



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:

- Robust legal engagement continues
- U.S. supports freezing maritime zones
- PRC survey ops and BRI contracts raise legal concerns
- DPRK defies UNSCRs

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China's Marine Data Collection Under Scrutiny

Chinese flagged survey vessels are reportedly conducting marine data collection on an unprecedented scale. Marine data collection is an umbrella term for various types of collection activities in the maritime domain. According to a [new study](#) released by the Center for Strategic and International Studies (CSIS), a fleet of 64 Chinese survey vessels conducted hundreds of thousands of hours of operations globally over the last four years. Over 80 percent of those vessels demonstrated suspect “dual-use” behavior or linkages to the People’s Republic of China’s (PRC’s) geopolitical agenda.

Reporting shows that the PRC uses its survey vessel fleet and marine data collection for [military purposes](#); to [advance excessive claims](#); to [obstruct coastal states from exploring and exploiting natural resources](#); and to uncover [ancient shipwrecks](#) as supposed evidence of the Chinese Communist Party’s [preferred historical narratives](#) and its debunked assertions of “[historic rights](#)” within the dashed-line claim.

To be clear, the United States and other countries conduct [marine data collection](#) for a broad range of peaceful purposes, such as studying climate change and marine life. For military requirements, the United States employs [naval auxiliary vessels](#) to conduct marine data collection consistent with high-seas



In 2023, the Chinese survey vessel, Xiang Yang Hong 10, operated extensively inside Vietnam’s EEZ near Vanguard Bank and oil drilling initiatives. Photo by [globalsecurity.org](#).

freedoms guaranteed to all nations by international law.

In some cases, the PRC may be pursuing similarly peaceful purposes, but the immense scale of the PRC’s marine data collection, its “dual-use” objectives, and a pervasive lack of transparency make it difficult to discern the true nature of the activities in question. This uncertainty is particularly apparent when the PRC’s survey vessels operate in foreign exclusive economic zones (EEZs).

The PRC’s activities in foreign EEZs blur distinctions between the different types of marine data collection, obfuscating the ability of coastal states to identify legal transgressions and take meaningful action. This approach also reflects a double-standard—i.e., the PRC purports to [restrict foreign activities](#) in its EEZ, yet seemingly operates with disregard for the sovereign EEZ rights of other nations.

Addressing questions surrounding the PRC’s marine

data collection requires applying the appropriate legal framework. Not all marine data collection is treated the same under international law. Article 56 of the U.N. Convention on the Law of the Sea (UNCLOS) grants coastal states the exclusive right to explore, exploit, conserve, and manage living and non-living resources in their respective EEZs. Moreover, marine scientific research, which are those activities undertaken to expand scientific knowledge of the marine environment, is subject to coastal state consent in the EEZ under Article 246 of UNCLOS.

There is considerably less regulation of other types of marine data collection conducted beyond the territorial sea. UNCLOS does not define or prohibit hydrographic surveys (activities to obtain information for the making of navigational charts and for safety of navigation), military surveys (non-commercial marine data collection for military purposes), and operational oceanography (the routine collection of ocean observations), provided such activities are carried out lawfully and with due regard for the rights of the coastal state.

The PRC’s extensive and dubious marine data collection activities merit further scrutiny. The USINDOPACOM legal office is keen to work with allies and partners to uphold the rule of law and oppose unlawful marine data collection.

Asia-Pacific Center Hosts Dialogue on Rules-Based International Order

More than 150 fellows from 11 countries participated in the Indo-Pacific Orientation Course (IPOC) 23-3. IPOC 23-3 was hosted by the Daniel K. Inouye Asia-Pacific Center for Security Studies (DKI APCSS) in Honolulu, Hawaii from 14-17 November 2023.

DKI APCSS is a U.S. Department of Defense institution that addresses regional and global security issues through multinational executive education programs and workshops. Its mission is to build resilience, shared understanding, and networked relationships and institutions in support of a free and open Indo-Pacific.

IPOC 23-3 was a milestone event for DKI APCSS as its largest ever in-person course. International participation ensured a diversity of perspectives and contributed to rich discussion. Of note, CDR Liam Connel, a U.S. Navy judge advocate assigned to DKI APCSS as a military professor, led dialogue on the rules-based international order (RBIO). The United States has [defined](#) RBIO as “the system of laws, agreements, principles, and institutions that the world came together to build after two world wars to manage relations between states, to prevent conflict, and to uphold the rights of all people.”

