

# China's Maritime Police Law

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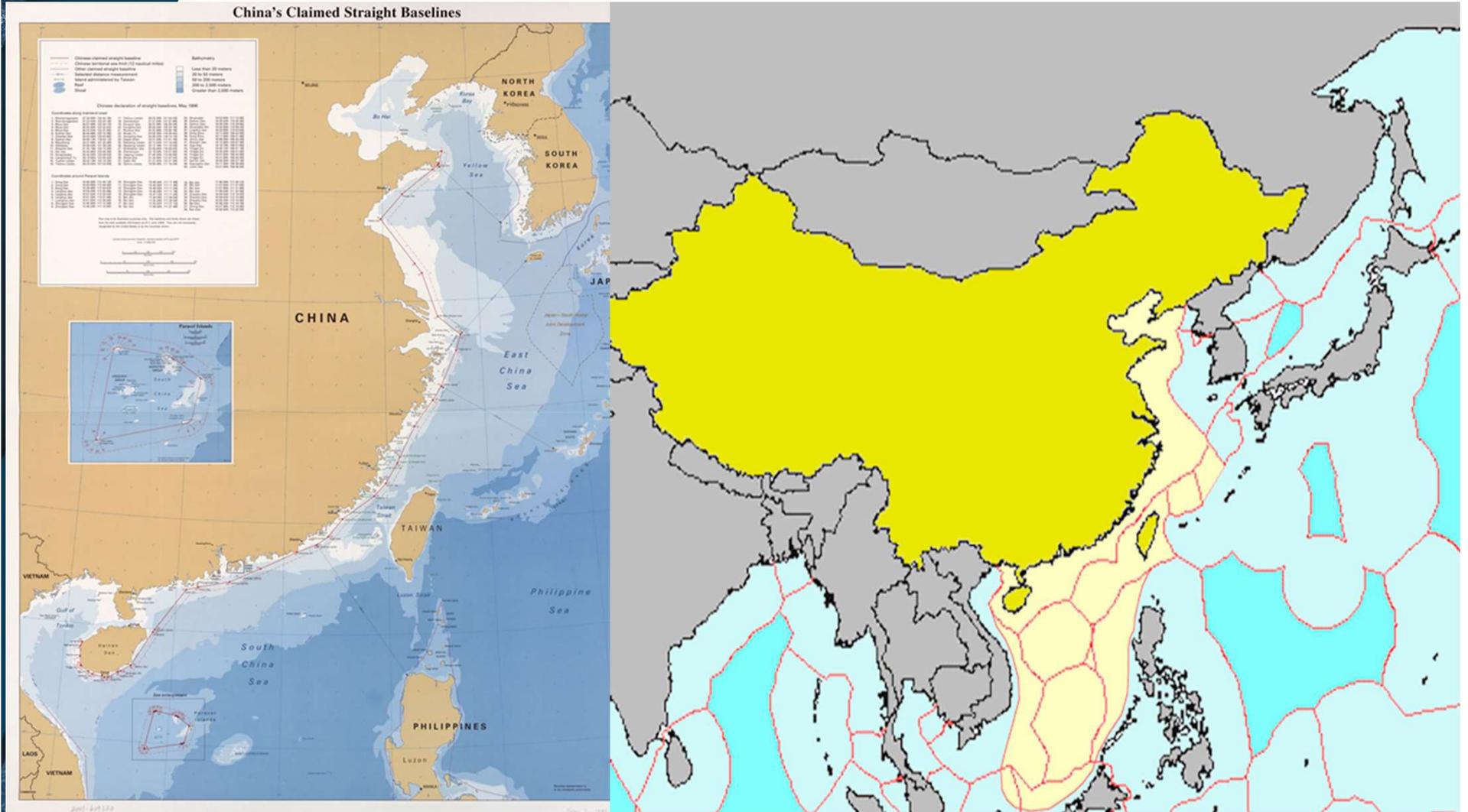
# Overview

- Adopted 22 Jan 2021
- Took effect 1 Feb 2021 (Art. 84)
- Regulates duties of China's PAP Force's maritime police agencies, led by CCG (Art. 1, 2, 10)
- **Far-reaching potential application—sea areas under PRC jurisdiction (Art. 3)**
- CCG Duties (Art. 5):
  - carry out maritime safety and security,
  - maintain maritime security and order,
  - combat maritime smuggling,
  - supervise the development and utilization of marine resources,
  - protect the marine ecological environment, and
  - conduct marine fishery production operations





