



USINDOPACOM Office of the Staff Judge Advocate

Legal Vigilance Dispatch

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

ISSUE 5, FALL

NOVEMBER 2023

SPECIAL POINTS OF INTEREST:

- The PRC continues its pattern of concerning behavior during air and sea interactions
- U.S. continues support to allies and partners through crucial humanitarian aid and military training
- INDOPACOM counter-lawfare program gains further institutional momentum

INSIDE THIS ISSUE:

Disputed Land Borders 2

“Coercive and Risky” PLA air intercepts 3

Humanitarian Assistance to Philippines 4

Ulchi Freedom Shield 2023 5

Legal Warfare in DOD’s China Report 5

INDOPACOM Activates CLAW 6

Counter-Lawfare at NWC 7

Illegal, Unreported, Unregulated Fishing Spurs International Law, Threatens Security

Recent reporting is highlighting the continued scourge of illegal, unreported, and unregulated (IUU) fishing and its impact on sovereign rights, ocean health, food security, and economic stability in the Indo-Pacific region and around the world.

An October report in the [New Yorker](#) tied devastating environmental impacts and large scale human suffering to the PRC’s enormous fishing fleet. The piece describes how massive trawlers supported by sustainment vessels remain at sea for years at a time in large groups with global reach, without regard for fisheries laws, coastal state sovereignty, ecological sustainability, labor laws, or fundamental human rights. As reported by the [New York Times](#) in September, IUU fishing occurs alongside the PRC’s efforts to militarize, deny fisheries access, and enforce self defined control in the exclusive economic zones of other nations, such as the Philippines.

The threat from IUU fishing is acute for [Pacific Island nations](#) and developing economies that depend on fisheries for food security and export income, but the dangers of IUU fishing also extend shoreward, as evidenced by [additional reporting in the New Yorker](#), which linked IUU fishing to the PRC-led genocide of Uyghur Muslims and other ethnic and religious groups in Xinjiang. The report noted that

the PRC has forcibly put to work millions of Uyghurs in many industries, including global seafood processing hubs sustained by IUU fishing.

Under international law reflected in the U.N. Convention on the Law of the Sea, every flag state is obliged to prevent

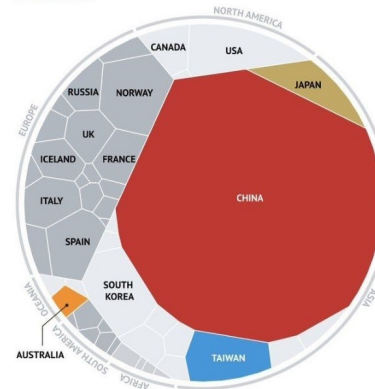
over the use and benefit of the natural resources, to include fisheries, in their exclusive economic zones, which includes jurisdiction over the preservation and enforcement of those rights.

To combat IUU fishing, [U.S. law](#) directs a whole-of-government approach led by the National Oceanic and Atmospheric Administration, supported by 21 federal departments and agencies, including the U.S. Department of Defense (DOD). In the Indo-Pacific, U.S. efforts are focused on improving maritime domain awareness, legal frameworks, enforcement, and the capacity of allies and partners. See USINDOPACOM OSJA’s [TACAID](#) for more information on U.S. efforts and legal considerations.

The far-reaching threat from IUU fishing demands a broad network of allies, partners, and interagency experts to root out unlawful conduct, spotlight bad actors, and preserve the rights of coastal states to use and benefit from their natural resources.

To meet this challenge, USINDOPACOM is working with allies and partners and the U.S. interagency to protect sovereignty, promote adherence to international law, and uphold the rules-based international order.

