

New Amendments to the Haian Law Under the Sight of the Maritime Convention

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Abstract

China's maritime traffic safety law has enforced for thirty years since 1984 and has not experienced revision, but affected by subjective and objective factors, maritime traffic safety legislation has long ignored the sight of the international law, combined with the great changes in international shipping situation and the maritime traffic safety order, leading to the urgent revision of the old law. The new law came into force in September 2021. As an essential code in the field of maritime law, the United Nations Convention on the Law of the Sea returns to the newly revised Haian Law, which is conducive to China to fulfill its obligations and international responsibilities for relevant international conventions and promote the construction of China's "maritime power" policy. By comparing the prominent differences between the new law and the old law, this paper aims to specify the responses to the Convention in this law, reflect the return of the Convention in the new law, and make certain comments on the new changes of the law, as well as make responses to some criticisms toward this revision in the international community, and finally summarize the significance of the revision in the national strategic level.

Keywords: international maritime rule of law, Maritime Traffic Safety Law, United Nations Convention on the Law of the Sea, national maritime rights and interests, maritime power, maritime traffic safety

The maritime traffic safety law of the People's Republic of China (hereinafter referred to as "Haian law") has not been modified since January 1, 1984. On April 29, 2021, the 13th session of the standing committee of the National People's Congress passed the newly revised Haian Law with 167 votes, 1 abstentions, and formally implemented on September 1 in the same year.

In the 30-year enforcement of the old law, as the international shipping situation and maritime traffic safety management has been facing prominent contradictions and the old management mode has undergone fundamental changes, the old law has obviously lagged behind the new requirements of maritime traffic safety management and the new needs of rule of law strategy, at the same time, part of the old law does not adapt to the obligations and responsibilities under the maritime international convention and hasn't fully docked in the maritime international conventions that China has concluded, joined or participated in.

Combining the current international Marine rule of law practice and the Convention, this paper aims to explore the "new changes" reflected in this revision from the perspective of the Convention, and also, make certain responses to the international community about their comments toward the new law, and finally by correlating the law's development and the "maritime power" strategy, make prospects for the future development of Marine undertakings in our country.

1. The Lack of Sea Law Vision in the Old Rules of the Haian Law

1.1 Comparison of Old and New Distribution

Table 1. Comparison of old and new distribution

Content distribution													altogether	
edition	general rules	Ship, facilities and personnel concerned	Maritime traffic conditions and navigation guarantee	About navigation	About safety	The transportation of goods related to dangerous goods	About maritime search and rescue	Investigation and handling of relevant maritime traffic accidents	Salvage clearance	legal liability	management by personal supervision	special provision	supplementary provisions	
antique statue	Article 1 to Article 3	Chapter II Inspection and Registration of ships; Chapter III Personnel on ships and facilities	Chapter IV Navigation, Mooring and Operation (Article 10-19)	Chapter V Security Guarantee (Article 20-31)	chapter 6	Chapter VII Maritime Disaster Relief (Article 34-39)	Chapter 9 Traffic So the tune Check and Handling (Article 42-43)	Chapter 8	Chapter (Article 44-47)		Chapter 11	Chapter XII	Twelve chapters Article 53	
new law	Article 1 to Article 8	Chapter II Ships, Maritime Facilities and Crew	chapter three	Chapter IV Navigation, Mooring and Operation (Clause 33-56)	Chapter V Safety of Maritime Passenger and Freight Transporta tion (Article 57-65)	Chapter VI Maritime Search and Rescue (Article 66-79)	Chapter VII Maritime Traffic accident survey Handling (Clause 80-87)	Chapter IX (Article 95-116)	Chapter 8		Chapter 10	Ten chapters and 122 articles		

1.2 Problems With the "Old Law"

From the comparison of Table 1, it is not difficult to conclude that the old law is simple and principled. Although it only includes 53 provisions, it involves a wide range of regulatory objects, such as ship, crew, ship navigation and operation, transportation safety, maritime rescue and maritime traffic accidents, which reflects the characteristics of strong legislative principle and large law enforcement space, but inevitably produces the consequences of weak operability.

Combining with the topics discussed in this paper, one of the significant problems in the old Haian Law is that ---long-term attention to the domestic rule of law and the insufficient attention to international conventions in the field of maritime transportation, which does not fully reflect the requirements of the international community in related fields.

