

## **Proposed Chinese Law on Maritime Traffic Safety: Interpretations and Implications**

**Author:** Prakash Gopal

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On February 14, 2017, the Legislative Affairs Office of the State Council of China sought public comments on a new draft legislation, proposed to replace the existing Maritime Safety Law of 1983. Coming in the backdrop of the rather uneasy peace in the South China Sea, certain provisions of the draft legislation garnered significant media attention. A closer examination reveals that most suggested provisions are a reiteration of either existing international laws on the subject (as codified in the United Nations Convention on the Law of the Sea [UNCLOS], 1982), or of existing domestic laws of China. There are also however, provisions that are problematic and not compatible with customary or codified international legal tenets and practices. Such provisions, when implemented are likely to lead to contested interpretations, and serious implications for the larger maritime region, and therefore merit greater analysis. A caveat worth highlighting is that this study was undertaken on an unofficial English translation of the draft legislation, which may have inherent semantic inaccuracies.

Whereas the existing Maritime Safety Law has 53 Articles, the new proposed law has 134. Much of this increase in the volume of text can be attributed to new provisions on registration, and certification of vessels and crew members. There is also a relatively elaborate article (Article 21) on delineation of various zones, for management of maritime traffic, which includes 'forbidden zones', and areas that may be separately demarcated for military purposes.

The most striking issue with the proposed legislation, is the concurrent usage of terms which have a legal basis in the UNCLOS, together with those that do not have a standardized and internationally accepted definition. Article 2 for instance, talks about the geographical scope of application for this law. Standard terms such as Territorial Waters, Exclusive Economic Zone (EEZ) and Continental Shelf, are used, together with terms such as 'other sea areas under the jurisdiction of the People's Republic of China'. This term is open to interpretation in the absence of an

internationally recognized and delimited span of maritime space that may be additionally under Chinese ‘jurisdiction’. So when Article 21 talks about the maritime administrative authority retaining the right to promulgate ‘forbidden zones’, Article 2 would allow the promulgation of such areas even outside of the maritime zones to which China is entitled under the provisions of UNCLOS. This could pose a significant threat to freedom of navigation in the region, especially in the ambiguity that is associated with Chinese claims within the ‘nine-dash line’, as well as the large area of sea that is enclosed by it.

Another misuse of the ‘jurisdictional’ seas clause could also be made in the case of a ‘hot pursuit’. While UNCLOS permits ‘hot pursuit’ to commence within different maritime zones depending on the nature of violation committed, the draft Chinese law permits its commencement even within the undefined ‘jurisdictional’ waters. The unfettered extension of jurisdiction over waters that may otherwise constitute part of The Area is a point of significant potential contest and conflict.

Yet another provision that has garnered notable media attention, is one that mandates foreign ‘submersibles’ to transit on surface, with its flag displayed, within Chinese Territorial Waters. This however is in consonance with the stipulations concerning ‘Innocent Passage’ in the UNCLOS (Article 20), which states that all ‘submarines and other underwater vehicles’ are required to traverse through the Territorial Waters of a Coastal State, on surface and showing their flag. With the increasing use of Unmanned Underwater Vehicles (UUVs) in the South China Sea, especially by the US, and the large span of disputed waters within China’s ‘nine-dash line’, it is likely that this provision would be extensively applied to curtail underwater activity in the region. This is also evident in the Chinese seizure and subsequent return of the US’ UUV in December 2016, being operated off the coast of Philippines by USNS Bowditch.

The new draft law also reiterates China’s position on foreign military vessels requiring permission to enter Chinese Territorial Waters. This is a tenet that has been contested by the US, through diplomatic demarches and the US Navy’s Freedom of Navigation Operations (FONOPS). In this instance the Indian position is also somewhat similar, with the Maritime Zones of India (MZI) Act of 1976 requiring foreign military vessels and submarines to give prior notification to Indian authorities before entering Indian Territorial Waters. Additionally, while ratifying the UNCLOS on June 29, 1995, India made a declaration in accordance with Article 310 of the UNCLOS, to state that foreign military vessels are required to obtain prior consent before conducting military exercises within the Indian EEZ. India’s position on the rights of foreign

military vessels within its Territorial Waters and EEZ, is also in conflict with that of many other countries, and has also been subject to US diplomatic and military opposition.

While in its entirety, the new draft legislation appears to be an attempt to merely revise China's existing 1984-vintage legislation, there are some contentious provisions that do not conform to international maritime law. Once implemented, these have the potential to create conflicts at sea, which may assume greater military and diplomatic proportions, especially in the prevailing environment in the South China Sea. The introduction of this draft legislation also serves as a reminder for India to revisit its existing legal structures, and revise them as necessary. This may be an opportune time to evolve a comprehensive domestic legal framework that supports the pursuit of India's maritime interests and the fulfillment of its international obligations.

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*\*Cdr Prakash Gopal is a Research Fellow at the National Maritime Foundation (NMF). The views expressed here are his own and do not reflect the official policy or position of the NMF, the Indian Navy or the Government of India. He can be reached at [gprakash.76@gmail.com](mailto:gprakash.76@gmail.com)*