# Art. 3—Scope of Application





# Impact SCS Arbitration Award on the Merits

- Tribunal issued unanimous Award in favor of RP on 12 Jul 16
  - Final and binding on both parties
- Historic Rights and the “Nine-Dash Line” (9DL)
  - UNCLOS comprehensively allocates rights to maritime areas
  - **Any historic rights the PRC may have had to the resources in the SCS were extinguished by the EEZ provisions of UNCLOS**
  - No credible evidence PRC historically exercised exclusive control over the waters or resources of the SCS.
  - **No legal basis for the PRC to claim historic rights to resources within the sea areas falling within the 9DL**





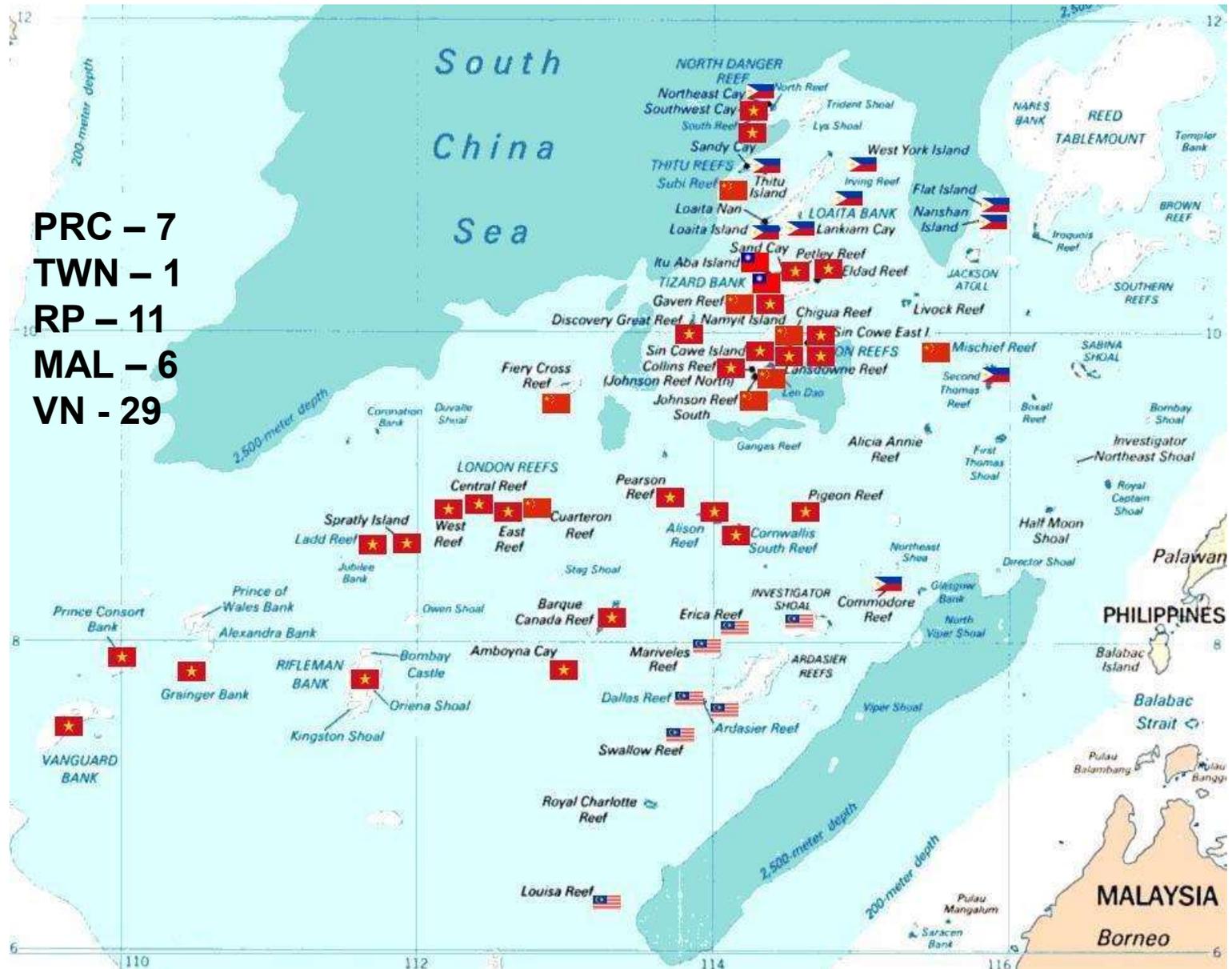
# Art. 12—CCG Tasks

- **Guarding key islands and reefs**
- Managing and protecting maritime boundaries
- **Preventing**, stopping and eliminating **acts** that **endanger** national sovereignty, security, and **maritime rights** and interests
- **Protection of islands** and **development** and utilization of **uninhabited islands**
- **Protection** of important **maritime targets** and major activities



