

USINDOPACOM Office of the Staff Judge Advocate

Legal Vigilance Dispatch

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

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Special points of interest:

- PRC mischaracterizes long-standing maritime law enforcement agreements
- Russia violating the Chemical Weapons Convention in Ukraine
- President Marcos emphasizes the importance of preserving the rulesbased international order at Shangri-la
- Long-term PRC presence at Ream raises concerns

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Eight Years Later, PRC Fails to Heed Binding Arbitral Tribunal Decision

uly 12, 2024 marked the eighth anniversary of a unanimous Arbitral Tribunal ruling unequivocally declaring that the People's Republic of China's (PRC) expansive maritime claims in the South China Sea are inconsistent with international law. The Tribunal rejected the PRC's claims over areas within the Philippines' exclusive economic zone and continental shelf. Because both the Philippines and the PRC are parties to the convention, the decision is legally binding on both.

Despite this clear legal decision, the PRC continues to assert "territorial sovereignty" over vast areas of the South China Sea that are clearly within the maritime jurisdiction BRP Sierra Madre, using water of Vietnam, the Philippines, Malaysia, and Brunei, and where high seas freedoms of navigation and overflight apply under international law. Moreover, over the past year, the PRC blatantly and repeatedly disregarded international law and the safety of Filipinos in its use of water cannons, dangerous maneuvers, and destructive tactics – including ramming, forcible towing, and boarding that resulted in damage to Philippine vessels and injury to Philippine service members.

Most recently, on June 17, 2024, the PRC dangerously and irresponsibly denied the Philippines from lawfully delivering supplies to service



Permanent Court of Arbitration Peace Palace, The Hague, The Netherlands. Established in 1899 to facilitate arbitration and other forms of dispute resolution between states, the PCA has developed into a modern, multi-faceted arbitral institution perfectly situated to meet the evolving dispute resolution needs of the international community.

members stationed onboard the cannons, ramming, blocking maneuvers, and towing. The PRC's aggressive actions injured Filipino personnel

and destroyed Philippine vessels. The U.S.

continues to call on the PRC to abide by the 2016 arbitral ruling, to cease its dangerous and destabilizing conduct, and to comport its conduct as well as its territorial and maritime claims in the South China Sea to the international law of the sea as reflected in the U.N. Law of the Sea Convention.



Counter to PRC Mischaracterizations, U.S. Maritime Law Enforcement Agreements Preserve International Law and Coastal State Sovereignty

The task of a coastal State to govern its maritime zones, protect its sovereign rights, and apply its laws to illicit activities at sea poses an immense and universal challenge to all nations. The United States—alongside a broad coalition of allies and partners—views cooperation and collaboration between and among nations as a cornerstone for successful maritime governance and employs international maritime agreements as a strategic tool to advance global safety and security interests at sea.

The United States has used international agreements to great success since the 1980s to facilitate partnership on maritime activities including law enforcement, search and rescue, and pollution. Increasingly, maritime law enforcement agreements are used to cooperatively address specific categories of malign activity, including illegal, unreported, and unregulated (IUU) fishing, drug smuggling, human trafficking, human smuggling, and illicit transport of weapons of mass destruction (WMD). All U.S. international maritime agreements are founded on principles of international law, respect for the sovereign equality of coastal States, and freedom of navigation and overflight and other lawful uses of the sea as reflected in the 1982 Law of the Sea Convention (UNCLOS) and customary international law.

In Oceania, the U.S. Coast Guard concluded bilateral maritime law enforcement agreements with 12 Pacific Island countries: the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, Nauru, Kiribati, Cook Islands, Fiji, Tonga, Vanuatu, Samoa, Tuvalu, and Papua New Guinea. Bilateral maritime law enforcement agreements serve as an extension of Pacific Island Countries' capacity to patrol their own maritime zones and enforce their own sovereign rights. The agreements are sometimes referred to as "shipriders" based on one provision in many of the agreements

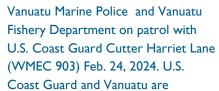
whereby law enforcement officers from one party can be placed on board vessels of the other party with authority to conduct certain law enforcement operations.

