

TOPIC: *Sierra Madre*, Second Thomas Shoal, and the U.S. Commitment to Defense of the Philippines

BLUF

- Second Thomas Shoal (2TS), known as “Ayungin Shoal” in the Philippines, is a low-tide elevation (LTE) in the Spratly Islands area of the South China Sea (SCS). It sits approximately 104 nautical miles from the archipelagic baseline of the Philippine island of Palawan within the Philippines’ exclusive economic zone (EEZ).
- As an LTE situated wholly outside any State’s territorial sea (TTS), 2TS does not generate a TTS of its own and is not subject to any claim to sovereignty or appropriation by any State under international law.
- Accordingly, the People’s Republic of China’s (PRC) claim to sovereignty over 2TS (as well as more than one hundred other LTEs in the SCS that are beyond the lawful limits of any State’s TTS) has no basis under international law as reflected in the U.N. Convention on the Law of the Sea (UNCLOS).
- In 1999, the Philippines grounded BRP *Sierra Madre* (LT-57), a Philippine Navy transport vessel, on 2TS where it remains as a Philippine military outpost.
- In 2016, an Arbitral Tribunal convened in accordance with UNCLOS determined in a binding award that the Philippines possesses sovereign rights to resources at 2TS and that the PRC has no lawful territorial or maritime claim to 2TS.
- The PRC disregards the Arbitral Tribunal’s binding ruling, Philippine sovereign rights, and fundamental principles of international law, such as freedom of navigation, due regard, and rules for navigational safety by continuing to interfere with the Philippines’ activities in and around 2TS, including lawful operations to resupply *Sierra Madre* and its detachment of Philippine Marines.
- The PRC’s actions threaten regional peace and stability, infringe upon freedom of navigation in the SCS as guaranteed under international law, and undermine the rules-based international order.
- The United States has reaffirmed that an armed attack on Philippine armed forces, aircraft, or public vessels in the SCS would invoke U.S. mutual defense commitments under the U.S.–Philippines Mutual Defense Treaty (MDT).
- As such, an armed attack on *Sierra Madre* (or its Marine detachment) or any Philippine armed force, aircraft, or public vessel attempting to resupply *Sierra Madre* may implicate U.S. defense obligations to the Philippines.



WHY THIS MATTERS

- Upholding international law is fundamental to the rules-based international order that benefits all nations.
- The PRC’s repeated interference with lawful, sovereign activities by the Philippines in the Philippine EEZ – including the area in and around *Sierra Madre* and 2TS – sets a dangerous precedent. If left unchecked, the PRC could be emboldened to take further coercive action against the Philippines and other countries in the region.
- The PRC’s disregard of a binding Arbitral Tribunal ruling, UNCLOS, and fundamental principles of international law threatens the rules-based international order and the sovereign rights of all states.
- An armed attack on the *Sierra Madre* or any Philippine armed force, aircraft, or public vessel attempting to resupply *Sierra Madre* may implicate U.S. defense obligations in accordance with the MDT.ⁱ

DETAILED DISCUSSION



BACKGROUND

- 2TS is an LTEⁱⁱ in the Spratly Islands area. The Spratlys are spread across 135,000 square miles in the southern SCS (an area also known as the West Philippine Sea) and are interspersed with numerous reefs, banks, and other submerged features.
- 2TS sits approximately 104 nautical miles northwest from the Philippines' archipelagic baseline near Palawan and 616 nautical miles southeast from the nearest PRC claimed baseline point adjacent to Hainan Island.ⁱⁱⁱ
- Although 2TS sits wholly beyond the TTS of any nation, it falls squarely within the EEZ and continental shelf of the Philippines.^{iv} Accordingly, the Philippines and not the PRC enjoys sovereign rights to explore, exploit, conserve, and manage natural resources in and around 2TS.^v
- Despite the Philippines' sovereign rights in its EEZ, the PRC claims territorial sovereignty over not only 2TS, but across "Nansha Qundao" (南沙群岛), which encompasses the entirety of the Spratlys, including approximately 40 small islands and roughly 150 LTEs such as 2TS.^{vi}
- Unlike the PRC, the Philippines does not make an unlawful claim to territorial sovereignty over 2TS. Rather, the Philippines' pleadings to the Arbitral Tribunal assert (and the Tribunal agreed) that as an LTE beyond any State's TTS, 2TS is not subject to appropriation (i.e. territorial sovereignty) under international law.^{vii}
- In addition to its explicit claims over "Nansha Qundao," the PRC asserts "historic rights" throughout the SCS without legal basis or specificity as to the nature or geographic extent of the "historic rights" claimed.^{viii}
- In submitting its legally baseless dashed-line claim to the UN General Assembly in 2009, the PRC declared that it has "indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof."^{ix}
- In 1999, the Philippine Navy grounded *Sierra Madre* on 2TS where it maintains a detachment of Philippine Marines onboard. The Philippines regularly resupplies and rotates its Marine detachment.^x



Map 1. Overview map of the South China Sea with key features labeled.

