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区域海洋污染应急合作制度的  
利益层次化分析

Cooperation in Combating Pollution in Cases of  
Emergency in Regional Seas with Analysis of  
Classification of Interests

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## 内容摘要

**第一章：区域海洋污染应急合作制度的历史嬗变。**本章是对区域海洋污染应急合作制度（以下均简称为应急制度）历史发展足迹的追寻。通过对制度源头的反观，可以发现，突发性的海上溢油事故是产生应急制度的直接诱因。但是，若作更深层次的探析，则可以发现，海洋环境利益和经济发展利益的相互平衡需要，是应急制度产生、发展和壮大的根本原因。二战后，经济发展深受各国重视，这带动了海上石油运输业的发展，由此，也招致了一些大规模的海上石油污染事故。在惨痛的教训面前，国际社会开始注意到海洋环境的利益诉求。这在国际法上的最直接表现，就是区域海洋项目在全球范围的全面铺开。早期应急制度的支持者，多是强调以海洋环境利益来限制经济发展利益。但是，自 1992 年《里约环境与发展宣言》后，可持续发展理念开始被纳入到海洋环境保护规范中，海洋环境也被看作是“为了发展的环境”。如今，应急制度不但能够以一种较成熟的姿态来平衡海洋环境利益和经济发展利益，而且，其在基础性法律框架、适用对象和具体内容等多方面都获得了较大的发展。从总体上看，应急制度产生与发展的历史，就是海洋环境利益与经济发展利益斗争与妥协的历史。

**第二章：区域海洋污染应急合作制度的利益分析视角。**顾名思义，本章力图借助利益分析的方法来剖析应急制度。利益具有和人类不可分的品质，它和人类的生存和生存方式紧密相关。因此，利益分析方法在社会科学领域一直有着广泛的使用。本章则更进一步，提出了利益的层次化分析方法，将那些维持人类生存的利益称为生存性利益，将那些改善人类生存方式的利益称为发展性利益。应急制度所直接保护的海洋环境利益，属于生存性利益；而那些影响应急制度构建和实施的区域内各方的经济和政治利益，则更多地属于发展性利益。一般情况而言，当这两种利益发生冲突时，对生存性利益的保护应当优先于对发展性利益的保护。

此外，本章也探讨了可以支撑应急制度的各种一般理论和具体理论。在一般理论方面，综合吸收了自然法学、实证法学和社会法学的有益成分；在具体理论方面，则是分析了应急制度中风险预防原则、合作原则和有限主权原则的合理性。这也为本文第四章提出的西北太平洋区域和东亚海区域海洋环境保护公约草案

以及应急制度草案，奠定了理论基础。

**第三章：区域海洋污染应急合作制度的构建模式。**本章尽览了现有应急制度的构建模式：北海—东北大西洋区域的分立模式、波罗的海区域的综合模式和以地中海区域为代表的综合—分立模式。通过对三种模式的考察，可以发现，是否建立应急制度，是由海洋环境利益的基础性地位所决定的，但是，关于更为具体的事项：诸如应急制度应采取什么模式加以构建、谁来主导保护、用什么方式保护、保护的合作范围和深度等问题，则会深受区域内各方政治和经济利益格局的影响。北海—东北大西洋区域分立模式的成功，很大程度上取决于区域内各方政治经济利益的一致性；波罗的海区域的综合模式，则是“东西方”因素所导致的政治利益根本分歧使然；地中海区域为代表的综合—分立模式，更多地是借助于区域内经济主导方主导性力量的发挥。此外，本章也总结了各区域应急制度的一些具体经验和教训。

**第四章：区域海洋污染应急合作制度的扩展。**本章探讨了西北太平洋区域和东亚海区域的应急制度构建问题。在全球 18 个区域海洋中，除了南北极区域之外，只有这两个区域尚未形成应急制度。并且，中国恰好也处于这两个区域之中。近年来，中国经济结构和经济增长方式的调整、海洋环境保护法律制度的改革和应急能力的发展，都已经使得中国有条件也有能力去推动这两个区域的应急制度构建。但是，为了避免加深政治利益的分歧，不可以“主导”来代替“推动”。通过对这两个区域自身特点和相关经济、政治利益格局的分析，作者认为，西北太平洋区域更适合借鉴波罗的海区域的综合模式，东亚海区域则更适合借鉴地中海区域的综合—分立模式。此外，本章还分析了中国的推动进路，提出了这两个区域应急制度构建的具体建议，并针对这两个区域分别拟出了海洋环境保护和应急合作方面的具体草案。

**第五章：区域海洋污染应急合作制度的改进。**在应急制度的改进问题上，本章着重考察了那些能够影响各区域海洋环境利益和经济发展利益的重要因素。这些重要因素中，可以分为全球化的因素和区域化的因素。全球化的因素，主要是指国际经济自由化、WTO 和国际海洋环境保护法律的发展。区域化的因素，主要是指经济区域化和政治区域化的发展趋势。不论是全球化的因素，还是区域化的因素，都会对应急制度的发展带来正反两方面的影响。因此，应急制度的改进，

关键在于如何利用全球化和区域化中的有利因素，有效地化解个中的不利因素，从而达成海洋环境利益和经济发展利益的平衡。这其中，区域间和区域内的合作至关重要。在大方向上，如果能够推动各区域中的政治利益格局、经济利益格局和海洋环境利益格局尽可能地重叠，将有利于应急制度的改进；在具体方向上，则应当坚持三个方面的改进：一是合作深广度的推进；二是各区域应急合作模式的改进；三是制度价值取向从“应急”向“防急”的转变。

