

## 中国国旗法的产生、内容与特点

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### 摘要

虽然近代中国的国旗历史可以追溯到清朝末年，但其国旗法首次通过是在1990年。此后，中国国旗法经过两次修订，最近一次是在2020年，其规定比其他制定国旗法的国家更为有力。该法共24条，涵盖了五星红旗的意义、五星红旗的大小、悬挂方式、防止五星红旗被不尊重和被商业使用以及升旗的规则，明确了法律的监督机构，并阐明了其在宣传和教育中的作用。与其他一些国家不同，该法具有普遍性、约束力，并带有强制执行条款。

## The Emergence, Content, and Characteristics of China's National Flag Law

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### Abstract

While China's national flag history goes back to the late Qing Dynasty, its national flag law was first adopted in 1990. Amended twice since, most recently in 2020, its provisions are more forceful than those in many other countries with flag laws. Its 24 articles cover the significance of the five-star red flag, its sizes, its display, its protection from disrespect and commercial use, and protocols for raising it, specifying the supervisory authority for the law and clarifying its role in publicity and education. Unlike in some other countries, the law is universal, binding, and carries enforcement provisions.

## 一、我国国旗法的制定与沿革

国旗作为国家的象征，具有民族主义的意象，是建构国家认同的重要政治符号之一。中国近代国旗的产生可以追溯至晚清。第一次鸦片战争以后，随着通商口岸的开放，西洋船只大量涌入。西方国家普遍使用国旗来识别其船只和财产，形成了与国家主权有关的一套规则，如处理纠纷、航运事务等规则。由于清政府没有用于国际交往的国旗，产生了不少因悬挂或未悬挂国旗的纠纷事件，最为典型的的就是“亚罗号事件”。

为了避免误会、纠纷，清政府于1866年，确定了近代中国用于国际交往的国旗——黄龙旗(图1)。

然而黄龙旗带有浓厚的西学东渐痕迹，只为官用，禁止民用，实用色彩浓于国家象征。真正从国家象征意义上对国旗的讨论，出现在辛亥革命前后，发生在革命党内部。革命党尚未夺取国家政权，先议国旗，意在坚定推翻清朝统治、建立新政权的革命信念。

1911年12月，在上海召开的各省都督府代表联合会上，由江苏都督程德全提议，五色旗被确定为国旗(图2)。



图1. 黄龙旗，1866年。

Figure 1. Yellow Dragon Flag, 1866.



图2. 五色旗，1911年。

Figure 2. Five-color flag, 1911.

## I. The Formulation and Evolution of China's National Flag Law

A national flag, as a symbol of the state, has nationalistic imagery and is one of the most important political symbols for the construction of national identity. The creation of the Chinese national flag can be traced back to the late Qing Dynasty. After the First Opium War, with the opening of trade ports, there was an influx of Western ships. Western countries commonly used the national flag to identify their ships and properties, forming a set of rules related to national sovereignty, such as rules for handling disputes and shipping affairs. Since the Qing government did not have a national flag, many disputes arose because of flying or not flying the national flag, the most typical one being the “Yaluo Incident” in 1856.

In order to avoid misunderstandings and disputes, the Qing government established the first Chinese national flag, the Yellow Dragon Flag, in 1866, which was modeled on foreign design conventions (fig. 1). However, the Yellow Dragon Flag, with strong traces of Western influence, was only for official use and prohibited for civilian use, more of a utilitarian banner than a national symbol. The real discussion of the national flag in terms of national symbolism occurred around the time of the Xinhai Revolution, within the revolutionary party. Before the revolutionary party had seized state power, it first discussed the national flag, with the intention of firming up the revolutionary goal of overthrowing the Qing Dynasty and establishing a new regime.

In December 1911, at the proposal of the Governor of Jiangsu, Cheng Dequan during the Federation of Representatives of Provincial Governor's Offices held in Shanghai, the five-color flag was officially established as the national flag (fig. 2).

