Research on the Legal Protection of the Deep Civil-military Integration

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Abstract. As an important national strategy, civil-military integration is now in a critical period from primary integration to deep integration. For the sake of the Deep Development of Civil-Military Integration, China urgently needs to establish a sound legal system to play a normative and guaranteed role. This paper aims at the legal obstacles such as lack of top-level legal system, Legislative gaps, Lag of legal system and imperfect dispute resolution mechanism in the process of deep development of military and civilian integration in China. It is proposed to build a legal guarantee mechanism for this national strategy. That is, to promulgate the law on promoting civil-military integration, improve the legal level, strengthen special legislation, and establish a dispute settlement mechanism for civil-military integration to achieve its comprehensive, multi-field and efficient development model [1].

Connotation and Significance of Civil-Military Integration

Civil-military integration refers to the integration of national defense construction and military modernization with economy and society, and the promotion of the integration of civil-military in economy, culture and education in an all-round way. Our country's civil-military integration mainly passes through two paths, namely, military-to-civilian integration and civil-to-military integration. The former refers to the application of advanced military technology used in the construction of private enterprises. The latter refers to the entry of advanced technology, capital and products from the private sector into the construction of the army and national defense [2]. Implementing the civil-military integration strategy is the inevitable way to realize the dream of China and dream of strong military.

On the one hand, it can promote the economy development by using the national defense resources. On the other hand, it can take full advantage of the economy, resources and information to promote our national defense construction and military modernization construction.

Existing Legal Obstacles in the Deep Integration of Civil-military in China

As an important national strategy of our country, the deep integration of civil-military needs a sound legal system as the fundamental guarantee.

During the implementation of the civil-military integration, China has promulgated many laws and regulations. For example, “the National Defense Law”, “Regulations on National Defense Patents” and so on. However, there are still many problems in our country's laws and regulations on promoting the deep integration of civil-military, which need to be solved urgently.

Lack of Top-level Legal Design

In the period of deep integration of civil-military, China lacks a comprehensive law that stipulates some basic concepts, principles, subjects, and legal responsibilities. The main legislative manifestations are the regulations and policy red-headed documents named “approval”, “opinion” and “notification”. The effectiveness of the law is not strong. At the same time, due to the lack of effective communication between the military and the civilian in the formulation of laws, they only consider their own interests. So there is a situation of inconsistency in the rules and regulations promulgated.
Legislative Gaps
Although many laws and regulations have been formulated in the field of civil-military integration in recent years, there are still legal gaps in some specific areas. For example, there are gaps in our legislation\(^3\) on military personnel training and logistics support, weapons and equipment, infrastructure construction and defense science and technology industry.

Lag of Legal System
At present, there are some legal systems in China that lag behind the development of civil-military integration. For example, Article 12 of the Provisional Regulations of the People's Republic of China on Private Enterprises promulgated in 1998 stipulates that "Private enterprises shall not engage in the production and operation of military and financial industries." At the same time, China's "Company Law" stipulates that the company producing special products should be a solely state-owned company.

The Dispute Settlement Mechanism is Imperfect
In the process of our country's deep integration of the civil-military, the contradictions between the two sides are frequent, because of the more subjects involved and the broader fields involved. At present, China lacks a set of legal mechanisms to resolve disputes. It is urgent for China to build a dispute settlement mechanism to ensure the smooth implementation of this national strategy.

Feasibility Analysis of Civil-military Deep Integration Legislation
Policy Foundation
At the second meeting of the Central Committee on Civil-Military Integration and Development in 2018, it was emphasized that the "Opinions on Strengthening the Rule of Law in Civil-Military Integration and Development" must be implemented. The legal system should be improved, the legislation should be promoted, and the full coverage of legislation in key areas should be realized as soon as possible. We should improve the quality of legislation, attach equal importance to the establishment, reform, abolition and interpretation, timely amendment and abolition of laws and regulations that do not meet the needs of practice, and enhance the timeliness, coordination and operability of the legal system.

Advanced Experience Abroad
The legislative experience of some countries in the world in the field of civil-military integration can provide us with useful reference.

