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Analytical Assessment of Iran's Maritime Laws

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Abstract

Iran as maritime country, despite having a strategic position in the Middle East, and about 4,900 km of coastline along the northern coasts of the Persian Gulf and the Sea of Oman and the transit communication axis between the Caspian Sea and Persian Gulf, plays a decisive role in regional and international trade, therefore, it must have comprehensive and complete maritime laws so that it can comply with the international community and national and international issues. The importance of maritime rights should be evaluated according to various factors, including the strength of the national fleet, the level of movement and activity of the country's ports, and the country's geographical position in the region. The present study is descriptive and analytical in terms of nature and library method. In this study, the qualitative method of data analysis was used. In collecting sources and data, relevant books and laws were referred to, and the method of recording study slips was used. In the end, suggestions have been made to improve Iran's maritime law conditions.

Keywords: Analytical Assessment, Iran Maritime Laws, Legal System, International Law, Persian Gulf

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Introduction

The international law of the seas (or simply the law of the seas) is one of the oldest and most important trends in international and public law (Janis, 1983). This is because the seas have always brought various uses for nations and governments, from shipping and maritime trade to the exploitation of living resources and non-living resources such as mineral and oil resources, and based on its definition, is a collection of traditional rules that encourage and facilitate the general adoption of the highest practicable standards in maritime safety, navigation efficiency, and the prevention and control of marine pollution from ships, as well as dealing with administrative and legal issues (Nathan & Policy, 2017).

The need to regulate such uses and establish legal order in the use of the seas has always necessitated the establishment of legal rules and regulations to govern such uses of the seas. Based on this necessity, an international legal system (as a part of the general international law system) has been formed in the modern era, which is called the international law of the seas (Boviatsis & Vlachos, 2022; Hill & Kulkarni, 2017). In this way and according to the developments in recent decades in the field of this trend of international law, the international law of the sea can be simply defined as follows: "The international law of the sea is a set of rules, regulations and legal principles (Baatz, 2020)". It is international that govern the relations between governments (and in a way the relations between governments with international organizations and in some cases with individuals) in the framework of the use of the seas(Hussain, Bhatti, & Sciences, 2023). It is obvious that the international law of the sea governs all the sea areas of the coastal states and all the seas and oceans of the world(De la Rue, Anderson, & Hare, 2022).

Although the maritime laws of each country and other national regulations such as the regulations and approvals of relevant institutions are the main sources of maritime law, the main basis of this field of law is in the text of international maritime treaties or conventions that has been specifically formulated on one of the issues of maritime law. These conventions have been prepared and compiled with the efforts of the International Maritime Organization (IMO) and some specialized agencies affiliated to the United Nations, which have been implemented after certain formalities (Hodges & Hill, 2001). The deep

substantive effects of the aforementioned international regulations on the thinking of the national law makers have caused the maritime laws of countries to find many similarities with each other in order to preserve their national identity and in some cases(Usman, 2022), due to the intensity of similarity, the distinction between them is limited to the difference in their names (Mandaraka-Sheppard, 2013).

Iran's maritime law approved in 1964, which has been prepared and compiled with great care, due to its lack of comprehensiveness and as a result, its weakness in responding to the country's shipping needs today and its inability to solve problems such as issues related to maritime work, non-oil pollution, how to issue and identification of seafaring certificates, marine insurance, etc., has shown Iran's maritime law to be ineffective and outdated(Rezaei, Arashpour, Massoud, & Law, 2022). Finally, in solving the legal problems and incidents related to commercial shipping, it is necessary to refer to the regulations of other legal fields and the suspicion of its lack of independence is strengthened. According to this fact, the purpose of this research is to analysis of Iran's maritime law, due to the weaknesses in the aforementioned law, citing the provisions of international maritime conventions as the main source of maritime law and getting help from the maritime laws of some western and Islamic countries are inevitable, and for this reason, wherever there was a need to explain and expand the content, these sources were used as a master.