# Occupied Features

PRC – 7  
TWN – 1  
RP – 11  
MAL – 6  
VN - 29





# Art. 12—CCG Tasks

- Use of force authorized to execute these tasks in contested areas like the ECS (Senkakus) and SCS (Spratlys/Scarborough Shoal)
  - US defense obligations?
  - Violation of Art. 2(4)?
- Protection of survey vessels (*e.g.*, *Haiyang Dizhi 8*) or oil rigs (*e.g.*, *Hai Yang Shi You 981*) engaged in hydrocarbon exploration in foreign EEZs and continental shelves
  - Violation of UNCLOS Art. 56 and Tribunal Award (RP)
- Protection of Chinese fishing vessels engaged in IUU fishing in foreign EEZs and high seas
  - Violation of UNCLOS Art. 56, 87 and Tribunal Award (RP)



# Art. 17—Impact on Innocent Passage

- Foreign ships that “**illegally enter**” PRC’s **territorial sea** may be ordered to “leave immediately” and CCG authorized to take **enforcement measures** in the territorial sea, such as **detention, forced removal, and forced towing**
  - Illegal entry not defined
    - Passage permitted as long as it is not prejudicial to the peace, good order or security of the coastal state [UNCLOS Art. 19]
  - PRC illegally requires prior permission for warships to engage in innocent passage
    - Coastal State may not use force against sovereign immune vessels except in self-defense (hostile act/hostile intent)
    - Sole remedy – order it to leave [UNCLOS Art. 30]
  - Could be used as a subterfuge to hamper the right of innocent passage [UNCLOS Art. 17-26]



# Article 20

- CCG authorized to **use force to stop** foreign entities from **constructing** buildings or structures **and installing** fixed or floating devices, to include the **demolition** of these facilities, in waters under PRC jurisdiction.
  - All SCS claimants, except Brunei, have outposts on several of the features also claimed by China [UNCLOS Art. 56, 60, 80]
  - Illegal use of force inconsistent with the purposes of the UN and a clear violation of Article 2(4) of the Charter



# Art. 20

- **Unintended consequences** in the ECS (Senkakus) and SCS (Second Thomas Shoal/Scarborough Shoal)