THE 2016 ARBITRAL TRIBUNAL AWARD

- In 2013, the Philippines exercised its right under UNCLOS to seek legal arbitration to contest the PRC's claims. The Permanent Court of Arbitration (Arbitral Tribunal) firmly and unanimously rejected the PRC's claims in 2016.^{xi}
- With regard to 2TS, the Arbitral Tribunal sided with the Philippines in holding that 2TS is an LTE in its natural state located outside any State's lawful TTS.^{xii} Accordingly, 2TS does not generate entitlements to a TTS, EEZ, or continental shelf, and is not capable of appropriation by any State (i.e., not subject to territorial sovereignty).^{xiii}
- However, because 2TS is located within the Philippine EEZ, the Arbitral Tribunal determined the Philippines possesses sole sovereign rights to explore, exploit, conserve, and manage its natural resources.^{xiv}
- Conversely, the Arbitral Tribunal found that the PRC has no lawful territorial or maritime claim to 2TS. Further, the PRC's claims to "historic rights" or other sovereign rights with respect to the maritime areas of the SCS encompassed by the so-called "nine-dash line" are contrary to UNCLOS and without lawful effect.^{xv}
- Likewise, the PRC's dashed-line claim does not provide a basis for any entitlement by the PRC to maritime zones or overlapping maritime entitlements in and around 2TS.^{xvi}
- In effect, the Arbitral Tribunal's award, which is binding on the PRC, confirms unequivocally that the PRC has no lawful basis to harass Philippine resupply vessels or interfere with Philippine rights in the EEZ. Like all nations, the PRC enjoys freedoms of navigation, overflight, and other internationally lawful uses of the sea in and around 2TS,

but such freedoms must be exercised with due regard for the rights of other States, including the Philippines' sovereign rights in the EEZ.^{xvii}

- The U.S. position is clear: The Arbitral Tribunal's decision is legally binding on the PRC, and the PRC's provocative and unsafe conduct infringes on rights guaranteed to the Philippines under international law.^{xviii}

LEGAL STATUS OF SIERRA MADRE

- *Sierra Madre* remains a commissioned vessel in the Philippine Navy.^{xix}
- Under international law, warships and other naval vessels enjoy sovereign immunity from arrest, search, inspection, or other assertions of jurisdiction (e.g., unlawful interference) by a foreign State.^{xx} Sovereign immunity covers all personnel, stores, weapons, or other property on board the vessel.
- As a sovereign immune naval vessel, the Philippines has a lawful sovereign interest in protecting *Sierra Madre* and its crew against violations of sovereign immunity.^{xxi}
- Further, international law embodied in the doctrines of *self-defense* and *protection of nationals* provides authority for a State (e.g., the Philippines) to use proportionate force when necessary to protect its vessels, aircraft, nationals, and property against unlawful violence in and over international waters.^{xxii}
- Likewise, the Philippines may defend *Sierra Madre* in accordance with the UN Charter's recognition that all States enjoy the inherent right of individual or collective self-defense against an armed attack or imminent armed attack.^{xxiii}



U.S. DEFENSE COMMITMENT TO THE PHILIPPINES

- The U.S. and the Philippines entered a Mutual Defense Treaty (MDT) in 1951, which remains in effect today.^{xxiv}
- In Article IV of the MDT, each Party recognizes that in the event of an "armed attack" on either of the Parties that it "would act to meet the common dangers in accordance with its constitutional processes."^{xxv}
- Article V goes on to say that an "armed attack" for the purposes of Article IV is deemed to include an "armed attack" on "armed forces, public vessels, or aircraft."^{xxvi}
- The U.S. position on the MDT is clear: as reaffirmed recently by the U.S. Secretary of Defense and the U.S. State Department, "an armed attack on Philippine armed forces, public vessels, or aircraft, including those of the Coast Guard in the South China Sea, would invoke U.S. mutual defense commitments under Article IV."^{xxvii}
- Applied in context of events surrounding *Sierra Madre* and 2TS, Article IV of the MDT may be invoked in the event of an "armed attack" on *Sierra Madre*, armed forces embarked on *Sierra Madre*, or Philippine vessels, aircraft, or armed forces operating lawfully in and around 2TS, *Sierra Madre*, or anywhere in the SCS.
- The terms of the MDT are consistent with the doctrine of collective self-defense under international law, which permits States to use proportionate force necessary to protect foreign vessels, aircraft, and nationals and their property from unlawful violence at sea with that foreign State's consent.^{xxviii}
- What constitutes an "armed attack" under the MDT is not defined, but as a matter of international law, the United States has long taken the position that the inherent right of self-defense against an armed attack or imminent armed attack potentially applies against *any illegal use of force*,^{xxix} or as implemented in U.S. standing rules of engagement, against any hostile act or demonstrated hostile intent.^{xxx}
- An *illegal use of force* is not limited by law to a kinetic armed attack (e.g. the use of munitions), but could also include non-kinetic attacks that result in death, injury, damage, or destruction of persons or objects.^{xxxi}

