



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:

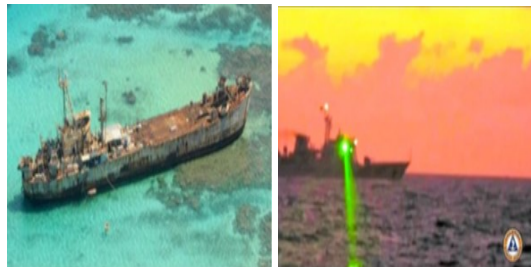
- PRC's provocation of the Philippines around 2TS
- US and allies capable of protecting SLOCs
- Multiple legal engagements across the Indo-Pacific
- MILOPS 23 Update
- Law relating to High Altitude Balloons

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2nd Thomas Shoal: Provocations Against Philippines

Feb 6, 2023 - a Chinese Coast Guard (CCG) vessel illuminated the bridge of a Philippine Coast Guard vessel (*BRP Malapascua*) with a military-grade laser, temporarily blinding some of the crew. *BRP Malapascua* was re-supplying Marines aboard *BRP Sierra Madre*, a Philippine naval vessel grounded in international waters since 1999 at Second Thomas Shoal (2TS) within the Philippine exclusive economic zone (EEZ). The Philippines filed a diplomatic protest against the PRC, calling the CCG vessel's actions a "blatant disregard for, and a clear violation of, Philippine sovereign rights."



Source: Jay Directo/Agence France Presse – Getty & PHL Coast Guard

The actions by the CCG vessel on Feb 6 reflect a pattern of provocative and unsafe conduct by the PRC against the Philippines in relation to *BRP Sierra Madre* and 2TS. In recent years, PRC vessels and aircraft have used various measures to interfere with Philippine efforts to resupply *BRP Sierra Madre*, from dangerous maneuvers at sea to water cannons at close range. At issue is the PRC's claim to territorial sovereignty over 2TS - a claim that was roundly debunked in a legally binding decision by a United Nations Arbitral Tribunal in 2016.

2TS, also known as Ayungin Shoal, is a low-tide elevation (LTE) in the Spratly Islands, approximately 104 NM from the Philippine Island of Palawan's archipelagic baselines. As an LTE situated wholly outside any

nation's territorial sea (TTS), 2TS does not generate a TTS of its own and is not subject to any claim to sovereignty or appropriation by any State under international law. Unlike the PRC, the Philippines does not make an unlawful claim to sovereignty over 2TS.

Although 2TS is outside the TTS of any nation, it falls within Philippines' EEZ. As such, the Philippines enjoys sovereign rights under international law to explore, exploit, conserve, and manage natural resources in and around 2TS. To protect these sovereign rights against unlawful claims by the PRC, the Philippines maintains a detachment of Marines at *BRP Sierra Madre*, which remains a commissioned vessel in the Philippine Navy.

The US has affirmed that an armed attack on Philippine armed forces, aircraft, or public vessels in the South China Sea would invoke U.S.-Philippines Mutual Defense Treaty obligations. These obligations could extend to on attack on *BRP Sierra Madre*, its Marine detachment, or a Philippine public vessel transiting to re-supply *BRP Sierra Madre*.

USINDOPACOM continues to expand efforts with the Armed Forces of the Philippines (AFP) to preserve peace and stability and uphold international law. Among many efforts currently underway, USINDOPACOM and AFP legal advisors recently met in Manila to plan legal engagements and cooperation for the coming year. These activities will serve to strengthen collaboration between legal advisors, counter malign activity and legal warfare, and advance the rules-based international order. For additional details and sourcing, see J06 TACAID [here](#).

U.S., Allies, & Partners Protect Chokepoints and Sea Lines of Communication

In the event of conflict, the United States and its allies and partners are willing and able to protect and secure chokepoints and sea lines of communication (SLOCs) around the world. Chokepoints are constricted passageways, like straits and canals, that separate oceans and seas; they are relatively narrow, heavily trafficked, and sometimes in regions vulnerable to instability. SLOCs are the principal maritime routes between ports used for trade, military, or other purposes.