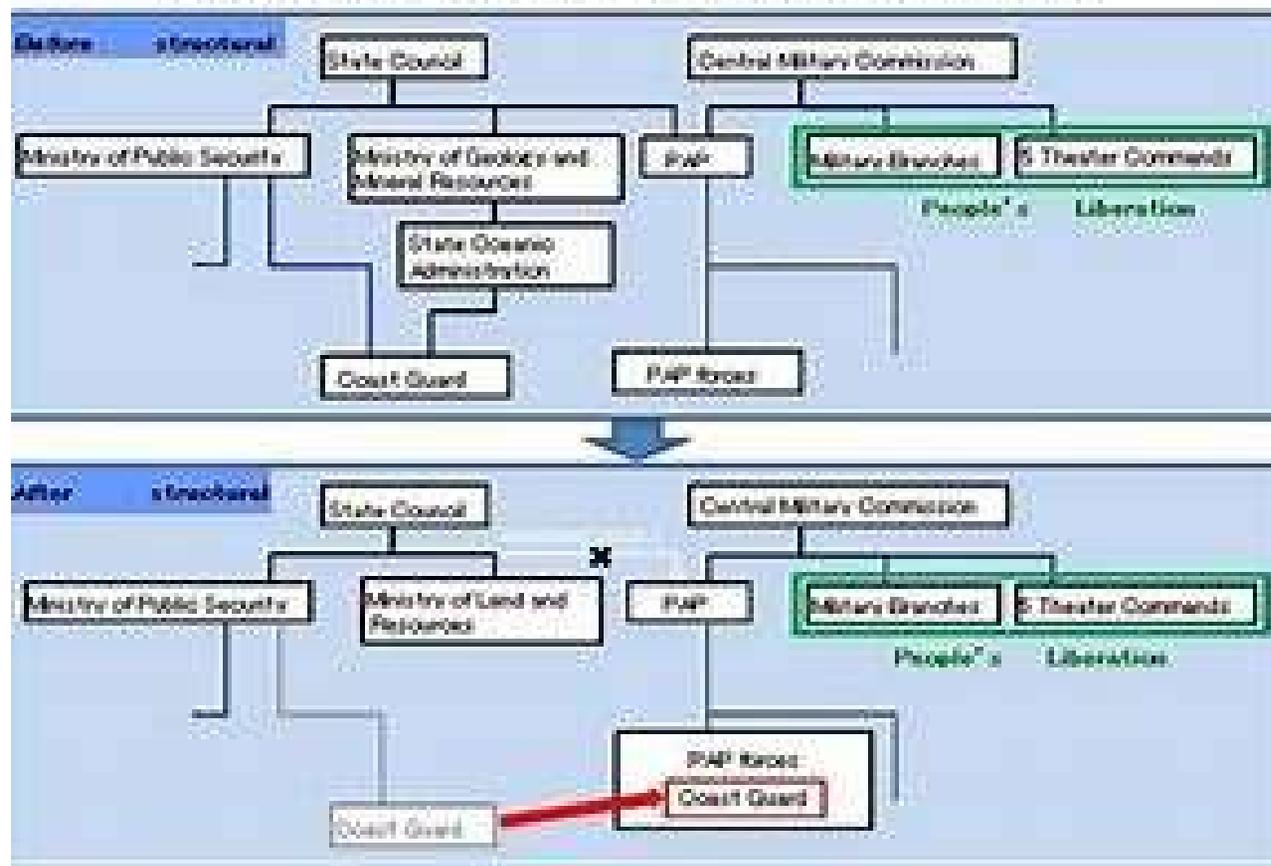




# CCG C2

- Maritime arm of the PAP under **C2 of the CMC**
  - Part of China's **armed forces**
  - Use of force = act of aggression/armed attack under UN Charter

Figure: Change in the China Coast Guard chain of command





# US-JPN Mutual Security Treaty (1960)

- Scope of application
  - ART. V - 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. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations in accordance with the provisions of Article 51 of the Charter. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.
- U.S. assurances – White House Press Statement (27 Feb 21)
  - “As President Biden underscored in his call with Prime Minister Suga, Secretary Blinken reaffirmed in his call with Foreign Minister Motegi, and Secretary Austin further reaffirmed in his call with Defense Minister Kishi, the United States is unwavering in its commitment to the defense of Japan under Article 5 of our security treaty, which includes the Senkaku Islands. The United States opposes any unilateral action that seeks to change the status quo.”



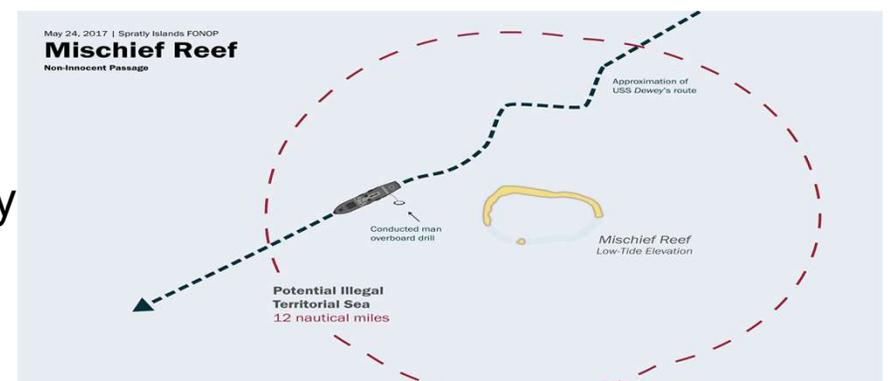
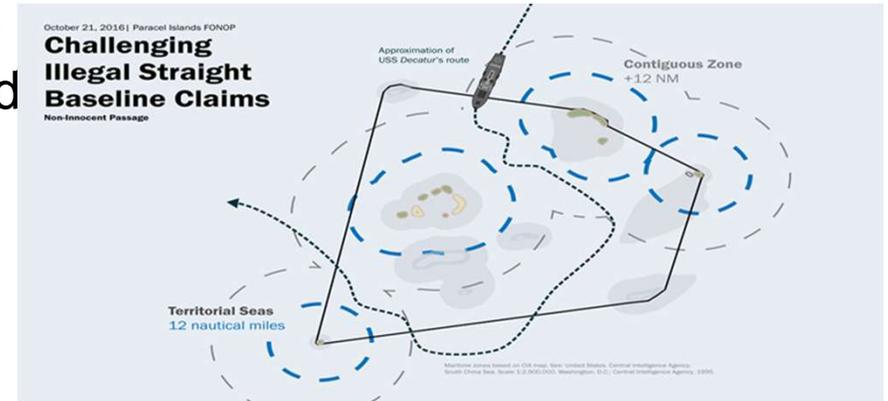
# US-RP Mutual Defense Treaty (1951)

- Scope of application
  - ART. IV - 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.
  - ART. V - For the purpose of Art. IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or **on its armed forces, public vessels or aircraft in the Pacific.**
- U.S. assurances – Secretary of State Blinken (29 Jan 21)
  - Blinken stressed the importance of the MDT for the security of both nations, and its clear application to armed attacks against the Philippine armed forces, public vessels, or aircraft in the Pacific, which includes the SCS



