

From: [REDACTED]
Subject: INDOPACOM Legal Vigilance Update #4 (25 Sep 2024)
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Teammates,

Below please find the fourth edition of INDOPACOM's Legal Vigilance Update.

- 25 September 2024: reports indicate that the Japan destroyer *JS Sazanami* completed the Japanese Self-Defense Force's first-ever Taiwan Strait transit on 25 September 2024.
 - **Bottom-line:** operations within the Taiwan Strait in accordance with international law uphold the navigational rights and freedoms of all nations.
 - References:
 - [Gabriel Dominguez and Jesse Johnson, *Japan warship sails through Taiwan Strait for first time, reports say* \(The Japan Times, September 26, 2024\)](#)
 - Key legal points:
 - The Taiwan Strait includes a corridor beyond the territorial sea of any state in which all nations enjoy high-seas freedoms of navigation, overflight, and other internationally lawful uses of the sea and air.
 - The U.S. rejects any assertion by the PRC of sovereignty over the entirety of the Strait or beyond its 12 nautical miles territorial sea, and rejects any assertion of excessive jurisdiction or control exceeding that provided for by international law as reflected in the UN Convention on the Law of the Sea.
 - Notably, on 17 September 2024, a U.S. Navy P-8A Poseidon transited the Taiwan Strait in international airspace (see [7th Fleet Aircraft Transits Taiwan Strait](#)).
- 25 September 2024: U.S. Secretary of State Antony J. Blinken participated in the UN General Assembly's High-Level Plenary Meeting on "Addressing the Existential Threats Posed by Sea-Level Rise."

- **Bottom-line:** Secretary Blinken highlighted the broad suite of actions the U.S. Government is taking to tackle the challenge of sea-level rise at home and around the world, including the 2022 policy that the U.S. will not challenge maritime zones and baselines that have been established consistent with international law and that are not subsequently updated despite sea-level rise caused by climate change.

- References:

- [U.S. Department of State – U.S. Actions to Tackle Sea-Level Rise at Home and Abroad](#)
- [U.S. Department of State – Marine Environment \(including U.S. Policy on Sea-Level Rise and Maritime Zones\)](#)
- [USINDOPACOM Jo6/SJA TACAID Series – Impact of Sea-Level Rise on Maritime Zones](#)
- [U.S. Mission to the United Nations – Remarks by Ambassador Linda Thomas-Greenfield at a UN Security Council Open Debate on Sea Level Rise](#)

- Key legal points:

- The UN Convention on the Law of the Sea does not address the effect of sea-level rise on long-established baselines and corresponding maritime zones.
- The U.S. believes that sea-level rise driven by human-induced climate change should not diminish the maritime zones on which island States and other coastal States rely.
- The U.S. applauds the Pacific Island States' initiative to take steps now to determine, memorialize, and publish their coastal baselines in accordance with the international law of the sea as set out in the UN Convention on the Law of the Sea.
- The U.S. is committed to preserving the legitimacy of maritime zones, and associated rights and entitlements, that have been established consistent with international law as reflected in the Convention and that are not subsequently updated despite sea-level rise caused by

climate change.

- The U.S. will work with Pacific Island States and other countries toward the goal of lawfully establishing and maintaining baselines and maritime zone limits and will not challenge such baselines and maritime zone limits that are not subsequently updated despite sea-level rise caused by climate change.
- 24 September 2024: President Biden addressed the 79th session of the United Nations General Assembly.
 - **Bottom-line:** President Biden stressed the importance of the UN Charter, saying that “we are at an inflection point in world history where the choices we make today will determine our future for decades to come” and emphasizing that “we need to uphold our principles as we seek to responsibly manage the competition so it does not veer into conflict.”