Recent comments by the PRC Ambassador to New Zealand, Wang Xiaolong, reflect a fundamental misunderstanding of the history, purpose, practice, and underlying international law associated with maritime law enforcement agreements. Ambassador Xiaolong's comments appear to build on a recent article from the School of Law. Dalian Maritime University, Dalian, China that advances a fundamentally flawed belief that countries are acquiring law enforcement jurisdiction through bilateral law enforcement agreements. This is patently false. U.S. maritime law enforcement agreements do not create jurisdiction, do not limit coastal State sovereignty, and do not authorize the U.S. to enforce any of its laws. Instead, the agreements enable the U.S. Coast Guard to

provide capacity and capability for partner coastal States to enforce their own laws in their own maritime zones. PRC's transactional view of the region mistakes legitimate cooperation and collaboration as encroachment and confrontation.

Partnerships across the Indo-Pacific are built on shared values and common maritime interests. They must be safeguarded from false criticism veiled as diplomatic exchange and academic discourse. In truth, U.S. maritime law enforcement agreements are not imposed on our allies and partners, but are pursued jointly with their full knowledge, consent, and active collaboration. International maritime agreements firmly grounded in customary international law-including UNCLOS—offer a structure for joint action against diverse maritime threats across vast oceanic regions. These agreements fortify coastal States' sovereignty and significantly elevate global maritime governance. Contrary to PRC's mischaracterizations, the

> agreements demonstrate the power of collaboration with regional partners to promote peace, security, and prosperity for all nations.



partnering to model good maritime governance and to bolster capacity by working with each other in combating illegal, unreported, unregulated fishing in the Blue Pacific. *Photo by U.S. Coast Guard, Senior Chief Petty Officer Charly Tautfest.*

India's state of Arunachal Pradesh:

The U.S. is strongly opposed to any unilateral attempts to advance territorial claims by incursion or encroachments, military or civilian, across the line of actual control.

In late March 2024, the People's Republic of China (PRC) further escalated tensions with its neighbor India, when the PRC Ministry of Civil Affairs released a map unilaterally renaming places, rivers and mountains in the northern Himalayan Indian state of Arunachal Pradesh. This is the fourth time the PRC has used this malicious and coercive tactic, in attempt to boost its territorial claim to the area, which the PRC calls "South Tibet". India's Foreign Ministry called the claims 'absurd', adding that Arunachal Pradesh will always be an "integral and inalienable part of India....and attempts to assign invented names will not alter this reality". The U.S. has also responded, noting that Arunachal Pradesh is Indian territory, and stating that the U.S. "strongly oppose any unilateral attempts to advance territorial claims by incursion or encroachments, military or civilian, across the Line of Actual Control". The escalating border dispute by the nuclear-armed nations poses significant threat to international peace and security, as does the PRC's blatant disregard for the rules based international order.

India and China have been embroiled in a military border conflict along the poorly demarcated 3,800kms (2,360mile) frontier since 1962, including more recent military clashes in 2020, which resulted in 24 soldiers killed. India's control of Arunachal Pradesh dates to the establishment of 'The McMahon Line' in 1914, which was established as the boundary between then British-India and then de-facto independent Tibet. In 1947, the newly independent Republic of India (India) inherited the pre-independence boundaries set by British-India and has exercised effective control to the present-day. India declared the territory as the State of Arunachal Pradesh on February 20, 1987. In September 1993, India and China signed the Agreement on the Maintenance of Peace and Tranquility Along the Line of Actual Control in the India-China Border Areas, pledging to maintain the status quo of mutual border until a dispositive boundary settlement was reached.

