversity of international soft law manifestations is mainly reflected in the resolutions, decisions, declarations, statements, recommendations, guidelines, standards, general rules, and action plans of international organizations and international conferences.

Keywords: International Soft Law, Law of the Sea, Mandatory binding force.

1. Introduction

The importance of the oceans to the international community is self-evident. However, with the increase in the number of marine-related activities in various countries, the marine environment and biodiversity have been destroyed, and ocean disputes abound. Cooperation in the ocean area is also the focus of problems in recent years. In the context of global integration, with the widespread acceptance of the principles of sustainable development, international cooperation, and peaceful settlement of international disputes, the international community has put forward urgent requirements for the improvement of the maritime legal system. Due to the fact that hard law has complicated procedures for contracting, a long period of time, and failure to cover new issues, and that developed and developing countries do not make concessions, consensus cannot be reached. It is very difficult to establish a binding international instrument in the field of the law of the sea. Under this circumstance, at least at this stage, establishing international soft law in the field of the law of the sea to regulate the emergence of new problems is our best choice. International soft law plays a significant role in the field of the marine environment and is more useful in dealing with new environmental issues. Therefore, the position of international soft law in the field of the law of the sea is particularly important and has become an indispensable factor in the legal system of the law of the sea.

2. Introduction of the International Soft Law

Under the background of globalization, the distribution of global power, in general, presents four different dimensions of distribution: the regional dimension, the national dimension, the supranational dimension, and the civil society dimension. These levels are interrelated and have a very close relationship. For decades, international law has been insisting on regulating and guiding the behavior of nations around the globe and trying to protect and maintain the existing international order and international rules. It is true that the international order must be maintained by a combination of traditional international law and numerous international soft laws. The emergence of "soft law" has precisely responded to the necessity of the international community today to further pursue " the rule of law" and " the order", and to a large extent, has remedied the gaps and deficiencies in traditional international law, so that the global governance system can be developed and refined in the legal context.

2.1. The Basic Theories and Definitions of International Soft Law

The term "soft law" was introduced by the Western international legal system, and its counterpart is "hard law". In the works of Western academics, "cooperative regulation", "quasi-regulation", "voluntary regulation" and "self-regulation " are all forms of "soft law". In general, the current definition of "soft law" in international jurisprudence has the following three main views.

First, there is the gray area theory. The traditional doctrine adheres to a dualistic approach, arguing that there is only a clear distinction between laws and non-laws and that there is no "gray area" (soft laws) between them. However, the opponents contend that it is obvious under international legitimacy that there exists a wide area of agreement between nations in the absence of formal treaties. For instance, Hillgenberg (1999, p.499) argues that “There is quite clearly a broad area of situations in which states enter into commitments without concluding a formal treaty under international law. I will refer to these arrangements as 'non-treaty agreements'…” [1] Therefore, this old-fashioned dichotomy is unreasonable, and soft laws do exist in the gray area between the legal and the illegal, and it may have substantial implications as a mediator between the two.

Second, there is the binding force theory. French Professor Francis Snyder (1994) believes that soft law is a rule of conduct that has practical effect although it is not legally binding in principle [2]. This view is mostly referred to by western scholars. The binding force is the distinctive feature of hard law, and the smooth implementation of hard law can be ensured by setting corresponding legal responsibilities. In contrast to hard law, soft law is more flexible, it is not compulsorily binding, and violation of its provisions is not subject to legal consequences.

Third, there is the three-dimensional theory. The "three-dimensional theory" is proposed by Kenneth W. Abbott and Duncan Snidal (2000, p.422), who believe that "soft law" can be distinguished from "hard law" in three dimensions-- “The realm of ‘soft law’ begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation [3]”. “Hard law” is considered by them to have the characteristics of the three aforementioned dimensions simultaneously. Delegation refers to the authorization of third parties to settle disputes; obligation means that the rule of international law binds the subjects of international law; precision indicates that the rules clearly define the conduct it permits or prohibits.

