



USINDOPACOM Office of the Staff Judge Advocate

Legal Vigilance Dispatch

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

ISSUE 4, SUMMER

SEPTEMBER 2023

SPECIAL POINTS OF INTEREST:

• MILOPS 23

• PRC uses membership in international organizations to push revisionist agenda

• International resolve on display following Philippine transparency in South China Sea

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USINDOPACOM stands with Palau following Russian boarding of Palau-flagged vessel in the Black Sea

The Republic of Palau was thrust into the spotlight following a Russian military boarding of a Palau-flagged commercial vessel in the Black Sea. Sukru Okan, a 328' long bulk carrier, was transiting to the Ukrainian port of Izmail on August 13 when it was fired upon and boarded by a Russian warship.

The Russian Ministry of Defense acknowledged that its forces opened fire with automatic small arms and landed a helicopter on the deck of Sukru Okan, but did not articulate a legal basis for doing so. According to reporting from the [New York Times](#), Sukru Okan was located in international waters in the southwestern Black Sea at the time of the boarding. The incident is [representative of Russian aggression](#) in the Black Sea and a failure to respect the navigational rights and freedoms of all nations in accordance with international law.

Although the boarding of Sukru Okan occurred in the Black Sea thousands of miles from the USINDOPACOM area of responsibility, it nonetheless underscores the far-reaching implications of Russian aggression on the sovereign



Image from a video released by Russia's Defense Ministry showing crew members of the Palau-flagged Sukru Okan kneeling on deck during a boarding by the Russian Navy in the Black Sea. Photo by Reuters via the Russian Ministry of Defense

rights and interests of Indo-Pacific nations. Despite these implications, the Russian Federation and the PRC boast of a “[no limits](#)” friendship exemplified by [frequent combined exercises](#) across the Indo-Pacific region. In contrast, USINDOPACOM stands with Palau and other allies and partners to uphold the rules-based international order against aggression and coercion. On August 23, as part of a continued commitment to enhancing maritime governance and promoting regional sovereignty, representatives of the United States and the Republic of Palau signed an expanded [bilateral law enforcement agreement](#).

In addition, the [Compacts of Free Association \(COFA\)](#)

between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and Republic of Palau vests full authority and responsibility for the islands' security and defense matters with the United States. All three COFA states operate commercial vessel registries; the Marshall Islands' registry is the second largest in the world (nearly five thousand vessels), and Palau's registry is one of the world's fastest growing. As sovereign nations, COFA states have the legal authority to maintain commercial ship registries. USINDOPACOM will continue to support the navigational rights and freedoms of commercial vessels flagged to COFA states.

U.S. INDO-PACIFIC COMMAND INTERNATIONAL MILITARY LAW & OPERATIONS CONFERENCE

MILOPS

34TH ANNUAL CONFERENCE | 30 JULY - 3 AUGUST 2023 | BALI, INDONESIA

Nearly 200 delegates from more than 30 countries gathered for the 34th annual International Military Law and Operations Conference (MILOPS 23) in Bali, Indonesia, 31 July – 3 August 2023. MILOPS 23 featured the highest level of international participation in the conference's history and an unmatched slate of prominent speakers and attendees.

Keynote addresses included Admiral Aquilino, Commander, U.S. Indo-Pacific Command; Lt Gen (ret) Muhammad Herindra, Deputy Minister of Defense, Indonesia; and the Hon Dr. Kevin Rudd AC, Australia's Ambassador to the United States and former Prime Minister of Australia. The theme for MILOPS 23 was Cooperating to Defend the Rules Based International Order in the Indo-Pacific. Consistent with this theme, participants engaged with leading experts and contributed to panel discussions and a syndicate exercise to expand cooperation and uphold international law, rules, and norms. Topics discussed at MILOPS 23 included serious and sustained challenges to the rules-based international order, such as Russia's illegal invasion of Ukraine and its implications on Indo-Pacific security; the PRC's excessive maritime and territorial claims in the South China Sea; and security impacts of climate change.

MILOPS 23 addressed these challenges through dialogue that forged person-to-person ties, built consensus on regionally significant aspects of international law, and advanced mechanisms for continued collaboration. MILOPS 23 resulted in a series of key takeaways, including resolutions to communicate and collaborate on combined legal initiatives to build trust and a culture of legal transparency across national boundaries. A complete MILOPS 23 Record of Proceedings and the full listing of takeaways is available [here](#).