EXAMPLES OF ESCALATORY ACTIONS BY THE PRC

- The PRC's pattern of dangerous and unlawful behavior surrounding *Sierra Madre* and 2TS shows a disregard for the binding Arbitral Tribunal award, Philippine sovereign EEZ rights, and fundamental principles of international law, such as freedom of navigation, due regard, and rules for navigational safety reflected in the 1972 International Regulations for Preventing Collisions at Sea (COLREGS).^{xxxii}
- Such behavior is likely enabled by the PRC's overreaching domestic Coast Guard Law, which confers broad extraterritorial authority (e.g., jurisdiction and use of force) on the China Coast Guard (CCG) through various provisions that many contend are non-compliant with international law on their face or in application.^{xxxiii}
- Examples of dangerous, provocative, or unlawful conduct by the PRC surrounding *Sierra Madre* and 2TS include:

- On **11 May 2018**, a People's Liberation Army (PLA) helicopter flew "dangerously close" to a Philippine Navy vessel that was carrying supplies to Philippine Marines on board *Sierra Madre*.^{xxxiv}
- On **8 April 2021**, a CCG vessel and two PLA warships reportedly "chased" Philippine journalists out of the Spratlys as the journalists' boat made its way toward 2TS.^{xxxv}
- On **16 November 2021**, three CCG vessels tried to ram, and then used water cannons to prevent two Philippine Navy ships from delivering food and other supplies to *Sierra Madre*.^{xxxvi}



- On **6 February 2023**, a CCG vessel illuminated BRP *Malapascua*, a Philippine Coast Guard (PCG) vessel, with a military-grade laser and temporarily blinded some of the crew.^{xxxvii} BRP *Malapascua* was resupplying the Philippine Marines aboard *Sierra Madre*. Due to the lasing and subsequent "dangerous maneuvering" by the CCG vessel, the Philippine vessel was forced to alter course.^{xxxviii} The use of "blinding laser" weapons is prohibited by international law.^{xxxix}

- On **5 August 2023**, a CCG vessel used a water cannon and aggressive blocking maneuvers to disrupt the passage of two Philippine supply vessels approaching 2TS to resupply the *Sierra Madre*.^{xi}



- On **22 October 2023**, two PCG vessels and two Philippine supply vessels attempting a resupply of the *Sierra Madre* were surrounded by four CCG vessels and eight Chinese Maritime Militia (CMM) vessels.^{xii} One of the CCG vessels maneuvered to cause physical contact with *Unaiza* (a much smaller and defenseless Philippine supply vessel) and one of the CMM vessels caused a collision with BRP *Cabra*, a PCG vessel.^{xiii} While there have been several near-collisions over the years, this is the first known example of collisions directly caused by the PRC.^{xiiii}
- On **10 December 2023**, CCG and CMM vessels harassed, blocked, and executed dangerous maneuvers on PCG and Philippine supply vessels attempting a resupply of the *Sierra Madre*.^{xlv} CCG vessel 5204 caused severe engine damage to the supply vessel *Kalavaan*, disabling the vessel and endangering the lives of its crew.^{xlv} Additionally, the PCG vessel BRP *Cabra* suffered damage to its mast after receiving the full strength of CCG

vessel 21556's water cannon. Another resupply vessel, *Unizah Mae 1*, was rammed by a CCG vessel.^{xlvi} According to reports, PRC vessels also used long-range acoustic devices (LRADs) against Philippine vessels, resulting in "severe discomfort and incapacitation" of some Filipino crewmembers.^{xlvii} Separately on 10 December, a Philippine "Christmas Convoy" to 2TS consisting of 40 civilian vessels returned to port in Palawan after constant shadowing by two PLA Navy warships, one CCG vessel, and one PRC-flagged cargo ship.^{xlviii} The convoy—led by civic organizations intending to deliver donated supplies and Christmas gifts to Philippine outposts in the SCS—turned back after a PLA Navy warship closed to within five nautical miles of the convoy and a CCG vessel moved into position to ram one of the convoy vessels.^{xlix}