# Art. 21

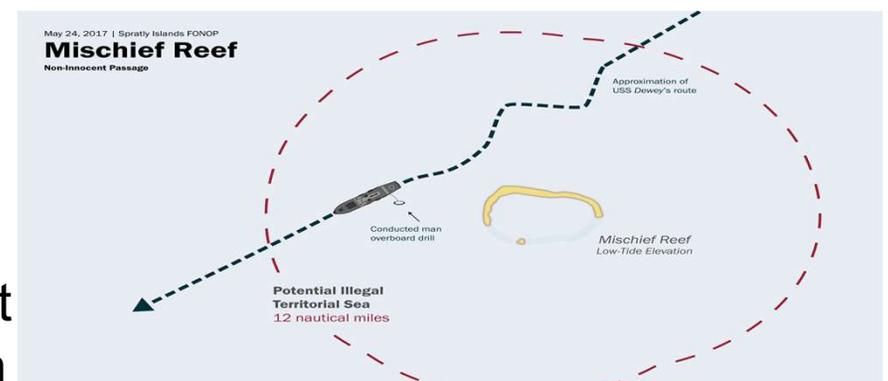
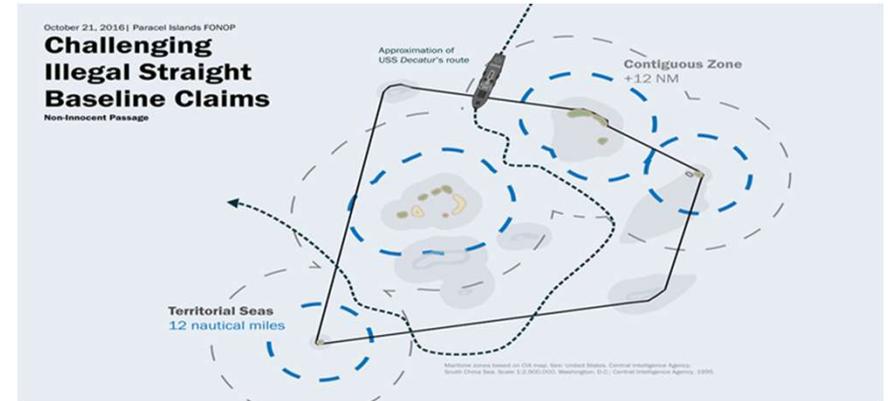
- Authorizes CCG to **use force** against **foreign warships** and other **sovereign immune vessels** that have refused to leave PRC waters
  - Includes “**forced eviction** and **forced towing**”
  - China routinely protests US FONOPS in the Spratlys and Paracels, and military surveys and presence ops in SCS
  - CCG might use MPL to justify **increased interference** with US FONOPS, military surveys, and presence operations in the SCS





# Art. 21

- Foreign warships and other government non-commercial vessels are entitled to **sovereign immunity** (Art. 32)
- **Sole remedy** for noncompliance with coastal State laws/regulations in the territorial sea is an **order to leave** or a diplomatic protest, unless force is required in self-defense (hostile act/hostile intent) [UNCLOS Art. 30]
- Threat or use of force against US warship could result in an armed response in self-defense under the US SROE





# Art. 25 – Security Zones

- **Highly problematic** from a freedom of navigation perspective
  - Zones in Territorial Sea v. Beyond the Territorial Sea
- Authorizes establishment of temporary **maritime security zones** in **waters subject to PRC jurisdiction** to **restrict or prohibit the passage** or stay of ships for any of the **following reasons**:
  - (1) perform maritime security tasks;
  - (2) combat illegal and criminal activities at sea;
  - (3) deal with emergencies at sea;
  - (4) protect marine resources and ecological environment; or
  - (5) any other situation that requires the delimitation of temporary maritime security zones



# Art. 25

- UNCLOS allows a coastal State to 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” [UNCLOS Art. 25]
  - Establishing a temporary maritime security zone in a limited area of the territorial sea for a brief period to perform maritime security tasks or combat illegal and criminal activities at sea may be permissible under UNCLOS Art. 25
- **Beyond the territorial sea**, all ships enjoy high seas freedom of navigation and no State may validly subject any part of the high seas to its sovereignty [UNCLOS Art. 87, 89, 90]
  - IMO/IHO World-wide Navigational Warning Service § 4.2.1.3
  - **NAVAREA Warnings** – **not a prohibited zone** – warning area to provide information on activities that might affect safety of shipping

Authority: NAVAREA III 1374/19

281203Z NOV 19

(Ukrainian NAVY)

1. Naval training from **01 DEC19** to **01 MAR20**, from 0600 UTC to 1800 UTC. In area bounded by:

46-00.0N 031-41.0E,

46-00.0N 031-54.9E,

46-02.0N 032-17.9E,

45-54.0N 032-35.4E,

45-40.0N 032-22.0E.

22. CANCEL THIS MSG on 011900UTC  
MAR 20

Authority: NAVAREA III 134/20

311152Z JAN 20.

