
The China Coast Guard Law (2021): A New Tool for Intimidation and Aggression

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◀ Abstract ▶

China's new Maritime Policy Law (MPL) purports to regulate the duties of China's maritime police agencies, including the China Coast Guard, and safeguard China's sovereignty, security, and rights and interest. The MPL has potentially far-reaching application, as China claims extensive maritime areas off its mainland and in the South China Sea. This expansive application of maritime law enforcement jurisdiction is problematic given that most of China's maritime claims are inconsistent with international law. To the extent that the MPL purports to assert jurisdiction over foreign flagged vessels in disputed areas or on the high seas, it contravenes international law. Numerous provisions of the MPL regarding the use of force are also inconsistent with international rules and standards governing the use of maritime law enforcement jurisdiction, as well as the UN Charter's prohibition on the threat or use of force against the territorial integrity or political independence of any state. China could use the MPL as a subterfuge to advance its illegal territorial and maritime claims in the South and East China Seas and interfere with coastal State resource rights in their respective exclusive economic zone.

Key Words : use of force, maritime law enforcement, reasonable and necessary, China Coast Guard, Maritime Police Law

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I . Introduction

The rules-based international legal order that underlies a free and open Indo-Pacific has been under a continuous and an unprecedented assault from China over the past 20 years. Although it is a party to the United Nations Convention on the Law of the Sea (UNCLOS),¹⁾ virtually all its domestic legislation, regulations, statements, and declarations from 1992 to present are, completely or in part, inconsistent with the provisions of the Convention and customary international law.²⁾

On February 1, 2021, a new law with similar deficiencies came into force that regulates the activities of the China Coast Guard (CCG) and other maritime police agencies under its command and control.³⁾ The Maritime Police Law of the People's Republic of China (MPL) provides the CCG broad authority to safeguard China's sovereignty, security, and maritime rights and interests.⁴⁾ The law also authorizes the CCG to use of force and various weapon systems, to include lethal force and surface-to-surface and surface-to-air missiles, to ensure compliance.⁵⁾

Tasks assigned to the CCG by the MPL include: carrying out maritime safety and security; maintaining maritime security and order; combating

1) United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

2) Bureau of Oceans and International and Environmental and Scientific Affairs, U.S. Department of State, Limits in the Sea No. 117: Straight Baseline Claims: China (1996), <https://www.state.gov/wp-content/uploads/2020/01/LIS-117.pdf>; U.S. Department of Defense Representative for Ocean Policy Affairs, Maritime Claims Reference Manual, https://www.jag.navy.mil/organization/code_10_mcrm.htm (last visited Mar. 25, 2021); South China Sea Arbitration (Phil. v. China), Case No. 2013-19, PCA Case Repository, Award, ¶¶ 169-278, 631, 682, 1203B(2) (Perm. Ct. Arb. 2016), <https://pca-cpa.org/en/cases/7/> [hereinafter SCS Award]; Michael R. Pompeo, U.S. Secretary of State, Press Statement, U.S. Position on Maritime Claims in the South China Sea (July 13, 2020), <https://2017-2021.state.gov/u-s-position-on-maritime-claims-in-the-south-china-sea/index.html> [hereinafter U.S. SCS Position]; Raul "Pete" Pedrozo, China's Legacy Maritime Claims, LAWFARE (July 15, 2016), <https://www.lawfareblog.com/chinas-legacy-maritime-claims>.

3) Maritime Police Law of the People's Republic of China (promulgated by Standing Committee, 13th Nat'l People's Cong., Jan. 22, 2021, effective Feb. 1, 2021) XINHUA NEWS AGENCY, Jan. 22, 2021, art. 84, [hereinafter MPL], <http://politics.people.com.cn/n1/2021/0123/c1001-32009344.html>.

4) *Id.*, art. 1.

5) *Id.*, Chap. III-VI.

maritime smuggling; supervising the development and utilization of marine resources; protecting the marine ecological environment; and conducting marine fishery production operations.⁶⁾ More specifically, the CCG shall, *inter alia*, carry out patrols in waters under China's jurisdiction; guard key islands and reefs; manage and protect maritime boundaries; prevent, stop and eliminate acts that endanger national sovereignty, security, and maritime rights and interests; provide protection of important maritime targets and major activities; protect the safety of key islands and reefs, including artificial islands, facilities, and structures in the exclusive economic zone (EEZ) and continental shelf; protect islands and the development and utilization of uninhabited islands; protect submarine cables and pipelines; monitor foreign marine scientific research (MSR); and supervise activities in fishing grounds.⁷⁾

Although these duties may appear to be legitimate maritime law enforcement activities, the manner and location in which they are implemented—e.g., territorial sea v. EEZ or high seas—and the level and intensity of force used to ensure compliance—e.g., non-lethal v. deadly force—may violate international norms regarding navigational rights and freedoms, as well as international standards for the use of force by maritime law enforcement agencies. This article analyzes various provisions of the MPL, especially the use of force/use of weapons provisions and the articles that could affect navigational freedoms, to determine whether they are consistent with international law and norms, including UNCLOS and recognized guidelines on the use of force at sea. The article concludes that many of these provisions are inconsistent with international law or would, in all probability, be implemented improperly by the CCG given China's track record over the past 20 years of intimidating and using excessive force against other nations to advance its illegitimate claims in the Yellow Sea, East China Sea (ECS), and South China Sea (SCS).

6) *Id.*, art. 5.

7) *Id.*, art. 12.

II. Expansive Scope of Application

One of the MPL's most problematic provisions is its potential scope of application. Article 3 applies to CCG law enforcement activities "in and over the sea areas under the jurisdiction of the People's Republic of China" (PRC).⁸⁾ The term sea areas under PRC jurisdiction is not defined and is somewhat ambiguous, perhaps intentionally. Enacting ambiguous and imprecise laws and regulations is a major component of the Chinese playbook, as it allows China to alter its position on the application of the law based on changed circumstances. Nonetheless, an evaluation of other Chinese pronouncements in the ECS, SCS, and Yellow Sea may shed light on the meaning of the term.

A. South China Sea

In the SCS, for example, China claims indisputable sovereignty over the SCS Islands and the adjacent waters, as well as sovereign rights jurisdiction based on historic rights, with respect to the maritime areas encompassed by the nine-dash line (9DL). Nonetheless, China has never expressly clarified the nature or scope of its claimed historic rights, nor its understanding of the meaning of the 9DL.⁹⁾ The closest it came to defining these rights was in 2009 when China filed a *note verbale* with the United Nations responding to a joint submission by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf concerning their extended continental shelf claim in the SCS. In that note China claimed that it "has indisputable sovereignty over the islands in the South China Sea and the adjacent waters and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof" within the 9DL.¹⁰⁾ Thus, the MPL would arguably apply to all the

8) Id., art. 3.

9) SCS Award, *supra* note 2, ¶ 180.

10) Note Verbale, Permanent Mission of the People's Republic of China to the United Nations, Notification Regarding the Joint Submission by Malaysia and Vietnam to the Commission on the Outer Limits of the Continental Shelf Concerning the Outer Limits of the Continental

land features, waters, and seabed encompassed by the 9DL. Such an expansive application, however, is unlawful given that an international tribunal has determined that China's historic rights claims, as well as other sovereign rights and jurisdiction, with respect to the SCS maritime areas encompassed by the 9DL "are contrary to the Convention and without lawful effect..."¹¹⁾

B. East China Sea

In the ECS, China has an ongoing territorial and maritime boundary dispute with Japan. China claims sovereignty over the Senkaku (Diaoyu) Islands,¹²⁾ which are currently under the administration of Japan pursuant to the Okinawa Reversion Treaty.¹³⁾ In 2012, China established straight baselines connecting some of these islands.¹⁴⁾ This action is unlawful since continental states may not establish archipelagic baselines around claimed mid-ocean archipelagoes.¹⁵⁾ Japan protested the baselines declaration indicating that China's unilateral action has no basis under international law, including UNCLOS, and that the Senkakus are part of Japan and under the valid control of the Government of Japan.¹⁶⁾

Shelf Beyond 200 Nautical Miles, Ref. No. CML/17/2009 (May 7, 2009), https://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009_re_mys_vnm_e.pdf.

11) SCS Award, *supra* note 2, ¶¶ 277-278.

12) The Law on the Territorial Sea and the Contiguous Zone of the People's Republic of China, adopted at the 24th meeting of the Standing Committee of the National People's Congress on 25 February 1992, art. 2, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf.

13) Agreement Between the United States of America and Japan Concerning the Ryukyu Islands and the Daito Islands, signed at Washington and Tokyo, June 17, 1971, art. I, 23 U.S.T. 446, T.I.A.S. 7314.

14) Statement of the Government of the People's Republic of China On the Baselines of the Territorial Sea of Diaoyu Dao and Its Affiliated Islands, 10 September 2012, United Nations, Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, Law of the Sea Bulletin No. 80 (2013).

15) Only island nations may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provide the ratio of water to land is between 1-to-1 and 9-to-1. UNCLOS, *supra* note 1, art. 46-47.