The <u>principle of territorial integrity</u> is a critical part of the rules-based international order governing relations between States. The principle prohibits States from interfering in the domestic affairs and political independence of a sovereign state, such as attempting to promote secessionist movements, attempting to promote territorial border changes, or attempting to claim sovereign territory through the threat or use of force. The PRC's new map which termed the Indian state "Zangan- an inherent part of China's territory", purports to amend territorial boundaries. India's External Affairs Minister S Jaishankar replied with <u>"[i]f today I change</u> the name of your house, will it become mine? Arunachal Pradesh was, is and will always be a state of India. China renames 30 places inside Arunachal Pradesh: Claims all the land of the region saying 'it is our Zangnan' Ist such name-list was released in 2017, 2nd in 2021, 3rd in 2023 & now 4th.



<u>Changing the name does not have an effect.</u>" The PRC's recent destabilizing actions related to the LAC mirrors its coercive strategy elsewhere in the region, such as the South China Sea (where it disregards the internationally accepted <u>2016 Arbitral Tribunal ruling</u>) and the Taiwan Strait (where it seeks to unilaterally change the status quo to the detriment of peace and stability).

One peaceful means of settlement of territorial disputes is through the jurisdiction of the International Court of Justice (ICJ). The ICJ's past boundary dispute decisions demonstrate a hierarchical preference for treaties, inheritance of pre-independence boundaries from colonial predecessors, and the State exercising effective control of the disputed territory, in determining which State possesses the greater claim. In the case of Arunachal Pradesh, where there is no treaty establishing a border between India and the PRC, the customary international law principle of uti possedetis applies. This principle seeks to preserve the preindependence boundaries of colonies that evolved into independent States. Here, the Republic of India inherited its pre-independence border with China from British-India in 1947 and has exercised effective control of Arunachal Pradesh to the present-day, thereby providing India a strong claim of sovereignty.

Another violation of international law:

Russia uses chemical weapons and riot control agents as a means of warfare in the Ukraine

On May 1st, 2024, the United States announced its determination that <u>Russia has been using</u> chemical weapons and riot control agents as a method of warfare, in its ongoing conflict in <u>Ukraine, in clear violation of the Chemical Weapon</u> <u>Convention</u>. In addition to public attribution, the U.S. has imposed a suite of new sanctions which will affect over 80 entities and over 280 individuals, including actors which enable Russia's chemical and biological weapons programs. Russia's has described the U.S. accusations as 'baseless'. The reinvigoration of chemical weapons in warfare is of significant concern to international peace and security and cannot be tolerated.

The U.S. Department of State determination specifically claims that Russia has used 'chloropicrin' as a chemical weapon, as well as riot control agents as a method of warfare, against Ukrainian troops in the Russian invasion of Ukraine. The public statement provided that "...use of such chemicals is not an isolated incident and is probably driven by Russian forces' desire to dislodge Ukrainian forces from fortified positions and achieve tactical gains on the battlefield." Ukraine has been vocal on Russia's use of chemical weapons for some years, with reports that over <u>500 soldiers</u>



Ukrainian soldiers take part in radiation, chemical and biological hazard drills near Kharkiv, Ukraine, on February 29, 2024. Photo by Sofiia Gatilova/Reuters

have been treated for exposure to toxic substances, including one fatality due to tear gas suffocation. Methods of using the chemical in modern warfare include the K-51 grenade and light weight drones full of <u>chloropicrin and 2-chlorobenzylidene</u> <u>malononitrile</u>, commonly known as 'tear gas'.



Allied soldiers pose for a picture while wearing their gas masks.

Chloropicrin was widely used as a choking agent during World War I, paralyzing the respiratory muscles, and causing indiscriminate and agonizing pain, and death. As a result of the public outrage over the human suffering, the 1925 Geneva Protocol prohibited the use of chemical and biological weapons in war. However, the Geneva Protocol failed to address the prohibition of the development, production and stockpiling of such chemical weapons, and as such, the more comprehensive Chemical Weapons Convention was opened for signature in January 1993, since which 193 states have ratified, including Russia. Under the Chemical Weapons Convention, any toxic chemical, used for its toxic properties with the purpose to cause harm or death is considered a chemical weapon and is prohibited in warfare. Chloropicrin is expressly banned under the Chemical Weapons Convention (CWC), and so too is the use of riot control agents as methods of warfare.