1. Basic concepts of maritime law

Most jurists consider maritime law in its broadest sense to be a set of legal rules related to shipping or seafaring. Maritime law, in the sense mentioned above, includes legal rules regulating maritime relations between states in times of peace and war (Baatz, 2020). These rules are referred to as "General International Law of the Sea" which includes issues such as freedom of navigation, maritime blockade, maritime smuggling and spoils of war (Hodges & Hill, 2001). Another part of the maritime rules is dedicated to the relationship between the persons who engage in maritime exploitation on the one hand, and the government or its organizations and institutions on the other hand. These rules govern the safety of ships, their seaworthiness, and the employment of sailors, the conditions of captains, ships and marine engineers. For this reason, the provisions of the maritime administrative law are used for this section.

On the other hand, a set of rules includes crimes related to shipping, which is known as "maritime criminal law" (Cox, 2001). In the same way, a set of the

above legal rules that are used in a certain branch of maritime activities constitute general maritime law.

Some authors consider maritime law in its special meaning, i.e., the set of laws, regulations and maritime customs that govern the relations between individuals and governments in the affairs of cargo and passenger transportation at sea, and the issues and issues related to shipping, commerce and safety in covers the sea (Hill & Kulkarni, 2017).

Although several years have passed since the above definition, but in terms of principles, this definition should be considered acceptable. However, it should not be overlooked that the issues and topics related to shipping today, in terms of industrial and technological development, have found many differences with previous years, and as a result, in the above interpretation and definition, in addition to safety, issues should be considered. Because oil and non-oil pollution as well as waste from ships and other such matters were of concern. The development of the scope of subjects and studies of maritime law has made this field of law, which in the past was mostly in the realm of private law, enter the field of public law studies as well. As a result, in some cases, the role of governments has become stronger than in the past.

2. Human Security and Maritime Security

Human security has evolved as a critical component of our comprehension of marine security. While maritime security remains a "buzzword" (Bueger, 2015), many attempts to define it in the literature and in the policies of States and regional players have been made, with allusions to human security becoming increasingly visible (Chapsos, 2016). Bueger, for example, has constructed the following matrix to conceptualize maritime security, contending that maritime security is built on four pillars: the marine environment, economic growth, national security, and human security (Figure 1).

Figure 1. Constructed matrix to conceptualize maritime security

Protecting the seas' safety is critical for human safety and well-being. According to the European Union Maritime Security Strategy 2014, maritime security is defined as a situation in the global maritime domain in which international and national laws are enforced, freedom of navigation is ensured, and citizens, infrastructure, transportation, the environment, and resources are protected (Germond & Germond-Duret, 2016). This bolsters the idea that human security is now an essential component of any marine security plan. Looking at the African Union's attempts to attain stronger maritime security demonstrates this. The Lomé Charter and Africa's Integrated Maritime Strategy 2050 both recognize the beneficial influence that maritime security has on human security and persons at sea.

Looking beyond the theoretical basis of maritime security, we shall discover that human security is intricately linked to maritime security in practice. It is critical to recognize that crime at sea is a reflection of instability on land. Somalia, for example, struggled to control the expansion of pirate assaults because, as a failing state, it lacked the ability to enforce laws and defend its waterways. This had a huge influence on the safety of the thousands of sailors who were kidnapped, as well as coastal towns that could no longer rely on tourism in regions where pirate bands were operating. Another feature of security at sea is that it has no borders. While threats may originate from a few countries, they can easily spread across seas. For example, the collapse of the Gaddafi regime in Libya has turned the country into a center for illegal immigration, with thousands of people risking their lives to cross the Mediterranean Sea.