16) Note Verbale, Permanent Mission of Japan to the United Nations, Ref. No. PM/12/303 (Sept. 24, 2012), https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn89_2012_jpn.pdf.

In 2012, China also filed its extended continental shelf notification with the Commission on the Limits of the Continental Shelf (CLCS), the outer limit of which extends to the Okinawa Trough.¹⁷⁾ The distance between the opposite coasts of Japan and China in the area in question is less than 400 nautical miles (nm). In such circumstances, Article 83 of the Convention requires that the delimitation of overlapping continental shelves shall be achieved by agreement of the parties or through third-party dispute settlement to achieve an equitable solution.¹⁸⁾ Thus, as Japan correctly points out in its *note verbale* to the United Nations, China may not unilaterally establish the outer limit of the continental shelf in this area.¹⁹⁾ Moreover, Article 83 further requires that, pending such agreement, the parties shall not take action that could jeopardize or hamper reaching a final agreement.²⁰⁾ Thus, employing the CCG to enforce these disputed claims in the ECS would violate China's obligations under UNCLOS, as well as the U.N. Charter as an unlawful use of force.²¹⁾

C. Yellow Sea

The maritime boundary between China and Republic of Korea (ROK) in the northern ECS and in the Yellow Sea, including around Ieodo (Socotra Rock), is also unresolved. The ROK's claim to the maritime area around Ieodo dates back to the declaration of the Syngman Rhee line in 1952, and the Ieodo Ocean Research Station, constructed by the ROK on the

17) Submission of the People's Republic of China Concerning the Outer Limits of the Continental Shelf beyond 200 Nautical Miles in Part of the East China Sea, Executive Summary, 14 December 2012, https://www.un.org/Depts/los/clcs_new/submissions_files/chn63_12/executive%20summary_EN.pdf.

18) UNCLOS, *supra* note 1, art. 83.

19) Note Verbale, Permanent Mission of Japan to the United Nations, Ref. No. PM/12/372 (Dec. 28, 2012), https://www.un.org/Depts/los/clcs_new/submissions_files/chn63_12/jpn_re_chn_28_12_2012.pdf.

20) UNCLOS, *supra* note 1, art. 83.

21) Article 2(4) requires member states to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. United Nations, *Charter of the United Nations*, 1945, 1 U.N.T.S. XVI, [hereinafter U.N. Charter], art. 2 ¶ 4.

submerged feature, was opened in 2003 to monitor weather patterns, ocean currents, and fish stocks.²²⁾ China also asserts jurisdiction over the waters in the Yellow Sea surrounding the submerged rock as part of its EEZ.²³⁾

In 1996, the ROK declared a 200-nm EEZ consistent with the Convention, recognizing (consistent with Article 74 of UNCLOS) that the delimitation of its EEZ in relation to the EEZ of other States with opposite or adjacent coasts would be “effected by agreement with the States concerned on the basis of international law.”²⁴⁾ In addition, like Article 83, Article 74 of UNCLOS requires that, in delimiting overlapping EEZs, the parties not take action that would “jeopardize or hamper the reaching of the final agreement.”²⁵⁾ The ROK also filed a partial submission with the CLCS concerning the outer limits of its extended continental shelf in the ECS in December 2012, which overlaps China’s claim in the Okinawa Trough.²⁶⁾

Although China and the ROK are engaged in bilateral discussions to resolve the outstanding maritime disputes, it is unlikely that a solution will be achieved in the near term given the different approaches taken by each side for delimiting their maritime boundaries.²⁷⁾ China argues that the delimitation should be proportionate to the length of its coastline and larger population. The ROK maintains that the parties should apply the median line principle so that the maritime boundary is drawn equidistant

22) Declaration on Sovereignty over Adjacent Oceans (Notification No. 14 of the State Council of the Republic of Korea), Jan. 18, 1952, <https://theme.archives.go.kr//next/monthly/viewMain.do?year=2010&month=01>; Terence Roehrig, *South Korea: The Challenges of a Maritime Nation*, The National Bureau of Asian Research, Dec. 23, 2019, <https://www.nbr.org/publication/south-korea-the-challenges-of-a-maritime-nation/>.

23) T. Roehrig, *supra* note 22.

24) Exclusive Economic Zone Act No. 5151 (Aug. 8, 1996), art.1, 2, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/KOR_1996_EEZAct.pdf; UNCLOS, *supra* note 1, art. 57, 74.

25) UNCLOS, *supra* note 1, art. 74.

26) Partial Submission to the Commission on the Limits of the Continental Shelf Pursuant to Article 76 Paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary, 26 December 2012, https://www.un.org/depts/los/clcs_new/submissions_files/kor65_12/executive_summary.pdf.

27) *Country Profile for the Republic of Korea*, The National Bureau of Asian Research, <https://www.nbr.org/publication/republic-of-korea/>.

from the coast of each state.²⁸⁾ Until the issue is resolved, however, UNCLOS and the U.N. Charter preclude China from using force to settle the dispute.

III. Impacts on Navigational Freedoms

In addition to its overly broad scope of application, the MPL contains numerous provisions that are inconsistent with UNCLOS and customary international law and will adversely impact traditional navigational rights and freedoms for all states in the Asia-Pacific region.

A. MPL Article 17

Article 17 authorizes the CCG to act against foreign ships that have “illegally entered” China’s territorial sea. These actions include ordering the vessel to leave the territorial sea immediately or taking more aggressive measures such as detaining, forcibly removing, or forcibly towing the vessel.²⁹⁾ Without defining “illegal entry,” the MPL could be used as a subterfuge to impede the right of innocent passage, which is guaranteed to all ships by international law.³⁰⁾ Passage is considered innocent if it is not prejudicial to the peace, good order, or security of the coastal state. An exhaustive list of activities considered to be prejudicial to the peace, good order, or security of the coastal state is contained in Article 19 of the Convention. Although China may take the necessary measures in its territorial sea to prevent passage that is not innocent, unless a foreign vessel is engaged in a prohibited activity, China may not deny or impair its passage through its territorial sea.³¹⁾

28) *Id.*; T. Roehrig, *supra* note 22.

29) MPL, *supra* note 3, art. 17.

30) UNCLOS, *supra* note 1, art. 17.

31) *Id.*, art. 24, 25.

B. MPL Article 21

Similarly, Article 21 purports to authorize actions against sovereign immune vessels that are clearly inconsistent with international law. If the CCG determines that a warship or other sovereign immune vessel has violated China's laws and regulations in waters under its jurisdiction, it may order the warship to leave immediately. If the warship does not comply and causes serious harm or threats, the MPL allows the CCG to take measures, such as "forced eviction and forced towing," to expel the warship from Chinese waters.³²⁾ International law, as reflected in UNCLOS, is clear on this point—warships and other sovereign immune vessels enjoy complete immunity from coastal state interference. Subject to the right of self-defense against an armed attack or other unlawful threat or use of armed force,³³⁾ if a foreign warship does not comply with coastal state laws and regulations concerning passage through the territorial sea and disregards a request from the coastal state to comply, the coastal state's sole remedy is to order the warship to leave the territorial sea immediately.³⁴⁾ Beyond the territorial sea, warships and other sovereign immune vessels are under the exclusive jurisdiction of the flag state and have complete immunity from the jurisdiction of any other state.³⁵⁾ Any CCG interference with sovereign immune vessels seaward of the 12-nm limit would therefore be unlawful.

Article 21 arguably empowers the CCG to interfere with U.S. freedom of navigation operations and other military activities (*e.g.*, surveillance and reconnaissance operations (SRO), military marine data collection, naval and air exercises, and presence operations) within China's claimed maritime zones. China maintains that foreign military ships must obtain permission to enter its territorial sea.³⁶⁾ China also restricts military

32) MPL, *supra* note 3, art. 21.

33) U.N. Charter, *supra* note 21, art. 51.

34) UNCLOS, *supra* note 1, art. 30.

35) *Id.*, art. 58, 86-87, 92, 95-96, 110, 236.

36) The Law on the Territorial Sea and the Contiguous Zone of the People's Republic of China, adopted at the 24th meeting of the Standing Committee of the National People's Congress

marine data collection (military surveys) and other military activities in its EEZ.³⁷⁾ The United States routinely challenges these illegal claims under the U.S. Freedom of Navigation Program and maintains a forward naval presence and conducts other lawful military activities in and over China's claimed maritime zones.³⁸⁾ Of note, in 2019, former Chief of Naval Operations Admiral John Richardson warned his PLAN counterpart, Vice-Admiral Shen Jinlong, that the U.S. Navy would treat CCG grey zone operations the same way it treats PLAN aggressiveness.³⁹⁾ Thus, CCG interference with U.S. ships and aircraft could have unintended consequences. A threat or use of force by the CCG against a U.S. warship or other sovereign immune vessel would justify a response in self-defense under Article 51 of the Charter, as well as the U.S. Standing Rules of Engagement, which vest U.S. commanders with the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent.⁴⁰⁾

C. MPL Article 25

Article 25 is particularly problematic from a freedom of navigation perspective. It authorizes the CCG to establish temporary maritime

on 25 February 1992, art. 6, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf; People's Republic of China, Declaration made upon ratification of the United Nations Convention on the Law of the Sea, Aug. 25, 2006, ¶ 4, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#EndDec.