Shangri-La Dialogue:

International law the cornerstone of Indo-Pacific security

Philippines, Ferdinand R. Marcos Jr., delivered a keynote address at the 21st IISS Shangri-La Dialogue, which affirmed the criticality of international law in peace, security and stability in the Indo-Pacific.

In his speech, Marcos Jr. emphasized the importance of preserving the rules-based international order, upholding the sovereign equality of states, and promoting ASEAN centrality in addressing the Indo-Pacific's regional security challenges.

Marcos Jr. expressed concern over the strategic competition between China and the United States, and urged both countries to manage their rivalry responsibly. He also reiterated the Philippines' commitment to addressing and managing disputes through dialogue and diplomacy. Particularly, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and the binding 2016 Arbitral Award are vital to peace and security in the region.

He said this is in stark contrast to "assertive actions that aim to propagate

On 31 May 2024, the President of the excessive and baseless claims through force, intimidation and deception." When referencing recent activity in sovereignty, sovereign rights and jurisdictions. Attempts to apply domestic laws and regulations beyond



Philippines' President Ferdinand Marcos Jr. delivers a speech during the 21st Shangri-La Dialogue summit in Singapore on May 31, 2024. Photo by Agence France-Presse

the West-Philippine sea, the President said that unfortunately the ASEAN vision for a sea of peace, stability and prosperity remains a distant reality due to "[i]llegal, aggressive, and deceptive actions continue to violate our

one's territory and jurisdiction violate international law, exacerbate tensions, and undermine regional peace and security."



Coming Soon

The 35th international Military Law and Operations (MILOPS) strategic engagement is to be held over 27-30 August 2024 in Manila, Philippines. This year the Theme is "The Future of the Indo-Pacific: Partnering to Defend Sovereignty".

MILOPS has grown into an internationally renowned event, bringing together over 200 participants from over 30 nations, to discuss issues of significance in the areas of law,

operations and policy. The speakers and international order that allows participants include world leaders, politicians, lawyers, policy advisors and academics, who contribute honest and open dialogue in their shared commitment to a Peaceful, Secure, Stable, Free and Open Indo-Pacific.

Given the current geo-political climate, it has never been more important for deterrence that countries come together to strengthen cooperation, support open and frank dialogue, contribute to legal consensus and reinforce the rules-based

prosperity for all countries large and small. MILOPS meets this aim while simultaneously strengthening relationships, shared values and the rule of law across our oceans.



Legal Diplomacy, Stronger Together

Australia, Japan, U.S. Legal Talks Highlight Sovereign Equality and International Rule of Law

In On 25-27 June, over 25 legal and policy representatives from Australia, Japan and the United States Departments of State, Foreign Affairs and Defence came together for Trilateral Legal Talks in Hawaii.

The meetings addressed substantive contemporary legal issues, provided awareness of country positions on select strategic issues, assisted in the strengthening of relations, and better prepared personnel for greater future cooperation.

The legal talks specifically highlighted the importance of the principle of sovereign equality to the international rule of law: that each country is equal regardless of its political, economic and military power. All countries are equal and empowered under the UN Charter, which is why the threat to the current system should be concerning to all.

Some of the legal challenges discussed included the People's Republic of China increased aggressive conduct in the South China Sea, East China Sea, Sea of Japan and Taiwan Strait, countering 'lawfare' (the promulgation of misinformation in the legal environment, distortion and abuse of the law for strategic objectives) and the identification of unlawful, unprofessional and unsafe practices. The talks also facilitated a way forward on increased co-operation on legal diplomacy in the Indo-Pacific.

One of the key takeaways was the importance of clear and transparent terminology and using caution to ensure accurate use of terms like "unlawful", "illegal", "aggressive", "destabilizing" and "bad behavior". Careful terminology ensures international law is respected and clear, but that other actions that may be coercive, destructive, forceful, and deceptive also continue to be exposed and opposed by all countries.



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Exercise Keris Strike 24 is the 29th iteration and the first trilateral exercise involving the Malaysian Armed Forces, the U.S. Army and U.S. Marines, and the Australian Defence Forces.

