



Special points of interest:

- New PRC-claimed straight baselines spark legal concerns
- New civilian flight paths in Taiwan Strait risk aviation safety
- International community standing with the Philippines in face of South China Sea aggression
- U.S. interagency experts are partnering to counter legal warfare
- PRC's polar ambitions are under scrutiny
- ICRC a lynchpin of rules-based international order

Inside this issue:

- PRC Baselines 1-2
- PRC Modifies Flight Paths 3
- 2TS Tensions 4
- Cross-Sector Partnership / MARFORSOC C-Lawfare 5
- PRC expands in Antarctica 6
- Increased Militia Activity 7
- Cobra Gold Legal Summit 8

People's Republic of China announces new straight baselines in Gulf of Tonkin

The People's Republic of China (PRC) [announced new straight baselines in the Gulf of Tonkin](#) on March 1 (see figure 1). According to [Vietnamese officials](#) and [international law experts](#), the new claims are inconsistent with international law reflected in the United Nations Convention on the Law of the Sea (UNCLOS).

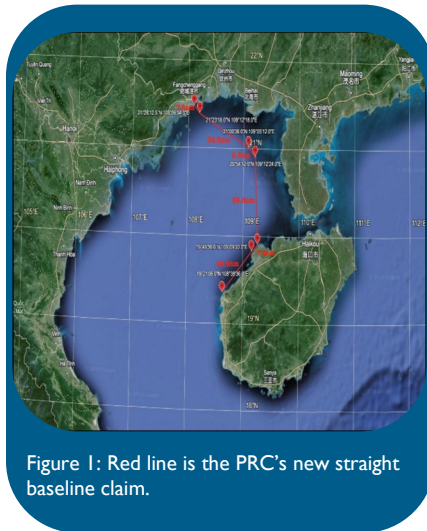


Figure 1: Red line is the PRC's new straight baseline claim.

[The PRC has a history of excessive straight baseline claims](#) that do not comport with international law, including 49 base points extending from mainland China (see figure 2) and a series of baselines enclosing the Paracel and Senkaku islands.

The reasons why the PRC chose to make this announcement now are unclear. PRC-controlled media [characterized](#) the move as “a key step in the delineation of

territorial sea” across all of southern China. A [statement](#) released by the Ministry of Foreign Affairs cited the PRC's domestic Law on the Territorial Sea and Contiguous Zone as a supposed legal justification, despite there being no apparent foundation under international law.

Vietnam [swiftly criticized](#) the claims and called on the PRC “to respect and comply with the 2000 Agreement on the Delimitation of the Territorial Sea, Exclusive Economic Zone and Continental Shelf between the two countries in the Gulf of Tonkin, as well as the 1982 UNCLOS.” The new claims do not appear to directly implicate boundary agreements between the PRC and Vietnam in the Gulf of Tonkin, but they may nonetheless be a legal warfare tactic to gain leverage and coerce concessions in other contexts, such as in relation to [oil and gas fields in the South China Sea within Vietnam's exclusive economic zone](#).

Beyond effects on Vietnam, the PRC's new claims could have significant ramifications for the broader international community. In general, [excessive straight baseline claims](#) risk destabilizing the security environment, impeding navigational rights guaranteed to all nations, and threatening the integrity of UNCLOS and the rules-based international order.

The waters enclosed by the newly claimed straight baselines are presumably considered internal waters by the PRC, meaning the PRC could attempt to unlawfully prohibit access to the Hainan Strait, an international strait connecting the South China Sea and the Gulf of Tonkin in which all nations have the right of transit passage. There is also concern that the PRC's announcement could be a precursor to prepare the environment and test resolve ahead of additional straight baseline claims in the Taiwan Strait or Spratly Islands.