3. The importance of maritime law in Iran

The geographical scope of the countries is not only limited to the land borders, but the coastal countries are connected with neighboring, opposite and extra-regional countries through sea borders. The need for a single procedure in determining maritime boundaries caused the League of Nations and the United Nations to hold 3 conferences in 1930, 1958, and 1960 to try to reach an understanding on the international law of the seas, which led to the formulation of the 1958 Geneva Convention; In these conferences, many issues of the law of the sea remained unresolved (Mandaraka-Sheppard, 2013).

Throughout history, Iranians have engaged in persistent trade activities both overland and over maritime routes (Foran, 1989). Despite the fact that Iran has a historical legacy dating back over 500 years BC (Whitehouse & Williamson, 1973), attributed to its notable expertise in the renowned silk route and marine navigation, it is regrettable that no documented evidence or written records have been found to substantiate the existence of a complete maritime law prior to the year 1343. The Civil Code of Iran, which was approved in 1928, and the Commercial Law, approved in 1932, are significant legal frameworks for adjudicating maritime affairs and sea transportation. Specifically, articles 377 to 394 of the Commercial Law pertain to the transportation contract within the broader context of the court's general provisions. It is worth noting that these legal sources play a crucial role in shaping judgments related to maritime matters and transportation at sea. Iranian Maritime Code has been adapted from book II of France Commercial Law ratified in 1807, and has been sorted out according to Iranian Legal System and the translation of international maritime conventions and Hague rules and ratified in September 20, 1964.

The importance of maritime rights should be weighed according to various factors, including the strength of the national fleet, the mobility and activity of the country's ports, and the country's geographical location. The investigation of this issue takes place in two time periods before the revolution and after the revolution. Before the Islamic Revolution, despite Iran benefiting from the Caspian Sea, the Persian Gulf and the Sea of Oman, its great influence in the field of foreign trade by sea was less noticed by the government and universities. Despite the fact that maritime activities could play a prominent role in the health of the environment, commerce, national economy and even the security of the country, it was not considered. After the revolution, privileges such as scientific discoveries, the privileged position of the country for the arrival of equipped

ships, the emergence of international conventions and the unresponsiveness of Iran's maritime law, caused the authorities to pay more attention to maritime law issues than in the past. In 1982, the Ports and Shipping Organization, which has been the main custodian of the country's ports and maritime affairs, in cooperation with the International Maritime Organization (IMO), prepared the bill to amend Iran's maritime law and after asking for opinions from the organizations and institutions involved in the work of the country In 1986, a draft law submitted to the government board for approval, which remained silent for unknown reasons.

One of the concerns of the great powers has been the variety of national laws and the variety of internal regulations of different countries regarding maritime and shipping techniques. Therefore, to solve this concern, the conclusion of international treaties began, and the International Chamber of Commerce, the International Maritime Committee of the United Nations and the International Maritime Organization have also played a role in it. Some of these treaties are as follows:

1. The law allowing the government of Iran to join the agreement on maritime signs
2. The law of accession of the Islamic Republic of Iran to the Maritime Surveillance and Rescue Convention
3. The law on the accession of the Iranian government to seven international maritime agreements
4. International agreement related to the Sahin Line of ships
5. Law approving the protocol for controlling cross-border transfers and disposal of hazardous waste and other waste at sea
6. The Law on Acceptance of Memorandum of Understanding on Control and Inspection of the Port Owner Country for the Indian Ocean Region

4. Maritime law enforcement framework

Maritime law enforcement is an essential component to achieving maritime security. Countries rely on navies and coast guards to enforce their laws in their maritime zones in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (Nordquist, 2011). At the same time, the concept of maritime security has grown to include many threats, including threats to human security. Accordingly, law enforcement is essential not only to achieve maritime security, but also to maintain human security at sea. Therefore the purpose of the maritime law implementation framework is to explain the scope of maritime law

and introduce issues such as the nature of maritime shipping, types of maritime shipping according to the length of the distance, types of shipping according to the subject, etc., which are in this territory or outside of it (Mukherjee, Mejia, & Xu, 2020).