Keris Strike 2024: Legal Subject Matter Expert Exchange

On 29 June to 2 July 2024, United States Army Pacific (USARPAC) participated the First Annual Keris Strike Legal Subject Matter Expert Exchange (SMEE). This event showcased collaboration with legal professionals from Australia, Malaysia, and the United States. The event was attended by legal advisors from the Australian Army 1st Division, the Malaysia Army's 5th Division, and USARPAC's 1st Special Forces Group and 25th Infantry Division.

The SMEE featured a comprehensive schedule designed to enhance legal interoperability and further the participants' understanding of each

country's legal systems and approaches to advising commanders during military operations.

Detailed discussions explored complex hypotheticals related to the Law of Armed Conflict (LOAC). These sessions facilitated in-depth exchanges of ideas as to how each country might address similar legal issues differently. These discussions highlighted the diversity in legal interpretations and the way in which each nation applied its laws in these scenarios.

A culminating moment of the SMEE was a dynamic discussion led by representatives from USARPAC and 1SFG on counter-lawfare. This briefing

emphasized the objective of counterlawfare, the development and use of tactical aids (TACAIDS), and offered several examples to illustrate the importance of these initiatives. The discussion accentuated the role of law and legal advisors in ensuring regional stability and supporting USINDOPACOM's efforts to uphold the rule of law and promote a free, secure, and open Indo-Pacific. The success of the Keris Strike 2024 SMEE will provide the pathway for future collaboration with partner nations and strengthen regional legal frameworks, resulting in greater stability and cooperation in the Indo-Pacific region.

USINDOPACOM Office of the Staff Judge Advocate





BALIKATAN 24

Marine Corps and Armed Forces of Philippines Strengthen **Ironclad Alliance through Legal Engagement**

On 24 April, I Marine Expeditionary Force (I MEF) Office of the Staff Judge Advocate (SJA) deployed four Judge Advocates and one Legal Specialist in support of Balikatan 24 (BK 24). III MEF deployed an additional Judge Advocate in support of BK 24. Exercise Balikatan is the largest annual bilateral exercise conducted between the Philippines and the U.S. This year marks the 39th iteration showcasing the ironclad Alliance and enduring friendship between the two nations. Marine Judge Advocates held several legal engagements with the Armed Forces of the Philippines Judge Advocate General Corps (AFP JAG) while supporting BK 24. The I MEF legal team assumed the role of the Joint Task Force SJA, which coordinated with JAGs from the Army, Navy and Marine Corps.

AFP JAGs and USMC legal practitioners engaged in insightful discussions relating to operational legal matters. Colonel P.D. Houtz, I MEF SJA, led off the conversation by emphasizing strengthening relationships through capacity building and legal interoperability. A highlight of the luncheon was a learned mutual interest in developing more skilled operational law practitioners, a reflection of the ongoing development of complex legal issues in the area of operations.

Subsequent legal engagements among attorneys included discussions centered on humanitarian assistance and disaster response operations regarding emergencies and natural disasters and incorporation of multidomain operations. Additionally, USMC attorneys supported the Staff Exercise and the Combined Coordination Center along with AFP JAG attorneys.

Stronger Ties Between USA and Pacific Island Nations as COFA Renewed

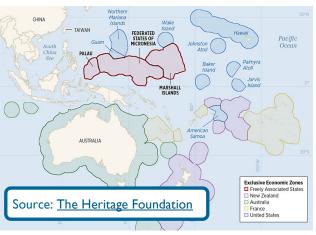
On 9 March 2024, the U.S. President signed into law the **Consolidated Appropriations** Act 2024, providing for a further \$7 billion funding package for the three Pacific Island Nations: the Marshall Islands, Federated States of Micronesia (FSM) and Palau.

The renewal of funding supporting the Compacts of Free Association (COFA) Agreements reaffirms the U.S. commitment to its close Pacific Island partners, and ensures an ongoing security presence

in the region, which has been referred Islands, FSM and Palau signed the to as "the bedrock of the U.S. role in the Pacific" in the U.S. Indo-Pacific Strategy.