In summary, this paper defines "international soft law" as a collective term for the legal norms developed by states or international organizations to regulate the behavior of subjects of international law as well as the relations between them; soft laws are not real laws in the international level, and therefore does not have legally binding force.

2.2. The Significance of the Study of International Soft Law in the Field of Law of the Sea

The developing field of international soft law is gradually expanding and its influence is becoming more and more extensive, and in recent years it has been expanding into the field of international law of the sea. The flourishing of soft law is closely related to the status quo in the international community: firstly, the increasing level of modern technology has provided technical support for its development; secondly, the organization of the international community has laid the foundation for the formation of international soft law [4], the previous international treaties and international customs cannot cover all aspects of social life; finally, large-scale, multi-disciplinary, indefinite global problems have emerged, so there is an urgent need for international soft law to adjust and regulate them [5]. The above factors are inseparable from the rapid development of international soft law, and the study of international soft law has a very strong theoretical and practical value.

The seas and oceans have played a significant part in the long history of mankind. The degree of development of marine civilization has been a yardstick to measure the progress of civilization and social development for a long time. In modern times, due to the gradual depletion of land resources and waste, the oceans have gradually been invested with more attention. In general, the seas and oceans have indispensable values in the fields of economy, scientific research, transportation, military and ecological values, and their position in the development of human society as a treasure house of energy and resources is also undoubted. In recent years, given the high value of the seas and oceans, sovereign states, as the main members of the international community and subjects of international law, have gradually become increasingly aggressive in competing for maritime rights and interests to secure their own private interests. Against this background, the improvement of the international sea legal system, the protection of the marine environment, and the adherence to sustainable development have become global issues that cannot be ignored.

As the economic and productive activities of nations continue to extend to the sea, inter-state conflicts over the sea have proliferated. Due to the complex and constantly changing international situation, there is a constant demand to adapt the law to changes in objective circumstances. But traditional international law, like domestic law in general, is stable and has remained constant over time. In contrast, soft law has the flexibility to address the myriad maritime conflicts and issues that arise continuously.

From the perspective of the nature of "soft law" and "hard law", international soft law can also play an important role in making up for the shortcomings of the current international law of the sea. In fact, due to the difference in national maritime policies and conflicting interests of countries, it is difficult to form mandatory binding hard laws, and the procedures of concluding hard laws are too complicated, take a long time and are also too costly. As a result, the shortcomings of hard laws do not satisfy the need of the international community for maritime legal regulation. Compared to them, soft laws, with their simple contracting procedures and low contracting costs, can just make up for these defects of existing hard laws.

Specifically, the research related to international soft law can be effective in the hot issue of marine environmental pollution that has strong negative spillover effects and significant impacts.

First, seawater is fluid, so once one country's sea area is polluted, it is likely to spread to the adjacent sea areas belonging to other countries, and thus the whole marine zone in the area will be affected by pollution. Take oil pollution in recent years as an example, the relevant data show that in 2010, the Deepwater Horizon oil spill resulted in the contamination of approximately 180,000 square kilometers of the Gulf of Mexico [6]. It can be seen that marine environmental issues have a strong "co-benefit" attribute, and the fate of coastal countries is often closely related to each other. In the absence of international "hard law" and its coercive effect, if all countries pursue their own private interests and ignore the interests of mankind as a whole, it would easily lead to a "tragedy of the commons", thus causing the limited public resources in the ocean to be rapidly depleted. In this regard, the study of how to effectively establish and develop international soft law will be of great significance in the field of the marine environment.

Second, in recent years, the marine environment has been increasingly damaged and polluted, leading to the accelerated consumption of resources; the marine ecology is being seriously damaged, making the use value of the ocean decline significantly and rapidly, and the marine pollution problem has its own special, comprehensive, complex and multidimensional characteristics. All these factors render the existing traditional international law unable to cover all aspects of its related problems, and with a certain time delay. Under such circumstances, "soft law" with faster adaptability is urgently needed by the international community to better coordinate and deal with new marine environmental issues.