CDR Patrick Jackson, an IPOC 23-3 attendee, remarked that “it was refreshing to engage with allies and partners regarding the meaning and significance of the rules-based international order, its basis in the United Nations Charter and the Universal Declaration of Human Rights, and indicators showing the positive impact that it has had on the world post-World War II.”

The next IPOC is scheduled as a mobile course and will take place in Japan from April 15-19, 2024.



Senior legal advisors from Japan Joint Staff and USINDOPACOM finalize a bilateral legal memo in December 2023.

Series of Bilateral Legal Memos Reflects Ironclad Japan-U.S. Alliance

Legal advisors from the Japan Joint Staff (JJS) and United States Indo-Pacific Command (USINDOPACOM) routinely collaborate on bilateral memos crafted to support interoperability and promote legal transparency. Bilateral memos on [Air Intercepts](#), [North Korea's Ballistic Missile Program](#), the PRC's [Maritime Militia](#), and [Maritime and Air Warning and Exclusion Zones](#) are accessible on the USINDOPACOM legal office's [webpage](#).

As the series of bilateral memos produced by JJS and USINDOPACOM continues to grow, the two legal staffs are becoming increasingly integrated and adept at collectively navigating complex legal terrain. JJS-USINDOPACOM combined legal analyses embody a shared commitment to preemptive planning, risk mitigation, and unified action to uphold the rule of law and preserve peace and stability.

“Our bilateral memos stand as a testament to the strength of the Japan-U.S. alliance while epitomizing the depth of collaboration, trust, and commitment between two stalwart allies,” said Commander Sara Neugroschel from the USINDOPACOM joint operational law team.

RADM (Ret)
Peter
Gumataotao, the
Director of DKI
APCSS, speaks to
IPOC 23-3
participants. Photo
provided by DKI
APCSS.



Additional
information
about DKI
APCSS and IPOC
is available [here](#).



Front Row: Group Captain Chris Taylor, Captain Dom Flatt, and Colonel Junji Shinagawa
Back Row: Commander Marc Lawrence, Commander Sara Neugroschel, Captain Koichi Ishii (Left to Right).

Annual Trilateral Legal Talks held at Camp Smith, Hawaii

From 4-5 December 2023, the Office of the Staff Judge Advocate, USINDOPACOM, hosted senior legal staff from Japan and Australia for the second annual Trilateral Legal Talks.

Senior representatives at the talks included Colonel Junji Shinagawa, Legal Affairs General, Japan Joint Staff; Group Captain Chris Taylor, Director Legal, Joint Operations Command (Australia); and Captain Dom Flatt, Staff Judge Advocate, USINDOPACOM.

The talks focused on emerging legal challenges, solidified shared understandings, and bolstered legal interoperability. Significantly, this round of Trilateral Legal Talks preceded Exercise Keen Edge 2024. Keen Edge has historically been a bilateral, command post exercise between the Japan Joint Staff and USINDOPACOM. This year, the Australian Defence Force will participate in Keen Edge for the first time. Trilateral participation in Keen Edge 2024 will provide important opportunities for the three legal staffs

to apply and rehearse the lessons learned during the Trilateral Legal Talks.

The talks culminated in a [trilateral statement](#). The statement noted the shared commitment of the senior legal advisors to building legal consensus and increased interoperability through continued legal collaboration. Such efforts are consistent with the core pillars of USINDOPACOM's counter-lawfare program, which focuses on the promotion of adherence to international law and the rules-based international order alongside like-minded countries.

U.S. Supports Freezing Maritime Zones as Seas Rise

Sea-level rise due to climate change threatens coastal communities worldwide and poses an [existential threat](#) to low-lying Pacific Island States. The U.N. Convention on the Law of the Sea (UNCLOS) did not address the effect of diminishing land territory caused by sea-level rise on long-established baselines and corresponding [maritime zones](#).

Rising seas mean that islands that could once sustain human habitation may become uninhabitable, rocks may become low-tide elevations that are underwater at high tide, and low tide

elevations may disappear entirely. The resulting landward contraction of coastal baselines, and by extension to coastal state territorial seas (TTS) and exclusive economic zones (EEZs) derived from those baselines, would be catastrophic to low-lying island nations. As international law in this area [continues to develop](#), many countries recognize a need for "[legal stability](#)."

For its part, the United States is leading from the front, having announced a [new policy](#) in 2023, which supports "maintaining [lawfully established] baselines and maritime zone limits" and not challenging "such baselines and maritime zone limits that are not subsequently updated despite sea-level rise caused by climate change."