37) Surveying and Mapping Law of the People's Republic of China, Apr. 27, 2017, art. 2, <http://extwprlegs1.fao.org/docs/pdf/chn173733.pdf>; Raul (Pete) Pedrozo, *Military Activities in the Exclusive Economic Zone: East Asia Focus*, 90 INT'L L. STUD. 514 (2014); Raul (Pete) Pedrozo, Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone, 9 Chinese J. Intl Law 9-29 (March 2010).

38) Department of Defense Report to Congress, Annual Freedom of Navigation Report Fiscal Year 2020, <https://policy.defense.gov/Portals/11/Documents/FY20%20DoD%20FON%20Report%20FINAL.pdf>; R. Pedrozo, *supra* note 37.

39) Demetri Sevastopulo & Kathrin Hille, *US warns China on aggressive acts by fishing boats and coast guard*, Financial Times, Apr. 28, 2019, <https://www.ft.com/content/ab4b1602-696a-11e9-80c7-60ee53e6681d>.

40) U.N. Charter, *supra* note 21, art. 51; Chairman, Joint Chiefs of Staff, CJCSI 3121.01B, Standing Rules of Engagement (SROE)/Standing Rules for the Use of Force (SRUF) for U.S. Forces (2005).

security zones that can be used to restrict or prohibit the passage or stay of ships in waters subject to PRC jurisdiction. The CCG may establish such zones for any of the following reasons: (1) to perform maritime security tasks; (2) to combat illegal and criminal activities at sea; (3) to deal with emergencies at sea; (4) to protect marine resources and the ecological environment; or (5) any other situation that requires the delimitation of temporary maritime security zones.⁴¹⁾ Given the scope of application of the MPL, these zones could be established both within and outside China's claimed territorial sea and internal waters.

A coastal state may temporarily suspend innocent passage in a specified area of its territorial sea "if such suspension is essential for the protection of its security, including weapons exercises."⁴²⁾ Coastal states may also adopt laws and regulations for the prevention, reduction, and control of marine pollution from foreign vessels in the territorial sea, but these laws and regulations may not hamper innocent passage.⁴³⁾ Thus, China could establish a temporary maritime security zone in its territorial sea for a brief period to perform maritime security tasks or combat illegal and criminal activities at sea, consistent with UNCLOS, if the zone is essential to protect China's security interests. China could also adopt laws and regulations to control vessel source pollution in portions (or all) of its territorial sea, but such laws and regulations may not create an exclusion or prohibited zone that hampers or impedes the right of innocent passage. In the EEZ, China's authority to regulate vessel-source pollution is limited to enacting laws and regulations that give effect to International Maritime Organization (IMO)-approved international rules and standards, which does not include designation of maritime security zones or denial of passage.⁴⁴⁾ Finally, China may establish reasonable safety zones up to 500 meters around artificial islands, installations, and structures in the EEZ and on the continental shelf to ensure safety of

41) MPL, *supra* note 3, art. 25.

42) UNCLOS, *supra* note 1, art. 25.

43) *Id.*, art. 211(4).

44) *Id.*, art. 211(5).

navigation and the safety of the installations and structures.⁴⁵⁾ Within the zone, commercial ships shall comply with generally accepted international standards (*i.e.*, IMO-approved) regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.⁴⁶⁾

Beyond the territorial sea, no state may validly subject any part of the high seas, including the EEZ, to its sovereignty.⁴⁷⁾ Seaward of the territorial sea, all ships and aircraft enjoy high seas freedoms of navigation and overflight and other internationally lawful uses of the seas related to these freedoms, including military activities.⁴⁸⁾ China, therefore, does not have the authority to establish temporary maritime security zones seaward of its territorial sea for any of the reasons specified in Article 25. China could issue a notice to mariners (NOTMAR) or notice to airmen (NOTAM) establishing a temporary warning area to advise ships and aircraft that it is conducting a military exercise or weapons test beyond its territorial sea.⁴⁹⁾ Such warning areas, however, are not exclusion zones and ships and aircraft retain the right to transit the area recognizing that there are increased risks in doing so.

IV. Use of Force and Weapons

The MPL contains several provisions regulating the use of force and weapons, some of which could be applied consistent with international law, while others are clearly inconsistent with international norms applicable to maritime law enforcement operations. The CCG can certainly use force to execute its mission, but any force used must be unavoidable, reasonable, and necessary under the circumstances.

45) *Id.*, art. 60, 80.

46) *Id.*

47) *Id.*, art. 58, 86-87, 89.

48) *Id.*, art. 58, 86-87, 89-90.

49) IMO/IHO World-wide Navigational Warning Service Document, annex 1, ¶ 4.2.1.3.13, June 24, 2013; Convention on International Civil Aviation, Dec. 7, 1944, 15 U.N.T.S. 295, Dec. 7, 1944, annex 15, ¶ 5.1.1.1(l).

However, indiscriminate use of force against a foreign flag vessel, which intrudes into Chinese-claimed waters or threatens Chinese territorial claims, which fails to comply with an order to stop or depart the area, may not be unavoidable, reasonable, and necessary under a totality of the circumstances.

A. MPL Article 20

One of the most egregious use of force provisions is Article 20. If a foreign organization or individual constructs a building or structure or installs a fixed or floating device in sea areas and islands under Chinese jurisdiction without China's permission, the CCG is authorized to order the organization or individual to stop the activity or demolish the building, structure, or device. If they refuse the order, the CCG can use force to stop the activity or force the demolition.⁵⁰⁾ This authority applies to the contested areas claimed by China in the South China Sea.⁵¹⁾

Of the 100-plus features in the Spratly Islands, 51 are occupied by five of the six claimants—China (seven), Malaysia (five), the Philippines (nine), Taiwan (one), and Vietnam (twenty-nine). Vietnam has additionally established 14 economic, scientific, and technological service stations on six underwater banks in the SCS southeast of Vietnam.⁵²⁾ To counter China's increasing militarization of its occupied features, Taiwan, Vietnam, and the Philippines continue to upgrade several of their Spratly outposts.⁵³⁾ Article 20 brazenly purports to authorize the CCG to destroy

50) MPL, *surpa* note 3, art. 20.

51) *Id.*, art. 3.

52) Spratly Islands, The World Factbook, U.S. Central Intelligence Agency, <https://www.cia.gov/the-world-factbook/field/military-note> (last updated Mar. 15, 2021).

53) *Vietnam Shores Up Its Spratly Defenses*, Asia Maritime Transparency Initiative, Feb. 19, 2021, <https://amti.csis.org/vietnam-shores-up-its-spratly-defenses/>; Ankit Panda, *South China Sea: What's Taiwan Building on Itu Aba?*, The Diplomat, Sept. 21, 2016, <https://thediplomat.com/2016/09/south-china-sea-whats-taiwan-building-on-itu-aba/>; Armando J. Heredia, *Analysis: Growing The Philippines South China Sea Outpost*, USNI News, July 20, 2015, <https://news.usni.org/2015/07/20/analysis-growing-the-philippines-south-china-sea-outpost>; Michael Green, Kathleen Hicks, Zack Cooper, John Schaus, & Jake Douglas, *Counter-Coercion Series: Second Thomas Shoal*, Asia Maritime Transparency Initiative, June 9, 2017, <https://amti.csis.org/counter-co-2nd-thomas-shoal/>.

these outposts if the other claimants refuse an order to demolish the structures. Such an unlawful use of force would clearly violate the U.N. Charter and UNCLOS, as well as China's commitments under the South China Sea Declaration of Conduct (DOC).

States are prohibited from using force or the threat of force "against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."⁵⁴⁾ UNCLOS similarly requires Parties to settle their disputes by peaceful means and prohibits the "threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."⁵⁵⁾ Additionally, in contested EEZ or continental shelf boundary delimitations, UNCLOS imposes an obligation on the Parties to the dispute to not engage in acts that could jeopardize or hamper the reaching of a final agreement.⁵⁶⁾ The use of force authorization contained in Article 20 is therefore inconsistent with the Charter and UNCLOS.

A similar situation arose in the Guyana-Suriname arbitration where Guyana had granted oil exploration concessions to CGX Resources Inc. (GCX), Maxus Guyana Ltd. (Maxus), and Esso Exploration and Production Company (Esso) in an area of overlapping claims with Suriname.⁵⁷⁾ Suriname demanded, through diplomatic channels, that Guyana cease all oil exploration in the disputed area, and subsequently ordered GCX to cease its operations.⁵⁸⁾ When these efforts failed, Suriname responded by dispatching two navy patrol boats to order the CGX oil rig and its supporting drill ship, the C.E. Thornton, to leave the area within 12 hours or face the consequences. Based on this perceived threat, the C.E. Thornton detached the CGX oil rig from the ocean floor and withdrew from the area, never to return.⁵⁹⁾ Around the same time, Suriname's

54) U.N. Charter, *supra* note 21, art. 2 ¶ 4.