Third, more liberal and flexible soft law may involve more complex economic, military, cultural, and political measures. Nowadays, in the international community, a consensus on international marine protection has been formed, and the subjects of international law are actively taking various measures to protect the marine environment and marine biological resources.

In the present era, various emerging international organizations, including the United Nations, have attached great importance to the marine environment and used "soft law" norms to reach more and more international consensus; in recent years, the *Stockholm Declaration* and *Agenda 21* and other declarations and documents with important influence on the international community have been published one after another. This has provided theoretical support and value guidance for countries to further develop "hard law" rules of international law of the sea with mandatory binding force. In this way, the international community can largely prevent the phenomenon of "draining the pond to catch all the fish ", promote the protective exploitation of the sea and reduce the possibility of maritime disputes, thus achieving the purpose of maintaining international peace and security.[7]

3. International Soft Laws in the Field of Law of the Sea

3.1. Rules and Classification of Soft Laws

Due to the diversity of the subjects of international soft law enactment, international soft law has many forms, such as declarations, statements, recommendations, guidelines, action plans, and so on. Although the names are different, these international soft laws all have commonality, and for the sake of research, this paper divides the international soft law rules related to the field of law of the sea into two categories, which are political programmatic rules and specific implementation rules.

3.1.1 Political Programmatic Rules

Political programmatic rules are used to guide international legislation and practice, mostly in principle, without specifying specific rights and obligations, but they can play the functions of prediction, guidance, evaluation, and education. The existing political programmatic rules include the *Stockholm Declaration*, the *Nairobi Declaration*, the *Agenda 21* from the United Nations, the *Declaration on the Conduct of Parties in the South China Sea (DOC)*, the *Rio Declaration on Environment and Development*, and the *Code of Conduct for Responsible Fisheries* and the *International Guidelines for the Management of Deep-sea Fisheries in the High Seas* formulated by the Food and Agriculture Organization of the United Nations (FAO), and so on. Among them, the *Stockholm Declaration*, the *Nairobi Declaration*, *Agenda 21*, and the *DOC* are not only soft law rules for the maritime domain. In fact, the *Nairobi Declaration*, the *Stockholm Declaration*, and *Agenda 21* are declarations on the global environment as a whole, while the *DOC* is designed to strengthen good neighborly partnerships and cooperation in marine environmental protection, search, and assistance, as well as combating transnational crime. Other than that, the rest of the soft laws and regulations are legal documents only for the maritime area.

3.1.2 Specific Implementing Rules

Although not legally binding, specific implementing rules can help countries solve specific problems in ocean management and promote the implementation of political agendas. For example, in the field of fisheries management, the *Code of Conduct for Responsible Fisheries* is an international guiding document developed by the FAO, which requires countries to engage in fishing, breeding, processing, shipping, and marketing, international trade and fisheries scientific research, and other activities should assume their responsibility for the requirements of the code. However, this code is only a political program rule as described above, which only puts forward the principle requirements, and there are no specific implementation rules. Therefore, to better guide practice FAO has developed four plans of action: the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)*, the *International Plan of Action for the Conservation and Management of Sharks*， the *International Plan of Action for Managing Fishing Capacity*, and *International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries*. Each of these four plans of action addresses a theme derived from the *Code of Conduct for Responsible Fisheries*. Unlike international treaties, which are known to have complex and rigorous procedures for ratification and accession, these four plans of action are different. They are essentially international soft laws that do not require the complicated negotiation and conclusion process of treaties and can be announced after they are adopted by international conferences, which saves time and better guides practice. In addition, they all play a role in preventing damage to the marine environment, preventing indiscriminate fishing, and protecting marine biodiversity. At the same time, these documents are closely related to each other and to the *United Nations Convention on the Law of the Sea* and the *United Nations Fish Stocks Agreement* and serve to improve and fill in the gaps in international fisheries treaties.[8]

3.2. The Characteristics of the Soft Law in the Legal Regulation of the Law of the Sea

The common features of all international soft law rules are: First, the content is diverse and covers many fields. Second, they are non-compulsory and not legally binding. Third, they follow the principle of consultation in the process of formulation and dispute settlement. Yet international soft laws have their own "personality" in the field of law of the sea, and their characteristics are as follows.

