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## China's New Coast Guard Law and Its Implications

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On January 22 the Standing Committee of the National People's Congress of China passed a new Coast Guard law, which empowers the China Coast Guard (CCG) to use "all necessary means", including pre-emptive strikes without warning, if the commander of the ship deemed necessary, against foreign vessels in waters "under China's jurisdiction".<sup>1</sup> The law also permits the CCG to use "different kinds of weapons— hand-held, ship-mounted or airborne —to demolish other countries' structures built on Chinese-claimed reefs and to board and inspect foreign vessels in waters claimed by China".<sup>2</sup> Besides, the law empowers the Coast Guard to create temporary exclusion zones "as needed" to stop other vessels and personnel from entering Chinese "claimed waters". Though the mandate for using weapons to protect 'sovereignty and maritime rights' by the CCG is ambiguous in the law, such provision is grossly different from the ones used by most other countries such as the US, South Korea, Japan, and the Philippines whose coast guards can use weapons for law enforcement purposes, but not for 'defending sovereignty and maritime rights'.<sup>3</sup>

The law came into effect on February 1 even as the United States and regional countries have raised concerns about the potential scope for tensions as it would violate international norms and principles, including the United Nations Conventions on the Law of the Sea (UNCLOS) provisions. For instance, Article 2 of the CCG law

says the People's Armed Police Force's Coast Guard, that is, the coast guard organization, shall uniformly perform maritime rights enforcement duties, while Article 3 stipulates that "the CCG Organization shall conduct law enforcement operations in the waters under the jurisdiction of China and in the airspace above the waters under the jurisdiction of China, and apply this Law."<sup>4</sup> Under the UNCLOS, the waters under the jurisdiction of a state are the internal waters, territorial sea, contiguous zone, exclusive economic zone, and the waters of the continental shelf (including the extended continental shelf). But China's position on jurisdictional waters in the South China Sea has long clashed with the UNCLOS text. China claims almost 90 per cent of the South China Sea water body as its territorial waters while most of the Southeast Asian countries challenge the Chinese claim as their EEZ overlap with the China claimed 'U' shaped nine-dash line.

Further, China amended the Maritime Traffic Safety Law of 1984 on April 29, giving the maritime safety agency –Maritime Safety Administration (MSA)- which comes under the Ministry of Transport, the power to order foreign vessels to leave what Beijing claims as its territorial waters if it thinks that they could threaten security.<sup>5</sup> The amended law will come into force on September 1, according to the official *Xinhua* News Agency. The MSA can also block foreign ships from intruding into the "territorial

waters" if they do not fall under innocent passage under international law. The impact of coast guard law could be more visible in the East China Sea as Chinese coast guard ships frequently intrude into the territorial waters of Senkaku islands controlled by Japan. On the other hand, the Maritime Traffic Safety Law is more concerned with the South China Sea because the law enforcement activities are largely conducted by civilian agencies coordinated by the MSA. The MSA has a strength of 25,000 officials, operate a patrol force of 1,300 vessels and watercraft of various types, including the 10,000-ton 'Haixun 09', the largest one in the MSA inventory with hulls of a naval ship that can potentially ram other vessels in what is referred to as 'shouldering' in naval parlance.<sup>6</sup> In place of the official Coast Guard, a maritime militia, known as People's Armed Forces Maritime Militia (PAFMM), a component of the militia of the People's Liberation Army, conducts law enforcement activities in the South China Sea. The PAFMM is a civilian force and its members receive training from the PLA and China Coast Guard (CSG) to perform tasks including (but not limited to) border patrol, surveillance and reconnaissance, maritime transportation, search and rescue, and other auxiliary tasks, which it often performs in conjunction with the PLAN and the CCG.<sup>7</sup> The amended law provides the PAFMM more ammunition to harass fishing trawlers of neighbouring countries as they are frequently involved in intimidating fishing vessels from littoral countries as well as the sinking of these vessels at times. At the same time, there could be more coordinated actions by the CCG and the PAFMM in the South China Sea, which has been demonstrated by a joint exercise between the CCG Bureau and the PLA Navy on Woody Island (Yongxing Island) in the Paracel Islands in July 2020.