1.3 The Lack of the International Law of the Sea Vision in the "Old Law"

There are numerous international conventions in the field of international Marine research, among which the

United Nations Convention on the Law of the Sea ("the Convention") is especially taken as an important legal document. In accordance with the relevant provisions of the Convention, the competent maritime authorities shall have the duties of managing the harmless passage of foreign ships, managing maritime communications, exercising the right of pursuit and boarding, being responsible for rescuing life at sea, and managing the continental shelf. However, there are few relevant provisions in the old law, and there are missing and vague provisions. Specifically, the author will focus on explaining the following four parts.

1.3.1 Scope of Application

According to the definition of "berthing places" in Article 12 of the United Nations Convention on the Law of the Sea, the berthing places which are usually used for ship handling and anchorage are included within the territorial sea, even if all or part of them are located outside the external limits of the territorial sea. However, the scope of application defined in the old Maritime Traffic Safety Law is that the coastal ports, inland waters and territorial seas, which obviously doesn't include such "berthing places", let alone include them as part of the territorial sea. Therefore, in terms of the scope of application, the old rules of the Haian Code are decoupled from the Convention, and their application scope is narrower than the Convention on the Law of the Sea.

1.3.2 On Strengthening the Search and Rescue

In accordance with article 98 of the Convention on the Law of the Sea, paragraphs 1 and 2 respectively stipulate the maritime relief obligations of ships and coastal authorities, especially paragraph 2: each coastal state shall promote the sufficient application of maritime and air safety and effective search and rescue services through mutual regional arrangements and cooperation between neighbouring countries. At the same time, according to the judicial practice of the international community, the current large number of maritime searches and rescue work are also governmental public welfare activities. However, the old regulations of the Sea Safety Law only stipulate ships' responsibilities of the maritime searches and rescue work on how to implement rescue (paragraph 1), but do not stipulate how government agencies implement rescue (paragraph 2). In addition, a further regulations on the maritime search and rescue work, search and rescue system and funds controlled by the state authorities are blank.

1.3.3 On Ship and Crew Management

The United Nations convention on the law of the sea requires member states to exercise jurisdiction to ensure ship safety, but the old security law does not put the requirements for the members truly implement: the contents involving the ship management and crew management are relatively principled, among which the provisions involving ship management are only two and those involving crew management are only four. Due to the limited length of the law, its content is not comprehensive and lack specific operational norms. There are no effective provisions on the contents of ship management and crew management, such as ship security check, security guard, ship inspection and registration, the rights and obligations of the captain, and the responsibilities of the crew.

1.3.4 On Innocent Passage and Right of Hot Pursuit

Article 21 of the United Nations Convention on the Law of the Sea provides that "a coastal State may, in accordance with the provisions of this Convention and other rules of international law, formulate laws and regulations on any of the following concerning innocent passage of territorial waters: (a) protection of navigation equipment and facilities and other facilities or equipment;..." Article 111 "Where the competent authority of a coastal State may have sufficient reason in the opinion that a foreign ship violates the laws and regulations of that State." Therefore, according to the relevant provisions of the Convention, the competent authorities of coastal countries should enjoy and implement the right of innocent passage and hot pursuit. However, the old law did not stipulate the rights of coastal states, as well as relevant investigation and handling measures.

1.4 About the Cause of This "Missing"

This "missing" fundamentally lies in the lack of international Marine rule of law vision when formulating the old law. Objectively speaking, considering the origin of China share with the Convention on the Law of the Sea and the implementation of the old Haian Law, the enactment and entry into effect of the old law were more than ten years earlier than China's formal accession to the Convention. After its accession to the Convention, despite one revision (2016) with only "fine-tuning", which cancelled the ship entry and exit visa system and change it into a reporting system, no major changes were made, and has kept implementing the 84-year-old law overall. Therefore, Even if our country later acceded to the Convention, the Haian Law still adopts the old domestic rule of law vision; Subjectively, when the old Haian Law was enacted, it paid more attention to the legal practice of domestic maritime traffic, lacking forward-looking thinking on the international maritime rule of law and leaving room for flexibility.

2. The Return of the Vision of the International Maritime Law in the New Regulation of the Haian Law

2.1 What Are the Specific Modifications in the "New Law"?

The new Haian Law strengthens the management of ships and crew, clarifies the maritime search and rescue mechanism, emphasizes the accountability system, refines the accident investigation, and makes great changes in the chapter structure and legislative objectives.

