

TOPIC: CHINA'S MARITIME TRAFFIC SAFETY LAW

OVERVIEW

- In September 2021 the People's Republic of China (PRC) revised its 1983 Maritime Traffic Safety Law (MTSL).
- The revised MTSL applies the PRC's domestic law enforcement authority to "sea areas within the jurisdiction of the [PRC]." Although "sea areas within the jurisdiction of the [PRC]" is not defined, the PRC's baseless and excessive maritime claims presage intent to enforce the MTSL beyond the PRC's 12-nautical mile territorial sea in waters where all nations enjoy high-seas freedoms of navigation, overflight, and other lawful uses of the sea.
- The revised MTSL and a related PRC Maritime Safety Administration (MSA) notice released in August 2021 also appear to restrict the right of innocent passage by compelling certain vessels to report to the MSA upon "entering or exiting the territorial sea." Warships and other sovereign immune vessels are not expressly exempted.

WHY THIS MATTERS

- The revised MTSL is a legal vehicle for the PRC to impose its domestic jurisdiction on foreign flagged vessels (including – potentially – warships and sovereign immune vessels) beyond its lawful territorial sea, and possibly across the entirety of its sweeping maritime claims in the South and East China Seas.

ADDITIONAL INFORMATION

- U.S. statutes contain similar language to the revised MTSL (e.g., 14 U.S.C. 522 refers to U.S. Coast Guard law enforcement authority in "waters over which the U.S. has jurisdiction"), but unlike the MTSL, the language in U.S. law is defined in federal regulations and applied in accordance with customary international law reflected in the United Nations Convention on the Law of the Sea (UNCLOS).
- In contrast, the revised MTSL exploits ambiguous terminology to enable overreaching enforcement jurisdiction.

PROPOSED COUNTER-LAWFARE APPROACH

** This section offers suggested language for incorporation into communications strategies **

- Upholding international law and the rules-based international order is an enduring interest for the international community and one that is vital to peace, security, and prosperity throughout the region.
- The revised MTSL is an affront to the rules-based international order because it attempts to restrict navigational rights and freedoms guaranteed to all nations under customary international law reflected in UNCLOS.
- The revised MTSL exemplifies the PRC's use of domestic law as an instrument to assert excessive maritime claims that were unanimously rejected in the legally binding determination of the 2016 Arbitral Tribunal.
- The PRC's use of ambiguous and undefined language in the revised MTSL affords a veil of flexibility to undertake excessive enforcement of domestic law in conflict with high-seas freedoms enshrined in international law.
- The PRC's sweeping and excessive maritime claims render the revised MTSL inconsistent on its face with customary international law reflected in UNCLOS.
- By not expressly exempting sovereign immune vessels from the PRC's domestic regulatory authority, the revised MTSL fails to recognize the fundamental legal principle of sovereign immunity.
- The international community should expose and oppose any efforts by the PRC to exercise excessive enforcement jurisdiction under the guise of the MTSL.
- USINDOPACOM seeks to preserve peace and stability by upholding freedom of the seas in accordance with international law. This abiding interest is shared with allied and partnered forces who champion a free and open Indo-Pacific supported by the rules-based international order.