(continued on next page)

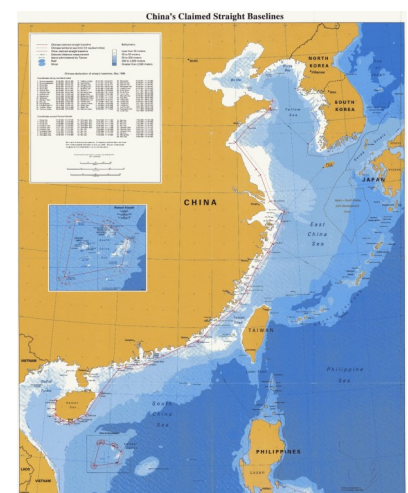


Figure 2: 1996 Straight baselines claimed by China. Source: U.S. Department of State, Limits In The Seas: No. 117, Straight Baselines Claim: China, July 9, 1996

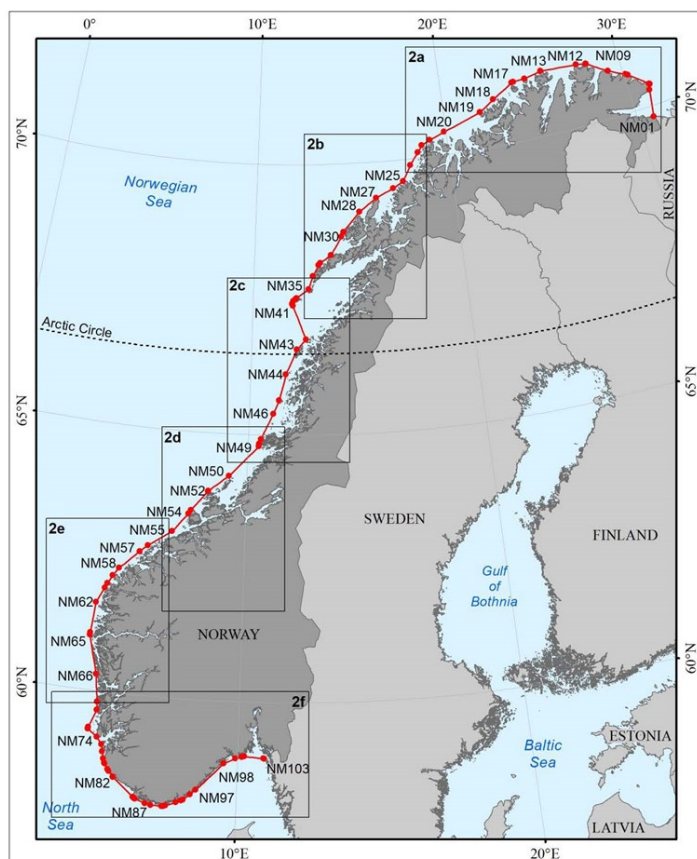
China announces new straight baselines in Gulf of Tonkin

(continued from previous page)

What is a straight baseline?

Normal baselines are based on the low-water point along a given coastline. Straight baselines are a concept based in geographic necessity. Some states have deep cuts in their coastline or fringing islands closely aggregated along the coast. Norway is the classic example (see figure 3). To accommodate these unique features, UNCLOS specifies limited circumstances where states can draw straight baselines analogous to a continuous coastline. Straight baselines demarcate a division between internal waters and territorial seas. Internal waters are the waters on the landward side of the baseline from which the breadth of the territorial sea is measured.

Among other requirements, UNCLOS stipulates that straight baselines must conform to the general direction of the coast, and that the sea area lying within the lines must be closely linked to the coast. As observers have noted, the PRC's new claims do not meet criteria for straight baselines under UNCLOS and clearly depart from the normal coastline such that vast areas of the Gulf of Tonkin now fall within the PRC's claimed territorial sea and internal waters. In some parts, the newly claimed straight baselines are nearly 50 nautical miles from the coastline, a significant departure from the UNCLOS standard that "straight baselines must not depart to any appreciable extent from the general direction of the coast."



Map 2. Overview of mainland Norway's straight baseline system. Labels for some baseline points have been omitted. Map scale: 1:8,500,000.

Figure 3: Example of lawful straight baselines claimed by Norway. Source: U.S. Department of State, *Limits In The Seas: No. 148, Straight Baselines Claim: China, August 28, 2020*.

What can be done?