The Governments of the Marshall

EEZs of Compact of Free Association States, South and Central Pacific States



COFA with the USA in 1982. The Agreements provide economic assistance to the island nations, as well as rights for their citizens to

reside and work in the U.S. and its territories as 'habitual residents'.

The new package provides ongoing economic support that funds critical services for the three countries at a time when Pacific Island nations face greater security threats arising from Climate change, natural disasters, depletion of natural resources and election interference.

The U.S. Assistant Secretary for Insular and International Affairs, Carmen Cantor, remarked "[t]his

law provides critical support to our friends and allies in the Pacific and bolsters both the commitments we have made in the past and relationships we want to keep in the

PRC Long-Term Presence at Ream Naval Base Raises Concerns About PRC Power Projection

Reports indicate that the People's Republic of China (PRC) has established a long-term military presence at Ream Naval Base in Cambodia, renewing concerns about the PRC's practice of leveraging <u>nontransparent and exploitative Belt</u> <u>and Road Initiative (BRI) lending</u> to advance its expansive (and increasingly coercive) military ambitions near vital sea lanes in the Gulf of Thailand and South China Sea.

According to satellite imagery analysis by the Asia Maritime Transparency Initiative (AMTI) and recent reporting by The New York Times, two Peoples Liberation Army Navy (PLAN) corvette warships have been docked at Cambodia's Ream Naval Base since early December 2023. The two corvettes were joined in May 2024 by an amphibious warfare ship and a training ship for a joint exercise. The Chinese government has also recently built a new 1,190-foot pier (big enough to accommodate an aircraft carrier), new wharf and drydock, as well as warehouses, administrative buildings, and living quarters on the base.

The long-term presence of PLAN warships, along with the deployment of additional training warships, indicates that the PRC may intend to develop and use Ream as a permanent military base in the region. While Cambodia's government has insisted that it is not allowing the deployment of foreign forces to its country, with Cambodia's Prime Minister stating in January 2024 that the country does not allow foreign military bases on its territory and that Ream is open to visits from all navies, no other State's warships have yet to be granted access to the facility. In fact, two visiting Japanese warships were recently docked in another port, and even Cambodian vessels at Ream have been relegated to the base's older, smaller pier, potentially indicating that Ream's new pier and associated infrastructure are for China's exclusive use.

China's exercise of effective control over Ream's piers is concerning because of the PRC's lack of transparency in its intentions, its practice of negotiating exploitative and overly broad contract provisions, and its increasingly aggressive actions in the South China Sea. Exclusive access to Ream could provide a forward position in and around the Gulf of Thailand and South China Sea from which the PRC could expand its coercive maritime strategy, in the same way that it uses military outposts in the Spratlys to intimidate neighbors in the South China Sea. Based on the PRC's history of aggressive actions toward other States in the South China Sea, the PRC's exclusive access to Ream has the potential to disrupt regional stability, especially considering Ream's proximity to critical sea lines of communication like the Strait of Malacca. The Ream base also has the capacity to repair, equip, and sustain PRC ships and associated

personnel, potentially enabling PLAN vessels to expand the country's coercive reach into the Indian Ocean and beyond.

The PRC's expansion of its overseas and basing infrastructure could allow the PLAN to project and sustain military power at greater distances, potentially disrupting the military operations of other States. Further, the lack of transparency regarding Ream and the PRC's obfuscation of its true intentions for the base does not engender trust across the region and mirrors the PRC's approach in Diibouti and Sri Lanka. In Djibouti, the PRC's financial support resulted in a permanent (and increasing) military presence on the Horn of Africa. More recently in Sri Lanka, the PRC constructed a naval base at the port of Hambantota, gaining direct control over the docks in Hambantota after investing more than \$2.19 billion to modernize the port.



Expanding PLAN ambitions at Ream...



China has expanded its commercial influence across the world's seas

...and growing PRC influence across ports globally.

Source: The New York Times



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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 USINDO-PACOM 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.