3.2.1 Soft Law Legal Documents in the Field of Marine Law Focus on the Regulation of Marine Environmental Protection

The declarations issued by successive conferences on the human environment which have great influence in the field of environmental law, such as the *Stockholm Declaration*, the *Nairobi Declaration*, and *Agenda 21*, are all environmental soft laws. When adjusting the marine domain, they all have in common the requirement for countries to prevent ocean pollution, protect marine biodiversity, and achieve sustainable development. Environmental-type declarations and statements signed among countries, such as the *DOC*, require China and ASEAN countries to strengthen cooperation in marine environmental protection. Certainly, soft laws also involve areas beyond marine environmental protection. For example, the *DOC* provides for exploration or cooperation between the parties concerned in the area of marine scientific research; likewise, the *Code of Conduct for Responsible Fisheries*, created by important international organizations, provides for the regulation of fishing gear. In fact, all of these declarations and documents with great influence focus on the field of marine environmental protection and other related areas, but none of them provide specific rights and obligations, none of them are legally binding, and their scope of adjustment is also relatively limited.

3.2.2 The Soft Law Legal Documents in the Field of Law of the Sea are Mostly Guidance Documents

Soft laws and regulations in the field of the ocean are mostly programmatic documents that only serve as policy guidelines, with few specific implementation documents. The *Stockholm Declaration*, the *Nairobi Declaration*, *Agenda 21*, and other environmental soft laws only provide for the conservation of the ocean environment and biological marine resources, but there are no specific obligations on how to protect them. A series of global plans of action developed by the FAO in 1999-2001, consisting of four main components: regulation of illegal, unreported, and unregulated (IUU) fishing, reduction of incidental catch of seabirds in longline fisheries, management of fishing, and conservation and management of sharks. It is particularly true that these plans have provided constructive advice on how to better implement the *Code of Conduct for Responsible Fisheries*. However, there are very few soft laws that specify rights and obligations as the FAO's global plans of action do, and even these specific plans, as with all soft law legal documents, do not stipulate the corresponding legal responsibilities, which still require voluntary compliance by states.

4. The Role and Limitations of "Soft Law" in the Field of Law of the Sea

4.1. The Role of "Soft Law" in the Field of Law of the Sea

The establishment of international soft laws in the field of the law of the sea not only enables states to share interests in a wide range of international cooperation but also regulates the behavior of states, which is the best choice at this stage to improve the legal regulation of the law of the sea and to improve the legal system of the law of the sea. As Professor Boyle (1999,p.903) said, " Use of soft law instruments enables states to agree to more detailed and precise provisions because their legal commitment… " [9], which is why soft laws of the sea have been the indispensable element in the legal system of the sea. The role of "soft law" in the field of the law of the sea is manifested in the following four aspects.

4.1.1 Soft Laws can guide international legislation and international judicial practice to a certain extent

Recently, environmental issues have gradually attracted the widespread attention of the global community. In 1992, in response to international needs, the United Nations, heeding the calls of countries and international organizations, issued *Agenda 21* to address environmental issues on a global scale. The release of this document immediately attracted the attention of countries around the world, and under the guidance of the core ideas and concepts of *Agenda 21*, countries have formulated their own "New Century Agenda" accordingly. From this, it can be seen that all countries are using their own legislative action to promote the implementation of international soft laws, which also demonstrates that international soft laws have a clear and strong guiding effect. Accordingly, China has formulated *China's Ocean Agenda 21* accordingly, which stipulates: "Rational development of marine resources, protection of the marine ecological environment, ensuring sustainable use of the ocean, and achieving harmonious development of people and the sea must involve extensive public participation, including the participation of the education sector, the mass media, the scientific and technological sector, the business sector, coastal residents and the mobile population, and The grassroots government in coastal areas plays a special role in organizing the participation of the public." This is one aspect that can show that international soft laws are actively instructing the members of the international community to participate in the global practice of marine exploitation and protection, which has already exerted the initial effect.