The nature of maritime shipping

Generally, maritime shipping refers to transportation at sea that is carried out by ship (Mansouri, Lee, Aluko, & Review, 2015). Special attention to the ship is due to the fact that the ship has large dimensions and sufficient power for hard navigation operations, and these are the characteristics that apparently separate it from other vessels that operate in small rivers and canals. Regardless of this issue, Iran's maritime law, in its article one, has taken into consideration the conditions of citizenship of a seagoing ship and grants it Iranian citizenship on the condition of meeting the two conditions of capacity and ownership. According to the appearance of the above article, it is the subject of the seagoing ship law, while the quorum stipulated in the law, i.e., the net capacity of 25 tons, does not generally refer to the attribute of a seagoing ship, because in general, a ship with the mentioned net capacity is not included in the classification of seagoing ships, but rather refers to vessels It is a river. Therefore, the nature and definition of sea shipping should not be focused on all shipping devices and equipment because in terms of the type of construction, the size of the driving force and the amount of capacity, some vessels such as boats and barges are very different from ships. For this reason It is recommended that the explanation of the nature of shipping and its definition focus on the maritime territory and the legal and geographical nature of the waters in which navigation is carried out.

5. Analysis of Iran's maritime law

Before the maritime law was approved, maritime transportation issues and problems were resolved by referring to a few articles of the civil law and the commercial law. These laws, which are among the oldest laws of the country, have briefly addressed some common topics and issues in the transportation industry in a general and limited way. Articles 516, 513 and 517 are dedicated to this issue in the civil law approved on 1928. Also, Articles 2, 377 to 394 of the Trade Law approved on 1932 are regulated regarding commercial transactions and transportation contracts. In addition, Articles 17 and 26 of the Law on

Customs Affairs approved on 1971 have also been approved in connection with transportation and are considered among the sources of maritime law. It should be noted that other laws have been prepared and compiled according to the needs of the country during the years after the approval of the aforementioned laws and have passed the approval of the legislature, which are still in force, and along with the maritime law and other The rules are referred to and used.

Maritime law is both an integral component of domestic law and a subset of private world law, or international law. Every nation's marine law is developed from its own domestic and indigenous laws, but it cannot be used in the international legal system if it is not harmonized with international laws and regulations. Naturally, this situation did not escape the drafting of Iran's maritime law, which was approved in 1964. For this reason, the majority of the chapters are directly adapted and translated from international conventions, with the exception of those pertaining to ship registration, citizenship, transfer, sale, and mortgage, which are derived from national law (primarily from the trade and labor law) and the book Second, the French commercial law approved in 1807, and the Belgian law approved in 1895.

Iran's maritime law was drafted using international conventions, no doubt to comply with international regulations, but the interpretation of other nations' laws was likely prompted by the absence of domestic laws pertaining to this area of law, the inexperience of local experts, and the involvement of Belgian experts in this project. have been.

The nationality and legal registration of a ship with an internal nature are covered in the first chapter of maritime law. While the regulations pertaining to these matters may differ between nations, in theory they are unrelated to maritime law as defined by international conventions.

In order to allow governments to confirm and approve the desired laws in accordance with the conditions and internal situation of the country, paragraph 1, article 5 of the 1958 Geneva Convention leaves the hands open regarding the establishment of laws and regulations on citizenship and ship registration (Lapa, 2017). Furthermore, ships flying the flag and nationality of any nation are free to traverse the high seas under Article 87 of the 1982 Convention on the Law of the Sea, which states that all governments, coast-less and coast-having alike, are entitled to free commerce. All countries have the right to sovereignty, possession, or exclusive control over the open sea, as stated in Article 89 of the same agreement. As a result, wherever the ship travels while flying its flag, it will, in theory, be governed by state laws.