Law as a domain of competition

Commander Tim Boyle (USINDOPACOM) moderated a panel titled "law as a domain of strategic competition" and featuring leading practitioners of counter-lawfare, legal operations (NATO), and legal transparency (Philippines Coast Guard). In describing the Philippines ground-breaking transparency initiative, Commodore Jay Tarriela of the Philippines highlighted the need to deter aggression by "leveraging the power of public opinion." As

Commander Boyle noted, "competition in the legal domain means that we must consider the law not just in terms of compliance, but in terms of opportunity... opportunity to expand the competitive space by leveraging legal information, legal

instruments, legal institutions, and legal cooperation to advance our common interests and deny potential adversaries from gaining the legal high ground."



Island nations take center stage

MILOPS 23 included a memorable panel featuring senior leaders from the Pacific Island nations of Palau, Fiji, Nauru, Tuvalu, and the U.S. state of Hawaii. Commentary by the panelists underscored the vast

(continued on next page)

range of unique challenges faced by island nations and broader implications for the international community. As one panelist remarked, climate change is an “existential threat” and “the most important security issue for many island nations.”

To protect the sovereign rights of nations whose territories are threatened due to rising sea levels, another panelist advocated for “freezing maritime boundaries,” and noted that the United States has

already come out in support of such action.

The panelists also spoke to issues such as IUU fishing and maintaining maritime domain awareness in vast exclusive economic zones. “Without the fish, we have nothing,” remarked one panelist.

Operationalizing legal cooperation

For the first time in over two decades, MILOPS 23 included a practical exercise during which 10 syndicate groups cooperatively developed legal and policy solutions against a range of realistic threats to the rules based international order from dangerous air intercepts to malicious cyber activity and violations of sovereignty by high-altitude balloons. Spokespersons from 10

different countries debriefed their respective group’s findings during a plenary session facilitated by Professor Dale Stephens.

A common prevailing sentiment among the syndicates related to the deterrent value of exposing and opposing unlawful behavior. As one Indonesian junior officer stated, “if the world knows about it, it can change everything.”

In addition to plenary sessions, MILOPS 23 participants held bilateral / multilateral breakout meetings, key leader engagements, and social events. These engagements afforded opportunities for participants to address issues in small-group settings and build lasting friendships.

“...if the world knows about it, it can change everything”



USINDOPACOM, Japan Joint Staff Legal Advisors sign memo on People’s Armed Forces Maritime Militia

The legal staffs from USINDOPACOM and the Japan Joint Staff (JJS) frequently collaborate to develop legal products that document and solidify consensus and common understanding of legal issues affecting the region. These efforts recently resulted in the [release of a bilateral memorandum](#) on the People’s Armed Forces Maritime Militia (PAFMM).

The paper addresses PAFMM’s status as a reserve force of the People’s Liberation Army and its obligation to



CAPT Dom Flatt (USINDOPACOM SJA) and Colonel Junji Shinagawa (Legal Affairs General, Japan Joint Staff) finalize a bilateral legal memorandum.

follow international law, including customary international law reflected in the U.N. Convention on the Law of the Sea. In addition, the paper cites examples of activity by PAFMM that erodes fundamental principles of international law.

USINDOPACOM and JJS legal advisors are committed to further legal cooperation to build strength in numbers and expose and oppose activities that undermine the rules-based international order.



(Left to Right) MILOPS Organizer Wing Commander Hatem Abiad introducing The Honorable Dr Kevin Rudd AC, Australian Ambassador to the United States and former Prime Minister of Australia.

MILOPS participants from the U.S., Japan, and Brunei cooperate to develop legal solutions during a syndicate exercise.

Rear Admiral Kresno Bunturo (Director of BABINKUM, Indonesia’s National Legal Development Agency) and Vice Admiral Del Crandall (U.S. Navy Judge Advocate General) discuss opportunities for bilateral legal cooperation.



All MILOPS Photos by MCC Shannon Smith, USINDOPACOM PA

Guam defense: A legal obligation

Guam is part of the U.S. homeland and is indistinguishable from the fifty states for purposes of defense under international and domestic law. As the westernmost U.S. territory in the Pacific, Guam sits at the heart of USINDOPACOM's priority mission to defend the U.S. homeland.

The [conventional threats](#) to Guam underscore the need to prioritize Guam's defense. These include threats from intermediate and medium range ballistic missiles as well as H-6K/J/N bombers equipped with DH-10 LACM cruise missiles and YJ-12 anti-ship missiles. In addition to conventional threats, Guam faces a range of asymmetric challenges. Of note, a [recent advisory](#) released by the National Security Agency and international cybersecurity authorities from the Five Eyes partners spotlighted a report from Microsoft on activity associated with a PRC state-sponsored cyber actor known as Volt Typhoon. The report says that Volt Typhoon has been active since mid-2021 targeting infrastructure in

Guam ranging from communications to transportation and education.