- On **4 March 2024**, CCG and CMM vessels intercepted and aggressively harassed Philippine vessels attempting a resupply of *Sierra Madre*. Dangerous maneuvering by the PRC's vessels resulted in at least two collisions with Philippine vessels including disablement of *Unaizah May 4* (UM4). CCG vessels 21555 and 21551 also deployed water cannons against the Philippine resupply vessels breaking glass on the bridge of UM4 and injuring four PCG personnel. The encounter prompted UM4 to abort its mission and return to the Philippines.ⁱ
- On **17 June 2024**, CCG vessels denied the Philippines from lawfully delivering humanitarian supplies to service members at *Sierra Madre*. The PRC vessels' dangerous and deliberate use of water cannons, ramming, blocking maneuvers, and towing damaged Philippine vessels, recklessly endangered the lives of Philippine service members, and threatened regional peace and stability.ⁱⁱ Disregarding the binding 2016 Arbitral Tribunal award, the CCG vessels' conduct was not in accordance with UNCLOS (Articles 58(1) and 87); COLREGS; or 2002's Declaration on Conduct of Parties in the SCS.
- The PRC's escalatory actions surrounding *Sierra Madre* and 2TS have been met with strong, consistent, and transparent condemnation by the Philippines, the United States, and numerous allies and partners.
 - U.S. officials have stated on multiple occasions that the PRC's actions interfere with the lawful exercise of high seas freedoms, violate international law, and threaten regional peace and security.ⁱⁱⁱ The United States has also been unequivocal about the "ironclad U.S. alliance commitments to the Philippines" under the MDT.^{liii}
 - International backlash against the PRC's actions is also substantial. After the August 2023 water cannon incident, Australia, Japan, and Germany called the PRC's actions "dangerous" and "destabilizing." Canada "unreservedly condemn[ed] the dangerous and provocative actions taken by the Chinese Coast Guard."^{liiv}
 - Dueling diplomatic condemnations are another hallmark of recent incidents.^{liv} The Philippines has filed multiple diplomatic protests against the PRC in which the PRC's actions are cited as disregarding and violating Philippine sovereign rights.^{lvii} In response, the PRC consistently—and falsely—accuses the Philippines of trespassing into the PRC's waters without permission.^{lvii}
 - Following the violent interaction precipitated by the PRC's vessels on 4 March 2024, the CCG said "it took control measures in accordance with the law against Philippine ships that illegally intruded into the waters adjacent to Ren'ai Reef [Second Thomas Shoal]."^{lviii}
 - The PRC's statements are contrary to the binding Arbitral Tribunal award and fundamental principles of international law, and appear designed to manufacture baseless legal justifications for acts of intimidation, coercion, and bullying. The notion that that the Philippines' lawful exercise of navigational rights and freedoms in waters beyond any State's TTS constitutes an "illegal intrusion" is entirely without merit. Likewise, the CCG's enforcement of domestic "control measures" in the Philippine EEZ – over 600 nautical miles from the nearest PRC-claimed baseline point at Hainan Island – goes far beyond the PRC's jurisdictional remit under international law. The CCG's use of "adjacent" to describe waters near 2TS is a common refrain employed by the PRC to cast a veneer of legitimacy over its excessive claims the South China Sea. There is, however, no such concept of "adjacent" waters in international law and the term has no applicability – legally or factually – within the Philippine EEZ.

- In response to the increasingly dangerous and unlawful conduct by the PRC as described above,^{lix} the Philippines is reportedly considering legal action.^{lx} Despite the likelihood that the PRC will ignore any adverse legal ruling (much like it has disregarded the Arbitral Tribunal),^{lxi} the Philippines' readiness to pursue legal action through international legal institutions continues to reinforce the rule of law while eroding the PRC's efforts to establish alternative legal narratives.^{lxii} Philippine officials have suggested that a new lawsuit could focus on marine environmental harm associated with the PRC activity in the Philippine EEZ.^{lxiii}



This image shows a CCG vessel with bow number 5203 after bumping a Philippine supply vessel as it approached Second Thomas Shoal in the South China Sea on Oct. 22, 2023 (Armed Forces of the Philippines via AP). Note the ramming device installed on the bow of the CCG vessel.