Ship mortgage (Chapter 3), cargo security and loan acquisition (Chapter 7), ship ownership, building, sale, and transfer, and ship construction are all issues that are somewhat connected to national private rights. Although in many instances they closely resemble international maritime law, the rules and regulations pertaining to ship personnel and sailors often vary across nations and are national in nature. They are set up in close accordance with international rules and regulations to ensure that the rights of the nation flying the flag, the owners of the ships flying it, and the crew members aboard are appropriately protected on a global scale.

As previously said, the remaining chapters have been partially and entirely extracted from the international treaties and translated. It seems that the legislature added "unforeseen cases" to Article 194 to make up for any legal gaps and allow courts to make reference to global norms and standards.

It is not necessary to thoroughly analyze the maritime law and its provisions in this brief essay, paragraph by paragraph, but it is a good idea to briefly review the option that sums up internal experts' opinions in order to gain a better understanding of the general issues.

- Arrest of a ship: The topic of arresting a ship is a significant one that is not covered in Iran's maritime law; at the moment, Iran bases this action on trade laws and the law of civil process. Furthermore, Iran has not yet ratified the "ship arrest" treaty.
- What a bill of lading is and what kinds of it are: As of right now, the only definition of a bill of lading that is provided
- Maritime transport operators: The maritime legislation makes no mention of the primary and subsidiary operators.
- Collision at sea: In this area, our legislation is disjointed and incomplete.
- No legislation pertaining to maritime insurance
- There are insufficient judges with expertise in marine matters and in the nation's court system.
- The nation's Supreme Court and the Court of Appeal is unfamiliar with marine matters.
- The lack of adequate marine legal counsel

Consequently, based on the aforementioned remarks, it can be deduced that the issue lies not so much in the absence of a formal written law or legal text as it does in the infrastructure issues that impede the application of the law of the sea and the international organizations that are substantially involved in the

convention's implementation. It has been developed and accepted that Article 194 may be used to define criteria to international principles and norms, so solving many of the legal issues described above and unifying marine rules.

6. An analysis on the revision of Iran's maritime law

Although Iran's marine legislation, passed in 1343, is not without flaws and may be restricted in scope, it is often regarded as a good start toward establishing a legal framework for shipping and maritime affairs in Iran. Everything is normal and not so out of the ordinary, since the nations that now have a complete and adequate maritime law system did not arrive at their present position with the first move, but required many years to accumulate experience and execute changes. They enacted their own laws till they ultimately acquired comprehensiveness and present-day comprehensiveness.

Iran is considered a transit route between Asia and Europe and the Far East to independent countries; as a result, the country's economic, industrial, and international trade position, as well as export and import, have made significant progress in recent years, and naturally, the number of damages and lawsuits related to maritime matters such as accidents, damage to ship cargo, the issue of privileged rights, and so on, have also increased significantly. It is a list of grievances.

Of course, the fundamental issue with our maritime law system right now is not the content of the legislation, but the underlying issues, which were clearly highlighted in the preceding part. If these issues are addressed, given Iran's maritime law's 50-year history, the rapid growth of the maritime sector in the previous decade, and the extension of maritime law in addition to international maritime agreements, it is unquestionably required to amend this legislation. They should be chosen from among thinkers who are familiar with the science of maritime law in all fields, and they should compile and approve the best and most comprehensive book of maritime law with day and night efforts for one year, but if the infrastructure problems in maritime law are not solved, it is useless, and It's like offering a light to a blind guy to help him navigate the darkness, only we've made the rain heavier and upset its equilibrium.

According to available information, the revision and alteration of Iran's marine legislation was done three times seriously under the supervision of the Ports and marine Organization, on the following dates, but no codified and authorized result has yet been reached.

1. From 1360 to 1363, a United Nations mission led by Rafi Reza of Pakistan was tasked with amending Iran's marine legislation, but after a few years, this group abandoned the reform effort for various reasons and produced no achievements.
2. In 1380, a lawyer and university lecturer in Iran launched an initiative to revise Iran's marine legislation.
3. The Iranian maritime law reform project has been outsourced to Tehran University Law Institute since 1386 or 1987, and it is believed to be under progress, but no credible findings have yet been received.
Question is elegant and straightforward, however the solution is quite complex.