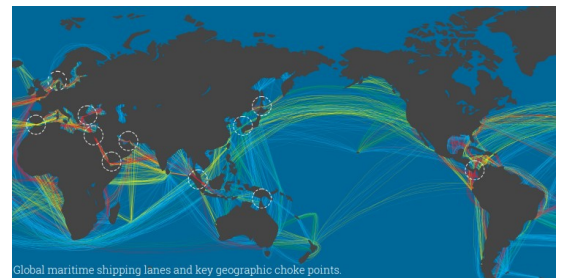
Source: U.S. Navy - USN, Japanese & Canadian Forces

The naval concept applicable to protecting and securing chokepoints and SLOCs is known as *sea control*. Lawful sea control helps to preserve freedom of navigation guaranteed to all nations by international law. When necessary during armed conflict, lawful sea control may deny or limit an adversary's ability to threaten chokepoints and SLOCs or use them for war-sustaining shipping.

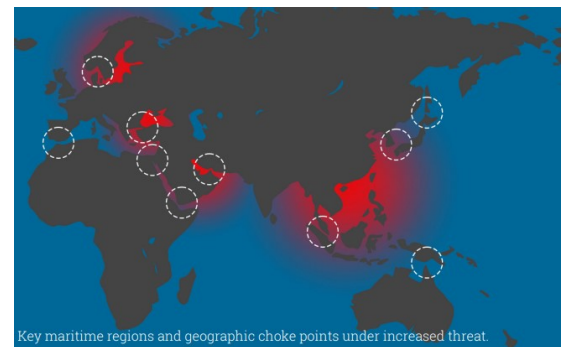
Sea control is a concept deeply rooted in naval strategy and history. [U.S. maritime strategy](#) defines sea control as "the condition in which one has freedom of action...in specified areas and for specified periods of time and, where necessary, to deny or limit its use to the enemy." Like the United States, [Japan](#), [South Korea](#), [Australia](#), the [United Kingdom](#), and many other allies and partners recognize the importance of sea control in naval strategy.

Legal vigilance enables effective sea control by ensuring execution in accordance with international law including the law of armed conflict. Legal vigilance also illuminates attempts by other states to exercise unlawful sea control through coercion and intimidation; unsafe and unprofessional air and sea interactions; interference with navigational rights and freedoms; and legally baseless and excessive maritime claims.

Given the vital significance of chokepoints and SLOCs to the global economy, U.S. forces train with allies and partners to exercise lawful sea control in a manner that ensures critical waterways remain open for trade and freedom of navigation, but shielded from hostilities and war-supporting shipping by adversaries during potential conflict.



Global maritime shipping lanes and key geographic choke points.



Key maritime regions and geographic choke points under increased threat.

Source: [USN CNO Navigation Plan \(2022\)](#)

Japan and U.S. Maritime Legal Dialogue

March 15, 2023 - The Commander, U.S. Pacific Fleet (CPF) Legal Office hosted counterparts from the Japan Maritime Self-Defense Force (JMSDF) Maritime Staff Office for a day of legal discussions and relationship-building. The meeting was part of a recurring series of legal engagements conducted between CPF and JMSDF legal advisors pursuant to a Memorandum of Understanding executed in 2013. The purpose of these continuing engagements is to foster trust and cooperation, maximize alignment on legal issues of common interest, and ensure interoperability in advance of coalition contingency operations in the future.



CPF-JMSDF Legal Dialogue participants gather in front of Headquarters U.S. Pacific Fleet

The Spring 2023 legal dialogue addressed a number of contemporary topics, including high-altitude balloons, grey-zone activities, and recent developments in Japanese domestic law and policy concerning national security strategy and when a use of force may be appropriate. Participants also engaged in robust discussion regarding the PRC's use of legal warfare to undermine the rules-based international order and U.S. Indo-Pacific Command's counter-lawfare initiative, with particular emphasis on the importance of ensuring a common understanding between allies on complex issues. Both offices resolved to continue close coordination and collaboration in their day-to-day practice. After a full day of weighty legal discussions at COMPACFLT, the dialogue concluded with an informal social and happy hour on historic Ford Island overlooking the USS Arizona Memorial. Kanpai!

Australia's Military Legal Service Hosts Inaugural Forum

The Australian Defence Force's Military Legal Service (MLS) held its inaugural Legal Forum in Sydney from Mar 29-30, 2023. The theme was: *Legal Capability – Enabling the Joint Force in Peace and War*. 200 MLS Legal Officers, including VIPs and guests from New Zealand, the UK and United States attended.

The MLS Forum brought together the ADF's joint legal capability for the first time since its inception, as an element of Joint Capabilities Group



International panel of military lawyers from NZDF, UK Army, and US INDOPACOM

and Defence Legal Division, aligning with Defence's strategic direction.