The CCG was created in 2013, uniting the

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previously separate maritime law enforcement agencies known as the 'Five Dragons'- the China Marine Surveillance, the CCG, the China Maritime Patrol, China Fisheries Law Enforcement Command, and the General Administration of Customs, all of which were under different civilian ministries.<sup>8</sup> In 2018, the CCG was transformed into a military-like organization under the centralized command of the Chinese Communist Party Central Committee and the Central Military Commission. Today CCG works like a military-like organization and its operating structure mirrors that of the People's Liberation Army (PLA).<sup>9</sup>

Allowing the coast guard to use weapons against foreign vessels deemed to be doing 'illegal activities' by Chinese authorities in the troubled waters will have serious ramifications because China already has complicated relations with the neighbouring countries over territorial disputes in the East and South China Seas (ESCS). Since China Coast Guard is under the dual command of the State Council and Central Military Commission, its actions will have the support of the political leadership of the state.<sup>10</sup> As a result, the actions of the Coast Guard would be considered as provocative actions of China by other countries and they will be forced to use regular armed forces to counter China's coast guard, thus generating potential conflict between China and the neighbouring countries.

On the other hand, China claims that the new law provides better facilitation of cooperation with other countries' coast guards based on international resolutions.<sup>11</sup> It also clarifies "coast guards' duties and limits of authority" while engaging in law enforcement activities in and around China's seas as well as cooperating with other coast guards. However, China is apprehensive of US naval ships' surveillance and freedom of navigation operations (FONOPS)

activities near China's maritime and air space of the disputed South China Sea. According to China's Ministry of National Defense spokesman Senior Colonel Wu Qian, "since the current US administration took office on Jan 20, activities involving US naval vessels in China's adjacent waters have increased by 20 per cent compared to the same period last year, with the frequency of reconnaissance planes up over 40 percent".<sup>12</sup> Even after the passage of the coast guard law, US warships have carried out 'freedom of navigation' operations there in an apparent bid to counter Chinese claims and actions in the South China Sea. With the new law in place, China conveys its message loud and clear that it is not hesitant to risk military skirmishes with the US if the US naval ships conduct surveillance activities closer to Chinese shores.

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### China and Territorial Disputes in the East and South China Seas

The territorial dispute in the East and the South

China Sea goes back to the period of the pre-PRC (People's Republic of China) era when China lost them because of unequal treaties forced upon it as a defeated party. China believes that it is the natural inheritor of all the territories that had been lost prior to the Second World War. One of the important features of the San Francisco Peace Treaty (1951) was that the territory the colonial/imperial powers occupied during or prior to the war were to be surrendered and returned to the original holders. However, the Chinese territories had not been returned to China; rather various agreements were left ambiguous as to who would be the new inheritor of the territory. As a result, the East and South China Seas are still disputed territories.

In the East China Sea, the main dispute is between China and Japan over the sovereignty of the Diaoyu Dao/Senkaku islands (Figure 1). Japan controls the islands under the Treaty of Shimonoseki of 1895 but China claims its sovereignty rights over them and says it should be returned to the PRC according to the San

**Figure 1: Senkaku/Diaoyu Islands**



Source: BBC, "How uninhabited islands soured China-Japan ties", November 10, 2014, <https://www.bbc.com/news/world-asia-pacific-11341139>