55) UNCLOS, *supra* note 1, art. 279, 301.

56) *Id.*, at. 74(3), 83(3).

57) *Guyana v Suriname*, Award, ICGJ 370 (PCA 2007), 17th September 2007, Permanent Court of Arbitration [PCA]: Guyana and Suriname, Arbitral Award, RIAA, vol. XXX, ¶ 150.

58) *Id.*

national petroleum company, Staatsolie, informed Esso that it was operating illegally in Surinamese waters and should cease operations. Both Esso and Maxus heeded the warning and ceased their operations in the disputed area.⁶⁰⁾ The Arbitral Tribunal unanimously found that

2. The expulsion from the disputed area of the CGX oil rig and drill ship C.E. Thornton by Suriname...constituted a threat of the use of force in breach of the Convention, the UN Charter, and general international law...; [and]
3. Both Guyana and Suriname violated their obligations under Articles 74(3) and 83(3) of the Convention to...make every effort not to jeopardise or hamper the reaching of a final delimitation agreement...⁶¹⁾

The duty to refrain from the threat or use of force to resolve international disputes, including territorial disputes, is reaffirmed in the non-binding Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations.⁶²⁾ This duty, however, was reinforced by the Eritrea-Ethiopia Claims Commission, citing the Declaration and noting that

...self-defense cannot be invoked to settle territorial disputes. In that connection, the Commission notes that border disputes between States are so frequent that any exception to the prohibition of the threat or use of force for territory that is allegedly occupied unlawfully would create a large and dangerous hole in a fundamental rule of international law.⁶³⁾

59) *Id.*, ¶¶ 151, 433, 435, 438-439.

60) *Id.*, ¶ 150.

61) *Id.*, ¶ 488.

62) Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (the "Friendly Relations Declaration"), UN General Assembly Resolution 2625 (XXV) of Oct. 24, 1970, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028, reprinted in 9 I.L.M. p. 1292 (1970).

63) Eritrea-Ethiopia Claims Commission, Partial Award, *Jus ad Bellum: Ethiopia's Claims 1-8* (19 Dec. 2005), 45 I.L.M. p. 430 (2006), ¶ 10.

Finally, although the DOC is not a binding instrument, China has committed to observe its provisions pending final resolution of the ongoing dispute. In this regard, the Parties “undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force...in accordance with universally recognized principles of international law...”⁶⁴⁾ The Parties additionally “undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited ... features and to handle their differences in a constructive manner.”⁶⁵⁾ Authorizing the CCG to use force to destroy structures on disputed features and fixed devices at sea clearly puts China at odds with the intent and purpose of the DOC to peacefully settle the dispute.

B. MPL Article 22

Article 22 allows the CCG to use all necessary measures, including the use of weapons to stop, *inter alia*, infringement of its sovereignty, sovereign rights, and jurisdiction.⁶⁶⁾ Thus, given the broad scope of application of the MPL, Filipino fishing boats operating in the Scarborough Shoal lagoon would be considered to be infringing on Chinese sovereignty and could be forcibly expelled. Use of force, including lethal force, could also be used to expel Vietnamese fishing boats operating in the SCS because they would be considered to be infringing on China’s claimed sovereign rights and jurisdiction within the 9DL. ROK scientists monitoring weather patterns and ocean currents from the Ieodo Ocean Research Station would be considered to be violating China’s sovereign rights and jurisdiction and could be forcibly expelled or

64) Declaration on the Conduct of Parties in the South China Sea, by The Governments of the Member States of ASEAN and the Government of the People’s Republic of China, Nov. 4, 2002, ¶ 4, https://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2.

65) *Id.*, ¶ 5.

66) MPL, *supra* note 3, art. 22.

arrested. The CCG would also be empowered to destroy the Station. Finally, a warship challenging China's excessive territorial sea claims in the SCS or illegal straight baselines along its coast would be viewed as violating Chinese sovereignty and could be engaged with weapons.

Use of force in these situations would contravene China's duty to refrain from the threat of use of force in resolving its international disputes and is therefore impermissible under prevailing international law.⁶⁷⁾ It would also violate a basic tenet of international law that, absent a situation warranting the use of force in self-defense, warships and other government non-commercial vessels enjoy complete immunity from coastal state jurisdiction or interference.⁶⁸⁾

C. MPL Chapter VI

Chapter VI regulates the use of weapons by CCG personnel. But for the expansive scope of application of the MPL, this Chapter could arguably be interpreted to comport with international maritime law enforcement standards.

Small arms may be used when there is evidence that criminal suspects are on board the ship or that the ship is illegally transporting weapons, ammunition, state secrets, drugs, or other items and refuses to obey an order to stop.⁶⁹⁾ The CCG can also use small arms if a foreign ship enters waters under China's jurisdiction and illegally engages in production activities, refuses to obey an order to stop, or refuses to accept boarding or inspection, and other measures are deemed insufficient to stop the illegal act.⁷⁰⁾ Employment of weapons in these situations, however, remains problematic in disputed areas given the requirements of UNCLOS, Articles 74, 83, 279, and 301, as well as the Friendly Relations Declaration and judicial opinions discussed above. Also, except in

67) *See supra* notes 54-63 and associated text.

68) *See supra* notes 69-71 and associated text.

69) MPL, *supra* note 3, art. 47.

70) *Id.*

situations involving hot pursuit,⁷¹⁾ use of weapons against a ship that may be transporting a criminal suspect or against ships engaged in smuggling weapons, munitions, state secrets, drugs, or other items would not be permitted outside China's claimed territorial sea. On the high seas, ships and persons on board are subject to the exclusive jurisdiction of the flag State, unless they are engaged in piracy, slave trade, or unauthorized broadcasting.⁷²⁾

The CCG is authorized to use shipborne and airborne weapons, in addition to small arms, when it is engaged in (1) maritime anti-terrorism missions, (2) situations involving serious incidents of violence at sea, or (3) attacked by weapons or other dangerous methods.⁷³⁾ While use of force in these situations may be warranted in China's claimed territorial sea or in self-defense, it would not be permitted in most cases beyond the 12-mile limit. The 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) makes this clear. Articles *3bis*, *3ter*, and *3quater* of the Protocol adds several new terrorism-related offenses to the SUA Convention.⁷⁴⁾ Nonetheless, any action taken against a foreign flag vessel that may be involved in one of these new offenses seaward of the territorial sea of any state, to include stopping, boarding, and searching the vessel, requires flag state consent.⁷⁵⁾ UNCLOS, Article 92 similarly precludes non-flag state interference with a ship involved in a serious incident of violence at sea, unless the ship was engaged in piracy.⁷⁶⁾

Articles 49 and 50 of CCG law also purport to comply with maritime

71) UNCLOS, *supra* note 1, art. 111.

72) *Id.*, art. 92, 110.

73) MPL, *supra* note 3, art. 47.

74) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome March 10, 1988, entered into force Mar. 1, 1992, 27 I.L.M. 672 (1988), UN Law of the Sea Bull. No. 11, July 1988, at 14, 1678 UNTS 221, [hereinafter SUA 1988], and Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at London, Oct. 14, 2005, entered into force July 28, 2010, IMO Doc. SUA.3/Circ.11, May 4, 2010, [hereinafter SUA 2005], art. *3bis*, *3ter*, *3quater*.

75) *Id.*, art. *8bis*. This provision is based on the general rule in international law reflected in UNCLOS Article 92 of exclusive flag state jurisdiction seaward of the territorial sea.

76) UNCLOS, *supra* note 1, art. 92, 105, 110.

law enforcement norms. Although a warning that use of weapons is imminent is normally given to a suspect ship prior to the use of force, Article 49 correctly points out that such warnings are not required if doing so “may cause more serious harmful consequences.”⁷⁷⁾ Consistent with international law, Article 50 restricts use of weapons to situations that are reasonably necessary and requires CCG personnel try to avoid or reduce unnecessary casualties and property losses. The question remains, however, whether the CCG will limit its use of force and weapons to situations that are reasonably necessary and try to avoid collateral damage to persons and property. China does not have a good track record of observing international maritime law enforcement standards and the CCG is known for its repeated and coercive harassment and excessive use of force against its neighbors to advance China’s illegal claims in the ECS, SCS, and Yellow Sea, as well as deny their access to offshore resources in their respective EEZs.⁷⁸⁾ Given this history of prior malign and aggressive behavior, it is unlikely that China will implement the MPL consistent with established maritime law enforcement practices.

V. International Use of Force Standards

The CCG may use force to execute its maritime law enforcement

77) MPL, *supra* note 3, art. 49.