If left uncontested, the PRC's claims could erode international law, ripen into accepted norms, and embolden further actions that threaten the rules-based international order. Fortunately, there are various ways to contest the PRC's new claims, including diplomatic protest, strategic messaging, freedom of navigation assertions, or compulsory dispute settlement procedures specified in Article 287 of UNCLOS.

Coordinated international efforts demonstrate strength in numbers and collective resolve to uphold the rule of law. Legal diplomacy and other proactive engagement efforts between allies and partners across the Indo-Pacific and globally help to ensure common legal understanding while protecting rights, freedoms, and lawful uses of the sea preserved to all nations. For more information on the PRC's new claims in the Gulf of Tonkin, see USINDOPACOM's [TACAID](#).

China increases gray zone pressure, risks aviation safety with unilateral changes to civilian flight paths in the Taiwan Strait

On 30 January 2024, the People's Republic of China (PRC) implemented changes to civilian flight routes in the Taiwan Strait in breach of a prior agreement with Taiwan authorities and without coordination required by International Civil Aviation Organization (ICAO) Guidance. This marks at least the second occasion since 2018 that the PRC [unilaterally altered civilian flight routes in the Taiwan Strait](#), despite agreeing in 2015 to consult with Taiwan's Civil Aviation Administration (CAA) before making any such changes.

As depicted in the inset graphic, the PRC's recent action included moving the [M503 flight route six nautical miles east](#) and [launching new eastbound flights on the W121, W122 and W123 routes in proximity to the Taiwan-controlled islands of Kinmen and Matsu](#). M503 now hugs the eastern edge of the Shanghai Flight Information Region (FIR) and is only 4.2 nautical miles from the Taipei FIR and the Taiwan Strait centerline (also known as the median line). Taiwan authorities have demanded that the PRC [reverse its actions and engage in dialogue](#) regarding any changes to flight routes in the Taiwan Strait.

These changes not only flout a prior agreement with Taiwan authorities, but also appear to defy ICAO procedures. ICAO is a technical agency of the United Nations (UN) created in 1944 by the *Convention on International Civil Aviation* ("Chicago Convention"). ICAO's broad mission includes [ensuring peaceful and safe global aviation](#). Section 4.2.6 of ICAO's *Air Traffic Services Planning Manual* stipulates that establishing and changing flight routes should be done "[only after they have been coordinated with all parties concerned](#)". Taiwan is not a member of ICAO, but the Taipei FIR is part of ICAO's network of regions and Taiwan's CAA is the "[sole entity overseeing, and is responsible for safe air traffic management throughout](#)" the Taipei FIR. Modifications to flight routes in the Taiwan Strait potentially implicate aviation safety in the Taipei FIR and as such should be coordinated with Taiwan authorities in accordance with ICAO



procedures, which do not limit "all parties concerned" to only ICAO contracting states.

A U.S. State Department official condemned the unilateral action, claiming that it "[only serves to heighten security risks, undermine aviation safety, and threaten cross-Strait stability](#)." Moreover, the changes create new dilemmas for Taiwan authorities responsible for managing complex civil air traffic corridors and air defenses, respectively. Expanding civilian flight routes affords the People's Liberation Army (PLA) increased opportunity to disguise military flights behind a civil façade in a manner that could threaten peace and stability and reduce Taiwan's ability to identify, warn, and defend against attack. Concern that the PLA will mask military flights in civilian flight routes is fueled by the PRC's propensity to blur civil-military distinctions in other domains.

Given that Taiwan is currently excluded from the International Civil

Aviation Organization (ICAO), it lacks the ability to coordinate safety measures internationally and mediate disagreements through ICAO's procedures. Members of Canada's parliament have urged ICAO in an [open letter](#) to pay close attention to the PRC's unilateral move to modify its M503 flight path, calling it a "significant safety issue" in the Taiwan Strait. At [ICAO's 2022 assembly](#), U.S. Secretary of Transportation Pete Buttigieg said, "We believe that all of international civil aviation's important stakeholders – particularly those who administer critical airspace, like Taiwan – should have the opportunity to participate meaningfully in ICAO's work." In recent years, Taiwan's diplomatic partners including Saint Lucia, Guatemala and Tuvalu, as well as other ICAO members such as France, Japan and New Zealand have [publicly endorsed Taiwan's participation in ICAO](#). For additional information on this topic, see USINDOPACOM's [TACAID](#).