▪ References:

- [Remarks by President Biden Before the 79th Session of the United Nations General Assembly](#)
- [U.S. Department of State – President Biden Addresses the 79th Session of the United Nations General Assembly – video](#)
- [Sheryl Gay Stolberg and David E. Sanger, *Biden Warns the World Is at an ‘Inflection Point’ Amid Global Crises* \(NY Times, September 24, 2024\)](#)
- [Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#)
- [U.S. Department of State – Political Declaration on Responsible Military Use of Artificial Intelligence and Autonomy](#)

▪ Key legal points:

- With respect to the Indo-Pacific, President Biden said that “[o]n matters of conviction, the United States is

unabashed, pushing back against unfair economic competition and against military coercion of other nations in the South China Sea, in maintaining peace and stability across the Taiwan Strait, in protecting our most advanced technologies so they cannot be used against us or any of our partners.”

- “At the same time,” President Biden said, “we’re going to continue to strengthen our network of alliances and partnerships across the Indo-Pacific,” which the President called “the building blocks for a free, open, secure, and peace
 - President Biden also discussed the need to prepare for future technological change, through (among other things) the development of norms and standards for artificial intelligence.
 - The President noted that the UN adopted the first-ever General Assembly Resolution on AI and that the U.S. announced a Declaration on the Responsible Use of AI.
 - President Biden said “[a]s countries and companies race to uncertain frontiers, we need an equally urgent effort to ensure AI’s safety, security, and trustworthiness.”
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- 24 September 2024: U.S. Senate Committee on Homeland Security and Governmental Affairs holds hearing on Safeguarding the Homeland: Examining Conflicts of Interest in Federal Contracting to Protect America’s Future.
 - **Bottom-line:** during the Committee’s hearing, Dr. Rush Doshi (Senior Fellow and Director of the China Strategy Initiative at the Council on Foreign Relations) discussed “China’s New National Security Laws: Risks to American Companies and Conflicts of Interest.”

▪ References:

- [U.S. Senate Committee on Homeland Security and Government Affairs Hearing on Safeguarding the Homeland: Examining Conflicts of Interest in Federal Contracting to Protect America’s Future - video](#)

- [Dr. Rush Doshi, *Prepared Statement for U.S. Senate Committee on Homeland Security and Governmental Affairs Hearing on “Safeguarding the Homeland: Examining Conflicts of Interest in Federal Contracting to Protect America’s Future”* \(September 24, 2024\)](#)
- [Kevin Breuninger and Eamon Javers, *Communist Party cells influencing U.S. companies’ China operations, FBI Director Wray says* \(CNBC, July 12, 2023\)](#)

▪ Key legal points:

- Dr. Doshi described how “[t]he PRC uses a variety of leverage, including threats to withhold market access and national security legislation, to pressure U.S. companies to advance PRC objectives,” exposing U.S. companies to potential conflicts of interest “particularly for those companies that might contract with the U.S. government, handle sensitive U.S. government data, or operate sensitive platforms upon which the U.S. government relies.”
- According to Dr. Doshi, “[t]he promise of market access, and the explicit or implicit threat to withhold it, is a tool the PRC uses to advance various state objectives.”
- Dr. Doshi detailed the PRC legal regime that creates potential conflict of interest challenges for U.S. companies, including:
 - The 1993 Company Law, which requires “PRC companies to establish and maintain Chinese Communist Party (CCP) cells;”
 - The 2017 National Intelligence Law, which “requires Chinese individuals and entities, including subsidiaries of U.S. companies in China, to affirmatively support PRC national intelligence work, comply with demands from PRC intelligence and law enforcement agencies, and ‘keep the secrets of national intelligence work from becoming public;” and
 - The 2017 Cybersecurity Law, which “requires that data in undefined critical industries be stored in China and that PRC public security and intelligence agencies be able to conduct spot checks of networks, which could include access to data.”

- Dr. Doshi’s testimony echoes Federal Bureau of Investigation Director Christopher Wray’s testimony before the House Judiciary Committee in July 2023, during which FBI Director Wray said, “There is no country, none, that presents a broader, more comprehensive threat to our ideas, our innovation, our economic security than the Chinese government and the Chinese Communist Party.”
 - Please see the links above for the full hearing video and Dr. Doshi’s full prepared statement.
- 24 September 2024: President Biden meets with leaders of Palau, Micronesia, and Marshall Islands.
 - **Bottom-line:** President Biden met with President Whipples, Jr. of Palau, President Simina of Micronesia, and President Heine of Marshall Islands in New York at the United Nations to celebrate renewal of the Compacts of Free Association and Compact-related agreements.