(Russian Black Sea Fleet)

1. Missile and gunnery firing exercises, **01 thru 29 FEB20**, except Sundays, from 0500 UTC to 1700 UTC. Navigation temporarily dangerous in area bounded by:

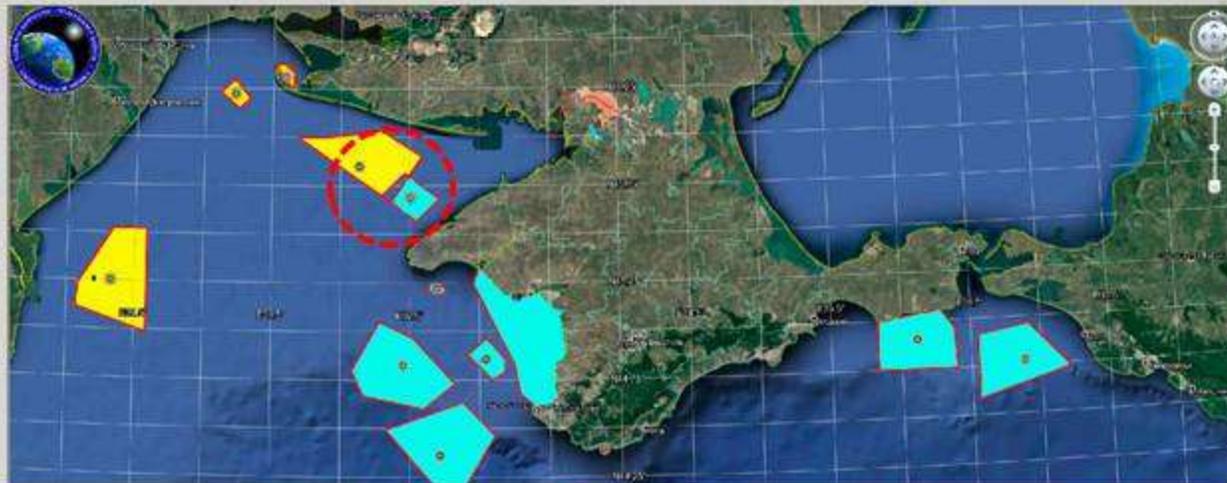
45-42N 032-18E

45-49N 032-28E

45-41N 032-43E

45-34N 032-33E

2. CANCEL THIS MSG on 291800 UTC  
FEB20.



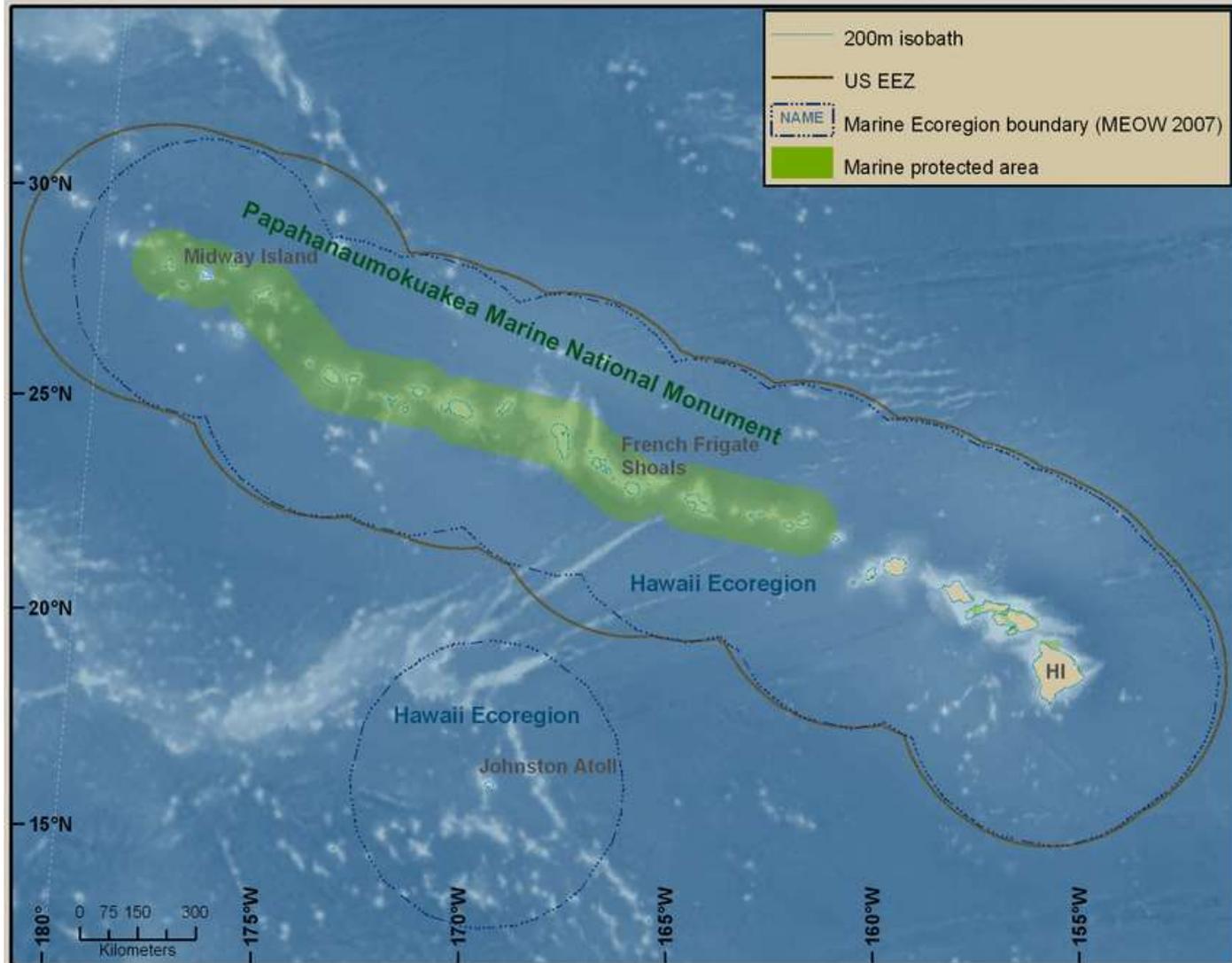


# Art. 25

- Coastal State **authority beyond the territorial sea** to protect marine resources and the marine environment is **very limited**
  - UNCLOS Art. 211 allows coastal States to 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 **shall not hamper or impede innocent passage**
  - In the **EEZ**, coastal State **authority is limited** to controlling vessel-source pollution by giving effect to IMO-approved international rules and standards, which do not include the designation of maritime security zones or denial of passage
  - **Special Areas** (e.g., Marine Protected Areas or Marine Sanctuary) – additional protective measures approved by IMO [UNCLOS Art. 211(6)]



# Papahānaumokuākea Marine National Monument (Hawaiian Islands)





# Papahānaumokuākea Marine National Monument (Hawaiian Islands)

- Permitting program manages access and activities in the protected area
  - Some activities are **prohibited** (oil & gas development, use of poisons, releasing invasive species, anchoring on coral)
  - Some activities are **exempted** (no permit needed)
    - Response to emergencies threatening life, property, or the environment;
    - Law Enforcement activities;
    - Activities and exercises of the Armed Forces (including the USCG); and
    - Passage without interruption (with notification requirements for commercial vessels when passing through the Monument)