The United States put forward the strategy of civil-military integration in 1950 and adopted a model of military-civilian unify. That is to establish a special coordination mechanism to Coordinate Military interests and economic interests and achieve civil-military integration strategy. The United States makes full use of legal means to promote the development of civil-military integration. Around the Constitution, the United States has formulated many relevant laws and regulations, such as the National Security Law and the Military Security Law, which clearly stipulate the concept, principles and legal responsibilities of civil-military integration.

After the Second World War, Japan adopted the form of integrating the army with the people to develop its military strength. Under the guidance of its Constitution, Japan formulated many policies and regulations on national defense security, logistical support and weapons and equipment in order to achieve its economic development and invisible growth of military forces.

The British government adopts the road of civil-military integration, which mainly uses legal means to promote economic growth and the growth of national defense forces. According to different development trends, Britain has promulgated the Emergency Power Act and the Civil Aviation Act to ensure a high degree of integration of national defense forces and economic society development.

Looking at the civil-military integration strategy of different countries, although the models...
adopted are different, they all attach great importance to legislation in the field of civil-military integration and use laws to guarantee the implementation of these strategies. China should also explore a system of civil-military integration rule of law with Chinese characteristics based on its own special national conditions.

The Design of the Legal System of Civil-military Deep Integration

China is building a socialist legal system with Chinese characteristics. The civil-military integration legal system is also a significant branch of it. In view of the legal obstacles in the course of the deep integration of civil-military in our country, this paper proposes several institutional design considerations, in the hope of creating a better rule of law environment for the deep integration of civil-military.

Strengthening Top-level Design and Making Basic Law

Civil-military integration is a complex system engineering. At present, our country is in an important stage of deep integration of the civil-military. It is bound to involve more relevant subjects and involve more fields. Therefore, our country should formulate and promulgate a basic law, named "Civil-Military Integration promotion law", which is used to adjust the relationship between economic society and national defense construction, coordinate, promote and guarantee economic society and national defense construction. This law should be based on the principles of overall coordination, integration and sharing, comprehensive innovation and deep integration. It is necessary to fix the advanced experience in the process of civil-military Integration in the form of law. At the same time, policies such as access, security mechanisms, and financial funds in the field of civil-military integration will be raised into law.

Perfecting the Legal System of Civil-Military Integration

At the 1st plenary meeting of the Central Committee on civil-military Integration and Development, President Xi Jinping emphasized that to promote the in-depth integration of the civil-military. It is necessary to speed up the work of establishing, reforming and abolishing the law. Give full play to the norms, guidance and guarantees of laws and regulations. Play to the norms, guidance and guarantees of laws and regulations.

At present, the legislation on the civil-military integration in our country is very complicated, and many laws have seriously affected the implementation of this strategy. Our country should start the work of legislation, reform and interpretation of civil-military integration in a timely manner, and abolish some laws with serious lag. At the same time, China can implement the joint promulgation of laws, that is, full consultation and balance of interests between the military and the civilian before the promulgation of laws. To balance the interests of both the military and the civilian to the greatest extent, so as to facilitate the deep integration of the civil-military.

Strengthening Special Legislation to Fill the Gaps in Law

At present, China's Civil-Military Integration Strategy needs to be guaranteed by a sound legal system. Our country should promote legislation in special areas of civil-military integration, such as national defense science and technology legislation, military personnel training legislation. In order to change the attribution of intellectual property rights and the confidentiality system in the process of the deep integration of civil-military, it is necessary to strengthen legislation on financial security and intellectual property rights in the field of civil-military integration.

During the implementation of the civil-military integration strategy, some private capital have difficulty in entering the military field. Special laws and regulations should be formulated to promote the private capital to participate in national defense construction and to maximize national defense and economic interests.

At present, the issue of confidentiality in national defense has become the biggest obstacle to the deep integration of civil-military affairs in China. The existing secret system in the national defense and military fields is incompatible with the civil-military integration strategy.
China should formulate corresponding laws and regulations on the basis of the Law on Guarding State Secrets, classify the secret level in the national defense and military fields, and make clear provisions on some decryption systems.