▪ References:

- [Readout of President Joe Biden’s Meeting with President Whipples of Palau, President Simina of Micronesia, and President Heine of Marshall Islands](#)
- [Congressional Research Service – The Compacts of Free Association](#)
- [Compacts of Free Association – Compact Documents](#)

▪ Key legal points:

- The Compacts of Free Association (COFAs) govern the relationships between the United States and the three sovereign nations collectively known as the Freely Associated States (FAS): the Republic of the Marshall Islands (RMI), the Federated States of Micronesia (FSM), and the Republic of Palau.
- The COFAs grant the U.S. military access to a strategic area in the Indo-Pacific, allow FAS citizens to live and work in the United States and its territories as lawful non-immigrants, and provide economic support and security

assistance for the FAS.

- More than 94,000 FAS citizens live in the U.S. and over 1,000 FAS citizens serve in the U.S. Armed Forces.
 - In March 2024, President Biden and the U.S. Congress affirmed this relationship for the next 20 years by renewing the COFAs and providing new economic assistance agreements.
 - The COFAs reinforce the uniquely close relationships between the U.S. and the FAS.
 - The COFAs help the U.S. implement its National Defense Strategy of pursuing a free and open Indo-Pacific region.
- 21 September 2024: President Biden hosted the fourth in-person Quad Leaders Summit in Wilmington, Delaware.
 - **Bottom-line**: the leaders of Australia, India, Japan, and the U.S. met to reaffirm the Quad countries' commitment to upholding the international order based on the rule of law that fosters a free and open Indo-Pacific that is inclusive and resilient.
- References:
 - [The Wilmington Declaration Joint Statement from the Leaders of Australia, India, Japan, and the United States](#)
 - [Fact Sheet: 2024 Quad Leaders' Summit](#)
 - [Readout of President Biden's Meeting with Prime Minister Albanese of Australia](#)
 - [Readout of President Biden's Meeting with Prime Minister Kishida of Japan](#)
 - Key legal points:
 - The Quad leaders stated that “we are steadfast in our commitment that international law, including respect for sovereignty and territorial integrity, and the maintenance of peace, safety, security and stability in the maritime domain, underpin the sustainable development, and prosperity in the Indo-Pacific.”
 - The leaders expressed serious concern about the situation in the East and South China Seas, including the “militarization of disputed features, and coercive and intimidating maneuvers in the South China Sea” and “the dangerous use of coast guard and maritime militia vessels, including increasing use of dangerous maneuvers.”

- Highlighting the importance of adherence to UNCLOS and the significance of the 2016 Arbitral Award on the South China Sea, the Quad leaders “re-emphasize[d] the importance of maintaining and upholding freedom of navigation and overflight, other lawful uses of the sea, and unimpeded commerce consistent with international law.”
 - The leaders also “reaffirm[ed] the importance of upholding the existing international legal framework for outer space activities, including the Outer Space Treaty, and the obligation of all States Parties to the Treaty not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.”
 - On the sidelines of the Quad, President Biden also held bilateral meetings with Prime Minister Albanese of Australia and Prime Minister Kishida of Japan, during which the leaders reiterated their support for maintaining peace and stability in the Taiwan Strait, and shared mutual concerns over the PRC’s “coercive and destabilizing activities, including in the South China Sea.”
- 19 September 2024: U.S. House Select Committee on the Chinese Communist Party holds hearing on CCP use of law to enforce its rule.
 - **Bottom-line:** during a House Select Committee on the Chinese Communist Party hearing titled “How the CCP Uses the Law to Silence Critics and Enforce its Rule,” National Defense University professor and USINDOPACOM Counter-Lawfare collaborator Dr. Jill Goldenziel testified about how the PRC is “weaponizing law in its strategic competition against the United States.”
 - References:
 - [House Select Committee on the Chinese Communist Party Hearing on How the CCP Uses the Law to Silence Critics and Enforce its Rule](#)
 - Key legal points:
 - Dr. Goldenziel testified that “[t]he PRC is using legal warfare to undermine the rules-based international order and to set the conditions to export authoritarianism and advance its military and strategic interests.”
 - Noting the counter-lawfare programs of USINDOPACOM and USEUCOM, Dr. Goldenziel explained that “PRC legal warfare