2.1.1 Chapter Settings

Table 1 and other information searched by the author show that "Old Law" has 12 chapters with 54 articles, and "New Law" is reduced to one of 10 chapters with 122 clauses; although the chapters are reduced, the contents are richer and more detailed. The number of words in the full text has been increased from 3,553 words to more than 18,000 words.

2.1.2 Legislative Objectives

"Old law" is strongly principled, pursuing unity of principle and flexibility, while leaving great operation space for maritime transportation practice; while "new law" closely follows the changes in the field of international maritime transportation, improving the system design in terms of formulating former system norms, strengthening supervision in the middle and afterwards and enhancing emergency disposal, which can fully implement safety management requirements, further clarify and refine the relevant requirements, and finally reinforce the operability of the law.

2.2 The Return of the International Law of the Sea Horizon in the "New Law"

The innovation and progress of the "new law" is "changing" in line with the new characteristics of the international Marine transportation industry today, and the United Nations Convention on the Law of the Sea is the fundamental outline of adjusting the important legal relations in the international maritime field. The change of the Haian Law just reflects China's response to the accession of the Convention in 1996 in maritime transportation legislative field, and also reflects China's more attention to the international maritime rule of law currently. To sum up, the revision is the return of China's international vision and height in this field. It is embodied in the following four aspects:

2.2.1 Scope of Application

The revision changes the application scope from "coastal waters" to "jurisdiction waters", including not only "navigation operations" for ships and offshore facilities, but also "maritime traffic safety related activities".

This change deals with the Convention, which divides the oceans into internal waters, territorial seas, contiguous zones, exclusive economic zones, continental shelf, high seas and international seabed zones, with countries implementing different traffic safety management rights based on jurisdiction in different waters. Based on the maritime area system of the Convention, coastal states can enjoy national sovereignty over the traffic safety management of internal seas and territorial waters, jurisdiction over specific matters in exclusive economic zones, and jurisdiction of flag states and general jurisdiction on the high seas. It is not difficult to conclude that the Convention emphasizes the rights of coastal countries in the corresponding waters, rather than separate concepts of natural geography and space. However, the application of "coastal waters" in the "old regulation" obviously does not conform to the legislative meaning of the Convention; the concept of "jurisdiction area" belongs to the concept of rights, indicating that the sea area belongs to the category of legal sovereignty and sovereign rights and conforms to the relevant provisions of the Convention.

From the perspective of legislative value, international maritime legislative rule has been committed to realize the balance of interests between maritime utilization countries and coastal countries and port countries; the underlying logic of defining "jurisdiction area" as the law's application scope is based on exercising sovereignty and jurisdiction over maritime traffic security in a specific geographical scope, which is more beneficial to protect the traffic safety enjoyed by China as coastal countries and port countries over other maritime utilization countries.

2.2.2 Freedom of Navigation

2.2.2.1 The Innocent Passage in Territorial Sea

The revision attempts to take the maintenance of maritime traffic safety and the protection of the Marine environment as considerations of whether the foreign ship loses the right of innocent passage; comparing the principled provisions of the Convention about innocent passage are stated that the behaviors of damaging peace, good order or safety of coastal states, and "any intentional and serious pollution acts in violation of this Convention" are listed as non-harmless adoption.

From the contrast, it is not difficult to conclude that: both of the "safety" and "environmental protection" standards in the new law are positive responses to the provisions of the Convention; "Order" is not directly listed in the new law, but the law provides provisions in legislative purposes for "maintaining traffic order at sea", which can reflect obviously the importance that the new law attaches to the maritime traffic order; Although "peace" is not included in the new law, but considering that maritime activities affecting the peace of coastal states in a large scale are mostly minorities and extreme situations, as well as the effectiveness, safety and proportionality, it should be regulated by more specialized sectors, for instance, according to Article 17 of the Coast Guard Law, the coast guard agency shall stop and drive non-innocent ships away.

Finally, non-innocent investigation measures. Article 25, paragraph 1 of the Convention authorizes coastal states to take necessary steps to prevent non-innocent passage of territorial waters; after the introduction of the new Haian Law, it further clarifies that the competent transport department of The State Council may, together with relevant competent authorities, take necessary measures to prevent and stop non-innocent passage. It is not difficult to see that this provision is the application and implementation of the Convention authorization.

