

**From:** [REDACTED]  
**Subject:** INDOPACOM Legal Vigilance Update #5 (4 Oct 2024)  
**Date:** Friday, October 4, 2024 7:21:49 PM  
**Attachments:** [image001.png](#)

---

Teammates,

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

- 29 September 2024: Vietnam reports dangerous actions by PRC law enforcement vessels against Vietnamese fishing vessels around the Paracel Islands.
  - **Bottom-line:** the U.S. and its allies call on the PRC to desist from dangerous and destabilizing conduct in the South China Sea.
    - References:
      - [Hau Dinh, Vietnam condemns China for assault on its fishermen in the disputed South China Sea \(Associated Press, Oct. 3, 2024\)](#)
      - [U.S. Department of State Spokesperson Comments on 29 September 2024 Incident](#)
      - [Statement of British Ambassador to Vietnam](#)
      - [Statement of New Zealand Embassy](#)
      - [Statement of Australian Ambassador to Vietnam](#)
      - [Statement of Philippines National Security Advisor](#)
    - Key legal points:
      - ***The PRC's use of force was unlawful, destabilizing, and demonstrated a lack of professionalism at-sea.***
      - Notably, the PRC asserts excessive maritime claims around the Paracels Islands – numerous States, including Australia, Japan, New Zealand, the Philippines, Vietnam, the United Kingdom, and the United States have protested the PRC's baselines around the Paracel Islands as inconsistent with international law as reflected in the U.N. Convention on the Law of the Sea.
        - For more on the PRC's excessive claims in the South China Sea, please see [the Department of State's Limits in the Seas No. 150](#).
- 28 September 2024: the Royal Australian Navy, Royal Australian Air Force, Japan Maritime Self-Defense Force, Royal New Zealand Navy, the Armed Forces of the Philippines, and the U.S. Navy conducted a Maritime Cooperative Activity (MCA) within the Philippines' exclusive economic zone in the South China Sea.
  - **Bottom-line:** MCAs contribute to peace and stability; uphold the

freedom of navigation and overflight in the Indo-Pacific region; and demonstrate the strength of relationships between partners and Allies.

▪ References:

- [U.S. Navy Press Release](#)
- [USINDOPACOM Press Release](#)

▪ Key legal points:

- The U.S., along with its Allies and partners, upholds the right to freedom of navigation and overflight, and other lawful uses of the sea and international airspace.
  - The MCA was conducted in a manner that is consistent with international law and with due regard to the safety of navigation and the rights and interests of other States.
  - ***By demonstrating the commitment to international law and professionalism in seamanship, MCAs provide a counterpoint to the increasingly aggressive and destabilizing behavior of the PRC in the South China Sea.***
- 26 September 2024: the U.S., Australia, Canada, the E.U., the Federated States of Micronesia, Finland, France, Japan, the Marshall Islands, the Netherlands, New Zealand, Portugal, Republic of Korea, Singapore, Tonga, Tuvalu, and the United Kingdom released a joint statement on the security and resilience of undersea cables in a globally digitalized world
- **Bottom-line:** emphasizing the criticality of undersea cables, the States identified principles that they aspire to uphold as part of a “shared global approach to ensure the security, reliability, interoperability, sustainability, and resiliency for the deployment, repair, and maintenance of undersea cable infrastructure.”
- References:
- [Joint Statement on the Security and Resilience of Undersea Cables in a Globally Digitalized World](#)
- Key legal points:
- The endorsing States aspire to “[c]omply with applicable international law, as reflected in UNCLOS, and domestic law and consider relevant policies at regional or national level, as well as applicable industry best practices, notably with regard to risk assessment and management.”
  - In contrast to the endorsing State’s commitment to the security and resilience of undersea cables – on 3 October 2024, Rebecca Tan of the Washington Post [reported](#) that ***the PRC’s increasingly aggressive, coercive, and destabilizing***

**behavior in the South China Sea poses significant risks to the repair and construction of underwater cables vital for internet connectivity in Asia.**

- The report details how the PRC's coercive permitting practices and aggressive at-sea tactics in the South China Sea have hindered critical construction and repair projects, and caused some cable ship owners to consider additional safety measures.
- 23 September 2024: a Russian Su-35 engaged in an unsafe and unprofessional maneuver in the vicinity of a North American Air Defense Command (NORAD) aircraft in the Alaska ADIZ.
  - **Bottom-line:** the Russian Su-35 failed to exercise due regard for the safety of navigation of the NORAD aircraft.
- References:
  - [NORAD Statement](#)
  - [Incidents at Sea Agreement \(INCSEA\)](#)
- Key legal points:
  - NORAD's Commander stated that "**the conduct of one Russian Su-35 was unsafe, unprofessional, and endangered all – not what you'd see in a professional air force.**"
  - UNCLOS Art. 87 requires that States exercise their freedom of overflight over the high seas "with due regard for the interests of other States in their exercise of the freedom of the high seas."
  - Moreover, Art. IV of the INCSEA agreement between the U.S. and Russia requires "Commanders of aircraft of the Parties shall use the greatest caution and prudence in approaching aircraft and ships of the other Party operating on and over the high seas."

Thank you for your continued participation in our Counter-Lawfare community of interest.  
V/r Ian

CDR Ian Santicola, JAGC, USN  
U.S. Indo-Pacific Command  
Chief, National Security Law  
Director, Counter-Lawfare Center





The U.S. Indo-Pacific Command's Office of the Staff Judge Advocate delivers full-spectrum legal support to integrated deterrence, legal force readiness, and counter-lawfare in support of COMUSINDOPACOM's Theater Campaign Plan. For more information, including USINDOPACOM's counter-lawfare TACAIDS, please visit <https://www.pacom.mil/Contact/Directory/Jo/Jo6-Staff-Judge-Advocate/>.