China’s fishing fleet now dwarfs all other countries’



SOURCE: GLOBAL FISHING WATCH GRAPHIC: MATT MALISHEV

IUU fishing by vessels flying its flag and to comply with legal requirements to conserve and manage the environment and living marine resources. The International Tribunal for the Law of the Sea has [opined](#) that the flag state bears responsibility to ensure compliance with international law by its vessels and must exercise “due diligence” in taking steps to meet that obligation. International law further provides coastal states with exclusive sovereign rights

Disputed Land Borders Remain Cause for Concern

In late August, the PRC's Ministry of Natural Resources released its so-called "[standard map](#)," which drew immediate condemnation from the international community for its territorial reach and "10-dashed line" encompassing the South China Sea and Taiwan. Much has been written over the years about the PRC's legally baseless dashed-line claim, but less attention is paid to contested territorial claims along the PRC's land borders, which are also in the ambit of the "standard map." Of particular concern are the PRC's land border disputes with India and Bhutan, respectively.

The Line of Actual Control (LAC) has been a de facto border between the PRC and India since their 1962 war, but they disagree over its position in at least [13 locations](#). Simmering tensions at the LAC have occasionally flared into violence. In 2020, a clash between People's Liberation Army (PLA) forces and Indian troops near the LAC in Galwan Valley resulted in the death of [over twenty soldiers](#). [Subsequent confrontations](#) along the LAC in Jan 21 and Dec 22 resulted in injuries.

The PRC is also locked in a protracted border dispute with Bhutan over Doklam, which sits on a strategic plateau near the tri-junction of Bhutan, India, and the PRC. In 2017, PLA forces entered Doklam to construct a road, which prompted a response from Indian



Disputed land borders in and around Tibet. Reuters graphic

forces supporting Bhutan. The ensuing stand-off lasted more than two months until both sides agreed to withdraw. Nevertheless, in Apr 23, [reports surfaced](#) that the PRC constructed villages in Doklam, despite a [1998 agreement](#) with Bhutan in which the PRC "recognize[d] Bhutan's sovereignty and its territorial integrity and agree[d] that 'no unilateral action will be taken to change the status quo on the border.'"

In an apparent attempt to strengthen and legitimize disputed territorial claims depicted in the "standard map," the PRC enacted a Land Borders Law in 2021. Like other PRC domestic laws, the Land Borders Law contains vague language, providing flexibility to enforce in a manner that could threaten peace and security.

For example, as both the PRC and India build infrastructure along the LAC, the Land Borders Law's prohibition on border construction without permission from PRC authorities could be a flashpoint if interpreted to include both sides of the disputed border. Moreover, the Land Borders Law's emphasis on development of border towns and the role of civilian groups in border defense raises questions about the PRC's [intentions to expand settlement](#) in disputed

areas. [Reports](#) of PRC construction in disputed areas appear to corroborate these concerns while evoking the same "[salami-slicing](#)" tactics used by the PRC to advance its disputed maritime claims.

Upholding international law is necessary to maintain peace and security around the globe, particularly in areas with disputed land borders. USINDOPACOM continues to closely monitor the security situation surrounding the PRC's land border disputes with India and Bhutan, respectively, and stands ready to cooperate with allies and partners to deescalate tensions and pursue peaceful dispute resolution in accordance with international law. See USINDOPACOM OSJA's [TACAID](#) for more information on border disputes and the PRC's Land Borders Law.



PLA Military Buildup 2017-2020. *Sim Tack, A Military Drive Spells Out China's Intent Along the Indian Border, Worldview Stratfor (Sept. 22, 2020, 10:10 GMT)*

DOD Illuminates Trend of “Coercive and Risky” Air Intercepts by the PLA

In October, the U.S. Department of Defense (DOD) released a trove of photos and videos of recent “coercive and risky” behavior by People’s Liberation Army (PLA) aircraft during intercepts of U.S. military aircraft operating lawfully in international airspace over the South and East China Seas. During a press conference, Assistant Secretary of Defense for Indo-Pacific Security Affairs, Dr. Ely Ratner, noted that, “since the Fall of 2021, we have seen more than 180 such incidents – more in the past two years than in the decade before that. That’s nearly 200 cases where PLA operators have performed reckless maneuvers or discharged chaff, or shot off flares, or approached too rapidly or too close to U.S. aircraft – all as part of trying to interfere with the ability of U.S. forces to operate safely in places where we and every country in the world have every right to be under international law.” Dr. Ratner added, “when you take into account cases of coercive and risky PLA intercepts against other states, the number increases to nearly 300 cases against U.S., ally and partner aircraft over the last two years.”