**Formulating Laws and Regulations for the Settlement of Civil-military Integration Disputes**

The civil-military integration is an important strategy in our country. In the actual development process of civil-military integration, more and more subjects will participate, involving significant interests and mostly involving confidentiality issues. Once disputes arise during the civil-military integration, the conventional dispute resolution mechanism cannot play a role. At present, there is no perfect legal mechanism to solve the disputes arising from civil-military integration in China. In order to better settle the disputes in the civil-military integration, our country should promulgate relevant laws and regulations as soon as possible.

**Legislation on Military-civilian Consultative Mechanism.** Military-civilian consultation mechanism is the most advantageous means to resolve the contradictions between the two sides in civil-military integration.

China's National Defense Law stipulates that the State Council and the Central Military Commission may hold coordination meetings to coordinate national defense affairs. However, there is no relevant legislation in China at present. There is no subordinate relationship between the two sides, so there is no common superior to coordinate the contradiction between them. China should formulate laws and regulations on military-civilian consultation mechanism as soon as possible, and set up a special coordinating body to hold coordination meetings and promote the two sides to coordinate and resolve contradictions.

**Formulating the Civil-Military Integration Arbitration Law to Improve the Relevant Arbitration System.** Arbitration, as an important mechanism to resolve disputes, is characterized by independence, rapidity, economy, confidentiality and professionalism. Article 2 of China's existing Arbitration Law stipulates that property and contract disputes between equal subjects can be arbitrated. However, the contract related to the process of civil-military integration involves the interests of national defense, and the two parties are not entirely equal in nature, so they cannot adapt to the Arbitration Law of our country. China should formulate a Law on Civil-military Integration Arbitration. The law stipulates the rules, powers, procedures and consequences of arbitration, Establishes special arbitration institutions to solves disputes in civil-military integration efficiently and professionally, and safeguard the interests of both parties.

**Improving the Litigation Settlement Mechanism.** Judicial procedure should be the last line of defense for settling disputes over civil-military integration. However, civil-military integration disputes usually involve national defense security and military secrets, so they cannot be applied to ordinary court proceedings.

Military courts usually have some special procedures and systems when hearing cases, so it is difficult to apply the procedures of military courts to the related litigation of civil-military integration. Therefore, this paper hold the view that China should introduce relevant laws on civil-military integration litigation. The establishment of specialized courts and the training of a number of professionals will enable the contradictions to be resolved fairly and quickly.

**Conclusion**

As an important national strategy, civil-military integration is at a critical stage of deep integration development. At the second meeting of the Central Committee on Civil-Military Integration and Development, the emphasis was placed on improving the level of legalization to achieve the in-depth development of civil-military integration. Therefore, this paper puts forward the preliminary conception of constructing the legal guarantee system for the deep civil-military integration, with a view to using the rule of law as an important support for the development of the integration of the civil-military, and promoting the formation of the deep development pattern of the civil-military integration.
References

[1] Information on http://www.xinhuanet.com/politics/2018-10/15/c_1123562440.htm.

[2] Nie Jing. On the Legal Issues of Civil-Military Integration Development,[J]. Legal System and Society, 2016, (04):152-153.

[3] Wang Jinhua. On the Legal Guarantee of the Deep Development of Civil-Military Integration in China,[J]. Journal of Lanzhou Institute of Education, 2018, 34(06):141-142.

[4] Dong Xinquan. On the Construction of Civil-military Integration Laws and Regulations in China,[J].Journal of Nanjing Univerity of Science and Technology(Social Science Edition) 2018.31(02):16-19.

[5] Lin Gaosong. Strategic Thinking on the Construction of the Legal System of Civil-military Integration, [J]. Law Science Magazine, 2017, (05):10-18.

[6] Zhu Zuoxin. On the Enactment of the Basic Law of the Civil-military Integration Development in China, [J]. Journal of Beijing Institute of Technology (Social Sciences Edition), 2016, 18(06):133-139.

[7] Cong Wensheng. Reflections on the Legal System with Chinese Characteristics for Military-Civilian Integration,[J]. Frontiers, 2017, (09):29-40.

[8] Zhang Jihai, QiaoJingjie. The Research of Civil-military Integration In-depth Development Pattern,[J]. Journal of Beijing Institute of Technology (Social Sciences Edition), 2016, 18(05): 111-116.