78) Young Kil Park, *The Role of Fishing Disputes in China-South Korea Relations*, The National Bureau of Asian Research, Apr. 23, 2020, <https://www.nbr.org/publication/the-role-of-fishing-disputes-in-china-south-korea-relations/>; Press Statement, Morgan Ortagus, U.S. Department of State Spokesperson, *PRC’s Reported Sinking of a Vietnamese Fishing Vessel in the South China Sea* (Apr. 6, 2020); Michael R. Pompeo, U.S. Secretary of State, Press Statement, *U.S. Position on Maritime Claims in the South China Sea* (July 13, 2020), <https://2017-2021.state.gov/u-s-position-on-maritime-claims-in-the-south-china-sea/index.html>; Press Release, U.S. Department of Defense, *China Coast Guard Sinking of a Vietnam Fishing Vessel* (Apr. 9, 2020), <https://www.defense.gov/Newsroom/Releases/Release/Article/2143925/china-coast-guard-sinking-of-a-vietnam-fishing-vessel/>; Matthew M. Burke & Aya Ichihashi, *Japan Coast Guard Protects Fishing Boat from Chinese Vessels Near Senkaku Islands*, Stars and Stripes, Oct. 13, 2020, <https://www.stripes.com/news/pacific/japan-coast-guard-protects-fishing-boat-from-chinese-vessels-near-senkaku-islands-1.648358>.

mission to the extent the force used is unavoidable, reasonable, and necessary under the circumstances. Indiscriminate and excessive use of force, however, is inconsistent with state practice and would violate prevailing international law. To date, the CCG has demonstrated a distain for or has largely ignored international use of force standards applicable to maritime law enforcement operations and a proclivity to abuse these standards while executing its law enforcement mission.

A. Judicial Interpretations

Decisions by international tribunals and commissions confirm that the indiscriminate and excessive use of force by maritime law enforcement agents is prohibited. The three seminal cases that have addressed the issue are the 1929 *I'm Alone*, 1961 *Red Crusader*, and 1997 *M/V Saiga*.

1. The *I'm Alone* (1929)⁷⁹⁾

The *I'm Alone* was a British ship registered in Canada that was used to illegally run rum from British Honduras (Belize) to the United States for sale during the Prohibition era. A bilateral agreement authorized U.S. law enforcement agents to board, search, and detain British-flagged vessels beyond the territorial sea if there were reasonable grounds to suspect that a vessel was attempting to smuggle alcoholic beverages into the United States.⁸⁰⁾ On March 20, 1929, the U.S. Revenue Cutter (USRC) *Dexter* observed the *I'm Alone* in the Gulf of Mexico. The *I'm Alone* attempted to flee the area, which prompted the *Dexter* and USRC *Wolcott* to engage in hot pursuit of the vessel. After a two-day chase, the *Dexter* intentionally sank the *I'm Alone* after the rumrunner refused multiple orders and signals, including the use of warning shots and disabling fire, to heave to for boarding.

79) S.S. *I'm Alone* (Can. v. U.S.), 3 R.I.A.A. 1609 (1935).

80) Convention Between the United States of America and Great Britain to Aid in the Prevention of the Smuggling of Intoxicating Liquor into the United States, *signed at* Washington, January 23, 1924; *ratifications exchanged at* Washington, May 22, 1924, 43 Stat. 1761, T.S. 685, 12 Bevans 414, 27 L.N.T.S. 182, art. II.

A case was brought before an arbitration commission to determine the validity of the U.S. action. The Commissioners noted that the United States could, consistent with the 1924 Agreement, use necessary and reasonable force to board, search, seize, and bring the suspect vessel into port. Moreover, if the sinking of the *I'm Alone* had occurred incidentally as a result of the use of necessary and reasonable force, the United States would be entirely blameless. Nonetheless, the Commissioners found that the intentional sinking of the vessel was not justified by the Agreement or any other principle of international law under the circumstances. The United States was ordered to formally acknowledge the illegality of its actions, apologize to the Canadian government, and pay the sum of \$25,000.

2. The Red Crusader (1961)⁸¹⁾

A similar conclusion was reached by a commission of inquiry in the *Red Crusader* case. The British trawler was arrested by a boarding party from the Danish frigate *Niels Ebbesen* for alleged illegal fishing near the Faroe Islands. Captain Sølling, the commander of the Danish frigate, ordered Skipper Wood of the *Red Crusader* to follow him to the port of Thorshavn. Wood initially complied, but then decided to make a run for Aberdeen with two Danish sailors—Lieutenant Bech and Corporal Kropp—still on board. After the *Red Crusader* ignored an order to heave to, the *Niels Ebbesen* fired four warning shots and signaled the British trawler to stop. When Skipper Wood refused to comply, the *Niels Ebbesen* fired solid, non-explosive gunshot at the *Red Crusader*'s scanner, mast, masthead light, hull, and stern without prior warning.⁸²⁾

Although no one was injured and the trawler was not sunk, the Commission of Inquiry found that Captain Sølling had exceeded the legitimate use of force by (1) firing solid gun-shot without warning and

81) *Red Crusader* (U.K. v. Den.), 29 I.L.R. 521 (Comm'n of Enquiry 1962).

82) Shots fired included 8 machine gun shots at scanner (2 verified hits), 21 machine gun shots at mast (no hits), 1 round of 40mm gun at masthead light (no hits), 1 round of 40mm gun at mast (no hit), 2 rounds of 40mm gun at stern (1 hit), 1 round of 40mm gun at stern (no hit). *Id.*

(2) creating a danger to human life on board the trawler without necessity. The Commission further found that the attempted escape by the *Red Crusader* with two Danish sailors on board did not justify Captain Sølling's excessive use of force.

3. The M/V Saiga (1997)⁸³⁾

The *M/V Saiga* was a fully laden coastal tanker registered in Saint Vincent and the Grenadines that was providing bunkering services to fishing boats off the West African coast and had recently provided fuel to fishing boats in Guinea's contiguous zone. Guinean patrol boats approached the *Saiga* and opened fire with live ammunition using solid shot from large-caliber automatic weapons, without any signal or warning, to stop the tanker. Guinean officials then boarded and arrested the *Saiga* on the high seas, without resistance from the crew, for allegedly violating Guinean customs laws. During the boarding, Guinean officers fired indiscriminately while on the deck and fired on the ship's engine to stop the *Saiga*. The ship suffered considerable damage, to include damage to vital equipment in the engine and radio rooms, and two crew members were severely injured.

The International Tribunal for the Law of the Sea found that the Guinean patrol boats' use of force to stop and board the tanker, both before and after the boarding, without any signal or warning, as required by international law and practice, was excessive and unreasonable and endangered human life. The Tribunal concluded that international law and practice require that the use of force must be avoided if possible and, if force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. The Tribunal went on to explain that the "normal practice used to stop a vessel at sea is to first give an auditory or visual signal to stop, using internationally recognized signals."⁸⁴⁾ If the vessel ignores the signal, the pursuing vessel may take a variety of

83) *M/V Saiga* (No. 2) (St. Vincent v. Guinea), Judgment of July 1, 1999, 2 ITLOS Rep. 72.

84) *Id.*, ¶156.

actions, to include firing warning shots across the bow of the ship. Only after these actions fail to stop the pursued vessel may force be used as a last resort. “Even then, appropriate warning must be issued to the ship and all efforts should be made to ensure that life is not endangered.”⁸⁵⁾

B. International Treaties

Several international agreements reaffirm the basic principle concerning the use of force in the arrest of a ship at sea. Although not an exhaustive list, some of these instruments include the 1995 Fish Stocks Agreement, the 2005 SUA Convention, and numerous bilateral counter-narcotics agreements and arrangements implementing the Proliferation Security Initiative (PSI).

1. 1995 UN Fish Stocks Agreement⁸⁶⁾

The UN Fish Stocks Agreement addresses the long-term conservation and sustainable use of straddling and highly migratory fish stocks. Articles 20 and 21 allow for boarding and inspection of vessels on the high seas to ensure compliance with established conservation and management measures. Basic procedures for boarding and inspections are set out in Article 22. Regarding the use of force, Article 22 provides that the inspecting state shall ensure that its inspectors “avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties.”⁸⁷⁾ Article 22 further provides that “the degree of force used shall not exceed that reasonably required in the circumstances.”⁸⁸⁾

85) *Id.*

86) Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, with annexes, *done at* New York August 4, 1995, *entered into force* December 11, 2001, T.I.A.S. 01-1211, 2167 U.N.T.S. 3.

87) *Id.*, art. 22.1(f).