Tensions High Near Second Thomas Shoal



A CCG vessel deploys blocking maneuvers and water cannons on a Philippine resupply vessel as it approached Second Thomas Shoal.

The PRC continues to exhibit coercive, dangerous, and unlawful behavior toward Philippine vessels and personnel involved in the rotational resupply of BRP Sierra Madre (LT-57), the Philippine Navy transport vessel grounded on Second Thomas Shoal (Ayungin Shoal) in the Philippines' exclusive economic zone (EEZ).

With no basis in international law and despite the Permanent Court of Arbitration's [legally binding](#) determination that the Philippines possesses sole sovereign rights in its EEZ, China Coast Guard (CCG) and maritime militia have [repeatedly interfered](#) with Philippine resupply efforts. Most recently, on 23 March 2024, vessels from the CCG and maritime militia blocked, deployed water cannons, and executed dangerous maneuvers against a Philippine vessel undertaking a resupply mission, resulting in significant damage to the vessel and injuries to Philippine crew. This marked the second time in March that lawless behavior by the PRC caused damage and personal injury.

Despite its own escalatory actions that are inconsistent with the responsibility described in Article 5 of the [2002 ASEAN-China Declaration](#) of Conduct of Parties in the South China Sea (DOC) "to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability", the PRC has argued that the Philippines' resupply efforts are a violation of the DOC and in breach of an informal agreement. The Philippines has been clear, however, that its actions are in accordance with international law and not subject to any informal agreement.

The PRC's actions have been met with strong condemnation by [the international community](#). At least 23 countries globally – from East Asia to Europe – issued public statements of support for the Philippines and defending international law in the days after the PRC's most recent provocations. Officials from Australia, Japan, India, New Zealand, and the Republic of Korea made remarks on behalf of their foreign ministries. A U.S. State Department [release](#) said that the United States "stands with its ally the Philippines and condemns the dangerous actions by the PRC against lawful Philippine maritime operations in the South China Sea on March 23."

By releasing timely visual evidence as part of its [transparency initiative](#), the Philippines continues to expose and oppose the PRC's unlawful actions, impose reputational costs, and galvanize international support for the rule of law in the Philippine EEZ and throughout the South China Sea. In parallel, the Philippines' senate recently voted unanimously to approve the [Philippine Maritime Zones Act](#), a proposed domestic law that aims to declare the rights and entitlements of the Philippines over its maritime zones in compliance with the United Nations Convention on the Law of the Sea (UNCLOS). Nevertheless, the PRC persists in its claims to "indisputable sovereignty".

USINDOPACOM continues to stand with the Armed Forces of the Philippines (AFP) in seeking to preserve peace and stability, uphold freedom of the seas in accordance with international law, and oppose any attempt to use coercion or force to settle disputes. USINDOPACOM and AFP legal advisors work together routinely to advance these common objectives. For additional information, please see the USINDOPACOM Tactical Aid (TACAID), available [here](#).

NDU and USINDOPACOM Build Cross-Sector Counter-Lawfare Team

In March, the National Defense University (NDU) and USINDOPACOM co-sponsored a counter-lawfare workshop with participation from across the U.S. interagency, academia, private-sector law firms, and legal counsel from congressional committees. The purpose was to identify tools and best practices for countering the PRC's legal warfare along with opportunities to leverage cross-sector partnership, expertise, and authorities.

Workshop participants agreed to continue expanding collaborative efforts on legal measures in support of deterrence. For example, the USINDOPACOM legal office is working closely with State Department counterparts in the Bureau of East Asian and Pacific Affairs to align counter-lawfare support to "legal diplomacy" and initiatives by the Global Engagement Center to counter misinformation on the law. The workshop also explored potential future opportunities to integrate and coordinate legal campaigning through the Department of Commerce's commercial law development program, the Department of Treasury's Committee on Foreign Investments in the United States, Department of Justice litigation, and private-sector legal claims, such as those related to environmental damage or illegal fishing.