Not only is the PLA’s behavior “coercive and risky,” it also raises significant legal questions. As previously discussed in [Legal Vigilance Dispatch-Issue 2](#), air intercepts

are not prohibited by international law. State aircraft may lawfully intercept other State aircraft for purposes such as identification, verification, or escort, provided the intercept occurs professionally, safely, and with due regard for the freedoms afforded to all States by international law. International law divides airspace between territorial airspace (i.e. airspace over a State’s land, internal waters, territorial seas, and archipelagic waters), which is subject to the sovereignty of a State, and international airspace, which is seaward of the territorial sea. In international airspace, all States enjoy freedoms of navigation and overflight, and other internationally lawful uses related to these freedoms. This includes military operations, exercises, and surveillance activities. All nations are bound by these airspace regimes as a matter of customary international law reflected in the U.N. Convention on the Law of the Sea. The requirement to fly with due regard for

other nations’ aircraft operating lawfully in international airspace is likewise binding customary international law. Beyond the requirement to operate with due regard, there is no international law regarding aerial encounters of State aircraft, but there are international norms and standards that preserve freedoms to use international airspace as well as ensure safety. The International Civil Aviation Organization (ICAO), a specialized agency of the United Nations, was established in 1947 for this specific reason. ICAO codified principles of international air navigation and establishes standards and recommended practices.



Chinese fighters intercept U.S. aircraft over the East China Sea and the South China Sea over the last 24 months. DoD Photos

When compatible with mission requirements, military aircraft that encounter each other should operate consistent with ICAO standards. Among these standards, ICAO outlines expected norms of conduct and procedures for executing air intercepts. Safe intercepts are typically characterized by controlled closure rates and stable station-keeping. Professionalism involves proper airmanship, non-provocative maneuvers, and no overtly aggressive actions, words, or gestures. [ICAO recommends](#) that states develop intercept methods according to a “standard method” designed to “avoid any hazard for the intercepted aircraft.” This includes “the

need to avoid flying in such proximity to the intercepted aircraft that a collision hazard may be created.”

The U.S. DOD and the PRC’s Ministry of Defense have agreed to [Rules of Behavior for Safety of Air and Maritime Encounters](#) (“the ROB”) in which both sides commit to operating consistent with ICAO standards when engaging in air-to-air encounters involving their State aircraft. U.S. forces are trained to conduct air intercepts for lawful purposes, and to do so safely and professionally in accordance with international law, norms, and standards. U.S. forces also strictly adhere to the ROB during intercepts of PLA aircraft.

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The Commander of USINDOPACOM, Admiral John C. Aquilino, has repeatedly called for the resumption of military-to-military dialogue with the PLA to promote safety and mitigate risk of mishap, collision, or loss of life, but until recently, the PRC had declined to resume such talks. During a meeting between President Biden and President Xi on November 15, the heads of state reportedly agreed to resume military-to-military dialogue.

Meanwhile, “coercive and risky” behavior by PLA aircraft persists, as evidenced by an incident on October 29 where two PLA J-11 fighters engaged in reportedly “unsafe” intercepts of a Canadian H-148 Cyclone helicopter operating lawfully in international airspace. According to a statement by the Canadian Armed Forces, one PLA jet conducted a pass over the CH-148 Cyclone helicopter with little separation, causing the helicopter to experience turbulence and take appropriate actions to remain safe. Later the same day, the same helicopter was intercepted by another J-11 fighter, which launched flares directly in front of the helicopter causing the pilot to maneuver to avoid the flares and reduce the risk of ingesting a flare into the helicopter’s rotor and intakes.