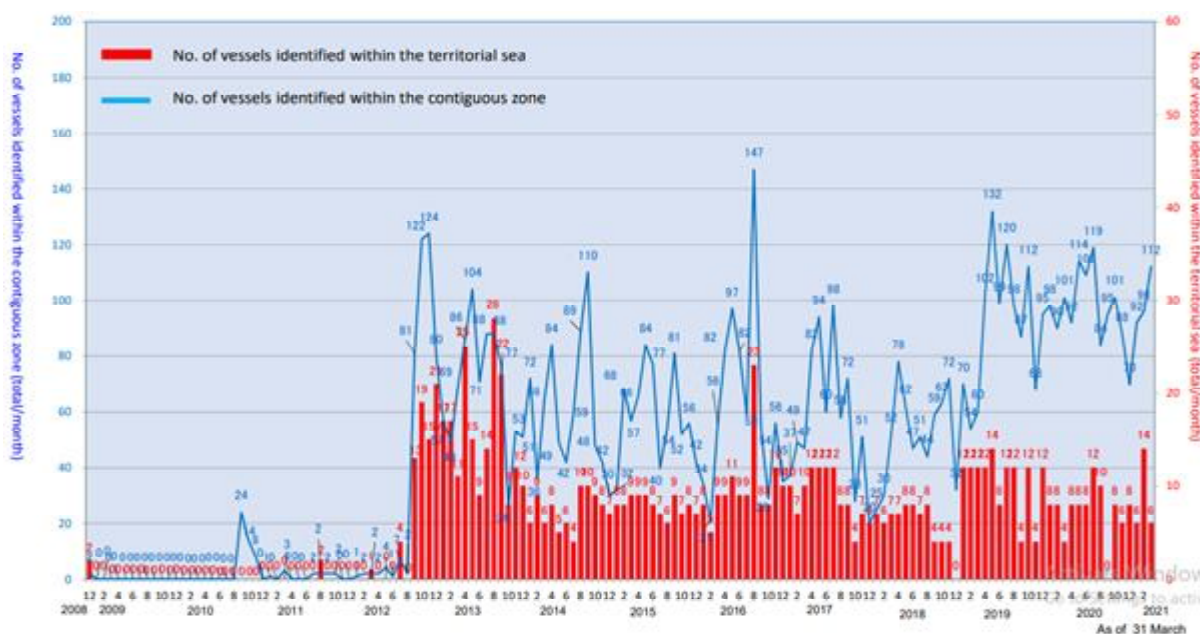
Francisco Peace Treaty. When the US returned Okinawa to Japan in 1972, the right of ownership of the Senkakus was left unclear. The islands straddle the 200nm exclusive economic zone (EEZ) of Japan and China, however, the control of the island would provide Japan possession of 740,000 square kilometres of maritime territory in the East China Sea, and the Japanese possession of the islands would hinder China's access to the Pacific Ocean. So, getting control of the islands are crucial for China's security strategy.

Both countries consider the actions of the other violation of their sovereignty. Chinese fishing trawlers, and at times naval ships, intrude into the exclusive economic zone surrounding the islands and are occasionally involved in friction with Japanese coast guard vessels near the Senkaku islands. Chinese vessels frequently intrude into the Senkaku islands area and the frequency has increased since 2012 (Figure 2). To enhance its claim and position in the ECS, China declared its East China Sea Air Defense Identification Zone (ADIZ) in November 2013, which overlaps with Japanese ADIZ.

Regarding the South China Sea, the dispute is mainly over the sovereignty of Spratly and Paracel islands and the exploitation of ocean resources

between China and some of the Southeast Asian countries. China claims around 90 percent of the waterbody of the SCS based on Chinese historical narratives.<sup>13</sup> China contends that it was the earliest to discover, name, and exercise administrative control of the islands, and the PRC has inherited all rights over the disputed territories from the previous regimes. The Chinese claim of the entire SCS waterbody is based on a purported U-shaped line map unilaterally drawn by the Republic of China government in 1947 (Figure. 3).<sup>14</sup> In 1974, the PRC navy fought a battle with South Vietnamese forces and gained full control over the Paracel Islands. Then, in 1988, it clashed with Vietnam to occupy six reefs in the Spratly Islands. In 1994, it took control of Mischief Reef from the Philippines. In 2002, it demonstrated restraint by signing the Declaration on the Conduct of Parties (DOC) in the South China Sea with the ten member states of the Association of Southeast Asian Nations (ASEAN). But it reasserted itself after 2009 when China formally submitted its nine-dash line claim to the UN. It continued its assertive actions such as the Scarborough Shoal incident with the Philippines in 2012, the oil rig incident with Vietnam in 2014, and large scale land reclamation and island building since September 2013.<sup>15</sup> Although China emphasised

**Figure 2: Trends in Chinese CCG Ships and Other Vessels in the Waters Surrounding the Senkaku Islands**



Source: Japan Ministry of Foreign Affairs, April, 30, 2021, <https://www.mofa.go.jp/files/000465486.pdf>

diplomacy to settle the dispute and started negotiations over a code of conduct (COC) with ASEAN in July 2016, it continues to use maritime militias to intimidate fishermen from other countries and to chase them away from the Chinese possessed areas.