在北洋政府时期，五色旗实际上已被社会各界接受为中华民国的国旗。

1895年，在兴中会策划最早的一次起义，也就是广州起义的过程中，陆皓东设计了青天白日旗。

1906年冬，同盟会讨论国旗时，孙中山加上了满地红，以青、白、红三色表达自由、平等、博爱(图3)。

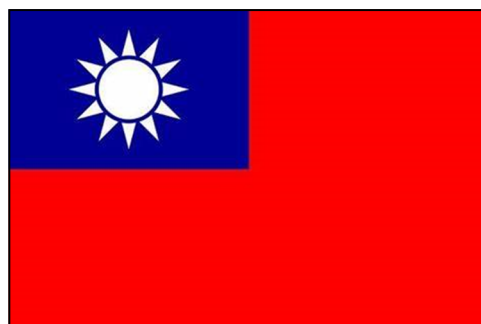


图 3. 青天白日满地红旗，1906 年、1928 年。

Figure 3. Flag of the blue sky and the white sun on Manchurian red, 1906, 1928.

新中国成立以后，国旗制度逐渐确立。1949年9月28日，中国人民政治协商会议第一届全体会议主席团公布了国旗制法说明(图4)。1950年初，中国人民政治协商会议第六小组曾起草《关于国旗升挂办法》和《国歌演奏办法》的草案。1984年，中央宣传部颁布《关于中华人民共和国国旗升挂的暂行办法》，涉及升降仪式、礼仪举止、商业禁忌等内容，较为全面。

1990年，第七届全国人大常委会第十四次会议审议通过《国旗法》。1991年，外交部等有关部门又制定了《涉外升旗和使用国旗的规定》《船舶升挂国旗管理办法》等部门规章。国家还发布了《国旗》和《国旗颜色标准样品》两项国家标准，详细规定了国旗的形状、颜色、

During the period of the Beiyang government (1912–28), the five-color flag was actually accepted by all sectors of society as the national flag of the Republic of China.

In 1895, during the planning of one of the earliest uprisings by the Xing Zhong Hui (Society for the Promotion of China), the Guangzhou Uprising, Lu Haodong designed the flag of the blue sky and the white sun.)

In the winter of 1906, when the National Flag was discussed in the League of the Allied Powers, Dr. Sun Yat-sen added the Manchurian Red, which was an expression of liberty, equality, and fraternity in the colors of blue, white, and red (fig. 3).

After the founding of the People's Republic of China, the national flag system was gradually established. On September 28, 1949, the Presidium of the First Plenary Session of the Chinese People's Political Consultative Conference announced the development of the national flag making law (fig. 4). In early 1950, the 6th Group of the Chinese People's Political Consultative Conference drafted the "Regulations on the Raising and Hanging of the National Flag" and the "Regulations on the Performance of the National Anthem". In 1984, the Central Propaganda Department promulgated the "Interim Measures for the Raising and Hanging of

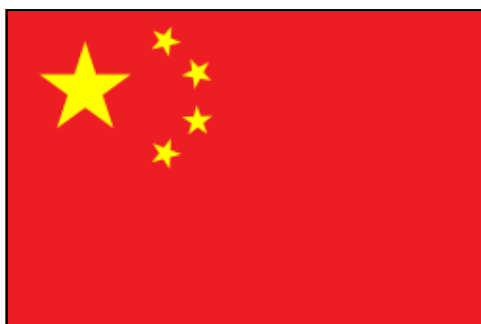


图 4. 五星红旗，1949年。

Figure 4. Five-star red flag, 1949.

the National Flag of the People's Republic of China", which involved raising and lowering ceremonies, etiquette and behavior, commercial taboos and other contents, and was relatively comprehensive. In 1990, the 14th meeting of the Standing Committee of the 7th National People's Congress reviewed and passed the "National Flag Law". In 1991, the Ministry of Foreign Affairs and other relevant departments formulated departmental regulations such as the "Regulations on Raising and Using the National Flag

图案、制版定位、通用尺寸、染色牢度等技术要求。我国关于国旗的法律制度初步建立。

我国《国旗法》自1990年审议通过之后，经过了两次修改。2009年修改了《国旗法》第19条，实质内容没有改动，因2005年颁布了《治安管理处罚法》，所以，删除了原条文中“治安管理处罚条例”的表述。第二次修改是2020年，此时《国旗法》已经实施了近30年，此次修订结合实际对《国旗法》的内容进行了实质性修订。2020年《国旗法》修改主要考虑到，随着我国政治和社会的发展，国旗的使用越来越广泛，成为人民群众表达爱国情感的重要方式，《国旗法》实施中也遇到一些新情况新问题，比如国旗的通用尺度已不能满足实践中国旗使用多样化的需求；国旗升挂和使用的场合已不适应国家政治和社会发展的需要；国旗升挂和使用中存在一些不规范的情况；国旗制作、销售、升挂、回收的监督管理部门还不够明确等。