88) *Id.*

2. 2005 SUA Convention⁸⁹⁾

The 2005 SUA Protocol adds several supplementary provisions to the 1988 SUA Convention to suppress terrorist acts of violence against the safety and security of international maritime navigation and the proliferation of weapons of mass destruction. Article *8bis* requires that state parties cooperate “to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention, in conformity with international law....”⁹⁰⁾ Article *8bis* further establishes a boarding regime to enhance cooperation. Concerning the use of force, Article *8bis* requires that use of force “be avoided except when necessary to ensure the safety of its officials and persons on board, or where the officials are obstructed in the execution of the authorized actions.”⁹¹⁾ Additionally, any use of force “shall not exceed the minimum degree of force ... necessary and reasonable in the circumstances.”⁹²⁾ When taking measures against a ship, the boarding party shall also, *inter alia*,

- take due account of the need not to endanger the safety of life at sea;
- ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international human rights law;
- ensure that a boarding and search ... shall be conducted in accordance with applicable international law;
- take due account of the safety and security of the ship and its cargo...⁹³⁾

3. Bilateral Counter-Narcotics Agreements

The 1988 Vienna Drug Convention was adopted to promote cooperation among states to address more effectively the illicit traffic in narcotic drugs and psychotropic substances. Article 17 of the Convention calls on

89) SUA 2005, *supra* note 74.

90) *Id.*, art. *8bis*.

91) *Id.*

92) *Id.*

93) *Id.*

states to “consider entering into bilateral or regional agreements or arrangements” to carry out or enhance the interdiction of illicit substances at sea.⁹⁴⁾ Consistent with this provision, the United States has entered into over 40 bilateral agreements, arrangements, and procedures with partner nations to facilitate the interception and boarding of vessels that are suspected of engaging in the illicit drug trade by sea.⁹⁵⁾ The U.S. Coast Guard (USCG) considers these agreements force multipliers and relies heavily on these partnerships to effectively suppress illicit trafficking by sea.⁹⁶⁾

Maritime counter-narcotics agreements and arrangements streamline the diplomatic process required to obtain flag State consent to interdict, board, and search suspect vessels. Although all bilateral agreements are not identical, they all have provisions regulating the use of force when conducting interdiction operations. The 1997 agreement with Colombia, for example, provides that “law enforcement officials shall avoid the use of force ..., including the use of firearms,” when conducting boardings and searches, except in the exercise of the right of self-defense.⁹⁷⁾ Force may also be used to

- (a) compel a suspect vessel to stop when it has ignored a standard warning to stop; and
- (b) maintain order on board a suspect vessel during the boarding and search or while it is being preventively held (i) “when the crew or persons on board resist, impede the boarding and search, or try to destroy evidence of illicit traffic” or (ii) “when the vessel attempts to flee during the boarding and search” or while it is preventively held.⁹⁸⁾

94) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, with Annex and Final Act, done at Vienna December 20, 1988, entered into force November 11, 1990, 1582 U.N.T.S. 95.

95) Dep’t. of Homeland Security, Fiscal Year 2020 Report to Congress, Counter-Drug Operations, Aug. 14, 2020, p. 6.

96) *Id.*, p. 4.

97) Agreement Between the Government of the United States of America and the Government of the Republic of Colombia to Suppress Illicit Traffic by Sea, *signed at Bogota* February 20, 1997, *entered into force* February 20, 1997, T.I.A.S. 12835, art. 12.

98) *Id.*

While conducting a boarding and search, law enforcement officials may carry small arms but “will only discharge them when it is not possible to apply less extreme measures.”⁹⁹⁾ Moreover, discharging weapons requires the prior authorization of the flag state “except when indirect warning shots are required as a signal for the vessel to stop, or in the exercise of the right of self-defense.”¹⁰⁰⁾ Nevertheless, if force is used, it will be “the minimum reasonably necessary and proportional under the circumstances.”¹⁰¹⁾

4. PSI Ship Boarding Agreements¹⁰²⁾

PSI is global initiative that aims to stop trafficking of weapons of mass destruction (WMD), their delivery systems, and related materials to and from states and non-state actors of proliferation concern. States that elect to voluntarily participate in PSI use existing national and international laws and frameworks to combat WMD-related trafficking, consistent with U.N. Security Council Resolution 1540.

PSI encourages states to enter into bilateral agreements or operational arrangements to enhance cooperation and facilitate the boarding of ships by participating States. These agreements provide authority on a bilateral basis to board and search vessels on the high seas suspected of carrying proliferation-related materials. To date, the United States has signed 11 ship-boarding agreements: Panama (2004), the Marshall Islands (2004), Liberia (2004), Croatia (2005), Cyprus (2005), Belize (2005), Malta (2007), Mongolia (2007), the Bahamas (2008), Antigua and Barbuda (2010), and Saint Vincent and the Grenadines (2010). None of these agreements are identical, but they all have provisions regarding the use of force during boarding operations.

The agreement with Belize, for example, provides that the authorization to board, search, and detain a vessel “includes the authority to use force....”¹⁰³⁾ Use of force under the agreement shall be in strict accordance

99) *Id.*

100) *Id.*

101) *Id.*

102) Dep’t of State, Statement of Interdiction Principles for the Proliferation Security Initiative, Sept. 4, 2003, <https://2001-2009.state.gov/t/isn/rls/fs/23764.htm>.

with the “applicable laws and policies of the Parties and applicable international law.”¹⁰⁴⁾ Additionally, use of force shall be avoided “except when and to the degree necessary to ensure the safety” of the boarding party, Security Force ships, and persons on board the suspect ship, and “where Security Force Officials are obstructed in the execution of their duties.”¹⁰⁵⁾ Any force used by the boarding and search teams must be “reasonably necessary.”¹⁰⁶⁾ Nonetheless, “boarding and search teams and Security Force ships have the inherent right to use all available means to apply that force reasonably necessary to defend themselves or others from physical harm.”¹⁰⁷⁾ Additional safeguards that must be observed by the boarding party include, *inter alia*, taking “due account of the security of the ship and its cargo” and ensuring “that persons on board are afforded the protections, rights, and guarantees provided by international law and the boarding State’s law and regulations.”¹⁰⁸⁾

C. Non-binding Instruments

The United Nations has developed several non-binding guidelines on the use of force to assist law enforcement personnel in the performance of their duties. Some of these policies include the UN Code of Conduct for Law Enforcement Personnel, the UN Principles on Use of Force, and the UNODC Maritime Crime Manual.

1. UN Code of Conduct for Law Enforcement Officials¹⁰⁹⁾

Although not specifically applicable to maritime law enforcement operations,

103) Agreement concerning cooperation to suppress the proliferation of weapons of mass destruction, their delivery systems, and related materials by sea, *signed at* Washington August 4, 2005, *entered into force* October 19, 2005, T.I.A.S. 05-1019, art. 4.

104) *Id.*, art. 9.

105) *Id.*

106) *Id.*

107) *Id.*

108) *Id.*, art. 8.

109) G.A. Res. 34/169, Code of Conduct for Law Enforcement Officials (Dec. 17, 1979) [hereinafter UN Code of Conduct].

the UN Code of Conduct for Law Enforcement Officials provides that law enforcement officials “may use force only when strictly necessary and to the extent required for the performance of their duty.”¹¹⁰⁾ The use of force therefore is the exception, not the rule. Any use of force must be “reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest” of a suspected offender.¹¹¹⁾

If the use of force is unavoidable, it shall be proportionate to the “seriousness of the offense and legitimate objective to be achieved.”¹¹²⁾ The Code additionally makes clear that the use of firearms is an extreme measure, and “every effort should be made to exclude the use of firearms.”¹¹³⁾ Therefore, law enforcement officials should generally not use firearms unless a “suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.”¹¹⁴⁾

2. UN Principles on Use of Force¹¹⁵⁾

The UN Principles on Use of Force contains similar guidance. In performing their duties, law enforcement officials “shall, as far as possible, apply non-violent means before resorting to the use of force and firearms” and they “may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”¹¹⁶⁾ If the use of force or firearms is unavoidable, law enforcement officials shall exercise restraint and use only that amount of force that is

110) *Id.*, art. 3.

111) *Id.*, art. 3 cmt (a).

112) *Id.*, art. 3 cmt (b).

113) *Id.*, art. 3 cmt (c).

114) *Id.*, art. 3 cmt (c).

115) Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, U.N. Doc. A/CONF.144/28/Rev.1, at 112 (Aug. 27 – Sept. 7, 1990) [hereinafter UN Basic Principles on Use of Force].

116) *Id.*, ¶ 4.

proportionate “to the seriousness of the offence and the legitimate objective to be achieved.”¹¹⁷⁾ Law enforcement officials shall also “minimize damage and injury, and respect and preserve human life” when using force or firearms.¹¹⁸⁾

The UN Principles also proscribe the use of firearms against persons except in self-defense or defense of others

against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.¹¹⁹⁾

Nevertheless, “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”¹²⁰⁾ Before discharging their firearm, law enforcement officials “shall identify themselves ... and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed.”¹²¹⁾ However, a warning is not required if doing so would “unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons or would be clearly inappropriate or pointless in the circumstances of the incident.”¹²²⁾

3. UNODC Maritime Crime Manual¹²³⁾

The Maritime Crime Manual developed by the United Nations Office on Drugs and Crime (UNODC) for use in capacity building training and by

117) *Id.*, ¶ 5.

118) *Id.*

119) *Id.*, ¶ 9.

120) *Id.*

121) *Id.*, ¶ 10.