**China's Consolidation of the South China Sea turns Full Circle**

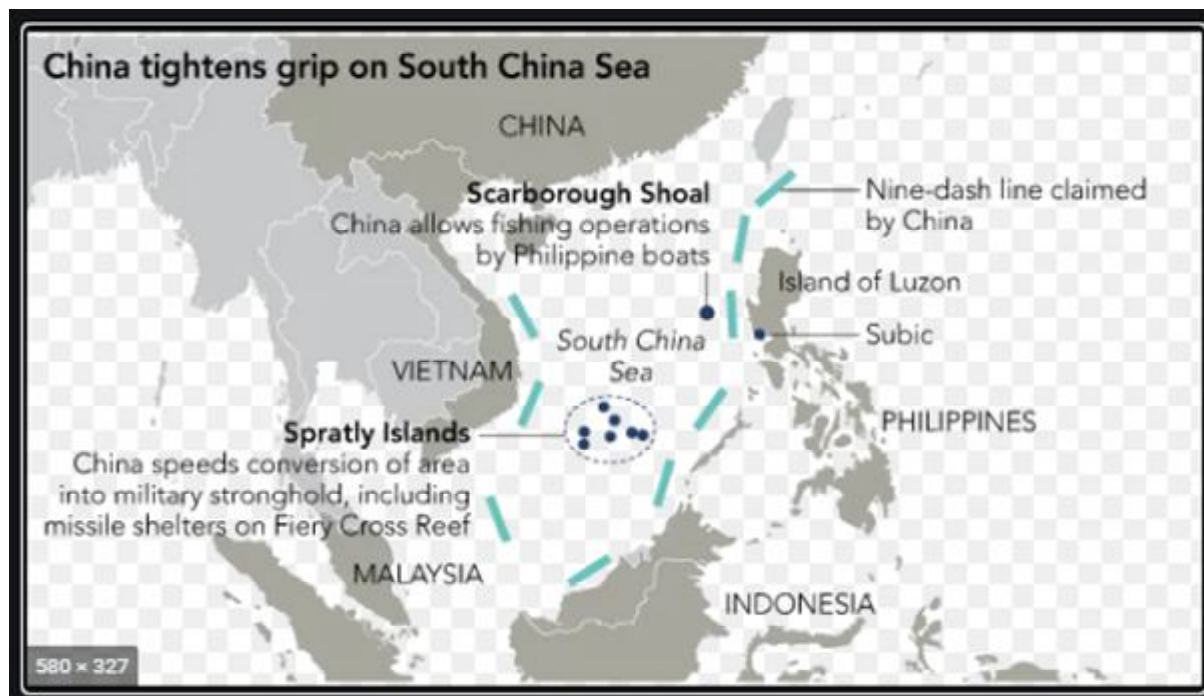
The Coast Guard law is part of a series of laws that China enacted since its attention shifted from land to sea in the late 1980s. To bring the adjacent waters within the national legal framework and

Macclesfield Bank, and the Spratly in the South China Sea.<sup>16</sup> The second one was the Law of the People's Republic of China on the Exclusive Economic Zone and Continental Shelf, passed in 1998, which demarcated the geographical boundary of China's claimed waters and officially laid its claims over the disputed maritime territories of ESCS. These

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two laws became the basis for substantiation of China's claim at the international level. For example, China cited the 1992 Law as a rationale for delineating its claimed baselines around Senkakus in 2012 when the Japanese purchased