2020年《国旗法》修改的基本原则是：

一是坚持部分修改，不作大的修改，重点完善国旗的礼仪规范和使用规则，明确国旗使用的监督管理部门。

二是根据国旗的特点，强调鼓励与规范并重，增加国旗非通用尺度使用的场合和要求，鼓励公民和组织在适当场合升挂、使用国旗和国旗图案，加强国旗宣传教育。

三是进一步规范国旗及其图案的使用，对实践中影响国旗权威和尊严的问题作出规范，维护国旗的权威和尊严。

in Foreign Affairs” and the “Regulations on the Management of Raising and Hanging the National Flag on Ships”. The state also issued two national standards, the “National Flag” and the “Standard Sample of National Flag Color”, which detailed the technical requirements of the shape, color, pattern, plate making positioning, general size, dyeing fastness and other technical requirements of the national flag. With this, China’s legal system on the national flag has been initially established.

Since its adoption in 1990, the Flag Law has undergone two revisions: In 2009, article 19 of the Flag Law was amended, with no substantive changes, and the reference to “regulations on public security administration penalties” was deleted from the original article because of the promulgation of the Public Security Administration Penalties Law in 2005. The second amendment was made in 2020, when the National Flag Law had been in force for nearly 30 years; its content was substantially revised in light of the current situation. The 2020 amendment to the National Flag Law took into account the fact that, with the development of China’s politics and society, the use of the national flag had become more and more widespread, and had become an important means of expressing patriotic sentiments for the masses of the people, and that some new situations and new problems, such as the issue of national flags, had been encountered in the course of the implementation of the National Flag Law. The implementation of the National Flag Law has also encountered a number of new situations and problems, such as the fact that the general scale of the national flag no longer meets the diversified needs of flag use in practice; the occasions on which the national flag is hoisted and used are no longer adapted to the needs of the country’s political and social development; there are a number of irregularities in flag hoisting and use; and the supervisory and regulatory authorities for the production, sale, hoisting and recycling of the flag are not yet sufficiently clear.

The basic principles of the 2020 revision of the National Flag Law are:

1) To insist on partial revision without major amendments, focusing on improving the etiquette norms and rules for the use of the national flag, and clarifying the supervisory and management authorities for the use of the national flag.

四是做好与国歌法等涉及国旗的相关法律的衔接，保持法律规范之间的和谐统一。总而言之，经过两次修订，我国国旗法的内容更加丰富完善，符合当今时代发展的需要。

## 二、我国国旗法的基本内容

目前我国《国旗法》共有24条，主要包含了以下内容：

第一，明确立法目的和国旗的意义。《国旗法》第1条规定：“为了维护国旗的尊严，规范国旗的使用，增强公民的国家观念，弘扬爱国主义精神，培育和践行社会主义核心价值观，根据宪法，制定本法。”五星红旗是中华人民共和国的象征和标志。

第二，规定国旗的尺度。《国旗法》所附的《国旗制法说明》对国旗的样式和五种通用尺度作出规定。目前，这五种通用尺度已不能满足实践中使用国旗多样化的需求。新修订的《国旗法》第3条增加了对非通用尺度国旗的原

2) In accordance with the characteristics of the national flag, it stresses the equal importance of encouragement and regulation, increases the occasions and requirements for the use of the national flag on a non-general scale, encourages citizens and organizations to hoist and use the national flag and its motifs on appropriate occasions, and strengthens the publicity and education on the national flag.

3) The use of the national flag and its motifs should be further regulated, and norms should be drawn up on issues affecting the authority and dignity of the national flag in practice, to safeguard the authority and dignity of the national flag.

4) It coordinates with the National Anthem Law and other relevant laws concerning the national flag, so as to maintain harmony and unity among the legal norms. All in all, after two revisions, the content of China's national flag law has become richer and more complete, meeting the needs of the development of today's times.

