

The Use of Force in Maritime Law Enforcement: Between International Law and State Practice

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Keywords: Maritime law enforcement; Use of force; International law regulation

Abstract: The UNCLOS systematically defines the rights and obligations of coastal states in their territorial waters, exclusive economic zones, and the high seas. However, with the intensification of conflicts over fishery resources, freedom of navigation for warships, and maritime delimitation, how coastal states safeguard their maritime rights and interests through effective law enforcement has become a focus of international attention. While the use of force as a means of law enforcement is direct and efficient, it also carries with it complexity and high risks, easily triggering international disputes and even endangering regional security. Therefore, striking a balance between legitimacy and necessity is a core issue in maritime law enforcement.

1. Introduction

Maritime law enforcement activities are directly related to national sovereignty, security, and the maintenance of maritime order. With the increase in global maritime disputes, the legal and effective use of force in law enforcement has become a matter of widespread international concern. While the United Nations Convention on the Law of the Sea establishes fundamental principles regarding the use of force, ambiguity and controversy persist in specific law enforcement practices. International judicial cases, in particular, have repeatedly addressed the limits of law enforcement force. These precedents not only clarify the procedural requirements for the use of force but also provide a reference for coastal states' law enforcement practices. In recent years, China has faced an increasingly complex landscape in maritime law enforcement. While the state has enacted a series of laws and regulations, empowering maritime law enforcement agencies with a relatively comprehensive system of powers, China's law enforcement practices have also faced skepticism and challenges from the international community. In particular, uncertainty remains regarding the criteria for the "necessary, reasonable, and proportionate" use of force. These realities make China's maritime law enforcement practices both a crucial observation point for studying the convergence between international and domestic law and a prime example for exploring the limits of law enforcement and the allocation of responsibilities.

2. Overview of Maritime Law Enforcement Entities

The United Nations Convention on the Law of the Sea (UNCLOS) grants legal status to the

maritime rights and interests enjoyed by coastal states, and expects them to maintain peace and stability in the oceans within the Convention. The Convention grants coastal states rights from inland waters to territorial waters, exclusive economic zones, continental shelves, and even the high seas. To safeguard these rights, coastal states may establish specialized maritime law enforcement agencies.

China's primary maritime law enforcement agency is the China Coast Guard. In recent years, its structure has gradually transformed from a local law enforcement force to a paramilitary force under the unified leadership of the central government. Authorized by the Standing Committee of the National People's Congress, it possesses clear law enforcement powers and legal basis. This institutional evolution demonstrates China's efforts to strengthen the independence and authority of its maritime law enforcement agencies. In addition to the Coast Guard, the Chinese Navy can also perform maritime law enforcement functions under certain conditions. Articles 110 and 111 of the Convention confirm the role of warships in the rights of boarding and hot pursuit, and Chinese domestic law also grants the military the power to exercise law enforcement in specific circumstances. In recent years, the Chinese Navy has gradually demonstrated its diverse capabilities in law enforcement and security through anti-piracy escort missions and international joint operations [1].

In the practices of most countries, maritime law enforcement activities include supervision, inspection, and punishment, and may also involve the use of force when necessary. This phenomenon has become somewhat common in international maritime law enforcement practices, but its legality and limitations still need to be regulated by international law.

3. International Legal Basis for the Use of Force in Maritime Law Enforcement

3.1. Definition of the Use of Force

UN Charter Article 2, paragraph 4 establishes the fundamental principle prohibiting the use or threat of force. The Convention also repeatedly emphasizes the prohibition of the use of force in Articles 19 (Innocent Passage), 36 (Lands of International Navigation), and 301 (Peaceful Uses of the Seas). These provisions reflect the international law requirement that coastal States and other States refrain from acts of force that undermine the sovereignty and territorial integrity of other States in their maritime activities.

In international legal theory, "force" primarily refers to the use of armed force in a military sense. Academic research sometimes interprets this broadly, considering economic or diplomatic coercion as extensions of "force," but these do not fall within the scope of the prohibition of Article 2, paragraph 4, of the Charter.

With regard to maritime law enforcement, coastal States may, in accordance with law, take coercive measures such as boarding, inspection, and pursuit within their jurisdictional waters. These enforcement measures differ from the use of military force within the meaning of the Charter. However, if these measures are excessive or discriminatory, they may be viewed by other States as a "use of force," potentially triggering international disputes. It is reasonable for coastal states to establish maritime law enforcement mechanisms through domestic legislation, but their enforcement actions must still be consistent with their international law obligations.

3.2. The UNCLOS on the Use of Force

The Convention does not directly authorize coastal states to generally use force in maritime law enforcement. Both Article 2, paragraph 4 of the Charter and Article 301 of the Convention clearly stipulate that States shall refrain from the threat or use of force, reflecting the international

community's fundamental requirement for the "peaceful uses" of ocean activities.