aims to distort international law and subvert the rules-based international order and the U.S. Constitutional order,” with the goal being to “factionalize PRC adversaries and weaken their will to fight.”

- **18 September 2024:** U.S. House Foreign Affairs Committee holds hearing on Great Power Competition in the Indo-Pacific.
 - **Bottom-line:** U.S. Deputy Secretary of State Kurt Campbell appeared before the House Foreign Affairs Committee to discuss the challenges posed by the People’s Republic of China to security and stability in the Indo-Pacific. The Deputy Secretary’s comments included discussion of the PRC’s attempt to mischaracterize UN General Assembly Resolution (UNGAR) 2758 to challenge Taiwan’s legitimacy.

- References:

- [House Foreign Affairs Committee Hearing on Great Power Competition in the Indo-Pacific - video](#)
- [U.N. General Assembly Resolution 2758 - text](#)
- [U.S. Department of State – U.S. Relations With Taiwan](#)
- [Congressional Research Service – Taiwan: The Origins of the U.S. One-China Policy](#)
- [Nike Ching, *US refutes China’s characterization of UN Resolution 2758* \(Voice of America, May 28, 2024\)](#)
- [Australia Senate adopts urgency motion affirming that UNGAR 2758 “does not establish \[PRC\] sovereignty over Taiwan”](#)
- [Jacques deLisle and Bonnie S. Glaser, *Why UN General Assembly Resolution 2758 Does Not Establish Beijing’s “One China” Principle: A Legal Perspective* \(German Marshall Fund of the United States, April 2024\)](#)

- Key legal points:

- During the hearing, the Deputy Secretary was asked a question regarding U.S. policy with respect to Taiwan and the PRC’s mischaracterization of UNGAR 2758.
- For context, UNGAR 2758 (passed on October 25, 1971), states that the General Assembly:
 - “Decides to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they

unlawfully occupy at the United Nations and in all the organizations related to it.”

- During the House Foreign Affairs Committee hearing on 18 September 2024, Deputy Secretary Campbell was asked to “clarify the U.S. position on China using [UNGAR 2758] to claim that Taiwan is part of China when in fact, while [UNGAR 2758] does address Chiang Kai-shek, it’s silent on Taiwan’s status?”
- Deputy Secretary Kurt Campbell replied:
 - “Yes, exactly, it is a tool that China has used in its diplomacy to make the argument that somehow Taiwan’s status is illegitimate or that the interpretation of a ‘one China principle’ leaves them at a disadvantage. I simply want to say that we stand by our commitments to Taiwan; we try to clarify in all of our engagements the nature of our policy towards Taiwan, how it’s influenced by the Taiwan Relations Act, the Six Assurances, and the Three Communiques. I will say, Congressman, that framework – it is difficult and challenging sometimes, but it has provided for an unprecedented level of development and peace and stability across the Taiwan Strait for 40 years. It’s going to be harder going forward, but I do think it has given us the capacity and the framework to engage on a complex issue.”
- Relatedly, on 21 August 2024, Australia’s Senate adopted an urgency motion “[t]hat United Nations Resolution 2758 of 25th October 1971 does not establish the People’s Republic of China’s sovereignty over Taiwan and does not determine the future status of Taiwan in the United Nations, nor Taiwanese participation in UN agencies or international organizations.”

Thank you for your continued participation in our Counter-Lawfare community of interest, and all the best.

V/r Ian

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Director, Counter-Lawfare Center





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