## II. The Basic Content of China's National Flag Law

China's National Flag Law currently has 24 articles, with the following main contents:

1) It clarifies the purpose of legislation and the significance of the national flag. Article 1 of the National Flag Law stipulates, "In order to safeguard the dignity of the national flag, regulate the use of the national flag, enhance the citizens' concept of the state, carry forward the spirit of patriotism, and cultivate and practice the core socialist values, this law is formulated in accordance with the Constitution". The five-star red flag is the symbol and standard of the People's Republic of China.

2) It stipulates the scale of the national flag—the style of the national flag and the five standard sizes are stipulated in the Notes on the National Flag System annexed to the National Flag Law. At present, these five standard sizes can no longer meet the diversified demands for the use of the national flag in practice. Article 3 of the newly amended National Flag Law adds provisions on the principles of the non-universal scale national flag, and at the same time sets out requirements on the ratio of the scale of the national flag to that of the flagpole.

则规定，同时对国旗与旗杆的尺度比例等提出要求。

第三，规定国旗升挂的单位和时间。新修订的《国旗法》增加规定，“中国共产党中央委员会”每日升挂国旗，“中国共产党中央各部门和地方各级委员会”在工作日升挂国旗。为体现国家监察体制改革后国家机构新变化，增加规定，“中国共产党中央纪律检查委员会、国家监察委员会”每日升挂国旗，“中国共产党地方各级纪律检查委员会、地方各级监察委员会”在工作日升挂国旗；明确各级监察委员会悬挂国徽。增加各民主党派、各人民团体在工作日升挂国旗的规定。增加非全日制学校和公共文化设施升挂国旗的规定。新修订的《国旗法》还增加了在网络中使用国旗图案的规则和标准以及举行哀悼仪式时，可以在遗体、灵柩或者骨灰盒覆盖国旗的情形。

第四，严禁损害国旗尊严等行为。新修订的《国旗法》明确不得倒挂或者以其他有损国旗尊严的方式升挂、使用国旗；不得随意丢弃国旗；大型群众性活动结束后，活动主办方应当妥善处理活动现场使用的各类国旗。在公共场合故意以焚烧、毁损、涂划、玷污、践踏等方式侮辱国旗、国徽的，依法追究刑事责任；情节较轻的，由公安机关处以十五日以下拘留。

第五，规范升旗仪式要求。新修订的《国旗法》规定“举行升旗仪式时，应当奏唱国歌，在国旗升起的过程中，参加者应当面向国旗肃立行注目礼或者按照规定要求敬礼，不得有损害国旗尊严的行为。”这些修改进一步明确了

3) It stipulates the unit responsible and the time for hoisting the national flag. The newly amended National Flag Law adds that the Central Committee of the Communist Party of China (CPC) shall hoist the national flag on a daily basis, and that “all departments of the Central Committee of the CPC and local committees at all levels” shall hoist the national flag on working days. In order to reflect the new changes in State institutions following the reform of the State supervision system, provisions were added to stipulate that the Central Discipline Inspection Committee of the Communist Party of China and the State Supervisory Commission shall hoist the national flag on a daily basis, and that the local disciplinary inspection committees of the Communist Party of China at all levels and local supervisory committees shall hoist the national flag on weekdays. “The national flag shall be hoisted on weekdays, and the national emblem shall be clearly displayed by the supervisory committees at all levels.” It adds the requirement that all democratic parties and people’s organizations hoist the national flag on working days, and adds provisions on the hoisting of the national flag in part-time schools and public cultural facilities. The newly amended National Flag Law also adds rules and standards for the use of national flag motifs on the internet and the circumstances under which the national flag may be covered over the body, casket, or urn when holding mourning ceremonies.

4) Acts which damage the dignity of the national flag and national emblem are strictly prohibited. The newly amended National Flag Law makes it clear that the national flag shall not be hoisted upside down or in any other way that undermines the dignity of the national flag; the national flag shall not be thrown away at will; and after the conclusion of a large-scale mass event, the organizer of the event shall properly dispose of all types of national flags used at the event site. Anyone who deliberately insults the national flag or national emblem by burning, destroying, painting, defacing, or trampling it in a public place shall be held criminally liable in accordance with the law; if the circumstances are less serious, the public security authorities shall impose a sentence of less than 15 days’ detention.