In addition, at the [U.S.-Pacific Islands Forum Summit](#) in September 2023, President Biden announced that sea-level rise driven by climate change should not cause any country to lose its statehood or its membership in the United Nations, and that sea-level rise should not diminish the maritime zones on which island nations and other coastal states rely for food and security.

Consequently, the United States is working with Pacific Island States toward the goal of lawfully establishing and maintaining baselines and maritime zone limits. For more information and analysis, please see the corresponding USINDOPACOM [TACAID](#).



Admiral Aquilino, Commander of USINDOPACOM, poses with Pacific Island leaders from Fiji, Nauru, and Tuvalu at USINDOPACOM's International Military Law and Operations Conference (MILOPS), August 2023. Photo by MCC Shannon Smith.

China's Exploitative Belt and Road Contracts

Under the guise of “win-win” cooperation, the People’s Republic of China (PRC) uses exploitative infrastructure contracts for its Belt and Road Initiative (BRI) projects. BRI contracts often include overly broad default clauses for reasons as vague as “[actions adverse to the PRC](#).” Violating such clauses may allow the PRC to [seize](#) the borrower nation’s public infrastructure, national resources, territory, and Gross Domestic Product (GDP) revenue unrelated to the loan project. Such terms are contrary to global norms and potentially unlawful.

BRI contracts often infringe on the rights of developing nations because they do not respect developing nations’ special status, as defined by the World Trade Organization (WTO). The WTO’s General Agreement on Tariffs and Trade (GATT) states that members should seek [transparency](#). It also requires members to engage in open and predictable policies. The WTO further requires members to grant “[special and differential treatment](#)” to developing nations. These requirements amounts to favorable treatment on a variety of terms, including safeguarding trade interests, longer term periods, and dispute resolution support.

The PRC flouts these obligations in many ways, including four specific tactics described in this piece. First, BRI contracts typically prohibit borrowing nations from [disclosing](#) debt details to its citizens, public interest groups, and international organizations. This practice is

Under customary international law, these exploitative contract provisions may in some cases be deemed *unconscionable*.

neither transparent nor open and predictable.

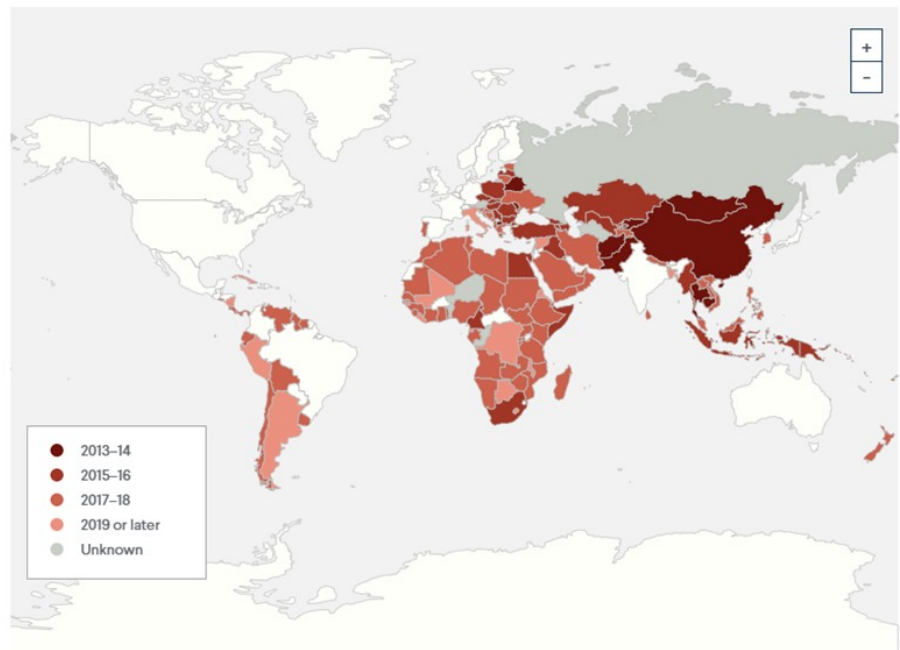
Second, BRI contracts often prohibit borrowing nations from [seeking](#) debt-relief or advisory guidance from relief agencies, international organizations, or other governments, which is unfavorable to borrowing nations. Third, BRI contracts usually require that any [disputes](#) be resolved by Chinese courts, without the involvement of non-Chinese

mediators, lawyers, or arbiters. Fourth, BRI contracts generally require that [high percentages](#) of the borrowing nation’s GDP be deposited as collateral in Chinese-controlled bank accounts rather

than neutral third-party accounts.

