

## TOPIC: THE PRC'S UNLAWFUL RESTRICTIONS ON INNOCENT PASSAGE OF WARSHIPS

### BLUF

- The ships of all States, including warships, enjoy the right of innocent passage through the territorial sea (TTS).
- The PRC unlawfully restricts the right of innocent passage by requiring that foreign military ships obtain permission from the PRC prior to entering its claimed TTS.

### WHY THIS MATTERS

- The PRC's unlawful restrictions on innocent passage are an affront to the navigational rights and freedoms guaranteed to all nations under international law.
- If left unchallenged, the PRC's unlawful restrictions on innocent passage could ripen into accepted norms, and may embolden the PRC to take more aggressive enforcement action across its sweeping maritime claims to the detriment of the rules-based maritime order that benefits all nations.

### DETAILED DISCUSSION

- Under international law reflected in Article 17 of UNCLOS, the ships of all States, including warships, enjoy the right of innocent passage through the TTS. Passage is innocent so long as it is not “prejudicial to the peace, good order or security” of the coastal State (UNCLOS Article 19).<sup>1</sup>
- A warship that conducts innocent passage in conformity with the provisions of UNCLOS does *not* prejudice peace, good order or security of the coastal State.<sup>2</sup>
- Furthermore, Article 21 of UNCLOS permits coastal States to adopt laws and regulations concerning innocent passage in a limited and defined set of circumstances – UNCLOS does *not* permit coastal States to condition the right of innocent passage on advance notification or permission requirements.
- The PRC's 1992 Law on the Territorial Sea and Contiguous Zone contains unlawful restrictions on the right of innocent passage – specifically by requiring that foreign military ships obtain *permission* from the PRC prior to entering its claimed TTS.
- In 2021, the PRC revised its Maritime Traffic Safety Law (MTSL) in a manner that similarly restricts the right of innocent passage, even going so far as to compel reporting to the PRC's Maritime Safety Administration for certain foreign vessels upon “entering or exiting the territorial sea.”<sup>3</sup>
- In addition to restricting the right of innocent passage, the PRC claims excessive straight baselines, which in effect extend the breadth of the claimed TTS in which the PRC purports to restrict innocent passage.<sup>4</sup>
- According to the PRC's 1992 Law, the PRC's TTS claims correlate not only to the Chinese mainland, but also to all claimed offshore islands, to include Taiwan and the various affiliated islands, as well as the Paracels, Spratlys, Senkakus, and other contested features in the South and East China Seas.

<sup>1</sup> UN Convention on the Law of the Sea ([UNCLOS and Agreement on Part XI - Preamble and frame index](#))

<sup>2</sup> U.S. State Dep't, Limits in the Sea (LIS) No. 112, Mar. 1992, <https://www.state.gov/wp-content/uploads/2019/12/LIS-112.pdf>.

<sup>3</sup> See e.g. J06 TACAID on the MTSL ([U.S. Indo-Pacific Command > Contact > Directory > J0 > J06 Staff Judge Advocate \(pacom.mil\)](#)); see also [Codifying Waters and Reshaping Orders: China's Strategy for Dominating the South China Sea | Asia Maritime Transparency Initiative \(csis.org\)](#).

<sup>4</sup> Maritime Claims Reference Manual, People's Republic of China (2017), U.S. Dep't of Defense, available from the website of the Navy Judge Advocate General's Corps [Maritime Claims Reference Manual | U.S. Navy JAG Corps](#)

- Accordingly, the PRC purports to restrict innocent passage not just in its internationally recognized TTS, but also in the TTS of offshore features to which it has no internationally recognized claim, to include in some cases low-tide elevations that have no legal entitlement to a TTS at all.
- As many as 30 other countries also purport to restrict innocent passage of warships either through requirements for permission or notification, but consistent with international law reflected in UNCLOS, the United States and the vast majority of the 157 parties to UNCLOS impose no such restrictions.
- The United States has consistently protested the PRC's unlawful restrictions on innocent passage both diplomatically and operationally.<sup>5</sup>
- Meanwhile, the PRC continues to distort international law by justifying its unlawful restrictions on innocent passage, and mischaracterizing U.S. freedom of navigation assertions as threats to the PRC's sovereignty.<sup>6</sup>