Panelists discuss tools for combating the PRC's legal warfare. *Photo by NDU*



A U.S. marine, center, and members of the Armed Forces of the Philippines participate in combined interoperability training. *Photo by Sgt Ethan Green, USMC*

MARFORSOC at cutting edge of competition in the legal domain

Being routinely deployed under U.S. Special Operations Command Pacific (SOPAC) provides Marine Forces Special Operations Command (MARFORSOC) operators and judge advocates a first-hand look at the PRC's distortion of international law and the effect it has on regional stability.

"As we've continued to deepen our relationships across the Indo-Pacific, the necessity to enhance our combined legal resilience has become increasingly clear," said Major Chris Davis, the MARFORSOC Staff Judge Advocate. "We must continue to work together with our allies and partners to preserve the legitimacy of our actions and hold the legal high ground," Davis added.

To that end, MARFORSOC now incorporates comprehensive counter-

lawfare education into its training pipeline while regularly consulting outside experts such as Dr. Jill Goldenziel (National Defense University-College of Information and Cyberspace) and Brig. Gen Pavel Kriz (NATO Senior Legal Advisor) to ensure tactical-level training is informed by the latest developments in international law.

During recent company-level exercises, MARFORSOC forces integrated dedicated counter-lawfare support into operational planning for the first time. Judge advocates with specialized counter-lawfare training also served in information operations cells where they assisted in identifying and countering false legal narratives in the information environment.

On deployment, MARFORSOC forces embedded with special operations task forces often field questions from allies and partners seeking to better understand aspects of international law that are under threat by the PRC. As a result of its training program, MARFORSOC operators and judge advocates are more prepared than ever to address these questions, and to collaborate with allies and partners on measures to uphold the rule of law.



Photos released by the PRC reportedly showing the opening ceremony marking the launch of Qinling Station on Feb 7, 2024.

In Feb 2024, the People's Republic of China (PRC) opened "Qinling", its fifth Antarctic station. A spokesperson for the PRC said the new station will "[contribute to enhancing humanity's scientific understanding of Antarctica](#)," but [there is concern](#) that the PRC's growing footprint in Antarctica could enhance military surveillance capabilities and enable future exploitation of protected natural resources.

The Antarctic region is governed by a legal framework known as the [Antarctic Treaty](#) system, which includes the Antarctic Treaty of 1959 and related legal instruments adopted by the 59 states party to the Antarctic Treaty. Under the Antarctic Treaty, states are prohibited from any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, or the testing of any type of weapon.

The PRC is a party to the Antarctic Treaty, but its propensity to [blur civil-military boundaries](#) and disregard treaty obligations is fueling questions about Qinling and the PRC's broader Antarctic ambitions. Even if Qinling was built for scientific purposes, some of its capabilities may be inherently "dual use." According to a report by the Center for Strategic and International Studies (CSIS), Qinling's "BeiDou" satellite-based radio navigation systems – constructed under the auspice of improving weather maps – [could enhance the precision of ballistic](#)

[missiles or support intelligence collection, including signals intelligence from Australia and New Zealand, as well as telemetry data on rockets launched from Australia's Arnhem Space Centre](#).

Like the PRC, the United States is a party to the Antarctic Treaty. The United States considers the Antarctic Treaty the keystone of U.S. Antarctic policy. [U.S. priorities](#) on Antarctica are to maintain the Antarctic Treaty; to ensure the continent will be used for peaceful purposes; to foster cooperative scientific research; and to protect the Antarctic environment. In contrast, according to a [2023 US Defense Department Report](#), the PRC is actively delegitimizing the Antarctic Treaty in preparation for 2048 when central aspects of the treaty will be open to renegotiation. The Report states "[I]t is likely both China and Russia will work together to seek to renegotiate the Antarctic Treaty to loosen regulations on mining and fishing practices, which both countries need for future consumption."