2.2.2.2 Right of Hot Pursuit

The principle of freedom of navigation and the right of coastal countries to maintain traffic safety are interdependent and mutually restricted. If the right of freedom of navigation has no boundary, it will inevitably damage the traffic safety of coastal countries. Therefore, as a restriction on the principle of freedom of navigation, close enforcement ensures that coastal states can effectively enforce foreign ships that flee to the high seas after violating their own laws.

According to Article 111 of the Convention, the right of hot pursuit is applicable to any country under the jurisdiction of territorial waters, exclusive economic zone, continental shelf covered waters; the territorial sea and adjacent zone law, though having nationalized relevant contents in the Convention, covering the basis, start and termination of this right, establishing the basic framework of enforcement exercise, but these points haven't been reflected in the old Sea Safety Law. This revision formally introduces the enforcement system: paragraph 2 of Article 90 stipulates that "if foreign ships violate the laws and administrative regulations of the People's Republic of China on maritime traffic safety or the prevention and control of ship pollution, the maritime administrative authorities may exercise the power of close enforcement in accordance with the law".

We can assume that the innocent passage is closer to "empowerment", then the addition of right of hot pursuit is more similar to "bidding power": the former is to guarantee the navigation freedom of foreign ships under certain conditions, while the latter one is to deliberately interfere with the behaviors of our maritime traffic management order based on the coastal traffic safety interests in accordance with international law sanctions.

2.2.3 Ship and Crew Management

Compared with the six provisions in the second and third chapters of the old law, the new edition of the Law integrates the old chapters with ships, Marine facilities and crew, and has more detailed provisions in the content, more expansion in structure and added more operational norms.

The new law breaks through the defects of the old law of strongly principled framework and broad operation space, and is more specific and in line with the requirements of current maritime practice. For instance, it clears the captain's legal responsibilities of managing the ship certificates, documents and personal crew certificates and the legal liabilities under the daily management of ship, cargo accumulation, transportation management, ship traffic accidents, maritime supervision and inspection; It stipulates the relevant requirements for the training and evidence collection of Chinese crew members and foreign crew members working on Chinese ships; All Chinese vessels, marine equipment, parts and materials specified, should comply with the relevant laws, regulations, rules and other relevant requirements, should obtain the corresponding certificates and documents after passing the inspection of the ship inspection agency and should carry out regular safety technical inspection according to laws; The ship shall, in accordance with the relevant laws and regulations on ship registration, apply to the maritime administrative authority for the registration of the nationality certificate; And the new law also includes the relevant regulations on the cancellation of the ship after its loss / scrapping.

2.2.4 Assistance and Salvage at Sea

Complying with the law of the sea convention article 98 of the second paragraph of the coastal departments of maritime search and rescue responsibility, and around the maritime search and rescue work facing the new situation, new problems, new demand, the new "sea safety law" target to enrich and perfect the old bias on ship rescue maritime search and rescue system.

First, a new maritime search and rescue principle has been established. Article 67 of the new law defines the principle of "government leadership, unified command, territorial orientation, special group combination and

nearby speed"; Second, it establishes a new maritime search and rescue command system. In Articles 68 and 70, the national maritime search and rescue coordination mechanism and the responsibilities of search and relevant member units are defined; Under the strategic principles and systems, the new law also strengthens the implementation of search and rescue responsibility through more detailed rules. In Articles 69 and 78, maritime search and rescue funds, medical care and living allowances of the rescued personnel have been strengthened. It can be concluded that this is the first time that the national authorities increase their obligations in the maritime search and rescue in the form of legislation, and through a series of specific mechanism, to distribute the responsibility to different departments, and apply funds and personnel as the solid foundation of the system, and finally implement the search and rescue principle of the "government leadership, national unified command".

It is worthy noting that this part of the legal provisions clearly points out the requirements for domestic laws to connect with the international legal system: Article 79 stipulates that the China Maritime Search and Rescue Center carries out international cooperation in accordance with the international Conventions concluded or participated in by China. In the author's opinion, such regulations actually set a target line for domestic maritime search and rescue work and also a final line of defense. It is more conducive to internationalize the development of China's maritime search and rescue work, stabilize China's image as a responsible major country in the international community, and submit a Chinese answer to the global governance plan.