5) The requirements for flag-raising ceremonies are regulated. The newly amended National Flag Law stipulates that “when a flag-raising ceremony is held, the national anthem shall be sung, and in the process

升国旗仪式参加者的礼仪规范，有助于增强升国旗仪式的庄严感和仪式感。

第六，明确监督管理部门。此前的国旗法没有明确国旗、国徽相关活动的具体监管部门，在实践中导致监管不到位。新修订的《国旗法》明确了国旗、国徽相关活动的监督管理主体，规定了国旗、国徽制作、销售、升挂、使用、回收等方面的监管责任，使监管工作的开展更加有法可依。

第七，规定国旗的作用及宣传教育。新修订的《国旗法》规定“国家倡导公民和组织在适宜的场合使用国旗及其图案，表达爱国情感。”并鼓励有关部门和单位要以重大节庆日、纪念日为契机开展国旗教育。

### 三、我国国旗法的特点

从世界范围来看，英国、美国、德国、日本、保加利亚等国家也制定了国旗法，我国的国旗法具有以下特点：

#### （一）我国国旗法具有普遍法律效力

我国是单一制国家，国旗法在效力层级上属于法律，具有普遍法律效力。在美国，国旗法虽然是联邦法律（U.S. Flag Code is a federal law），但是在性质上则属于指南（guidelines），不具有法律拘束力（non-

of raising the national flag, participants shall stand at attention facing the national flag and make a salute or salute in accordance with the prescribed requirements, and shall not engage in any behavior that undermines the dignity of the national flag”. These changes further clarify the etiquette of the participants in the ceremony of raising the national flag, which helps to enhance the solemnity of the ceremony of raising the national flag and sense of ceremony.

6) Clear supervision and management—the previous National Flag Law did not specify the specific supervisory authorities for activities related to the national flag and national emblem, which led to inadequate supervision in practice. The newly amended National Flag Law specifies the main supervisory and management authorities for activities related to the national flag and national emblem, and stipulates the supervisory responsibilities for the production, sale, hoisting, use, and recycling of the national flag and national emblem, to make the supervisory work more legally enforceable.

7) It stipulates the role of the national flag in publicity and education. The newly amended National Flag Law stipulates that “the State promotes the use of the national flag and its designs by citizens and organizations on suitable occasions to express patriotic sentiments.” It also encourages relevant departments and units to take major festivals and commemorative days as opportunities to carry out flag education.

### III. Characteristics of China's National Flag Law

From a worldwide perspective, Britain, the United States, Germany, Japan, Bulgaria, and other countries have also enacted national flag laws, and China's national flag law has the following characteristics:

#### 1) China's national flag law has universal legal effect

China is a unitary state, and the flag law belongs to the law in the hierarchy of effectiveness and has universal legal effect. In the United States, although the flag law (the U.S. Flag Code) is a federal law, it is in the nature of guidelines, not legally binding, and to be voluntarily complied with by the parties. In Germany, Article 22, paragraph 2, of the Basic Law of the Federal Republic of Germany stipulates that “the

binding），且需当事人自愿遵守（voluntary）。德国于《德意志联邦共和国基本法》第22条第2款规定：“联邦国旗是由黑红金三色组成”。因此，关于联邦旗帜的规定被赋予了宪法地位。联邦总统于1996年11月13日颁布了关于德国国旗的命令。德国由于是联邦国家，各州在会徽方面有自己的责任，因此在旗帜方面也有自己的责任。因此，无论是为联邦地区发布的基本规定还是特别标记令，都对各州和市镇或市镇协会没有法律上的约束力。

## （二）我国国旗法设有处罚条款

我国《国旗法》第23条明确规定侮辱国旗需要承担法律责任。美国国旗法中并无类似规定。1942年国会通过了正式的法律，将有关国旗的规定写入《美国法典》（Code of Laws of the United States of America），但在法典中并没有相应的处罚规定，国会将处罚规定留给各个州及首都特区去决定，让他们自己制定法律。此后，各州都制定了相应的法律。1990年的美国诉艾奇曼案（United States vs. Eichman）中，最高法院判艾奇曼胜诉，因此《国旗保护法》失效。自此以后，国会虽然屡次努力希望通过新的国旗保护法，但一直没能如愿。也就是说，在目前的法律体系中，即便对国旗不敬，亦不会受到处罚。