**Figure 3: Nine-Dash Line in the South China Sea**



Source: Jun Endo and Oki Nagai, "One year on, Beijing steps up military drive in South China Sea", *Nikkei Asia*, July 18, 2017, <https://asia.nikkei.com/Politics/One-year-on-Beijing-steps-up-military-drive-in-South-China-Sea2>

to establish legitimate claims over the disputed territory, China passed two important maritime laws in the 1990s. In February 1992, it enacted Law of the People's Republic of China Concerning the Territorial Sea and Contiguous Zone, which defined the PRC's territorial sea expansively to include disputed areas concerning Taiwan and all its islands, the Diaoyu (Senkakau) islands in the East China Sea, and the Paracels,

the island from a private owner.<sup>17</sup> In 2016, it cited the 1992 and 1998 laws to support its SCS claims against Manila at the Permanent Court of Arbitration.

With Xi Jinping at the helm in China, retaking the disputed territories became part of his 'China dream' and 'national rejuvenation' process.<sup>18</sup> The Chinese assertiveness in the disputed waters has created tensions with the neighbouring countries,

and, at times, with the United States over freedom of navigation operations (FONOPS).<sup>19</sup> China seeks to avoid using regular naval force to take control of the islands as it would lead to an open war with the neighbouring countries that would allow an option for the US to involve in the conflict, which Beijing wants to avoid. Instead, China practises a 'grey-zone'<sup>20</sup> conflict using its maritime militias in the South China Sea and coast guard forces in the East China Sea against other disputants. Indeed, a conflict between Japan and China over Senkakus by the respective coast guard forces would limit the options for the US to intervene in the crisis in support of Japan. China wants to take advantage of this situation and CCG would be the front line force to take control of disputed islands without resorting to using regular naval forces. Already having the largest coast guard fleet in the world and is now ready to exercise weapons for 'defending rights and interests' in the maritime domain, China's consolidation of the East and South China seas appears likely within a short period.

## Notes:

<sup>1</sup> Bloomberg, "China bill allowing coast guard to use weapons puts Japan on notice", *The Japan Times*, January 23, 2021. <https://www.japantimes.co.jp/news/2021/01/23/national/china-coast-guard-senkakus/>. Accessed on April 20, 2021.

<sup>2</sup> Reuters, "New law allows China coast guard to fire on foreign vessels", *Bangkok Post*, January 22, 2021. <https://www.bangkokpost.com/world/2055471/new-law-allows-china-coast-guard-to-fire-on-foreign-vessels>. Accessed on April 20, 2021.

<sup>3</sup> "Force Majeure: China's Coast Guard Law in Context", CSIS Asia Maritime Transparency Initiative, March 30, 2021. <https://amti.csis.org/force-majeure-chinas-coast-guard-law-in-context/>. Accessed on April 20, 2021.

<sup>4</sup> Shigeki Sakamoto, "China's New Coast Guard Law and Implications for Maritime Security in the East and South China Seas", *Lawfare*, February 16, 2021. <https://www.lawfareblog.com/chinas-new-coast-guard-law-and-implications-maritime-security-east-and-south-china-seas>. Accessed on April 20, 2021.

<sup>5</sup> "China boosts power of maritime authorities, fanning tensions", *Kyodo News*, April 29, 2021. <https://english.kyodonews.net/news/2021/04/1073524c2a56-urgent-china-passes-legislation-to-boost-power-of-maritime-authorities.html>. Accessed on April 20, 2021.

<sup>6</sup> "10,000 Tons Patrol Vessel 'Haixun' Launched For China's Maritime Safety Administration", *Naval News*, September 30, 2020. <https://www.navalnews.com/naval-news/2020/09/10000-tons-patrol-vessel-haixun-launched-for-chinas-maritime-safety-administration/>. Accessed on April 20, 2021. <https://www.navalnews.com/naval-news/2020/09/10000-tons-patrol-vessel-haixun-launched-for-chinas-maritime-safety-administration/>. Accessed on April 20, 2021.

