



**EUROPEAN UNION**

**DELEGATION TO THE PEOPLE'S REPUBLIC OF CHINA**

欧洲联盟驻华代表团

## **Consultation on the Proposed Amendments to the 1984 Maritime Traffic Safety Law – Comments of the European Union**

The European Union (EU) has taken note of the publication of the **Proposed Amendments to the 1984 Maritime Traffic Safety Law**, published on 14 February 2017, and welcomes the opportunity to provide its comments in this respect.

The EU and its Member States welcome efforts by China to implement its obligations under international law, including the United Nations Convention on the Law of the Sea (UNCLOS). The EU understands the draft amendments to the 1984 Maritime Traffic Safety Law as an effort to bring China's domestic legislation into alignment with such obligations, and welcomes this to the extent that these proposals are compliant with China's obligations under international law.

While awaiting an official English translation of the draft amendments, which would contribute towards greater understanding of the proposals, the EU would like to submit preliminary comments on elements of the proposed law which might not be consistent with, or appear to be open to interpretation in a manner which would not conform to international law, in particular UNCLOS.

Noting that the comments below do not necessarily constitute a complete list of the EU's concerns, the EU reserves the right to comment further upon receiving an official translation of the amendments. The EU would however welcome clarification of its concerns expressed below and would urge amendment of the draft Articles where conformity with international law is under question. It is hoped that any amendments to China's domestic law bring China's maritime claims into alignment with its international law obligations.

### **Main concerns**

#### **主要关切**

#### **1. Scope of application of proposed amendments**

The EU is concerned that the some terms used in the draft articles have not been clearly defined and as such would introduce an element of uncertainty with regard to their geographical scope of application. **Draft Article 2** of the proposed amendments provides that the Law would apply to, in addition to areas clearly defined under UNCLOS, "other sea areas under the jurisdiction of the People's Republic of China". However the draft law does not specify these "other sea areas". Should this extend to areas that China's Supreme People's Court appears to have defined as "jurisdictional waters", including internal waters, territorial

sea, contiguous zone, EEZ, continental shelf and "any other maritime areas under the People's Republic of China's jurisdiction", this would not be consistent with UNCLOS.

Apart from draft Article 2, the use of different terms in the draft articles without clear and precise definitions raises concerns of their scope of application and compatibility with UNCLOS. The notions of "waters under the jurisdiction of the People's Republic of China", used in **draft Articles 54(3)** and **100**, and "sea areas under the jurisdiction of the People's Republic of China" in **draft Article 101**, are examples. While draft Article 100 appears to provide that maritime authorities enjoy the right of hot pursuit in such "waters", Article 111 of UNCLOS specifically provides that hot pursuit of a foreign ship may only be undertaken by competent authorities of the coastal State in specifically defined maritime zones. This ambiguity of terminology raises concerns that the proposed amendments could allow an extension of the articulation of hot pursuit and a variety of criminal penalties to maritime areas beyond what is provided for under UNCLOS.

The EU would urge the Chinese authorities to clarify the definitions of "waters" and "other sea areas" and to ensure compatibility of the proposed amendments with UNCLOS.

## **2. Innocent passage**

The principle of innocent passage is of key concern to the EU. The EU is therefore concerned with a number of provisions in the draft amendments which appear to be inconsistent with the right of innocent passage under international law, or leave too much room for interpretation to ensure their compatibility with China's international obligations.

Compulsory pilotage requirement under **draft Article 34**, whether for military or merchant vessels, appears to be inconsistent with UNCLOS since there is no provision for pilotage in the territorial sea under UNCLOS.

**Draft Article 52** appears to allow for a subjective determination by Chinese authorities for suspending the innocent passage of foreign ships within the territorial sea rather than on the basis of objective criteria as provided for in Article 19 of UNCLOS. The EU also notes that suspension of innocent passage under such subjective criteria would go against Article 24 of UNCLOS on the duties of the coastal State. Furthermore, Article 25(3) of UNCLOS permits coastal states to suspend innocent passage only temporarily. However it is not clear whether draft Article 52 is limited to permitting only temporary suspension.

Requirements under **draft Article 53** for submersibles to report to maritime authorities when transiting the territorial sea, appears to be in contradiction with UNCLOS when submersibles are engaged in innocent passage. Noting that it is unclear what the rules of international law are in relation to submersibles and how they link to marine scientific research, the EU may wish to comment further on this article in due course.

The EU interprets provisions of **draft Article 54(1)** not to apply to military vessels (including nuclear powered ones) that seek to exercise innocent passage, per the definition of "vessels" in Article 131. The EU requests Chinese authorities to clarify these provisions, also taking into account the question raised above regarding the geographical scope of application of **draft Article 54(3)**. While it appears to impose an obligation for vessels coming from outside China's territorial waters to hold relevant certificates and adopt special safety precautions *in accordance with Chinese laws and regulations*, it cannot be ascertained whether such an obligation is compatible with Article 23 of UNCLOS.

Referring to the undetermined scope of application of **draft Article 101**, the EU notes the potential incompatibility of the said article and Articles 27 and 28 of UNCLOS. The EU would urge assurances that this provision will not interfere with the exercise of innocent passage.

The EU also considers the provisions of **draft Article 118** and its requirement for foreign ships transiting the territorial sea to first notify the Chinese authorities to be inconsistent with the exercise of innocent passage.

The EU would urge Chinese authorities to clarify these provisions and ensure their compatibility with international law.

### **3. Penalties**

Provisions under **Chapter 10** (Legal Responsibility) appear to establish financial and criminal penalties applicable to both foreign and domestic vessels without specifying the maritime zones to which they would apply. As such, and pursuant to **draft Article 2**, it is possible that these penalties could be extended beyond what would be permitted under UNCLOS. In particular, Article 73(3) of UNCLOS only allows for imprisonment or other criminal penalties to foreign vessels under the specific agreement of the third country involved.

The EU would urge Chinese authorities to clarify these provisions and ensure that their scope of application is clear, precise and compatible with international law.

### **4. Exemption of military vessels**

The EU notes that based on **draft Article 131**, it appears that military vessels are only subject to Article 34 of the proposed amendments. The exemption under draft Article 131 does not, however, seem to apply to all foreign sovereign immune vessels, as defined in Article 32 of UNCLOS. The EU requests that the exemption be clarified and expanded accordingly.

In the same vein, the EU urges China to clarify **draft Article 132** which appears to exempt underwater military activities from the provisions of the draft law.

### **5. Domestic law and obligations under international law**

**Draft Article 133** provides that where there is an inconsistency between Chinese domestic law and its treaty obligations, the provisions of the treaty will prevail except where China has announced reservations or chooses not to apply the treaty. To remove unnecessary uncertainty, the EU would welcome clarification that, where there is an inconsistency between the proposed draft articles and China's obligations under international law, the latter will prevail.