**关键词：**区域；区域海洋；污染事故；合作；利益

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## Abstract

**Chapter 1 is Development History of the Regime of Cooperation in Combating Pollution in Cases of Emergency in Regional Seas** (herein after as the emergency regime). This chapter is to trace back the course of the emergency regime. With tracing back the origin, it is to be found that the pollution incident of oil spillage at seas was the direct inducement of the creation of the emergency regime. Whereas, with deeper research, it is to be found that the need to balance economic development interest with marine environmental interest was the intrinsic cause to the creation and development of the emergency regime. Post World War II, economic development was the primary mission for states, which incurred some grave pollution incidents of oil spillage at seas. Facing with the grave pollution, the international community began to take notice of the interest of marine environment, to which the most direct reflection in international law was the rapid spread of Regional Seas Programmes under the auspices of United Nations Environmental Programme (herein after as UNEP). The advocates of the emergency regime in the beginning favored the interest of economic development being limited by that of marine environment. While with the adoption of the Rio Declaration in 1992, the concept of sustainable development began to be brought into the marine environmental protection regimes. Marine environment is also taken as “environment for development”. Nowadays, the emergency regime is not only to balance the interests of economic development and marine environment, but gets developed with respect to its legal framework, application objects and provisions. In general, the history of the creation and development of the emergency regime is the course of the contending and compromise between interests of economic development and marine environment.

**Chapter 2 is Interest analysis of the Regime of Cooperation in Combating Pollution in Cases of Emergency in Regional Seas.** As understood from the title, this chapter attempts to analyze the emergency regime with the method of interest analysis. Interest is undividedly related to human nature, which came into the field of social science with the needs of human living and ways of human living. Whereas the method of interest analysis has always been applied in the field of social science. This chapter furthers with bringing forward the method of classification of interests, which classifies interests related with the sustaining of human living as living-sustaining



interest, and those related with the promotion of ways of living as developing interests. Marine environmental interests protected by the emergency regime belong to the classification of living-sustaining ones; and those affecting the establishment and application of the emergency regime belong to the classification of developing ones. Generally speaking, the protection of living-sustaining interests overwhelms the protection of developing ones when those contending with each other.

Furthermore, this chapter also explores the general and specific theories and principles which underpin the emergency regime. In general theories, the author synthesizes the useful parts of natural, positive and social jurisprudences. In specific principles, the author analyzes the ration of preventive principle, cooperative principle and limited sovereignty principle, which lays the theoretic foundation the two drafts for the Northwest Pacific Region and the East Asia Seas Region in chapter 4.

**Chapter 3 is Patterns of the Regime of Cooperation in Combating Pollution in Cases of Emergency in Regional Seas.** This chapter makes a review of the patterns of the existing emergency regimes, which may be described as the independent pattern in the North Sea and the Northeast Atlantic Region, the synthesis pattern in the Baltic Region and the typical synthesis-independent pattern in the Mediterranean Sea Region. By examination of these three patterns, the establishment of the emergency regime is determined by the fundamental status of marine environmental interests, while the situations of political and economic interests in the region affect those more specific aspects of the emergency regime, i.e. the pattern of the establishment of the regime, the leading role of the regime, the methods used, the extent of the cooperation in the regime. The success in the North Sea and Northeast Atlantic Region, to a great degree, rests with the consistency the political and economic interests in the region; the synthesis pattern in the Baltic Region was due to the fundamental divergence of political interests between the “Eastern and Western” systems; the synthesis-independent pattern in the Mediterranean Sea Region, is determined by the leading role played by France in that region. Further, this chapter makes a summary on the lessons learned from the existing regimes.

**Chapter 4 is Extension of the Regime of Cooperation in Combating Pollution in Cases of Emergency in Regional Seas.** This chapter studies on the situation of cooperation in combating pollution in cases of emergency in the Northwest Pacific Region and the East Asian Seas Region. Among the 18 regional seas in the world, these are the only two regions without the emergency regime, while

China is a partner to both of these regions. Recently, the adjustments within Chinese economic structure and economic developing pattern, the reform of Chinese marine environmental protection regime and the rapid development of its response capability make China to be adequate with the capabilities to push the establishment of emergency regime in these two regions. Whereas, to avoid the deepening of divergence of political interests between different parties in these regions, it's preferable to "push" instead to "lead" the regime establishing course. With analysis of the characteristics and political and economic interests situations within the two regions, the author proposes that the regime establishment in Northwest Pacific Region should learn more from the Baltic Region, while the regime establishment in East Asian Seas Region should learn more from the Mediterranean Sea. Furthermore, the author raises more specific suggestions on the establishment of emergency regimes in these two regions, and on the approaches how China may push forward the establishment. Finally, the author proposes two drafts on marine protection and emergency regime for the two regions respectively.

**Chapter 5 is Promotion on the Regime of Cooperation in Combating Pollution in Cases of Emergency in Regional Seas.** On how to promote the emergency regime, this chapter attempts to realize this goal by making studies on those factors which affect the elements of the emergency regime. Those factors are to be further classified as those on global level and regional level. Factors on global level are primarily the liberalization of international economy and the development of international marine environmental protection law. Factors on regional level are primarily the trend of economic region as well as of political region. Both global and regional factors will bring about positive and negative impacts on the development of emergency regime. Whereas the promotion of the emergency regime lies with how to make use of the positive impacts when dispelling the negative ones, for which cooperation is the most critical factor. Generally speaking, the more overlapping between the political and economic interests with the marine environment interest in the same region, the more favorable to the promotion of the emergency regime. With the specific aspects of how to promote the emergency regime, there are three dimensions to be taken into consideration, one is to promote the cooperation pattern, the other is to promote the cooperation extent, and another is to change the guideline from "response" to pollution incident to "preventing" pollution incident.

**Key Words:** Region; Regional Seas; Pollution Incident; Cooperation; Interest



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