However, the Convention leaves room for law enforcement in several articles. Article 27 sets out the conditions under which coastal states may exercise criminal jurisdiction over foreign vessels passing through territorial waters in certain circumstances. While not involving the use of force, it confirms the legal basis for coastal states to enforce the law. Articles 110 and 111 further define the rights of boarding and hot pursuit. The right of boarding applies when there are reasonable grounds to suspect a vessel of involvement in international crimes such as piracy, the slave trade, or unauthorized broadcasting, and is limited to warships or military aircraft. The right of hot pursuit allows coastal states to pursue foreign vessels, beginning in their inland waters or territorial waters and continuing on to the high seas, to capture them if they discover they have violated laws [2].

During a hot pursuit, the Convention indirectly recognizes the possibility of using force under strict conditions, but requires that it be necessary and proportional: it must only be used when warnings are ineffective and other means are exhausted; the intentional sinking of a vessel is prohibited; and humanitarian principles must be respected to avoid unnecessary danger to vessels and personnel. This demonstrates that the Convention adopts an approach of "exceptional and strict limitations" regarding the use of force in law enforcement, striving to maintain a balance between effective law enforcement and the maintenance of international peace [3].

4. Conditions and Procedures for the Use of Force in Maritime Law Enforcement

4.1. Conditions for the Use of Force in Maritime Law Enforcement

The fundamental principles for the use of force in maritime law enforcement are necessity and proportionality. This principle requires that coastal states, when carrying out law enforcement tasks, may only use force when non-violent means are ineffective in stopping illegal acts. Furthermore, the force used must be proportionate to the threat and must not exceed the necessary limits for safeguarding maritime rights and interests, while also adhering to the principle of humanity. In practice, the cases of the *Lonely* and *Saiga* demonstrate the application of this principle. For example, in the *Saiga* case, upon discovering the vessel's illegal conduct, the Guinean patrol boat first issued a warning and fired warning shots, ultimately resorting to force to control the vessel, if necessary, while minimizing the risk of causing unnecessary harm.

These cases demonstrate that international law recognizes the right of coastal states to use force to safeguard their maritime rights and interests within their jurisdictional waters, but requires strict adherence to the principles of necessity and proportionality, taking into account humanitarian considerations. While this principle is conceptually similar to the right of self-defense and the principle of proportionality in the law of armed conflict, its application in maritime law enforcement differs, and its legal basis primarily stems from international maritime law and relevant treaties.

4.2. Procedures for the Use of Force in Maritime Law Enforcement

The use of force in maritime law enforcement should follow strict procedures and be based on the existence of an unavoidable emergency. In the *Guyana v. Suriname* case, the International Court of Justice stated that a coastal state may only use force when non-violent means are incapable of suppressing an illegal act. If a state cannot prove that the use of force was necessary, it will incur international responsibility.

Before resorting to force, an effective warning must be issued to the vessel. In the *Saiga* case, the tribunal clarified the procedures for maritime law enforcement warnings, including necessary visual, auditory, or radio signals to inform the vessel of the enforcement intention [4]. Visual signals

include L flags, SO flags, hand flags, and light signals; auditory signals include whistles and loudspeakers. Relying solely on radio signals without other necessary signals does not constitute an effective warning. The purpose of a warning is to provide the vessel with sufficient time to comply, thereby reflecting the principles of necessity and proportionality in the use of force [5].

If a vessel ignores warnings, warning shots may be fired, limited to the vessel's command and control areas, to force the vessel to stop and minimize casualties and property damage. If the above measures fail to deter illegal activity, the use of force may be used as a last resort, but must adhere to the principles of necessity and proportionality and must not exceed reasonable limits for safeguarding maritime rights and interests [6].

5. Challenges and Institutional Reform in the Use of Force in Maritime Law Enforcement: Insights from China's Experience

5.1. Legal Uncertainty in the Regulation of Force Used in Maritime Law Enforcement

5.1.1. The Connection Between Domestic Law and International Law

Maritime law enforcement authority primarily stems from domestic law. In China, documents such as the "Decision on the Authority of the China Coast Guard" and the "Outline of Military Non-War Operations" clearly define the duties and powers of the coast guard and the military in safeguarding maritime rights and interests. Furthermore, Article 2, paragraph 4, of the UN Charter and the UN Convention on the Law of the Sea impose strict restrictions on the use or threat of force by states. When enforcing law in areas such as the exclusive economic zone and the high seas, the use of force solely based on domestic law may conflict with international obligations, increasing the risk of diplomatic disputes or international liability. China's practice demonstrates that this is a common challenge faced by coastal states: how to ensure consistency between domestic and international law when exercising maritime law enforcement authority.