Of particular concern, a prohibition on deep sea mining in the Protocol on Environmental Protection to the Antarctic Treaty could lapse in 2048, affording a pathway for the PRC and others to exploit Antarctica's [rich mineral resources](#). Russia has already undertaken seismic surveys and quantified the potential value of oil and gas deposits off the Antarctic shelf, as well as identified the lucrative existence of over [70 billion tons of hydrocarbons](#).

Moreover, there have been numerous attempts since 2016 to designate three new Marine Protected Areas under the Commission for the Conservation of Antarctic Marine Living Resources, which aims to provide refuge for marine life and reduce threats from overfishing and pollution across 1.5 million square miles of the Antarctic Ocean. However, both the PRC and Russia continue to block the designation (despite all other parties being in favor), believed to be due to [their interest in expanding fisheries and other domestic economic opportunities](#).

To ensure treaty compliance, the Antarctic Treaty system obliges state parties to inform each other of their activities and permits parties to carry out [inspections](#) of others' facilities. Observers have "complete freedom of access at any time to any or all areas of Antarctica", including all stations, installations, and equipment as well as all ships and aircraft. U.S. observers inspected Qinling when it was under construction [in 2020](#). The PRC has likewise inspected U.S. facilities including McMurto Station as recently as February 2024. It will be important for state parties to the Antarctic Treaty to collectively monitor the PRC's activities in accordance with the provisions of the Antarctic Treaty. Annual Antarctic Treaty Consultative Meetings are another avenue for ensuring transparency and compliance.

International Committee of the Red Cross and INDOPACOM Bolster Cooperation

On 26 March 2024, Ms. Katherine Stewart and Ms. Margherita D'Ascanio from the International Committee of the Red Cross (ICRC) met with members of the USINDOPACOM staff including judge advocates from across the joint force. The ICRC is an independent, neutral organization ensuring humanitarian protection and assistance for victims of armed conflict. It acts in response to emergencies and promotes respect for international humanitarian law (IHL), also known as the law of armed conflict (LOAC).

Although the United States and the ICRC hold different views on international law in some cases, the ICRC is nonetheless a lynchpin of the rules-based international order. The work of the ICRC is based on the Geneva Conventions of 1949 and their Additional Protocols. Its [mission](#) is dedicated to protecting the lives and dignity of victims of armed conflict. USINDOPACOM and ICRC representatives hold regular dialogue to foster mutual trust and cooperation. This most recent engagement centered on the application of IHL/LOAC to status determinations of captured persons and complexities surrounding detention operations in remote and maritime environments. U.S. Department of Defense [policy](#) is to comply with the LOAC during all armed conflicts, however characterized.



USINDOPACOM area attorneys and representatives from the ICRC meet.

USINDOPACOM Office of the Staff Judge Advocate



Chinese maritime militia vessels underway. Photo courtesy of the Chinese photo press

China Militia Presence Increases in South China Sea

The number of Chinese maritime militia (CMM) vessels around disputed features in the South China Sea reportedly [grew by 35% last year](#) as Beijing ramped up its gray zone pressure tactics. Satellite imagery reviewed by the Center for Strategic and International Studies (CSIS) reportedly showed an average of [195 CMM vessels](#) near Fiery Cross Reef, Hughes Reef, Iroquois Reef, Mischief Reef, Scarborough Shoal, Second Thomas Shoal, Subi Reef, Thitu reefs/Sandy Cay, Whitsun Reef, and Gaven Reef on any given day. Most of these features lie within the Philippine exclusive economic zone.

The CMM presence at Mischief Reef served as a staging ground for interference in the vicinity of Second Thomas Shoal. Large groupings of CMM vessels were also observed near Hughes, Whitsun, and Gaven Reefs.

The CMM is [generally understood](#) as a reserve force of the People's Liberation Army (PLA) made up of mobilized personnel and a fleet of supposed fishing boats. Local and provincial commercial organizations are subsidized to operate CMM vessels and perform official missions on an ad hoc basis outside of civilian commercial

activities. Some CMM units are incorporated into the command structure of the PLA Navy and Coast Guard and equipped with steel-hulled ships containing armories and water cannons.