PROPOSED COUNTER-LAWFARE APPROACH

This section offers suggested language for incorporation into communication strategies

- **Upholding international law and the rules-based international order** in the SCS is an enduring interest for the international community and one that is vital to peace, security, and prosperity throughout the region.
- **Under international law, the PRC has no lawful maritime claim to 2TS.** The 2016 Arbitral Tribunal unanimously rejected the PRC's excessive maritime claims in the SCS as having no basis under international law – including the PRC's claim to 2TS, which the Tribunal determined to be part of the Philippines' EEZ and continental shelf. The PRC is legally bound to respect and comply with this decision.
- **The PRC continues to undermine international law and the rules-based international order,** as exemplified by its coercion and intimidation in the SCS. The PRC has repeatedly interfered with the Philippines resupplying *Sierra Madre*, harassed fisheries and energy development of the Philippines and other coastal nations, and engaged in dangerous maneuvers against ships and aircraft of numerous nations.
- **USINDOPACOM supports and defends a free and open Indo-Pacific.** USINDOPACOM seeks to preserve peace and stability, uphold freedom of the seas in accordance with international law, maintain the unimpeded flow of commerce, and oppose any attempt to use coercion or force to settle disputes. USINDOPACOM shares these deep and abiding interests with allied and partnered forces – including the Armed Forces of the Philippines – who champion a free and open Indo-Pacific supported by the rules-based international order.
- **USINDOPACOM stands ready and capable to support the Philippines in carrying out mutual defense obligations** in accordance with clear U.S. policy that an armed attack on Philippine armed forces, aircraft, or public vessels in the South China Sea would invoke U.S. mutual defense commitments under Article IV of the 1951 U.S.–Philippines Mutual Defense Treaty.
- **The PRC must comply with its obligations under international law,** cease its provocative behavior, and take steps to assure the international community that it is committed to the rules-based international order.

ⁱ U.S. Department of State (DoS), Press Statement, U.S. Support for the Philippines in the South China Sea, Feb. 13, 2023, <https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-3/>.

ⁱⁱ A low-tide elevation (LTE) is a naturally formed area of land surrounded by and above water at low tide but submerged at high tide. An LTE located wholly or partially inside the territorial sea (TTS) of a mainland or island may be used as a baseline to measure the TTS. However, an LTE located wholly outside of a TTS has no territorial sea of its own. Compare UNCLOS Arts. 13(1) with Art. 13(2).

ⁱⁱⁱ Award, The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China), PCA Case No. 2013-19, Jul 2016, ¶ 290 [hereinafter 2016 Arb. Tribunal Award].

^{iv} This TACAID focuses on Philippine EEZ rights, but it is worth noting that 2TS also sits on the Philippine continental shelf, which comes with distinct rights under international law.

^v UNCLOS Art. 56.

^{vi} See generally U.S. Dep't of State (DoS), Limits in the Sea (LIS) No. 143, China: Maritime Claims in the South China Sea, Dec. 5, 2014, <https://www.state.gov/wp-content/uploads/2019/10/LIS-143.pdf>; U.S. DoS LIS No. 150, People's Republic of China: Maritime Claims in the South China Sea, Jan. 2022, <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf>.

^{vii} See, e.g., 2016 Arb. Tribunal Award, ¶¶ 307-309, 1203.B.(4); see also Philippine's Submissions No. 4 and 6 and Supplemental Submissions. These documents are available at <https://pca-cpa.org/en/cases/7/>. The United States agrees that LTEs situated wholly outside of TTS (e.g., 2TS) cannot be appropriated under international law. See LIS No. 150, *supra* note vi, at p. 29 ("[T]he PRC's claims to sovereignty over maritime features that do not meet the international law definition of an 'island' and fall entirely beyond a lawful territorial sea are inconsistent with international law and not recognized by the United States and other States." This includes "any claim to sovereignty over low-tide elevations, such as Mischief Reef and Second Thomas Shoal, which fall entirely beyond a lawful territorial sea entitlement and which are not subject to appropriation under international law.").

^{viii} LIS No. 143, *supra* note vi, at p. 27.

^{ix} See U.N. Doc. CML/17/2009, May 7, 2009, https://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf; see also C. H. Venzon, *China's Fresh Map Claims Over Taiwan, Disputed Sea Stir Protests*, Bloomberg, Sep. 1, 2023, <https://www.bloomberg.com/news/articles/2023-09-01/china-s-fresh-map-claims-over-taiwan-disputed-sea-stir-protests> (describing PRC's controversial publication of a new official map renewing the baseless claims of the nine-dash line and adding an additional dash east of Taiwan, seemingly extending its territorial claims in the region).

^x 2016 Arb. Tribunal Award, *supra* note iii, at ¶ 1113; see also M. Green, et al., *Counter-Coercion Series: Second Thomas Shoal Incident*, Asia Maritime Transparency Initiative, Center for Strategic & International Studies, Jun. 9, 2017, <https://amti.csis.org/counter-co-2nd-thomas-shoal/> (providing a summary of early activity in and around 2TS, including a series of confrontations in 2013 and 2014 that formed the basis of the Philippines' arbitration bid and resulted in the first gesture of U.S. support on March 12, 2014).