## Art. 25 – Bottom Line

- China **may not** establish maritime security zones **beyond its territorial sea** for any of the enumerated reasons in Art. 25 of the MPL [UNCLOS Art. 58, 86, 87, 89]



# Maritime Law Enforcement

## Use of Force

- CCG may **use force** to execute its mission, but any force used must be **reasonable and necessary** under the circumstances
  - Use of force against a foreign-flagged vessel that intrudes into Chinese-claimed waters or threatens Chinese territorial claims or fails to heed an order or a warning from the CCG may not be reasonable and necessary under a **totality of the circumstances**
  - **Indiscriminate** use of force violates international law
  - Absent hostile intent or hostile act, use of force against **sovereign immune vessels** is **prohibited** by international law



# Art. 22 – Use of Force

- Allows CCG to use all necessary measures including the use of weapons to stop, *inter alia*, infringement of PRC sovereignty, sovereign rights, and jurisdiction
- Absent hostile intent or hostile act, use of force against **sovereign immune vessels** is **inconsistent** with international law [UNCLOS Art. 30, 32, 95, 96]
- Use of force against **other ships** must conform to existing state practice on the use of force by **maritime law enforcement** authorities



# *The I'm Alone (1929)*

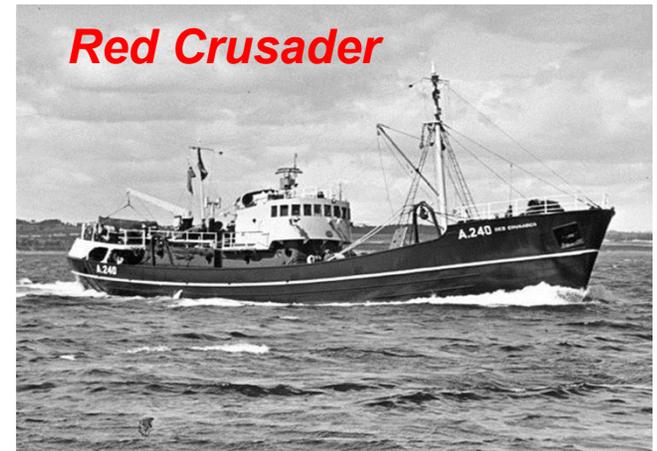
- Arbitration commission found that the decision of the USCG cutter to intentionally sink a vessel was not justified under international law.
- USCG pursued the vessel for two days for suspected smuggling of liquor.
- USCG personnel then sank the vessel after the captain refused multiple orders and signals, including the use of warning shots and disabling fire, to heave to for boarding.