See USINDOPACOM OSJA’s [TACAID](#) for more information on legal considerations associated with air intercepts.

Humanitarian Assistance to the Philippines



A CH-53E Super Stallion with Marine Medium Tiltrotor Squadron 163 is offloaded Aug. 3 by U.S. Marines and Filipino citizens in support of emergency relief efforts in the wake of a typhoon. Photo by Sgt. Sean Potter, USMC

As many countries across the Indo-Pacific confront the devastating effects of climate change and increasingly frequent extreme weather events, USINDOPACOM continues to prioritize delivery of rapid foreign humanitarian assistance (FHA) and disaster relief. When Typhoon Egay hit the Philippines in July, U.S. Marines responded within 24 hours, working with the Philippine government to deliver urgent supplies and partnering with [Philippine Marines](#) to support clean-up, while battling monsoon-season rain.

Under [U.S. law](#), the U.S. Agency for International Development (USAID) is the lead federal agency for FHA. [On average](#), USAID’s Bureau of Humanitarian Assistance responds to 75 crises in more than 70 countries each year, providing food, water, shelter, health care, and other critical aid to people who need it most.

U.S. policy permits USAID to request support from DOD, subject to a disaster declaration from Department of State and a requirement for DOD’s unique capabilities. DOD is also

permitted under its own authority to provide immediate lifesaving assistance, but continued assistance must have Secretary of Defense or Deputy Secretary of Defense approval within 72 hours of operations. All FHA missions are conducted at the request of a host nation (HN), or with the HN’s concurrence. A HN can limit the size, duration, or scope of FHA. When the international community responds to a disaster at the request of a HN, the United States will normally be part of an organized, professional humanitarian system consisting of many countries, donors, and organizations. Effective coordination across agencies and governments is essential to alleviate suffering of affected populations.

In three days following Typhoon Egay, U.S. aircraft flew [roughly 5000 miles](#) to distribute supplies. “This is what we do,” [said LtCol David G. Batcheler](#), Commanding Officer, Marine Medium Tiltrotor Squadron 163. “The opportunity to help our Philippine Allies in time of need, especially after training together during an exercise, is a privilege.”

Ulchi Freedom Shield 2023 Reinforces International Law



Left to Right – Cpl Ahn (ROKA), 1LT Kim (ROKA), Maj Brown (USMC), CDR Coffin (USN), LTC Moon (ROKA), LtCol Lee (ROKAF), 1stLt Park (ROKAF), MAJ Yoon (ROKA)

Annual combined, joint, inter-agency exercise Ulchi Freedom Shield (UFS 23) was conducted by Combined Forces Command, United Nations Command, and U.S. Forces Korea from 21-31 Aug 2023. Exercises like UFS 23

support the 1953 Armistice Agreement. They highlight longstanding friendship between the Republic of Korea (ROK) and the United States, help solidify the Alliance as a linchpin of regional peace and security, and reaffirm the ironclad commitment of the United States to the defense of the ROK.

ROK and U.S. forces were joined by forces from Australia, Canada, France, Great Britain, Greece, Italy, New Zealand, Philippines, and Thailand. In addition, the Neutral Nations Supervisory Commission

(Sweden and Switzerland) observed the exercise, fulfilling duties prescribed by the Armistice Agreement.

Rigorous scenario-based training during UFS 23 was tailored to enhance Alliance response capabilities to a range of emergent and diverse threats. UFS 23 demonstrates U.S. resolve to work with allies and partners to ensure peace and prosperity throughout the region and the continuing effort to secure a free and open Indo-Pacific.

PLA 'Legal Warfare' in DOD's Report

In October, DOD released its [annual report](#) on “Military and Security Developments Involving the People's Republic of China.” The congressionally mandated report “[serves as an authoritative assessment on military and security developments involving the PRC](#).” This year's report spotlighted the PRC's misuse of international and domestic law under the PLA's “three warfares” concept, which includes legal warfare as a component of broader political influence operations.