Under customary international law, these exploitative contract provisions may in some cases be deemed “unconscionable.” An unconscionable contract is [unenforceable](#) if its terms are so extremely imbalanced that they remove any meaningful bargaining power from one of the parties. Accordingly, the PRC’s enforcement of BRI contracts to seize borrower infrastructure, national resources, or territory could be tantamount to infringing on the internal affairs of sovereign states, in prohibition of Article 2(7) of the United Nations Charter.

International scrutiny of BRI contracts mitigates risk of manipulation and influence over sovereign decisions and infrastructure. See USINDOPACOM’s [TACAID](#) for more information.



Note: Publicly available information for countries marked unknown is unclear or contradictory. Sources: Green Finance and Development Center; Green Belt and Road Initiative Center; Belt and Road Portal.

COUNCIL ON
FOREIGN
RELATIONS

BRI borrowing nations are depicted above by year of joining. Many are developing nations in Africa. Graphic by Council on Foreign Relations.

U.S. Rescues Chinese Nationals at Sea 30 Miles off Guam

The U.S. Coast Guard, U.S. Navy, and Guam first responders [rescued](#) six Chinese nationals from a 23-foot recreational vessel on 6 January 2024. The vessel was located 30 miles offshore of Guam and issued a distress call when it began taking on water.

The rescue effort reflects the United States' unwavering adherence to a duty under international law to render assistance to persons in distress at sea. The duty to render assistance comes from international treaty obligations, customary international law, U.S. government policy, and longstanding U.S. military ethos and maritime tradition. This duty also exists independent of geopolitical tensions and extends to any person encountered at sea, regardless of nationality.

The rescue effort occurred amid a growing trend of Chinese nationals attempting suspected illegal entry into Guam via maritime means. In August 2022, Guam [established](#) a multiagency task force to address this issue. The task force's efforts have led to [criminal charges](#) for two Chinese boat captains in the Superior Court of Guam.

In addition, U.S. Homeland Security Investigations (HSI) [arrested](#) 14 Chinese nationals in September 2023 following an attempt to pay an undercover agent



The U.S. Coast Guard, Navy, and Guam first responders rescued six distressed PRC nationals from this vessel on 6 Jan 2024, 30 miles offshore of Guam. *Photo by The Guam Daily Post.*

in the Commonwealth of the Northern Mariana Islands to illegally transport the 14 individuals to Guam. The U.S. District Court for the Northern Mariana Islands is handling the case; two of the Chinese nationals have already pled guilty to a conspiracy to transport illegal aliens.

PRC's Distortion of UN Resolution Cited in Nauru Decision to Drop Taiwan Recognition

On 15 January 2024, two days after Taiwan's free and fair presidential election, the Republic of Nauru severed diplomatic ties with Taiwan and officially recognized the People's Republic of China (PRC). This marked the second time that Nauru has cut ties with Taiwan, having done so previously in July 2002 before reestablishing relations in May 2005. The U.S. State Department [described](#) Nauru's action as a "sovereign decision," but "nonetheless a disappointing one."

A [media release](#) by the Nauru government cited UN General Assembly Resolution (UNGAR) 2758 as the basis for switching recognition. Nauru's reference to UNGAR 2758 is troubling because it reflects the PRC's frequent [distortion](#) of the 1971 resolution as illustrative of "universal" consensus on its "one China principle" – i.e., the PRC's view that Taiwan is "indisputably" part of the PRC.

In fact, [UNGAR 2758](#) only addressed the question of China's representation at the United Nations. As [noted](#) by Laura Rosenberger, Chair of the American Institute in Taiwan, at a press conference following Nauru's decision, UNGAR 2758 "did not make a determination on the status of Taiwan; does not preclude countries from having diplomatic relationships with Taiwan; and does not preclude Taiwan's meaningful participation in the UN system." Ms. Rosenberger added, "It is

The U.S. One China Policy is not the same as the PRC's One-China Principle.