In terms of preventing seawater pollution, the Guidelines on *Marine Pollution from Land-based Sources* developed by the United Nations Environment Programme provided the specific conditions for the adoption of the Kuwait *Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources* in 1990, truly transforming "soft law" into "hard law. "

Furthermore, after years of practice, many elements of the *Stockholm Declaration* have been incorporated into many international treaties today, and individual elements such as "common but differentiated responsibilities" have developed into basic principles of international environmental law.

4.1.2 Soft Laws Can Promote International Cooperation and Resolve Differences

The current system of "soft law" is very useful in promoting the realization of international cooperation at sea, because the process of consultation and development of international soft law is simpler and faster than that of international hard law, and it is easier to promote consensus among states.

For instance, the *DOC* focuses on amicable consultations and negotiations aimed at resolving disputes in the South China Sea by peaceful means. According to this declaration, until the dispute is resolved, both parties should uphold an attitude of cooperation and understanding, exercise restraint, refrain from acts that may aggravate the dispute and expand it; and build mutual trust through various means, including research on marine resources, search and assistance, and combating transnational crimes. In research related to marine resources, countries should not infringe on the ownership of natural resource exploitation and do not affect the related rights and interests of other countries. Moreover, Article 2 of the *Stockholm Declaration* states, "The protection and improvement of the human environment is a concern for the well-being and economic development of people throughout the world." Article 3 states, "In modern times, the human capacity to transform the environment if used wisely, can bring development benefits and opportunities for improving the quality of life of all peoples. If used incorrectly, it can cause incalculable damage to people and the environment. In many parts of the planet, we can see increasing signs of human damage." In summary, both statements call on state parties to cooperate in a wide range of marine areas to protect the general interests of all peoples and promote sustainable global development while not harming the interests of others.

4.1.3 Soft Laws Contribute to Improve the Professionalism of Marine Management and Reduce the Cost of Contracting

With the advancement of science and technology, the protection of the marine environment and biodiversity is increasingly required to be realized through highly specialized technical norms. Soft law can fix the operation methods, review, and regulation standards of marine technology through the form of legal norms. For example, the *International Guidelines for the Management of Deep-sea Fisheries in the High Seas*, issued by FAO in 2009, were compiled by experts and professional managers from several countries, international organizations, the fishing industry, and academic institutions, and the process was multilaterally participatory.

In fact, this international guideline is a soft law norm of a voluntary nature and is not mandatory for States Parties, but is merely a guide for States to develop marine technical policies. Nevertheless, the guideline provides instructions on the elements of fisheries management for deep-sea fishing activities, recommends that relevant States adopt appropriate regulatory frameworks, provides for the establishment of sound statistical collection schemes, and also defines the essential managerial considerations and required measurements so as to assure the protection of affected ecosystems through these to conserve target and non-target species. [10]

In reality, countries have conflicting interests in the field of high-seas fisheries, and many countries are unwilling to give up their huge economic interests and even more unwilling to assume international legal responsibilities. The soft law creation process is relatively flexible, normally declarations and other guiding documents can be issued just following an international conference. For this reason, soft laws can expedite the resolution of unexpected problems in practice. A case in point is the *Code of Conduct for Responsible Fisheries*, which has had impressive success in reducing the cost of contracting and is considered a success story by many international organizations.

4.1.4. Soft Laws Can Be Invoked by Judicial Bodies as the Basis for Deciding Cases

The traditional rules of international law often lag behind and cannot be updated according to the needs of the real situation, so there will be *lacuna praeter legem*. In order to fill the *lacuna praeter legem* and defend justice, the judiciary often invokes international soft law rules as the basis for deciding cases in judicial practice. For example, the 1995 International Court of Justice decision on nuclear testing cited the *Objectives and Principles of Environmental Impact Assessment*, the obligations of states as articulated in *Agenda 21* in the *Report of the United Nations Conference on Environment and Development*, and Principles 1 and 21 of the *Stockholm Declaration* (on the principle of non-injury to other states) [11]. This is a good indication that soft laws can be invoked by the judiciary as a basis for adjudicating cases.