Despite obligations under customary international law reflected in the United Nations [Convention on the Law of the Sea](#) (UNCLOS), [the PRC uses the CMM](#) to advance excessive claims and prevent others from exercising navigational rights and freedoms guaranteed to all nations. Moreover, the CMM's [civilian façade](#) erodes the principle of distinction under the law of armed conflict (LOAC), providing the PRC with a veneer of deniability for aggressive behavior and a pretext for false accusations of civilian harm in the event of military action against a CMM vessel determined to be a valid military objective.

The CMM's ubiquitous presence is not limited to the South China Sea. In recent years, CMM vessels [swarmed](#) the territorial sea of the Senkaku Islands with no legal authorization from Japan and harassed Japanese vessels in violation of navigational norms codified in the Convention on the International Regulation for Preventing Collisions at Sea (COLREGs).

For more information, see the Japan Joint Staff-USINDOPACOM bilateral paper available [here](#).

Cobra Gold 2024 – Second Annual Multi-National Legal Summit

Legal practitioners from across the region convened at the Second Annual Multi-National Legal Summit during exercise Cobra Gold 2024 in Thailand. This dynamic gathering saw representatives from the Royal Thai Armed Forces, Royal Thai Air Force, Royal Malaysian Navy, Royal Australian Navy, Singapore Armed Forces, Japan Joint Staff, and U.S. Army Pacific/I Corps engaging in insightful discussions and fostering



COL Merriam, I Corps SJA, leads a discussion on counter-lawfare during the Cobra Gold 24 Multi-National Legal Summit. Photo by USARPAC

greater cooperation and understanding in operational legal matters.

Colonel J.J. Merriam, I Corps Staff Judge Advocate, led off the summit by highlighting the importance of upholding international law to ensure a free and open Indo-Pacific. Subsequent topics of discussion centered on counter-lawfare, the law of the sea, targeting, and a special presentation on "operating in the gray" and the impact of electromagnetic spectrum intrusion on partners and allies in the Pacific. A highlight of the summit was individual country briefs. Representatives shared insights into current and future operations, challenges, and legal force structures, and their role in the operational planning process, enhancing mutual understanding and interoperability.

The Second Annual Multi-National Legal Summit served as a testament to the commitment of participating nations toward fostering collaboration and synergy in legal matters, crucial for ensuring peace, security, and stability in the Indo-Pacific. This year's summit

marked significant growth, both in scale and substance, promising even greater potential for future iterations.



Bottom (L): LCDR Mustaqim, CPT Singh, CPT Rossi, MAJ See, SFC Ceon, LT Narawit. Top(L): SSG Jackson, LTC Westfall, LCDR Siladi, CPT Roberts, LT Yeatman, CPT Everidge, COL Merriam, MAJ Tanaka, LTC Porawan, CPT Brown. Photo by USARPAC



U.S. Indo-Pacific Command

Joint Operational Law Team
Office of the Staff Judge Advocate
Camp H.M. Smith
Hawaii, United States

Phone: (808) 477-6378
Email: indopacom.j06.oplaw@pacom.mil
Web: www.pacom.mil/Contact/Directory/J0/J06-Staff-Judge-Advocate/

*Promoting the Rule of Law to Ensure a
Free and Open Indo-Pacific*

What is Legal Vigilance?

Legal vigilance refers to the monitoring and assessment of the legal environment. Maintaining legal vigilance ensures the United States Indo-Pacific Command (USINDOPACOM) and its allies and partners are able to identify threats (including "legal warfare" by the People's Republic of China), integrate across the combined joint force, and implement action to uphold the rule of law.

The Legal Vigilance Dispatch is an informal, non-comprehensive survey of open-source information on the legal environment. Unless otherwise noted, all content is produced by the USINDOPACOM Office of the Staff Judge Advocate (OSJA) and does not necessarily reflect official positions of the U.S. government.

In addition to identifying threats in the legal environment, the Legal Vigilance Dispatch highlights cooperative efforts by the United States and its allies and partners to uphold the rule of law. USINDOPACOM OSJA is committed to building legal partnerships and working with allies and partners to preserve peace and stability in the Indo-Pacific. If you have comments, feedback, or vignettes to share, please contact us.