U.S. One China Policy	PRC One-China Principle
<ul style="list-style-type: none"> Guided by the Taiwan Relations Act, three US-PRC Joint Communiqués, and Six Assurances to Taiwan 	<ul style="list-style-type: none"> Based on the PRC's misrepresentation of various nations' one China policies and UNGAR 2758
<ul style="list-style-type: none"> Acknowledges, but does not endorse PRC's position that Taiwan is part of China 	<ul style="list-style-type: none"> Asserts that "Taiwan is part of China" and that this is an "indisputable fact"
<ul style="list-style-type: none"> Rests upon the expectation that Taiwan's future will be determined by peaceful means 	<ul style="list-style-type: none"> Provides that "non-peaceful means shall be used" if possibilities of peaceful unification exhausted
<ul style="list-style-type: none"> Does not recognize PRC sovereignty over Taiwan 	<ul style="list-style-type: none"> Asserts that Taiwan is part of the sovereign territory of China

Graphic by USINDOPACOM J06. Analysis on UNGAR 2758 by the German Marshall Fund is [here](#).

disappointing to see distorted narratives about UN [General Assembly] Resolution 2758 being used as a tool to pressure Taiwan, limit its voice on the international stage, and influence its diplomatic relationships."

Much like the United Nations General Assembly, the majority of the international community [maintains](#) "one China" policies that do not take an affirmative stance on Taiwan's status, notwithstanding the PRC's contrary claim that its "one China principle" is an "international norm" supported by history and law. As an example, the United States regards the PRC as the sole legal government of "China" (which is not defined) and "acknowledges," but does not endorse the PRC's position that Taiwan is part of China. In addition, the United States does not recognize Taiwan as a state or its authorities as a national government, but also does not take a position on Taiwan's ultimate status.

The PRC's distortion of UNGAR 2758 is characteristic of its legal warfare efforts to isolate Taiwan on the international stage and influence sovereign decisions concerning relations with Taiwan. "The PRC often makes promises in exchange for diplomatic relations that ultimately remain unfulfilled," said Matthew Miller, a [U.S. State Department spokesperson](#). "We encourage all countries to expand engagement with Taiwan and to continue to support democracy, good governance, transparency, and adherence to the rule of law."

DPRK “Satellite” Launches Violate Multiple UNSCRs

The Democratic People’s Republic of Korea’s (DPRK) purported satellite launches use [ballistic missile technology](#) in violation of international law, as transmitted in multiple unanimously approved United Nations Security Council Resolutions (UNSCRs).

From 2006-2018, the UN Security Council (UNSC) adopted 20 resolutions on the DPRKs ballistic missile and nuclear programs. Collectively, these UNSCRs prohibit the DPRK from conducting ballistic missile and nuclear tests; require the DPRK to suspend and abandon all activities related to its ballistic missile and nuclear programs; and ban the DPRK from any type of launch that uses ballistic missile technology. UNSCRs are binding international law pursuant to the United Nations Charter.

Since 1998, the DPRK has conducted eight attempts to launch a satellite into orbit, including its [most recent attempt](#) on 21 November 2023. Attaching a satellite to a rocket that uses ballistic missile technology does not excuse the DPRK from its obligations under international law. The UNSCRs ban the



May 2023 shows what the DPRK says is a launch of a Chollima-I rocket carrying the Malligyong-I satellite. The Chollima-I rocket has been linked to banned ballistic missile technology. Photo released by DPRK.

use of ballistic missile technology, regardless of the payload. The technology behind the DPRK’s recent satellite launch attempts was [reportedly developed](#) for an intercontinental ballistic missile.

Although the UNSC has convened to address recent launches, [oppositional stances](#) by Russia and the People’s Republic of China (PRC), both UNSC permanent members, preclude consensus or issuance of new UNSCRs. Moreover, the [transfer of ballistic missiles](#) from the DPRK to Russia and subsequent

use by Russia against Ukraine embodies a continued and flagrant disregard for UNSCRs that were unanimously supported by Russia and the PRC.

As [noted](#) by a U.S. State Department official following a DPRK ballistic missile launch over the territory of Japan in October 2022, “The failure of the PRC and Russia to fully and completely fulfill their obligations ... has only, we fear, emboldened the DPRK in undermining the UN Security Council, the international rules-based order and global non-proliferation regime.”

The DPRK’s violation of multiple UNSCRs undermines international safety norms, compromises the global non-proliferation regime, destabilizes the security environment, and ferments risk of miscalculation and escalation between nations. The USINDOPACOM legal office is committed to working with allies and partners to uphold international law and the UNSCRs at issue. For more information, see USINDOPACOM’s [TACAID](#) and the [USINDOPACOM-Japan Joint Staff bilateral memo](#).



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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.