4.2. Limitations of "Soft Law" in the Field of Law of the Sea

Of course, everything has two sides, there is no denying that international soft law has many positive effects, but these positive effects also give rise to a variety of limitations, affecting the effectiveness of international soft law. More specific analyses are as follows.

4.2.1 " Soft Law " is not Legally Binding

International soft law is mostly of principle and does not provide for specific rights and obligations, let alone for legal liability. For this reason, this feature of "soft law" is likely to lead to its lack of sufficient binding force in modern international society.

Power politics exists not only in the field of diplomacy and international relations but also in the field of soft law. As the formulators and promoters of influential international soft laws are usually big powers, it is inevitable that the soft law rules will also incorporate the "big power ideas", which may become an instrument for the great powers to promote hegemony and power politics. At this point, it is likely to produce the situation that even if the major powers are free to use, interpret or even violate international soft law, they will not be sanctioned by law. In this case, that is, in the process of formulating international soft law, the big countries are likely to use their dominant position to impose their will on small countries, which will also destroy the original international

order and pattern, resulting in an unfair, injustice and unreasonable situation. Moreover, since international soft law is not legally binding on countries, some countries are not responsible for negligence in implementing soft law, so these countries will be more emboldened and likely to abuse the phenomenon of international soft laws. They may, for example, choose those soft laws that are favorable to them to achieve their goals, and then argue that soft laws that harm their interests are non-legally binding.

4.2.2 The Scope of "Soft Law" is Uncertain and the Content is Ambiguous and Changeable

As mentioned above, although there are several representative doctrines of international soft law, no clear definition has been formed, scholars do not fully agree on the understanding of international soft law, and there are more or fewer inconsistencies in the scope. The implementation of many international soft law rules may not only create a conflict of rights among them but also between them and traditional international law [12].

Although one of the functions of international soft law is its flexibility, the fact remains that in practice there are still shortcomings, which often lead to an expanded interpretation of soft law. This is because the content of international soft law is ambiguous, mostly in terms of principles, and does not provide for specific rights and obligations. Moreover, international soft law is not stable, in other words, although it can keep pace with the times and make adjustments according to the real situation, this characteristic also increases the uncertainty of the application of international soft law. For all these reasons, international soft law often has a great deal of discretion in its implementation, but once the discretion is abused, it may cause very serious adverse consequences.

5. Development Trend of Soft Law in the Law of the Sea

At present, international legal practice has generally accepted the existence of international soft law, in which cooperation in marine environmental protection has become the core content of "soft law" adjustment; meanwhile, the widespread and common use of soft laws has also played a pivotal role in the protection of the marine environment.

In recent years, the effective use of marine resources and the protection of marine biodiversity beyond areas under the jurisdiction of national laws have become important issues of common concern for all mankind. In 2015, the 69th UN General Assembly adopted *Resolution 292* aimed at establishing a legally binding international instrument on the protection and sustainable utilization of marine biodiversity beyond national jurisdiction under the *UN Convention on the Law of the Sea*, with the preservation and sustainability of genetic resources as a central part of this future instrument.

This is because most developed countries hold the view that the "freedom of the high seas principle" should be applied to national extraterritorial genetic resources, while most developing countries believe that the "common heritage of mankind principle" should be applied [13]. The difference between the two views lies in whether or not to allow autonomous exploitation of the sea beyond national jurisdiction and to benefit from it. The developed countries, with their advanced technology and independent capacity to exploit and use them, strongly argue for the legitimacy of free exploitation of the resources on the high seas, while the developing countries do not have the same technology and capacity and thus oppose the developed countries' view. Obviously, it is difficult to establish "hard law" rules in the field of marine resource exploitation that is in the common interest of developing and developed countries. However, the two groups of countries can reach a basic consensus by seeking agreement on the goal of protecting the "common good of mankind" and developing corresponding soft laws accordingly. In addition, developed and developing countries should also take action as early as possible on this basis to jointly protect and utilize extraterritorial marine resources.