USINDOPACOM's priority mission to defend the U.S. homeland is based in the inherent right of all states to defend their territory and their people from an actual or imminent armed attack. The U.N. Charter's prohibition on the threat or use of force against the territorial integrity or political independence of any state applies to all U.S. territories including Guam. [U.S. officials](#) have "very clearly stated an attack on Guam is, in fact, an attack on the U.S. homeland." The inherent right of self-defense applies equally to cyber operations that amount to an armed attack or imminent threat thereof. The [United States has expressed the view](#) that when warranted, it will respond to hostile acts in cyberspace as it would to any other threat to the country.

Guam's legal status as U.S. homeland means that its defense will remain a top priority as a matter of law and policy. As [described by Lt Gen Stephen Sklenka](#), USINDOPACOM Deputy Commander, "Guam is a place [from which] we send a powerful strategic message to our allies and our

adversaries that the United States has invested in this region." See USINDOPACOM J06's [TACAID](#) for more information on legal considerations related to defense of Guam as well as the Commonwealth of the Northern Marianas Islands.

PRC seeks influence through dominating international organizations

The PRC's efforts in the last several decades to modify various tenets of clearly established international law should lead law-abiding states around the world to pay close attention to the PRC's powerful influence in international organizations.

A short list of the PRC's efforts to either change or disregard international law include: fabricating a "near-arctic" status to gain arctic rights, violating the long established principle of due regard by performing unsafe and unprofessional aircraft intercepts in international airspace, violating sovereignty by denying freedom of navigation in the South China Sea based on vague and unlawful legal claims, and violating states' territorial airspace by claiming rights to operate high-altitude balloons in "near space."

Because of the PRC's willingness to promote revisionist views about international law, combined with its regular exercise of military power in support of those views, states must carefully consider the purposes for which the PRC will employ every form of its national power in the international community—especially in international organizations.

All states play important roles in international organizations, but it

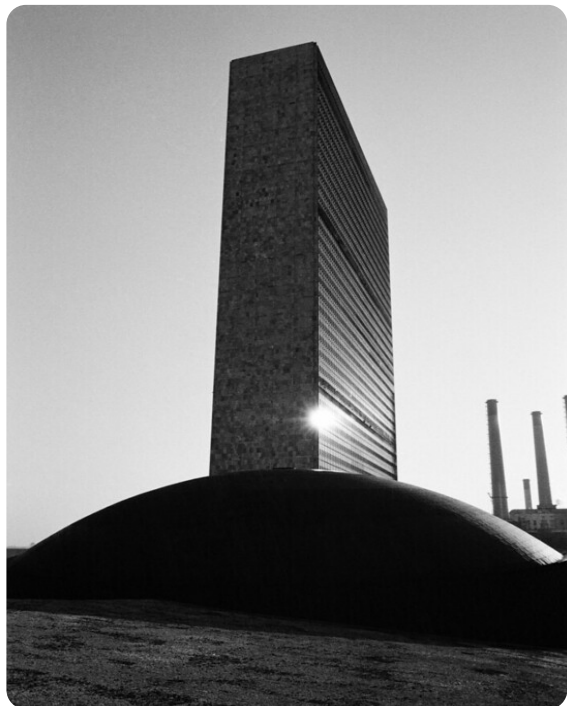


An aerial view of U.S. Naval Base Guam shows several Navy vessels moored in Apra Harbor. U.S. Navy Combat Camera photo by MCI Stacy D. Laseter

seems that no state other than the PRC has ever consciously and concertedly made efforts to: 1) revise accepted provisions of international law, and 2) hold so many powerful positions in international organizations. As recently as 2020, the PRC [led 4 of the United Nations specialized agencies](#), the International Civil Aviation Organization (ICAO), the International Telecommunication Union (ITU), the Food and Agriculture Organization (FAO), and the U.N. Industrial Development Organization (UNIDO).

By contrast, in 2020, the UK, US, and France, led only one agency each, and [the US has not led four since the 1950s](#). As of December 2022, this trend has evolved slightly. Although the PRC no longer leads any single agency, [it still holds 32 positions](#) in key international organizations at the board of directors or senior management team level.

Due to the PRCs extended network of leadership positions in these international organizations, combined with the PRC's proclivity to either disregard or change international law, all states that engage in international organizations must continue to exercise vigilance and careful assessment of the legal and policy positions of PRC representatives.