122) *Id.*

123) United Nations, Office on Drugs and Crime, *Maritime Crime: A Manual for Criminal Justice Practitioners* (2017).

criminal justice practitioners also provides guidance for maritime law enforcement operations. The Manual recognizes that the use of force may become necessary during a maritime law enforcement operation. However, it reiterates that maritime law enforcement is a peacetime police operation, not a wartime operation, and that the level of force used must not exceed the minimum reasonably necessary in the circumstances.¹²⁴⁾

Use of force by maritime law enforcement agents is permissible in self-defense—*i.e.*, force that is reasonable and necessary in the circumstances of an attack or imminent attack upon law enforcement officials or others under their protection to stop or deter the attack or imminent attack. Force may also be used to accomplish a specific law enforcement task or purpose, such as stopping, boarding, searching, detaining, seizing, and controlling a suspect vessel and its crew.¹²⁵⁾

Permissible levels of force range from non-deadly force to deadly force. The use of deadly force in maritime law enforcement operations is limited to those situations where the officer has a “reasonably objective belief” that a threat poses an imminent danger of death or serious bodily harm to the officer or others.¹²⁶⁾ Use of force in self-defense below this threshold is generally limited to non-deadly force.¹²⁷⁾ Deadly force includes force that is “intended to or likely to cause death or serious injury, regardless of whether death or serious injury results.”¹²⁸⁾

Generally, the act of stopping, searching, and detaining a suspect vessel and seizing cargo and persons on board will not “involve the threat of death or serious injury” to a law enforcement officer. Therefore, the use of deadly force is not authorized.¹²⁹⁾ Additionally, the use of deadly force would normally not be authorized to stop a fleeing vessel that has failed

124) *Id.*, p. 62.

125) *Id.*, pp. 62-63.

126) *Id.*, p. 63.

127) *Id.*

128) *Id.*

129) *Id.*

to obey an order to heave to for boarding.¹³⁰⁾ In these situations, the use of non-deadly force—such as use of pepper spray, propeller entrapment devices, fire hoses, and warning shots—would be appropriate.¹³¹⁾ If directed fire is used to stop a vessel, it should be carefully aimed at places on the vessel where it is unlikely that people are present or to cause the vessel to sink (*e.g.*, putting a hole in the hull below the waterline) or other life-threatening situation (*e.g.*, firing at fuel drums on the deck to cause a fire).¹³²⁾

VI. Unintended Consequences

Excessive or indiscriminate use of force by the CCG could also have unintended consequences in disputed areas of the SCS, ECS, and Yellow Sea. The United States has defense obligations with Japan, the Philippines, and the ROK that could be triggered if the CCG conducts activities, albeit purportedly for law enforcement purposes, that cross the threshold of an armed attack against one of its treaty allies.

The CCG is the maritime component of the People’s Armed Police (PAP).¹³³⁾ In 2018, the Central Military Commission (CMC) assumed command and control of the PAP, which is a paramilitary component of the PLA and the armed wing of the Chinese Communist Party (CCP).¹³⁴⁾ This new command structure facilitates closer coordination between the CCG and PLAN.¹³⁵⁾ Given that one of the PAP’s (and hence the CCG’s) primary missions is to assist the PLA during times of war, the United States has informed China that it will respond to aggressive acts by the

130) *Id.*

131) *Id.*

132) *Id.*

133) MPL, *supra* note 3, art. 2, 10.

134) Department of Defense, Military and Security Developments Involving the People’s Republic of China 2020 Annual Report to Congress, p. 69, <https://media.defense.gov/2020/Sep/01/2002488689/-1/-1/1/2020-DOD-CHINA-MILITARY-POWER-REPORT-FINAL.PDF>.

135) *Id.*, p. 70.

CCG in the same manner in which it reacts to aggressive behavior by the PLAN.¹³⁶⁾ Thus, a use of force by the CCG against a U.S. treaty ally could be viewed as an armed attack giving rise to a right of collective self-defense under Article 51 of the Charter and the relevant bilateral mutual defense treaty.

A. Senkaku Islands

Over the past few years, CCG intrusions into the territorial sea and contiguous zone surrounding the Senkaku Islands have steadily increased into the hundreds.¹³⁷⁾ As these illegal incursions continue to spiral, the possibility that an armed confrontation may occur between Japanese and Chinese coast guard and naval vessels is likewise increasing. The possibility of a clash is more acute with the enactment of the MPL, which may embolden the CCG to be more aggressive in advancing China's claims.

This provocative trend has continued into 2021. On March 29, for example, two CCG vessels intruded in Japan's territorial sea off Minami Kojima in the Senkakus, while three CCG vessels operated in the contiguous zone. This is the 11th CCG incursion into Japan's territorial sea since January 2021.¹³⁸⁾ The incursions were followed by a stern warning from China's defense ministry on March 31, demanding that Japan "stop all provocative moves involving the Diaoyu [Senkaku] problem," insisting that the "Diaoyu Islands and its affiliated islets are all China's inherent territory."¹³⁹⁾

136) Media Report: *FT: US warns China on aggressive acts by fishing boats and coast guard*, China-US Focus, Apr. 28, 2019, <https://www.chinausfocus.com/media-report/2019-04-28.html>.

137) Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Response, Ministry of Foreign Affairs of Japan, Mar. 3, 2021, https://www.mofa.go.jp/region/page23e_000021.html.

138) *Two Chinese ships enter Japan's territorial waters off Senkaku Islands*, WION Web Team, Mar. 29, 2021, <https://www.wionews.com/world/two-chinese-ships-enter-japans-territorial-waters-off-senkaku-islands-374121>.

139) Minnie Chan, *China issues strong warning to Japan over 'negative moves' in East China Sea dispute*, South China Morning Post, Mar. 31, 2021, <https://sg.news.yahoo.com/china-issues-strong-warning-japan-101036385.html>.

On January 27, 2021, President Joe Biden reaffirmed the long-standing U.S. position that the Senkaku Islands are covered by Article V of the U.S.-Japan Mutual Security Treaty.¹⁴⁰⁾ The Treaty provides that “each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes.”¹⁴¹⁾ As a surrogate of the PLAN, an armed incursion into the Senkakus by the CCG would not be viewed as a legitimate law enforcement measure and could trigger Article V of the Treaty.

B. Whitsun Reef

Trouble is also brewing at Whitsun Reef, where over 350 Chinese vessels operated by the People’s Armed Forces Maritime Militia (PAFMM), along with four PLAN ships, gathered at the uninhabited feature, known as Julian Felipe in the Philippines, in late March 2021.¹⁴²⁾ A demand by the Philippines to remove the vessels was ignored by Beijing, indicating that the fishing boats were simply taking refuge from rough seas. Some of the boats subsequently dispersed and relocated to five other Chinese-claimed features in the Spratly Islands, while 44 PAFMM vessels

140) Press Statement: Readout of President Joseph R. Biden, Jr. Call with Prime Minister Yoshihide Suga of Japan, The White House, Jan. 27, 2021,

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/readout-of-president-joseph-r-biden-jr-call-with-prime-minister-yoshihide-suga-of-japan/>.

141) Treaty of Mutual Cooperation and Security, with agreed minute and exchanges of notes, *signed at* Washington January 19, 1960, *entered into force* June 23, 1960, art. V, 11 U.S.T. 1632, T.I.A.S. 4509, 373 U.N.T.S. 186, as amended December 26, 1990, T.I.A.S. 12335.

142) The White House, Statement by National Security Council Spokesperson Emily Horne on National Security Advisor Jake Sullivan’s Call with National Security Advisor Hermogenes Esperon of the Philippines, Mar. 31, 2021, [hereinafter NSC Statement, 31 March 2021], <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/statement-by-national-security-council-spokesperson-emily-horne-on-national-security-advisor-jake-sullivans-call-with-national-security-advisor-hermogenes-esperon-of-the-philippines/>; Jim Gomez, *Philippines Demands China Remove Vessels at 6 Islands, Reefs*, The Diplomat, Apr. 1, 2021, https://thediplomat.com/2021/04/philippines-demands-china-remove-vessels-at-6-islands-reefs/?utm_source=Sailthru&utm_medium=email&utm_campaign=EBB%2004.01.21&utm_term=Editorial%20-%20Early%20Bird%20Brief.

remained moored at Whitsun, which is located within the Philippines EEZ.¹⁴³⁾ The Philippines increased its presence in the area, deploying Navy and coast guard ships and conducting daily aerial patrols with military aircraft, to monitor the situation.¹⁴⁴⁾

The situation is reminiscent of the 2012 Scarborough Shoal incident where two Chinese government ships prevented the Philippine Navy ship *BRP Gregorio del Pilar* (FF-15) from arresting Chinese fishermen that were harvesting protected corals, giant clams, and sharks in the Shoal's lagoon. After a standoff that lasted from April to June, China took *de facto* control of the shoal, which is clearly within the Philippines EEZ. There was no use of armed force by China, so the United States did nothing to intervene in support of its treaty ally.¹⁴⁵⁾

U.S. National Security Advisor Jake Sullivan indicated that the United States would stand with the Philippines at Whitsun to uphold the rules-based international legal order and reaffirmed that the U.S.-Philippines Mutual Defense Treaty (MDT) applied to the SCS.¹⁴⁶⁾ Article IV of the MDT provides that “each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.”¹⁴⁷⁾ An “armed attack” is deemed to include an armed attack on the armed forces, public vessels, or aircraft of either Party in the Pacific.¹⁴⁸⁾ Therefore, even though the United States does not recognize the Philippines’ claim to portions of the Spratlys, if the CCG were to attack

143) J. Gomez, *supra* note 142.