Among a variety of topics, the MLS Forum included discussion on the imperative to maintain a well-disciplined fighting force, emphasizing that how a nation fights can often outweigh with whom it fights.

Participants also examined legal challenges in the era of strategic competition including issues associated with emerging technologies and combined efforts to counter legal warfare.

Nimitz Carrier Strike Group Talks Counter-Lawfare with Allies

The Nimitz Carrier Strike Group conducted a trilateral maritime exercise with the Japan Maritime Self-Defense Force (JMSDF) and Republic of Korea Navy (ROKN), Apr 3-4, 2023.

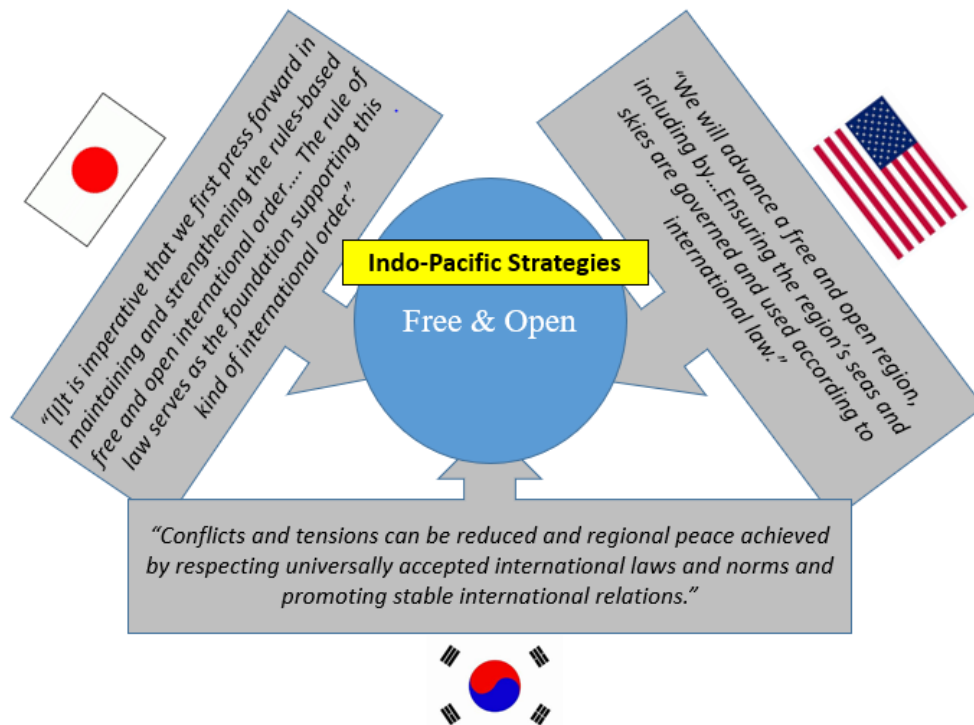
“The U.S., Japan, and Korea are three maritime nations with shared vision for a free and open Indo-Pacific by working together to develop mutual trust, partnership, and capability,” said Rear Adm. Christopher Sweeney, commander, Carrier Strike Group 11.

In the midst of combined operations at sea (including anti-submarine exercises, search and rescue exercises, and staff embarkations) officers of all three nations took time to discuss how to recognize and respond to the PRC’s legal warfare efforts.

During the exercise, U.S. Navy, JMSDF, and ROKN officers discussed USINDOPACOM’s counter-lawfare program. This engagement was the first of its kind at sea, and was unique in that the

audience consisted primarily of surface warfare officers from the three navies and focused on how all naval officers, not just legal advisors, must remain legally vigilant.

“Because PRC uses law as a weapon, naval officers should have a tactical understanding of the challenges these legal dilemmas create – just as they would learn about any other PRC weapon system,” said Lieutenant Commander Dennis Harbin, staff judge advocate, Carrier Strike Group 11.



Opportunities to collaborate among like-minded allies and partners on the influence of law in shaping naval operations supports USINDOPACOM’s efforts to protect the rules-based international order and a Free and Open Indo-Pacific. Discussion topics included collaboration between legal advisors and public affairs officers in the “battle of the narrative”;

the issue of accession to the UN Convention on the Law of the Sea (UNCLOS) and the weight of customary international law; and the importance of recording and reporting unsafe behaviors.