United Nations Building, New York, NY.
[United Nations photo by Milton Grant](#)

Pacific Fleet practices legal compliance, messaging during a 'high-end' fight

From 9-18 August 2023, U.S. Pacific Fleet (PACFLT) participated in the U.S. Navy Large Scale Exercise 2023 (LSE 23), a U.S. Navy-Marine Corps training event that leveraged the combined firepower of U.S. maritime force across six maritime component commands, seven numbered fleets, and 22 time zones to defend U.S., ally, and partner interests around the globe.

LSE 23 was designed as a live, virtual, and constructive, globally-integrated exercise that enabled the U.S. Navy and Marine Corps team to practice synchronizing maritime operations across multiple fleets, in



support of a broader joint and combined force. To enhance the Fleet's support to Joint and Combined operations, LSE merged real-world operations with virtually constructed scenarios originating in the Western Pacific and Eastern Europe to create a realistic exercise environment that allowed Sailors and Marines to train towards a high-end fight in multiple theaters of wars that cross conventional geographic boundaries.

Throughout the exercise, PACFLT staff judge advocates were critical force multipliers to this fight. Consistent legal coordination horizontally to other theaters and vertically up and down the chain of command ensured global Fleet operations advanced Joint warfighting concepts, complied with the law of armed conflict, respected the rights of partner nations, and met obligations under international and U.S. domestic laws. Key legal focus areas included use of military information support operations and strategic messaging as a form of counter-lawfare to highlight the belligerent and unlawful actions of adversary forces while underscoring the legitimacy and legality of U.S. actions – which were designed to safeguard freedom of navigation and commerce while protecting the sovereign rights of all nations.

PACFLT will take lessons learned from LSE 23 and apply them to day-to-day operations, ensuring that the United States maintains the ability to deter, defend, and, if necessary, defeat aggression in any location at any time, whether directed against the U.S. or our allies and partners. Working as part of the USINDOPACOM Joint Force and supporting our partners and allies, PACFLT remains committed to defending the rules-based international order and ensuring the Indo-Pacific remains free and open for all.

International resolve on display following Philippine transparency in South China Sea

On 5 August 2023, the China Coast Guard (CCG) [once again](#) “interfered with the Philippines’s lawful exercise of high seas freedom of navigation and jeopardized the safety of the Philippine vessels and crew.” Specifically, CCG vessels [fired water cannons and blocked the passage](#) of Philippine vessels that were transporting supplies to Philippine marines stationed onboard Sierra Madre, a naval vessel grounded at the Second Thomas Shoal in the Philippine exclusive economic zone.

Following the incident, the [European Union](#) and eight nations, ([France](#), [Germany](#), [South Korea](#), [the UK](#), [Japan](#), [Australia](#), [Canada](#), and the [United States](#)) expressed deep concerns over the CCG’s dangerous actions, which were said to “[undermine the status quo and directly threaten regional peace and stability](#).” [Canada](#) “unreservedly condemn[ed] the dangerous and provocative” actions of the CCG and noted “to disrupt the lawful operations of the Philippine vessels is unacceptable, and inconsistent with the obligations of the [PRC] under international law....continued acts of intimidation and coercion by the PRC against its neighbors undermine safety, security, and stability across the region and raise the risks of grave miscalculations.” [Australia](#) described the CCG’s actions as destabilizing. [Japan](#) stated it “strongly” supports the Philippines’ position, highlighting that it is “totally unacceptable any harassment and actions which infringe on lawful activities of the sea and endanger the navigational safety.” In addition to the previously mentioned nations, [the EU](#), [South Korea](#), [Germany](#) and [France](#), reaffirmed their support for international law, particularly the 2016 Arbitral Tribunal ruling. A common theme among these international statements is the call for peaceful dispute resolution without force or coercion.

The statements described above follow concerted efforts by the Philippines to [publicly highlight](#) the lawfulness of the Philippines’ activities and unlawful acts by the People’s Republic of China within the South China Sea. Alongside other partners within the Government of the Philippines Information Working Group, the Philippines Coast Guard is leading a “recalibrated” approach, known as its [transparency initiative](#), to truthfully inform domestic audiences and the international community. For more information on the situation at Second Thomas Shoal see [LVD Issue 3, Spring](#) and the INDOPACOM J06 [TACAID](#).



Chinese Coast Guard water cannon impacts Philippine Coast Guard patrol vessel (right) resulting in the PCG vessel steering away from the cannon impact. [Image Source](#)



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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, 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.



MILOPS group photo. Photo by MCC Shannon Smith, USINDOPACOM PA