^{xi} See generally *id.*

^{xii} *Id.* at ¶ 379-383, 309, 631-633, 646, 697, 693-694, 750-751, 1153.

^{xiii} *Id.* at ¶ 379-383, 309, 631-633, 646, 697, 693-694, 750-751, 1153.

^{xiv} *Id.* at ¶ 697

^{xv} *Id.* at ¶ 1203.

^{xvi} *Id.* at ¶ 631.

^{xvii} *Id.* at ¶ 741.

^{xviii} See DoS Press Statement, *supra* note i.

^{xix} 2016 Arb. Tribunal Award, *supra* note iii, at ¶ 1113.

^{xx} The Commander's Handbook on the Law of Naval Operations, USN/USMC/USCG (Mar. 2022 ed.), ¶ 2.1 et seq. [hereinafter LONO Handbook].

^{xxi} *Id.* at ¶ 3.10.2.

^{xxii} *Id.* at ¶ 3.10.1.

^{xxiii} U.N. Charter, Art. 51; U.S. Dep't of Def., Law of War Manual (updated Dec. 2016), ¶ 1.11.5.1 [hereinafter DoD LOW Manual].

^{xxiv} U.S.-Philippines Mutual Defense Treaty, Aug. 30, 1951, 3 UST 3947 [hereinafter MDT].

^{xxv} *Id.*

^{xxvi} *Id.*

^{xxvii} See, e.g., U.S. Dep't of State, Press Statement U.S. Support for the Philippines in the South China Sea, Feb. 13, 2023, <https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-3/>:

The United States stands with our Philippine allies in the face of the People's Republic of China (PRC) Coast Guard's reported use of laser devices against the crew of a Philippine Coast Guard ship on February 6 in the South China Sea. The PRC's conduct was provocative and unsafe, resulting in the temporary blindness of the crewmembers of the BRP Malapascua and interfering with the Philippines' lawful operations in and around Second Thomas Shoal. More broadly, the PRC's dangerous operational behavior directly threatens regional peace and stability, infringes upon freedom of navigation in the South China Sea as guaranteed under international law, and undermines the rules-based international order... The United States stands with our Philippine allies in upholding the rules-based international maritime order and reaffirms an armed attack on Philippine armed forces, public vessels, or aircraft, including those of the Coast Guard in the South China Sea, would invoke U.S. mutual defense commitments under Article IV of the 1951 U.S. Philippines Mutual Defense Treaty.

See also U.S. DoD, Press Release, Readout of Secretary of Defense Lloyd J. Austin III's Call with Philippine Senior Undersecretary and Officer in Charge of the Department of National Defense Carlito Galvez, Feb. 21, 2023, <https://www.defense.gov/News/Releases/Release/Article/3304564/readout-of-secretary-of-defense-loyd-j-austin-iiis-call-with-philippine-senior/> ("[SECDEF] reiterated that an armed attack on Philippine armed forces, aircraft, and public vessels, including those of its Coast Guard, anywhere in the South China Sea, would invoke U.S. mutual defense commitments under Article IV of the 1951 U.S.-Philippines Mutual Defense Treaty").

^{xxviii} LONO Handbook, *supra* note xx, at ¶ 3.10.2

^{xxix} DoD LOW Manual, *supra* note xxiii, at ¶ 1.11.5.2; U.S. Army TJAGLCS, Operational Law Handbook (2022), Ch.1, ¶ III.A.4 [hereinafter OPLAW Handbook].

^{xxx} See CJCSI 3121.01B, ¶ 6b(1), reprinted in OPLAW Handbook, *supra* note xxix; LONO Handbook, *supra* note xx, at ¶ 4.4.1.3. A "hostile act" is an attack or other use of force against a State, its forces, or other designated persons or property. It includes force used directly to preclude or impede the mission and/or duties of a State's forces. "Hostile intent" is the imminent threat of the use of force against the State, its forces, or other designated persons or property. See LONO Handbook, *supra* note xx, at ¶ 4.4.1.

^{xxxi} See H. H. Koh, Legal Advisor, Department of State, International Law in Cyberspace: Remarks as Prepared for Delivery to the USCYBERCOM Inter-Agency Legal Conference, Sep. 18, 2012, reprinted in 54 Harv. Int'l L. J. Onl. 7 (Dec. 2012) ("To cite just one example of this, the United States has for a long time taken the position that the inherent right of self-defense potentially applies against any illegal use of force. In our view, there is no threshold for a use of deadly force to qualify as an "armed attack" that may warrant a forcible response."). See also Program on Humanitarian Policy and Conflict Research at Harvard University, Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare, 28 (A.1.e.7) (2010) ("The definition of 'attacks' also covers 'non-kinetic' attacks (i.e. attacks that do not involve the physical transfer of energy, such as certain CNAs [computer network attacks]; see Rule 1(m) that result in death, injury, damage or destruction of persons or objects. Admittedly, whether 'non-kinetic' operations rise to the level of an 'attack' in the context of the law of international armed conflict is a controversial issue.")