In terms of marine technology transfer, as early as the 6th Special Session of the UN General Assembly, a resolution was made to "call for an international code of action on technology transfer that meets the requirements and conditions prevailing in developing countries". Still, even after about ten years, most developed countries are still unwilling to give up their technological advantages and

make substantial concessions on technology transfer, so the *International Code of Conduct on Transfer of Technology* did not enter into effect in the UN General Assembly. From the failed lessons on the *International Code of Conduct on Transfer of Technology*, it can be seen that traditional international law will be constrained by the power politics of developed countries, advanced international technology will bring huge economic benefits to the country, it is also closely related to national soft power and has distinct political overtones, so developed countries will never be willing to give up their monopoly on international technology. For this reason, no matter from the historical experience or the perspective of the behavior logic of countries, it can be noted that it is more likely to form soft laws on national extraterritorial marine technology transfer, and it is very difficult to ask developed countries to give up their dominant position to reach a consensus with developing countries to formulate hard laws.

To summarize, this paper argues that it is likely that soft laws will gradually take shape or even occupy a very critical position at least in the exploitation of marine resources and the transfer of marine technology. In this case, soft laws will become an indispensable element of the legal regime for the oceans, even if Resolution 69/292 adopted by the UN General Assembly calls for the development of a legally binding international instrument. In response to this, there are two broad possible ways forward. The first is to develop international soft laws first, to continue to summarize the experience on the ground, improve the shortcomings of soft law in the process of continuous change, and then promote the " soft law " towards " hard law".This is based on the premise that “soft law” has the possibility of belonging to international law, i.e., it requires that international soft law documents are only formally different from "hard law" and lack legally binding, but there is no clear distinction between them in terms of practical effect [14]. The second is to create international hard law directly but to incorporate soft law elements into it once it involves disagreements between developed and developing countries that do not give way. For example, Article 15(7) of the *Convention on Biological Diversity* states that "Parties shall take legislative, administrative or policy measures, as necessary and appropriate, to achieve the objective of equitable sharing of the benefits arising from research and development of genetic resources and from the commercial and other utilization of these resources by the source countries." This article does not impose specific obligations, and includes the words "as necessary" and " appropriate", allowing a degree of freedom of choice for the Contracting Parties. It is obvious, however, that the first approach is much easier than the second for practical purposes.

6. Conclusion

In the context of globalization, peace, and development have become the main theme of the present era. Whether it is to maintain international order or to promote international cooperation, the rules of international law are needed to adjust and regulate the behavior of the subjects of international law. In international governance, both hard laws and soft laws are indispensable factors, and they are irreplaceable and indispensable without one another. Indeed, international hard laws constitute the "center" of international legal regulation, while international soft laws are the "periphery" surrounding the hard laws, and they complement each other and promote each other to maintain the international order and pattern [15].

When there are irreconcilable contradictions and serious differences of interests among the countries of the world on a certain issue in the field of the law of the sea, the elaboration of non-universally binding soft laws will often be the most appropriate option. In reality, the likelihood of implementing soft law in international law is quite high. However, it must be clarified that, as of today, international soft laws are not laws in essence; although their practical effects may not be different from those of hard laws, they still cannot replace international hard laws. And although the hardening of soft laws has become a general trend, in most cases, the development of soft laws first and then modifying them according to the specific situation is still an important way to improve the legal system of the law of the sea. At the same time, it should be noted that "soft law" cannot have

only positive aspects, and it certainly has certain limitations. Soft laws are not systematic, they are not legally binding, they are not conducive to the construction of the international order and they are not conducive to the stability of the normative system of international law. Despite the limitations of soft law, it is impossible for existing traditional international law to cover the endless new issues concerning the oceans and seas. Therefore, the employment of soft-law norms to bridge legal lacunae is still of great value. International soft laws and international hard laws are closely connected and should be utilized together in real judicial scenarios for the purpose of preserving the marine environment and oceanic biodiversity, attaining sustainable utilization of marine resources, constructing a political and economic framework for the oceans, and jointly tackling any future unanticipated challenges of the oceanic domain.