Participants in the trilateral exercise included the aircraft carrier USS Nimitz (CVN 68), the Arleigh

Burke-class guided missile destroyers USS Decatur (DDG 73) and USS Wayne E. Meyer (DDG 108), JS Umigiri (DD 158) of the JMSDF, and ROKS Yul Gok Yi (DDH 992), ROKS Dae Jo Young (DDH 977), ROKS Choi Young (DDH 981), and ROKS So Yang (AOE 51) of the ROKN.

U.S. and Sri Lanka Legal Teams Build Ties

In February and March 2023 judge advocates assigned to U.S. Indo-Pacific Command and the Defense Institute of International Legal Studies (DIILS) supported International Human Rights Law and Law of Armed Conflict legal engagements in Colombo and Trincomalee, Sri Lanka. In addition to robust exchanges on the rule of law and the rules-based international order, discussions focused largely on maritime law enforcement, the use of force in maritime operations, defense support of civil authorities, and illegal, unreported, and unregulated fishing (IUUF). Representatives from the Sri Lankan Air Force and Navy were especially concerned with combatting IUUF as they regularly work together on this important issue for the country. The U.S. and Sri Lankan sides committed to continued legal collaboration to address matters of mutual interest.



USINDOPACOM/DIILS Instructors in Trincomalee, Sri Lanka.

US Personnel: Bottom Row, Left to Right: LCDR Phil Brueder, (USN), LTC Steve Bryant (USAR), LT Chuck Ball (USN).

ROK - U.S. Lawyers Strengthen Alliance During Ex Freedom Shield 23

Exercise Freedom Shield took place from 6 March to 23 March 2023 in the Republic of Korea (ROK). “Freedom” highlights the immutable value of the ROK-U.S. Alliance and “Shield” symbolizes the defensive nature of the exercise. More than 30 U.S. judge advocates from all services teamed with ROK counterparts in delivering operational legal support to Combined Forces Command, U.S. Forces Korea, and United Nations Command on a wide

range of issues, to include self-defense, rules of engagement, laws of armed conflict, and law of the sea.

Throughout the exercise, the ROK-U.S. legal team exemplified legal interoperability and enduring commitment to the rules-based international order.



(Left to Right) Capt Burke (USAF), 1stLt Kim (ROK), PFC Ahn (ROK), LtCol Noh (ROK), MAJ Jones (USA), Maj Korges (USMC), CDR Ericson (USN), LtCol Eberle (USAF), LT Fitzpatrick (USN).

Exercise Cobra Gold - 1st Annual Multi-National Legal Summit



U.S. and Indonesian JAGs participating in CARAT December 2022.



Colonel Machica, Judge Advocate General of the Armed Forces of the Philippines (AFP), with Major Alferes, AFP (right) and Commander Emge, US INDOPACOM J06 (left).



Legal advisors from AFP and USINDOPACOM joint force meet during Balikatan 2023, the largest Philippines-U.S. combined exercise to date.

More than 7,000 military personnel took part in the 42nd iteration of Exercise Cobra Gold from 27 February to 10 March 2023 in the Kingdom of Thailand. In addition to the host nation, participant nations included the United States, Indonesia, the Republic of Korea (ROK), Singapore, Japan, and Malaysia, with limited participants, planners, and observers from more than 20 additional nations.

This year's Cobra Gold featured the 1st Annual Multi-National Legal Summit designed to strengthen legal partnerships and improve legal interoperability. Military legal advisors from Thailand, the United States, Singapore, Malaysia, Australia, and the ROK shared best practices, expanded legal networks, built shared legal understandings, and committed to work together on matters of mutual interest, including countering legal warfare and upholding the rules-based

international order.

USINDOPACOM judge advocates concluded the summit with a presentation emphasizing Commander USINDOPACOM's vision of a Free and Open Indo-Pacific.



"Cobra Gold strengthens our ability to plan and conduct combined joint high-end security peacekeeping operations across all domains," Adm. John Aquilino, Commander, U.S. Indo-Pacific Command, said at the opening ceremony. "Through Cobra Gold we demonstrate our resolve to respond together to preserve a free and open Indo-Pacific so that all nations can maintain peace, stability and prosperity."

UPDATE: MILOPS 23



USINDOPACOM's 34th annual International Military Law and Operations (MILOPS) Conference is set to occur from 30 July through 3 August in Bali, Indonesia. This year's conference theme is "Cooperating to Defend the Rules-Based International Order."

"We are grateful to the host nation and our friends in the Indonesian armed forces for their support with executing MILOPS 23," said Commander Tim Boyle, USINDOPACOM Chief of National Security Law.