3. Comment: "The" New "of the Haian Law"

3.1 Significance

First, this modification is the objective requirements of shipping safety and development.

Maritime traffic safety is the basic premise for the development of the shipping industry. If China's shipping industry wants to achieve great development, we must strictly observe the red defense line of "safety". With the guidance of the spirits and systematic rules of the Convention and other relevant international treaties, the new law further defines the respective responsibilities of the relevant departments, strengthens the shipping enterprises' requirements to carry out the security responsibility, clears about source management system of the ship crew, at the same time, it strengthens legal responsibility of violations, and provides a solid system foundation and legal guarantee to realize the maritime security, in accordance with the updated requirements for national development.

Second, it is necessary to comprehensively promote the domestic and international rule of law.

The rise of Marine economy has promoted the rapid development of Marine shipping, and the new situation and new changes in maritime traffic safety have promoted the introduction or revision of various international maritime conventions. As a shipping power, China has successively joined more than 40 international conventions and protocols, including the Convention on the Law of the Sea, however, these joining actions were enforced after the promulgation and implementation of the Haian Law, and these treaties have been revised many times after the promulgation and implementation of the old Law.

In order to comply with the requirements of the international rule of law, the new Haian Law has completed the connection with the international maritime conventions concluded, acceded to or participated in by China, and stipulates clear rules for the application of the international maritime conventions. Article 121 stipulates that if the international treaties concluded or attended to by China have different provisions from the Haian Law, the provisions of the international treaties shall apply, except for the provisions that we declare the reservations. This regulation clarifies the rules for the transformation of international maritime treaties, solving the problem that the "internalization" of international treaties lags behind the requirements for implementing the Conventions, and more accords with and reflects the international demand of maritime transportation.

Third, to promote the protection of China's maritime security rights and interests

Before the promulgation and implementation of the new law, practices of the protection of China's maritime security rights and interests largely referred to the United Nations Convention on the Law of the Sea. There were no clear legal provisions concerning the rights and interests of maritime security. And the revision of the Haian law not only standardizes the jurisdiction of maritime security, but also puts forward the supporting measures and methods, and introduces Marine rights concept in time by establishing the port supervision, measures to combat illegal invasion, increasing special ship regulations, and strengthening maritime management departments cooperation, etc., realizing the maintenance of Marine safety rights and interests from the legislative level.

3.2 Responding to the Voice of the International Community

The revision of the law has brought about malicious hype of the United States-led western forces. Some western media and the official spokesmen accused that the new Haian law was in violation of the law of the sea

Convention, threatening freedom of navigation and overby, international trade and the rights and interests of the south China sea. Even more, said the revision is "new tricks to monopolize the South China sea".

But in fact, the main purpose of the revision is to adapt to the new situation and new requirements of maritime traffic safety management, to assume the responsibilities under the relevant international conventions that our country has joined, and to speed up the pace of the domestic maritime traffic safety legislation becoming in line with the international rule of law, which is not like what the western media interpret in inducing, smearing comments. The western world should be clear that the sea law, as an important law in the field of maritime traffic safety, and our country, as one of the parties to the Convention, have deep origins, additionally, this revision is the return of the Convention, which is the requirements of the Convention, as the code of the international maritime law, for each party, and also requirements of the international community for all members. Therefore, the sea law revision is imperative.

4. Epilogue

The revision of the maritime traffic safety law is based on the needs of safeguarding national Marine rights and interests, and for the needs of enforcing the "ocean power" strategy, aiming to realize the legal and scientific management of maritime traffic safety, and to guarantee the safety of ships, facilities and human property more effectively, which is the inevitable requirement of advocating building "Marine destiny community".

The international maritime rule of law has an important reference value for improving China's maritime traffic safety legislation. This revision is in line with the development trend of the international maritime rule of law, and has expanded, refined and improved a lot of contents, which realize closer connection with the Convention on the Law of the Sea.

The author believes that maritime traffic safety is the basis and premise of coastal governance of coastal countries. The continuous improvement of maritime traffic safety management laws and regulations has provided a solid system foundation and legal guarantee for the management of jurisdiction waters. China will continue to stabilize maritime traffic safety situation, further promote the strategic goal of "maritime power", and finally complete the history of transforming to maritime power.

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