5.1.2. Uncertainty about Standards and Procedures for the Use of Force

International law establishes the principles of necessity and proportionality in maritime law enforcement. However, significant uncertainty remains in practice. First, determining what constitutes a "last resort" is often difficult, especially in emergency situations, when law enforcement officers must quickly decide whether to use force and the extent of warnings or firing. While domestic laws provide for procedures such as warnings, expulsions, boarding, and firing, operational details are often unclear, potentially leading to delayed or inappropriate enforcement. Second, complex approval procedures and hierarchical reporting mechanisms can limit the autonomous decision-making capabilities of frontline personnel, making it difficult for coastal states to promptly control situations in emergencies. These factors not only reduce law enforcement efficiency but also increase the risk of international disputes and liability, highlighting the urgent need for a more clear and operational regulatory system.

5.1.3. Personnel Safety and International Risks

The use of force in maritime law enforcement inevitably involves the safety of personnel, including law enforcement officers, crew members, and third parties. Improper handling can not only result in casualties but also spark international attention, legal claims, and diplomatic protests. Risks are particularly acute when conducting operations on the high seas or in another nation's exclusive economic zone. If excessive use of force or violations of international law are deemed violations, coastal states may incur international liability, impacting their reputation and diplomatic

relations. China's practice demonstrates that while ensuring effective law enforcement, humanitarian safety must also be taken into account. Risk prevention and control mechanisms and emergency response mechanisms must be established to enhance the standardization and controllability of maritime law enforcement.

5.2. Improving the Institutional Framework for the Use of Force in Maritime Law Enforcement

5.2.1. Strengthening the Coordination and Integration of International Law and Domestic Law

China should further improve its legislation on maritime law enforcement within the existing legal framework to ensure consistency between domestic and international law and reduce the risk of law enforcement conflicts. Specifically, this can be achieved by explicitly incorporating the basic principles of international law into domestic legislation as a basis for application, establishing rules prioritizing the application of domestic and international law, and strengthening awareness of international legal obligations in law enforcement training and institutional design. Furthermore, China should actively participate in the formulation and revision of international maritime rules, strengthening its voice and promoting international rules that better balance the interests of coastal states with the needs of law enforcement practices.

5.2.2. Clarify the Standards and Procedures for the Use of Force

While upholding the principles of necessity and proportionality, more detailed operational standards for the use of force should be developed, clarifying the applicable conditions and limits for different levels of force, such as warnings, expulsions, boarding, and the opening of fire. A "tiered enforcement procedure" list could be established, requiring law enforcement officers to follow a sequence of steps, such as verbal warnings, sirens, and warning shots, before using coercive measures. For emergencies, the approval process should be streamlined, empowering frontline commanders to make independent decisions in emergency situations. At the same time, a post-event review and accountability mechanism should be established in accordance with the law to improve law enforcement efficiency and control risks. These operational standards should also incorporate the principles of necessity and proportionality stipulated in international law to reduce the potential for law enforcement disputes.

5.2.3. Ensuring Personnel Safety and National Responsibility

A risk assessment and human protection mechanism should be established, prioritizing the safety of law enforcement personnel and crew members. For situations that could potentially spark international disputes, legal and diplomatic risks should be assessed in advance, and a risk prevention and control mechanism involving multiple departments, including those responsible for foreign affairs, national defense, and the coast guard, should be established. A system for recording and collecting video evidence throughout the law enforcement process could be implemented to provide reliable evidence in international public opinion and disputes, thereby reducing diplomatic friction. Furthermore, a compensation and reparation mechanism should be explored for damages caused during law enforcement, demonstrating the responsible enforcement practices of coastal states within the framework of international law.

6. Conclusion

The use of force in maritime law enforcement lies at the intersection of national sovereignty and the international legal order, a complex and sensitive issue. A review of international law reveals that the use of force should always adhere to the principles of "necessity, reasonableness, and last resort" and adhere to a gradual approach. Practical cases demonstrate that the use of force beyond the limits of law enforcement can easily be deemed a violation of international law and even constitute an infringement on another state.

While China has established a relatively comprehensive domestic authorization system for maritime law enforcement, it still faces practical challenges in bridging international and domestic law, clarifying standards and procedures for the use of force, and ensuring law enforcement security and accountability. These challenges not only impact law enforcement effectiveness but also directly affect the country's international reputation and diplomatic relations.

Therefore, in the future, China should, while fully adhering to the rules of international law, integrate legislation with practice to improve the alignment of domestic laws with international obligations, clarify practical procedures for the use of force, and balance humanitarian considerations and liability risks while ensuring law enforcement efficiency. Only in this way can China's maritime law enforcement achieve both legitimacy and effectiveness within the framework of international law, safeguarding national interests and regional stability in a complex and volatile maritime security environment.

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