References

[1] Hartmut, H. (1999). A fresh look at Soft Law. *European Journal of International Law*, 10, pp.499-515.

[2] Snyder, F. (1994). *Soft Law and Institutional Practice in the European Community* (pp. 197-225). Springer Netherlands.

[3] Abbott, K. W., & Snidal, D. (2000). Hard and Soft Law in International Governance. *International Organization*, 54(3), pp.421-456.

[4] Xu, C. (2006). Inter-governmental Organization Network and International Economic Soft Law. *Global Law Review*, (04), pp.413-424.

[5] Wan, X. (2011). Analysis of the Rise of Soft Law in International Law. *Foreign Affairs Review*, (05), pp.131-139. The doi: 10.13569 / j. carol carroll nki far. 2011.05.013.

[6] Norse, E. A., & Amos, J. (2010). Impacts, Perception, and Policy Implications of the Deepwater Horizon Oil and Gas Disaster. Envtl. L. Rep. News & Analysis, (40), pp.11058-11073.

[7] Gao, Y. (2008). Research on Protection of Maritime Environment (Ph.D. Dissertation, Ocean University of China), *Chinese Doctoral Dissertations Full-text Database, Available at* https://kns.cnki.net/KCMS/detail/detail.aspx?dbname=CDFD0911&filename=200817 5053.nh.

[8] He, X. (2009). Research on the Legal Aspects of the Fisheries Management System of the High Seas (Master's Degree Thesis, Southwest University of Political Science and Law), *Chinese Master's Theses Full-text Database*, Available at https://kns.cnki.net/KCMS/detail/detail.aspx?dbname=CMFD2009&filename=200912 0944.nh.

[9] Boyle, A. E. (1999). Some Reflections on the Relationship of Treaties and Soft Law. *International & Comparative Law Quarterly*, 48(4), pp.901-913.

[10] Wei, D. (2017). A Study on Transformations of Fishery Resources Conservation Mechanism for High Seas in the Context of International Law (Ph.D. Dissertation, Jilin University), *Chinese Doctoral Dissertations Full-text Database*, Available at https://kns.cnki.net/KCMS/detail/detail.aspx?dbname=CDFDLAST2018&filename= 1018007046.nh.

[11] He, Z. & Sun, L. (2012). The Possibility of International Soft Law: A development from the perspective of Environment. *Contemporary Law Review*, (01), pp.36-46. doi: CNKI: SUN: DDFX.0.2012-01-006.

[12] He, Z. & Shang, J. (2015). Effectiveness, Limitation and Improvement of International Soft Law. *Gansu Social Sciences*, (02),128-131. doi: 10.15891/j.cnki.cn62-1093/c.2015.02.027.

[13] Zhang, L. (2018). The Softening Governance of Marine Biological Diversity of Areas Beyond National Jurisdiction in the Perspective of Inevitability that Elements of Soft Law Will Participate. *Fudan Journal (Social Sciences Edition)*, (02) 169-180. The doi: CNKI: SUN: FDDX. 0.2018-02-020.

[14] He, Z. (2017). International Soft Law in the Era of De-globalization. Wuhan University Journal(Social Science)，(04), pp.54-69. The doi: 10.14086 / j. carol carroll nki wujss. 2017.04.007.

[15] Wang, D. (2012). Research on Regulating the Problems in the Arctic by Soft Law (Ph.D. Dissertation, Dalian Maritime University), *Chinese Doctoral Dissertations Full-text Database*, Available at https://kns.cnki.net/KCMS/detail/detail.aspx?dbname=CDFD1214&filename=101310968 1.nh.