## COUNTER-LAWFARE APPROACH<sup>7</sup>

- The ships of all States, including warships, enjoy the right of innocent passage through the TTS.
- The PRC unlawfully restricts the right of innocent passage by requiring that foreign military ships obtain permission from the PRC prior to entering its claimed TTS.
- The PRC's unlawful restrictions on innocent passage are an affront to the navigational rights and freedoms guaranteed to all nations under international law.
- Allies and partners should work together to reject unlawful restrictions on innocent passage that could ripen into accepted norms or embolden more aggressive action that threatens the rules-based maritime order.

## GRAPHIC – CASE STUDY

- On 29 Nov 2022, USS CHANCELORSVILLE conducted innocent passage within 12 nautical miles of Fiery Cross Reef in the Spratlys without prior notification or permission of the claimants – in effect challenging not any one particular nation, but rather the unlawful restrictions on innocent passage held by the PRC, Vietnam, and Taiwan.
- In subsequent public statements, a spokesperson for PRC's Southern Theater Command – without any basis in international law – accused the U.S. of threatening the PRC's "indisputable sovereignty over the South China Sea islands and their adjacent waters" and also cited CHANCELORSVILLE's activity as "ironclad evidence" of the United States' militarization of the South China Sea – ironic given the PRC's vast military build-up of contested features.
- In contrast, a statement from U.S. Seventh Fleet noted that the "the operation reflects our continued commitment to uphold freedom of navigation and lawful uses of the sea as a principle. The United States is defending every nation's right to fly, sail, and operate wherever international law allows."<sup>8</sup>



### Fiery Cross Reef

Fiery Cross Reef is a rock located in the Spratly Islands. China first took possession of the feature in 1988.

U.S. Board of Geographic Names: Fiery Cross Reef

China: Yongshu Jiao, 永暑礁

Philippines: Kagitingan Reef

Taiwan: Yongshu Reef, 永暑礁

Vietnam: Đá Chũ Thập

Occupied by: China

Legal Status: Rock

GPS: 9° 32' 45" N, 112° 53' 15" E

Total area of reclamation: 677 acres

<sup>5</sup> Department of Defense Annual Freedom of Navigation (FON) Reports, available from the Department of Defense website ([Under Secretary of Defense for Policy > OUSDP Offices > FON](#))

<sup>6</sup> See e.g., Navy Cruiser Sails Past Disputed Islands, Stars and Stripes, 29 November 2022.

<sup>7</sup> The purpose of this section is to inform potential approaches in the information environment.

<sup>8</sup> See [7th Fleet Cruiser Conducts Freedom of Navigation Operation in South China Sea > U.S. Indo-Pacific Command > 2015 \(pacom.mil\)](#)

## WANT TO KNOW MORE?

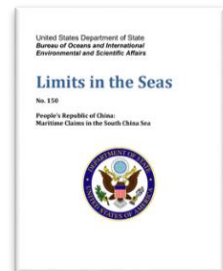
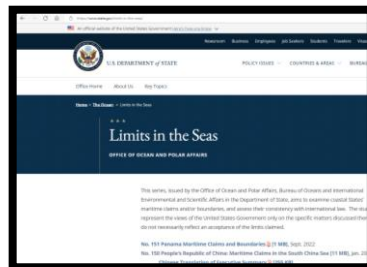
### U.S. Navy JAG Corps Maritime Claims Reference Manual

[https://www.jag.navy.mil/organization/code\\_10\\_mcrmm.htm](https://www.jag.navy.mil/organization/code_10_mcrmm.htm)



### U.S. Department of State, Office of Ocean and Polar Affairs, Limits in the Sea Series

<https://www.state.gov/limits-in-the-seas/>



### DoD Annual Freedom of Navigation Reports

<https://policy.defense.gov/OUSDP-Offices/FON/>



### DoD FON Programs Fact Sheet

<https://policy.defense.gov/Portals/11/DoD FON Program Summary 16.pdf?ver=2017-03-03-141350-380>