7. Suggestions

1. After constituting other conventions like Hamburg Rules in 1978, and Rotterdam Rules in 2009, it seemed necessary for the Iranian Maritime Code to be harmonized under the initiatives of these conventions. Although Iranian Maritime Code had some amendments regarding Decay of Cargo (Article 66), Ship Command (Article 80 recurrent2), Navigation and ship management (Article 80 recurrent 3), Confidence in Ship worthiness (Article 80 recurrent4), Obligation and responsibility of the ship commander in receiving and carrying the cargo (Article 81), Discharge and loading (Article 81 recurrent)5, it does not have a new perspective into the articles 52-55 which comply with Hague and Hague/Visby Rules in liability Of Sea Carrier.
2. Maritime law education should be taken seriously by renowned domestic colleges, and in the event of overseas demands, etc.
3. The marine insurance debate should be concluded by a team of marine insurance specialists and scientists.
4. Obligations and difficulties arising from the 1343 maritime legislation that have an internal country challenges should be handled with the cooperation and help of competent internal entities.
5. Points such as the growth of the country's marine transport sector and the development of economic and commercial contacts with other nations should be addressed while amending the language of the maritime legislation. The principles of independence, equality, and mutual benefit, as well as the existing routine of international maritime operations, must be taken into account. Because the assembled rules and regulations are mostly applied to international shipping problems, it is vital to perceive the international and global relations of this

business in the new law's wording in the direction of coordination and near to uniformity.

6. The new marine legislation must be current, comprehensive, and open to additions and revisions.

Working members of the review team or group must have a thorough understanding of maritime law collections, as well as complete mastery of translating and interpreting the provisions of international maritime conventions, maritime law collections, and domestic laws of the country, particularly related sections. Other aspects of this group's work include proficiency and skill in domestic and international law writing, acquaintance with the marine laws of renowned and prominent nations in this area of law, and knowledge of organizations supplying maritime conventions.

Conclusion

It can be argued that Iran's marine law now requires a significant overhaul, both in terms of organization and infrastructure, as well as in terms of maritime law provisions. If we wish to prioritize, the underlying issues come first, followed by the adjustment.

The above-mentioned aspects of maritime law are only a handful of aspects of modern maritime trade. The new laws, especially the Rotterdam law, have tried to keep pace with the rapid modernization of multimodal transport and have tried to maintain a balance between many interests. Although the rules do not have the force of law, they expect the carrier to be contractually faithful to their duties, which does not detract from the merits of the new rules. According to its long-term objectives Iran to increase the trade volume with neighboring countries, and to make the necessary measurements for the increase of foreign transit goods passage up to 10% each year, since this country should keep pace with the everyday change of the modern world of maritime law, should it want real progress in maritime transportation, Iran should prepare itself for a revolution in Maritime Law. This change will bring the country to the accessible market of Europe and further to Western countries by the improvement of trade exchanges according to the recent hope after lifting the sanctions.

Also being adjacent to the countries of Central Asia on the shores of the Caspian Sea, Arab countries on the shores of the Persian Gulf, and their commercial connection through the sea with all the countries of the world, which causes the traffic of a considerable number of small and large ships from all parts of the world that carry various petroleum products and import and export non-oil

products are moved in the region, as well as thousands of small and medium-sized ships of various types that carry out trade between the countries located on the shores of the Persian Gulf around the clock, and certainly such a high volume of moving goods and Ship traffic involves significant legal, insurance and environmental damages and problems, which requires an efficient maritime law system in the region to resolve disputes.

It seems that the establishment of a maritime justice system with the support of credible courts, which are administered by experienced judges familiar with the science of law, will stabilize the position of Iran in this field of law in the region.

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