<sup>7</sup> "Military and Security Developments Involving the People's Republic of China 2020", Annual Report to Congress, Office of the Secretary of defence, US, September 1, 2020. <https://media.defense.gov/2020/Sep/01/2002488689/-1/-1/1/2020-DOD-CHINA-MILITARY-POWER-REPORT-FINAL.PDF>; "How Organized is China's Maritime Militia?", *The Maritime Executive*, March 2021, <https://www.maritime-executive.com/editorials/how-organized-is-china-s-maritime-militia>. Accessed on April 20, 2021.

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Linda Jakobson, 'China's unpredictable maritime security actors'. Lowy Institute, December 2014. [https://www.lowyinstitute.org/sites/default/files/chinas-unpredictable-maritime-security-actors\\_3.pdf](https://www.lowyinstitute.org/sites/default/files/chinas-unpredictable-maritime-security-actors_3.pdf). Accessed on April 25, 2021.

<sup>11</sup> Zong Haiyi, "China's Coast Guard Law unlocks new chapter of maritime legal enforcement cooperation", *Global Times*, March 27, 2021. <https://www.globaltimes.cn/page/202103/1219578.shtml>. Accessed on April 25, 2021.

<sup>12</sup> "China rips US military for increased monitoring in South China Sea", *The Star*, May 1, 2021. <https://www.thestar.com.my/aseanplus/aseanplus-news/2021/05/01/china-rips-us-military-for-increased-monitoring-in-south-china-sea>. Accessed on April 20, 2021.

<sup>13</sup> David Shambaugh, "The insecurity of security: The PLA's evolving doctrine and threat perceptions towards 2000", *Journal of Northeast Asian Studies*, Vol. 31, No. 2, 1994, pp. 3–25

<sup>14</sup> Feng Zhang, 'China's long march at sea: explaining Beijing's South China Sea strategy, 2009–2016', *The Pacific Review*, Vol. 33. No. 5, 2020. pp. 757-78

<sup>15</sup> Feng Zhang, 'China's long march at sea: explaining Beijing's South China Sea strategy, 2009–2016', *The Pacific Review*, Vol. 33. No. 5, 2020. pp. 757-787

<sup>16</sup> 'Law of The People's Republic of China on The Territorial Sea and The Contiguous Zone', *Asian Lii*, <http://www.asianlii.org/cn/legis/cen/laws/lotprocottsatz739/>. Accessed on April 20, 2021.

<sup>17</sup> When Japan nationalised the Senkakau islands in September 2012, China strongly protested as it's a violation of Chinese sovereignty, and stated that "Taiwan

and the various affiliated islands including Diaoyu Dao” belong to China under the 1992 Law. See full text of the statement: ‘Diaoyu Dao, an Inherent Territory of China’, State Council Information Office, The People’s Republic of China, September 2012. [https://www.fmprc.gov.cn/mfa\\_eng/topics\\_665678/diaodao\\_665718/t973774.shtml](https://www.fmprc.gov.cn/mfa_eng/topics_665678/diaodao_665718/t973774.shtml). Accessed on April 20, 2021.

<sup>18</sup> “Structuring the Chinese Dream”, *China Daily*, 25 January 2014. [http://usa.chinadaily.com.cn/opinion/2014-01/25/content\\_17257856.htm](http://usa.chinadaily.com.cn/opinion/2014-01/25/content_17257856.htm). Accessed on April 20, 2021.

<sup>19</sup> CRS Report, “U.S.-China Strategic Competition in South

and East China Seas: Background and Issues for Congress”, Washington DC., March 18, 2021. <https://fas.org/sgp/crs/row/R42784.pdf>. Accessed on April 20, 2021.

<sup>20</sup> Green, M., Hicks, K., Cooper, Z., Schaus, J., & Douglas, J. (2017). Countering coercion in maritime Asia: The theory and practice of gray-zone deterrence. Washington, DC: Center for Strategic and International Studies p. 21. [https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/170505\\_GreenM\\_CounteringCoercionAsia\\_Web.pdf](https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/170505_GreenM_CounteringCoercionAsia_Web.pdf). Accessed on April 20, 2021.



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