# ***The Red Crusader (1961)***

- Commission of Enquiry found that a Danish frigate exceeded legitimate use of force by firing solid, non-explosive gun-shots at the Red Crusader's scanner, mast, masthead light, hull and stern without warning and creating danger to human life on board the vessel without necessity, even though the vessel was not sunk, and no one was injured.
- The Red Crusader was boarded for alleged illegal fishing but fled the scene with two Danish sailors on board and refused to heave to after the Danish frigate fired four warning shots, accompanied by sound signals to stop.



***Red Crusader***



***Niels Ebbesen (F-339)***



# M/V Saiga (1997)

- ITLOS found use of force by a Guinean patrol boat to stop and board the M/V Saiga for an alleged violation of Guinean customs laws, both before and after the boarding, was excessive and unreasonable and endangered human life
- ITLOS determined that international law requires that the use of force must be avoided if possible and, if the use of force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances
- When boarded on the high seas, the coastal tanker was fully laden with gas oil and had recently provided fuel to fishing vessels in Guinea's contiguous zone
- The Guinean patrol boat opened fire on the tanker with live ammunition using solid shot from large caliber automatic weapons without issuing any signal or warning, as required by international law and practice
- ITLOS additionally found that the use of weapons by the boarding party was excessive given that the crew of the tanker did not resist and in no way threatened the boarding party





# Chapter VI – Use of Weapons

- Art. 47 authorizes the use of small arms weapons
  - if there is evidence that a ship is carrying criminal suspects or illegally carrying weapons, ammunition, state secrets, or drugs and other items, and refuses to obey an order to stop
  - if a foreign ship enters waters under PRC jurisdiction and illegally engages in production activities, refuses to obey an order to stop, or refuses to accept boarding or inspection, and the use of other measures is not sufficient to stop the illegal act
- Art. 48 authorizes the use of shipborne and airborne weapons, in addition to small arms, when the CCG is (1) performing maritime anti-terrorism missions; (2) dealing with serious incidents of violence at sea; or (3) attacked by weapons or other dangerous methods
- Art. 49 – a prior warning that use of weapons is imminent is not required if giving a warning “may cause more serious harmful consequences”
- Art. 50 limits use of weapons to situations that are reasonably necessary and requires that CCG personnel try to avoid or reduce unnecessary casualties and property losses



# Chapter VI

- On its face, Chapter VI could be applied consistent with international maritime law enforcement standards
- However, **China does not have a good track record** when it comes to observing international law when conducting maritime law enforcement activities
  - CCG has repeatedly harassed and engaged in excessive use of force against Vietnamese, Japanese, and Filipino fishermen in the ECS and SCS and unlawfully denied access to offshore resources in coastal State EEZs
    - Two recent incidents include the sinking of a Vietnamese fishing vessel near the Paracel Islands in April 2020 and a Filipino fishing vessel off Reed Bank in June 2019
  - Given the CCG's prior malign behavior and disregard for international law, it is unlikely that the MPL will be implemented in accordance with established maritime law enforcement practices



# Emboldening the CCG

- CCG is an important surrogate of the PLAN
- Used to conduct coercive “**gray zone**” operations against its neighbors
- Maritime component of the PAPF
  - Under the command and control of the CCP Central Committee and Central Military Commission
- MPL empowers CCG to conduct maritime security duties and engage in military operations that go well **beyond the CCG’s maritime law enforcement duties**





# Gray Zone Operations

- MPL advances China's strategy of using nontraditional military forces to intimidate its neighbors, advance its national security objectives, and assert greater control over the ECS and SCS
- By engaging in these “gray zone” operations, China believes it can **avoid** an **armed response** from less-capable nations, like Vietnam and the Philippines, as well as avoiding a **direct military confrontation** with the United States.



# Why Now?

- 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.
- China is testing the waters to see how far it can go before it elicits an unfavorable response from Prime Minister Suga and/or President Biden.
- China will use the CCG to challenge US resolve
  - Although the new US administration has reaffirmed its commitments to defend Japanese interests in the Senkakus and to uphold its obligations under the US-Philippines MDT in the SCS, China will allow the CCG to use force below the threshold of a traditional armed attack to avoid a US response on behalf of Japan or the Philippines, thereby attempting to argue that the United States is not a reliable treaty ally





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