## （三）我国《国旗法》规定了公民与国旗相关的权利义务

我国《国旗法》非宣誓性立法，具有实质的内容，对于完善我国国家标志制度具有重要的意义。比如《国旗法》第9条规定：“公民和组织在网络中使用国旗，不得损害国旗尊严。”《国

federal flag shall consist of three colors: black, red, and gold”. The provision on the federal flag was thus given constitutional status. The Federal President issued an order on 13 November 1996 concerning the German flag. As Germany is a federal state, the länder have their own responsibilities with regard to the coat of arms and therefore also with regard to the flag. Consequently, neither the basic regulations nor the special marking orders issued for the Federal District are legally binding on the länder and the municipalities or municipal associations.

## 2) China's flag law has penalty provisions

Article 23 of China's Flag Law clearly stipulates that insulting the national flag entails legal liability. There is no similar provision in U.S. flag law. In 1942, Congress passed a formal law to incorporate the provisions of the flag into the Code of Laws of the United States of America, but there are no corresponding penalties in the Code, and Congress has left the penalties to be determined by the individual states and the District of Columbia. Since then, each state has enacted its own law, and the Flag Protection Act was invalidated in 1990 when the Supreme Court ruled in favor of Eichman in United States vs. Eichman. Since then, Congress has failed to pass a new flag protection law, despite repeated efforts to do so. In other words, under the current legal system, even disrespecting the flag is not punishable.

## 3) China's National Flag Law stipulates the rights and obligations of citizens in relation to the national flag

China's National Flag Law is non-sworn legislation with substantive content, which is of great significance to the improvement of China's national flag system. For example, Article 9 of the National Flag Law stipulates that “Citizens and organizations using national flag motifs in the network shall comply with the relevant network management regulations, and shall not harm the dignity of the national flag.” Article 20 of the National Flag Law stipulates: “The national flag and its designs shall not be used as trademarks, patented designs, or commercial advertisements, and shall not be used in inappropriate circumstances, such as for private funeral activities.”

Japan has also enacted a National Flag Law (Law Concerning the National Flag and National Anthem, Law No. 127 of the 11th year of the Heisei era), but



旗法》第20条规定：“国旗及其图案不得用作商标、授予专利权的外观设计和商业广告,不得用于私人丧事活动等不适宜的情形。”

日本也颁布了国旗法（《关于国旗及国歌的法律》，平成十一年法律第一百二十七号），但该法律未对日本国民施加任何关于国旗和国歌的新义务。其颁布意义在于为公众提供机会，加深对“日本国旗”历史、《君之代》起源及歌词的理解。

努力形成维护国旗尊严的意识和社会氛围。国旗是国家的象征和标志，代表着国家的权威与尊严。中国近代的国旗自晚清因商用诞生几经易改，见证了我国近代以来政权的频繁变动。新中国成立以后，选取了五星红旗作为国家的象征和标志，并逐渐完备了国旗法及其配套制度。

中国的国旗法与其他国家不同，更加强调国旗使用的规范性和严肃性、国旗使用的监督管理等。未来应当在全社会开展国旗教育，增加公民的国家观念，弘扬社会主义核心价值观，努力形成维护国旗尊严的意识和社会氛围。

this law does not impose any new obligations on the people of Japan with regard to the national flag and the national anthem, and the significance of the enactment of the law is that it will provide an opportunity for the public to deepen its understanding of the history of the “national flag of Japan” and the origin and lyrics of “Kimigayo”, the national anthem.

The national flag is the symbol and emblem of a country, representing its authority and dignity. Since the late Qing Dynasty, China’s national flag has been changed several times due to the birth of the commercial sector, witnessing the frequent changes of power in modern China. After the founding of New China, the five-star red flag was chosen as the symbol and emblem of the country, and the national flag law and its supporting system were gradually completed.

China’s national flag law is different from that of other countries in that it places more emphasis on the standardization and seriousness of the use of the national flag, and the supervision and management of the use of the national flag. In the future, flag education should be carried out throughout society to increase citizens’ concept of the State, promote socialist core values, and endeavor to form an awareness and social atmosphere that uphold the dignity of the flag.

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