The MILOPS conference agenda will in-

clude keynote addresses from senior U.S. and host nation officials as well as presentations and panel discussions featuring prominent law, policy, and operations experts. Topics to be addressed include lessons from Russia's invasion of Ukraine; implications of climate change on national security; illegal, unregulated, and reported fishing; and a range of threats to the rules-based international order in the South and East China Seas.

Formal invitations and the official MILOPS 23 website are expected to launch in May. Contact j06.pacom@pacom.mil for questions.

Setting the Record Straight on Balloon Law

On 4 Feb 2023, the U.S. conducted a successful operation to take down a PRC high-altitude balloon (HAB) above the territorial sea off South Carolina. U.S. officials stated the HAB was equipped to collect signals intelligence (SIGINT) for the People's Liberation Army (PLA) as part of a program that had targeted over 40 countries. The U.S. Congress condemned the PRC for the "brazen violation" of U.S. sovereignty and efforts to "deceive the international community through false claims about its intelligence collection campaigns."

At first, the PRC implausibly characterized its HAB as a "civilian airship" used for "meteorological" purposes while blaming "force majeure" for "unintended entry." Now that time has passed and the extent of the PRC's HAB program is widely known, the PRC seems to have pivoted from one-off attempts at justification in favor of a broader effort to sow confusion around the idea of "near space" and the false notion that international law does not limit State activity above altitudes at which aircraft operate.

CNN reported that searches on CNKI, the PRC's largest online academic database, show PRC military and civilian researchers have published more than 1,000 papers and reports on "near space." Some PRC-controlled media have even claimed that the Outer Space Treaty and its provisions on "exploration and use by all states" should be applied to HAB flights.

By propagating the existence of "near space" in various publications, the PRC likely aims to foment a grey zone in which to execute unlawful surveillance under a veneer of legitimacy. To be clear, there is no "near space" in international law – only airspace and outer space. International law does not specify where airspace ends and space begins, but all proposals demarcating the airspace-outer space divide begin at altitudes well above where HABs operate.

Notwithstanding the PRC's efforts to create confusion around "near space," HABs are aircraft under international law subject to the rules and norms governing safety of flight and observance of national airspace boundaries, even in uncontrolled airspace above altitudes at which aircraft operate. Under international law every nation has complete and exclusive sovereignty over the airspace above its territory. As such, all nations may take measures within their respective airspace to mitigate threats posed by unlawful HAB surveillance. The measures taken by U.S. forces to mitigate the threat posed by the PRC's HAB were consistent with longstanding practice of States exercising jurisdiction in their territories and airspace in analogous circumstances.

USINDOPACOM's legal position regarding HABs has been consistent and transparent. As an example, nearly a year prior to the U.S. takedown of the PRC's HAB, the Armed Forces of the Philippines (AFP) and USINDOPACOM coordinated on the use of HABs for combined maritime domain awareness during Balikatan, a large-scale bilateral exercise. AFP and USINDOPACOM ensured their cooperative use of HABs during Balikatan conformed to international law and standards governing navigational freedoms and safety of flight.



Lawful use of HABs by U.S. forces in coordination with the Armed Forces of the Philippines during exercise Balikatan 2022.
Image Credit: PETTY OFFICER DARBI COLSON/U.S. ARMY



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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.

(continued from page 7) USINDOPACOM coordinated extensively with AFP authorities and air traffic control to ensure the safety of people on the ground and civil and military aircraft operating nearby. Before the exercise, U.S. forces received authorization from the Philippine government to operate the HABs in Philippine national airspace as required by international law and Philippine domestic law.

In a demonstration of combined commitment to upholding the rules-based international order, the legal staffs of USINDOPACOM and Australia’s Headquarters Joint Operation Command (HQJOC) collaborated on an August 2022 bilateral legal memo on international law applicable to HAB operations, later receiving significant attention on [Twitter](#). USINDOPACOM and HQJOC legal advisors agreed that HABs operate in airspace and do not cross into outer space, and that “any State’s use of HABs must conform to international rules and norms governing safety of flight. This includes the exercise of due regard as well as observance of boundaries of national airspace.”

Although HABs may not be dominating the news cycle anymore, continued legal vigilance requires like-minded allies and partners to reject “near space” before it gains a foothold. USINDOPACOM J06 will continue to work together with allied and partnered legal offices to monitor evolving PRC legal warfare tactics and illuminate actions that undermine international law and the rules-based international order.

For additional details and sourcing, see the INDOPACOM J06 TACAID located [here](#).