Among many examples of legal warfare, the report cites to the PRC's propagation of legally baseless maritime claims, conflation of its “One China principle” with foreign “One China” policies, and a “double standard” in the “interpretation and enforcement of international law” in relation to foreign military activities in the exclusive economic zone.

Also prevalent are illustrations of civil-military fusion activities that deliberately erode international norms as a way to complicate international response options—e.g., describing commercial roll-on / roll-off (RORO) ships and their potential use in a Taiwan invasion, the report says that “by demonstrating intent to use commercial ROROs during an amphibious invasion, the PLA is eroding the principle of distinction under the law of armed conflict and obscuring crucial lines between warships and non-warships, civilians and combatants, and civilian objects and military objectives.”

USINDOPACOM's counter-lawfare program aims to counter PLA legal warfare by illuminating legal threats, building legal consensus, and promoting adherence to international law and the rules-based international order.



U.S. Department of Defense

MILITARY AND SECURITY DEVELOPMENTS
INVOLVING THE PEOPLE'S REPUBLIC OF CHINA

2023

ANNUAL REPORT TO CONGRESS

USINDOPACOM Activates Joint Counter-Lawfare Cell

The USINDOPACOM Office of the Staff Judge Advocate (OSJA) partnered with U.S. Air Force judge advocates and paralegals from Andersen Air Force Base to field-test a Joint Counter-Lawfare Cell (CLAW) from 26 Oct to 1 Nov 2023. The CLAW exercised legal vigilance through identification and analysis of malign activities that challenge the rules-based international order, published products (e.g. TACAIDs) that illuminated developing legal issues across the theater, and established a contingency response center to provide legal analysis and guidance on emergent legal questions in real time.

Although still a nascent concept, the CLAW is envisioned as a standing legal response force available to augment USINDOPACOM in competition, crisis, and conflict with a range of legal capabilities, from research and writing to capacity building support to allies and partners. During the field test, CLAW legal advisors addressed dozens of complex topics and produced several products for distribution to partners, allies, embassies, academics, command teams, and legal practitioners. By focusing its legal efforts on countering unlawful activities and upholding the rules-based international order, the CLAW proved to be a pivotal force-multiplier in support of integrated deterrence. USINDOPACOM OSJA intends to incorporate legal advisors from allied and partnered forces into future CLAW activation cycles.



Members of the CLAW conduct training on the law of armed conflict with French LEGAD Partners . *Photo courtesy of Joint Counter-Lawfare Cell*



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*Promoting the Rule of Law to Ensure a
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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.

Counter-Lawfare in the U.S. Naval War College Curriculum

In October, students at the U.S. Naval War College (NWC) received operational law instruction as part of their Joint Maritime Operations (JMO) course. It included readings and presentations by a panel of experts on a range of legal topics, including international law, law of the sea, cyber law, and LOAC.

This year also included legal warfare and counter-lawfare as a topic and featured a former member of the USINDOPACOM Office of the Staff Judge Advocate as a panelist. NWC students gained greater understanding of malign uses of legal warfare by the PRC, Russia, and others. NWC students were also introduced to ongoing counter-lawfare efforts including USINDOPACOM’s counter-lawfare initiative to expose and oppose such malign activities, build legal consensus, illuminate lawful activities by the United States and its allies and partners, and uphold the rule-of-law.



U.S. Naval War College, Newport, Rhode Island
DVIDS Photo by James Foehl

“Including lawfare and counter-lawfare in the JMO curriculum helps equip our students to exercise legal vigilance to identify lawfare threats, and to incorporate counter-lawfare activities into planning and operations in their future assignments,” said CAPT Danielle Higson, Associate Professor and JMO instructor at the NWC. Of note, the JMO course includes students from all the military services, other U.S. departments agencies, as well foreign officers including from a range of ally and partner militaries in the Indo-Pacific.