Prepared by: USINDOPACOM Joint Operational Law Team (INDOPACOM.J06.OPLAW@pacom.mil)

Last Updated: 17 June 2024 (all prior versions obsolete)

**This TACAID includes legal opinion and analysis that does not necessarily reflect official U.S. government positions

^{xxxii} LONO Handbook, *supra* note xx, at ¶ 2.9.1.

^{xxxiii} S. Sakamoto, *China's New Coast Guard Law and Implications for Maritime Security in the East and South China Seas*, Lawfare, Feb. 16, 2021, <https://www.lawfareblog.com/chinas-new-coast-guard-law-and-implications-maritime-security-east-and-south-china-seas>; R. P. Pedrozo, *Maritime Police Law of the People's Republic of China*, 97 Int'l L. Stud. 465 (2021); R. D. Martinson, *Gauging the Real Risks of China's New Coastguard Law*, Australian Strategic Policy Institute: The Strategist, Feb. 23, 2021, <https://www.aspistrategist.org.au/gauging-the-real-risks-of-chinas-new-coastguard-law/>; The Economist, *A New Law Would Unshackle China's Coastguard, Far From Its Coast*, Dec. 3, 2020, <https://www.economist.com/china/2020/12/03/a-new-law-would-unshackle-chinas-coastguard-far-from-its-coast>; N. T. Trung, *How China's Coast Guard Law Has Changed the Regional Security Structure*, CSIS AMTI, Apr. 12, 2021, <https://amti.csis.org/how-chinas-coast-guard-law-has-changed-the-regional-security-structure/>.

^{xxxiv} J. Gomez, *Philippines Says It Protests China 'Harassment' of Navy Boat*, AP News, May 30, 2018, <https://apnews.com/article/575ca64f275f42f3bbb6ed3ded9821fa>.

^{xxxv} S. Quirk, *Water Wars: Chinese Maritime Militia Disperses Amid Political Standoff With the Philippines and the United States*, Lawfare, Apr. 21, 2021, <https://www.lawfareblog.com/water-wars-chinese-maritime-militia-disperses-amid-political-standoff-philippines-and-united-states>.

^{xxxvi} I. Storey, *China and Second Thomas Shoal: For They Say, But Do Not, Fulcrum*, Nov. 25, 2021, <https://fulcrum.sg/china-and-second-thomas-shoal-for-they-say-but-do-not/>.

^{xxxvii} See U.S. DoD, Press Release, *supra* note xxvii.

^{xxxviii} See J. Gomez, *Philippines Says China Ship Used Laser Against Coast Guard*, Feb. 13, 2023, <https://apnews.com/article/politics-philippines-government-manila-china-8ee5459dcac872b14a49c4a428029259>.

^{xxxix} See Convention on Certain Conventional Weapons Protocol IV on Blinding Laser Weapons art. 1 (ratified by the PRC); see also DoD LOW Manual, *supra* note xxiii, at ¶ 6.15.1.

^{xl} Reuters, *Philippines Says China Blocked, Water-Cannoned Boat in South China Sea*, Aug. 5, 2023, <https://www.reuters.com/world/asia-pacific/philippines-says-china-blocked-water-cannoned-boat-s-china-sea-2023-08-06/>. Video of the incident is available at: <https://www.youtube.com/watch?v=xB4DyMEvCKI>.

^{xli} J. Gomez, *Philippines Says a Coast Guard Ship and Supply Boat Were Rammed by Chinese Vessels at Disputed Shoal*, Associated Press, Oct. 22, 2023, <https://apnews.com/article/south-china-sea-philippines-second-thomas-shoal-64d4fad7bb42b449f91df183fb39fe1d>. Video of the incident is available at: <https://www.youtube.com/watch?v=2K2ZxPcbGbE>.

^{xlii} *Id.*

^{xliii} *Id.*

^{xliiv} A. Stambaugh, et al., *Philippines and China Accuse Each Other of 'Dangerous' Incidents Involving Several Vessels in South China Sea*, CNN, Dec. 10, 2023, <https://www.cnn.com/2023/12/09/asia/philippines-incident-south-china-sea-intl-hnk/index.html>.

^{xlv} *Id.*

^{xlvi} *Id.*

^{xlvii} The Maritime Executive, *Chinese Use Water Cannons and LRAD to Stop Philippine Supply Mission*, Dec. 9, 2023, <https://maritime-executive.com/article/video-chinese-use-water-cannons-and-lrad-to-stop-philippine-supply-mission>.