144) Dave Makichuk, *Duterte tugs the dragon's tail with fighter planes*, Asia Times, Apr. 3, 2021, <https://asiatimes.com/2021/04/duterte-tugs-the-dragons-tail-with-fighter-flights/>.

145) Michael Green, Kathleen Hicks, Zack Cooper, John Schaus, & Jake Douglas, *Counter-Coercion Series: Scarborough Shoal Standoff*, Asia Maritime Transparency Initiative, Center for Strategic & International Studies, May 22, 2017, [hereinafter AMTI *Scarborough Shoal Standoff*], <https://amti.csis.org/counter-co-scarborough-standoff/>.

146) NSC Statement, 31 March 2021, *supra* note 142.

147) The Mutual Defense Treaty between the Republic of the Philippines and the United States of America, signed at Washington August 30, 1951, entered into force August 27, 1952, art. IV, 3 U.S.T. 3947, T.I.A.S. 2529, 177 U.N.T.S. 133.

148) *Id.*, art. V.

a Philippine Navy vessel or Philippine military aircraft at Whitsun Reef or anywhere else in the SCS, the MDT would apply.

C. Illegal Fishing in ROK EEZ

Chinese illegal fishing in the Yellow Sea has been an ongoing source of tension between China and the ROK for decades. Having depleted the fisheries off their coast, Chinese fishermen have expanded their operations into waters off the coast of South and North Korea. Efforts by the ROK coast guard to curtail Chinese poaching have at times turned violent. In 2011, for example, a ROK coast guard officer was stabbed to death by a Chinese fisherman during an attempted boarding.¹⁴⁹⁾

Between 2017 and 2019, illegal fishing by Chinese fishing boats in South Korean waters doubled, reaching 6,543 Chinese boats arrested or expelled in 2019 compared to 3,074 in 2017. These numbers continue to increase. In October 2020, an estimated 340 Chinese fishing vessels were breaching the South Korean EEZ each day—7,196 were expelled by the ROK coast guard.¹⁵⁰⁾ Similarly, with the onset of the 2021 spring fishing season, the number of Chinese fishing boats—112 per day—in South Korean waters has increased eightfold from 2020.¹⁵¹⁾ This unbridled rise in Chinese incursions has resulted in a tougher response by the ROK coast guard, to include joint operations with the ROK Navy to counter Chinese fishing boats equipped with steel bars and wire mesh to fend off the coast guard.¹⁵²⁾

Given the ROK's more robust enforcement measures, it is not beyond the realm of possibility that China will deploy the CCG to protect Chinese fishermen and impede legitimate law enforcement efforts by the

149) *South Korea anger at China fishermen stabbing*, BBC News, Dec. 13, 2011, <https://www.bbc.com/news/world-asia-16154118>.

150) *S. Korea to Resume Seizure of Illegal Chinese Fishing Boats*, Korea Bizwire, Oct. 23, 2020, <http://koreabizwire.com/s-korea-to-resume-seizure-of-illegal-chinese-fishing-boats/172672>.

151) M. H. Lee, *Blue Crab Season Attracts Illegal Chinese Fishing Vessels to West Sea*, Korea Bizwire, Apr. 1, 2021, <http://koreabizwire.com/blue-crab-season-attracts-illegal-chinese-fishing-vessels-to-west-sea/186291>.

152) *S. Korea to Resume Seizure of Illegal Chinese Fishing Boats*, *supra* note 150.

ROK coast guard and Navy. The international community witnessed similar behavior in 2012 when Chinese government ships prevented the Philippine Navy from arresting Chinese fishermen that were illegally fishing at Scarborough Shoal.¹⁵³⁾ CCG use of armed force to protect Chinese fishermen in the Yellow Sea could give rise to the application of the U.S.-ROK Mutual Defense Treaty (MDT). Article III of the Treaty provides that “each Party recognizes that an armed attack in the Pacific area on either of the Parties in territories now under their respective administrative control ... would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.”¹⁵⁴⁾

VII. Conclusion

China is testing the United States and its allies with the enactment of the new MPL. Japan has a new prime minister, the United States has a new president, and President Duterte has made it clear that he does not want a confrontation with China. Beijing will allow the CCG to engage in coercive acts to see how far it can go before it elicits an unfavorable response from President Moon, Prime Minister Suga, or President Biden. China will particularly use the newly empowered CCG to challenge U.S. resolve in the region. Although the Biden administration has reaffirmed its commitments to defend U.S. allies and friends in Asia-Pacific, if the CCG can successfully use force against Japan, the Philippines, the ROK or the other SCS claimants without eliciting a kinetic response from the United States, China will argue that Washington is a paper tiger and an unreliable treaty ally and friend.

153) AMTI *Scarborough Shoal Standoff*, *supra* note 145.

154) Mutual Defense Treaty Between the United States and the Republic of Korea, *signed at* Washington October 1, 1953, *entered into force* November 17, 1954, subject to an understanding, art. III, 5 U.S.T. 2368, T.I.A.S. 3097, 238 U.N.T.S. 199. (The United States Senate gave its advice and consent to the ratification of the treaty subject to the understanding that “neither party is obligated ... to come to the aid of the other except in case of an external armed attack against such party...”).

China will use the MPL to advance its strategy of using nontraditional military forces to intimidate its neighbors, advance its national security and expansionist objectives, and solidify control over disputed waters and territory in the SCS, ECS, and Yellow Sea. To date, China has successfully engaged in these “gray zone” operations without serious blowback or adverse repercussions. Nations, like Vietnam and the Philippines, are unable or unwilling to respond in kind, and China has avoided a direct military confrontation with the United States despite Washington’s purported red lines and condemnation of China’s malign behavior.

The way China implements the MPL, however, may change that paradigm. As a law enforcement agency, the CCG may use reasonable and necessary force under the circumstances to execute its law enforcement mission in its territorial sea and, to a limited extent, in its contiguous zone and EEZ. However, it may not use disproportionate or indiscriminate force, nor may it exercise law enforcement jurisdiction against foreign flag vessels on the high seas or in foreign EEZs. Given China’s prior malign behavior and inglorious track record of ignoring the rules-based international legal order when conducting maritime law enforcement activities, it is unlikely that China will implement the MPL consistent with established international practices.

The excessive use of force envisioned by the MPL goes well beyond what is permissible under international standards for maritime law enforcement operations and is more akin to the use of force by a military organization. Moreover, the potential scope of application of the new law, in effect, unilaterally puts all the waters within the First Island Chain under Chinese illegally claimed jurisdiction, thereby bolstering China’s anti-access/area capabilities in the SCS and ECS. As the maritime arm of the PAP, the CCG must be considered and treated as a military force, not a law enforcement agency. If the CCG engages in operations that involve the use of force, these operations should be considered an armed attack under the UN Charter that justifies an armed response in individual or collective self-defense. The international community can no longer afford to give China a free pass.

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〈국문초록〉

중국해안경비법(Coast Guard Law)(2021): 위협과 공격을 위한 도구

라울 페드로조

중국의 새로운 해양정책법(Maritime Policy Law: MPL)은 중국해안경비대 등의 중국 해양경찰 기관들의 임무를 규제하고, 중국의 주권, 안보, 권리, 이해관계를 보호한다고 주장한다. [하지만] 중국이 본토 주위 및 남중국해에서 넓은 해역에 대한 권리를 주장하고 있다는 점에서, MPL은 훨씬 광범위하게 적용될 수 있다. 중국이 제기하는 대부분의 해양 주장이 국제법에 부합하지 않는다는 점을 고려하면, 이렇게 해양법 집행 관할권을 광범위하게 적용하는 것은 문제의 소지가 많다. MPL이 분쟁해역 또는 공해에서 외국선적 선박에 대한 관할권을 주장한다면, 이는 국제법 위반이다. 무력 사용에 관한 MPL의 많은 규정 역시, 해양법 집행 관할권의 사용에 관한 국제 규칙 및 기준을 위반한 것이며, 모든 국가의 영토 온전성이나 정치적 독립성에 반하는 위협이나 무력사용을 금하는 유엔헌장에도 위배된다. 중국은 MPL을 남중국해와 동중국해에서 불법적인 영토 및 해양 주장을 제기하기 위한 구실로 사용할 수 있으며, 다른 연안국의 배타적경제수역 내 자원 권리 행사를 방해하기 위한 구실로도 사용할 수 있다.

주제어: 무력 사용, 해양법 집행, 합리적이고 필수적인, 중국해안경비대, 해양경찰법