^{xlviii} M. McCartney, *Timeline Shows Latest Flare-Up of China-Philippines Territorial Dispute*, Newsweek, Dec. 12, 2023, <https://www.newsweek.com/timeline-china-philippines-dispute-south-china-sea-second-thomas-shoal-scarborough-shoal-1851505>.

^{xlix} A. M. Lariosa, *Philippine Christmas Resupply Convoy Cancelled After Chinese Warship Harassment*, Dec. 11, 2023, <https://news.usni.org/2023/12/11/philippine-christmas-resupply-convoy-canceled-after-chinese-warship-harassment>.

^l A.M. Lariosa, *4 Philippine Sailors Injured, 2 Vessels damaged in Chinese Attempt to Block Second Thomas Shoal Resupply*, Mar. 5, 2024, [Chinese Injure 4 Sailors, Damage 2 Vessels in South China Sea Action - USNI News](https://news.usni.org/2024/03/05/philippine-sailors-injured-2-vessels-damaged-in-chinese-attempt-to-block-second-thomas-shoal-resupply)

^{li} U.S. Dep't of State, Press Statement, U.S. Support for the Philippines in the South China Sea, Jun. 17, 2024, <https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-10/>.

^{lii} See DoS Press Statement, *supra* note i; see also DoS Press Statement, U.S. Support for the Philippines in the South China Sea, Aug. 5, 2023, <https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-5/>; DoS Press Statement, U.S. Support for our Philippine Allies in the Face of Repeated PRC Harassment in the South China Sea, Oct. 22, 2023, <https://www.state.gov/u-s-support-for-our-philippine-allies-in-the-face-of-repeated-prc-harassment-in-the-south-china-sea/>; DoS Press Statement, On the Situation in the South China Sea, Nov. 19, 2021, <https://www.state.gov/on-the-situation-in-the-south-china-sea/>; DoS Press Statement, U.S. Support for the Philippines in the South China Sea, Dec. 10, 2023, <https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-7/>.

^{liii} The White House, Readout of National Security Advisor Jake Sullivan's Call with National Security Advisor Eduardo M. Año of the Philippines, Oct. 22, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/23/readout-of-national-security-advisor-jake-sullivans-call-with-national-security-advisor-eduardo-m-ano-of-the-philippines/>.

^{liiv} B. Lendon, et al., *International Backlash Grows after Chinese Vessel Fires Water Cannon on Philippine Boats*, CNN, Aug. 7, 2023, <https://www.cnn.com/2023/08/07/asia/china-philippines-coast-guard-confrontation-south-china-sea-intl-hnk/index.html/>.

^{liv} See B. Lynn, *Philippines Accuses China of Hitting its Boats in South China Sea*, Voice of America, Oct. 23, 2023, <https://learningenglish.voanews.com/a/philippines-accuses-china-of-hitting-its-boats-in-south-china-sea/7322848.html>; J. Gomez, *Philippines Summons Chinese Ambassador Over Water Cannon Incident in Disputed South China Sea*, Aug. 7, 2023, <https://apnews.com/article/philippines-south-china-sea-water-cannon-ambassador-c39a279d3267990320041cff211fd6da>; CNN Philippines, *PH Files Diplomatic Protest Over Incident Near Ayungin Shoal*, Feb. 14, 2023, <https://www.cnnphilippines.com/news/2023/2/14/dfa-pgc-diplomatic-protest-ayungin-shoal-china-laser.html>.

^{lv} *Id.*

^{lvii} *Id.*; PRC Foreign Ministry, Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference, Feb. 13, 2023, https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/202302/t20230213_11024546.html.

^{lviii} See J. Gomez, *Philippine and Chinese vessels collide in disputed South China Sea and 4 Filipino crew are injured*, Mar. 5, 2024, <https://abcnews.go.com/International/wireStory/chinese-coast-guard-blocks-vessels-off-south-china-107795637>

^{lix} See also H. Beech, *Blasting Bullhorns and Water Cannons, Chinese Ships Wall off the Sea*, New York Times, Sep. 23, 2023, <https://www.nytimes.com/2023/09/23/world/asia/china-sea-philippines-us.html> (providing a first-person account of PRC operations and tactics in the SCS, with special focus on Mischief Reef).

^{lx} C. de Guzman, *Why the Philippines May Take China to Court—Again—Over the South China Sea*, Time, Sep. 29, 2023, <https://time.com/6318671/philippines-south-china-sea-international-court/>.

^{lxi} *Id.*

^{lxii} *Id.*

^{lxiii} *Id.*