



UiT The Arctic University of Norway

Faculty of Law

China's Recent Maritime Legislation

A Study of Consistency with the International Law of the Sea and the Political Context

Sebastian Maria Karl Heinrich Kopf

Master's thesis in Law of the Sea // JUR-3910 // September 2022



Table of Contents

- 1 Introduction..... 1
- 2 Methodological Reflections 4
 - 2.1 Research Questions 4
 - 2.2 Delimitation of Scope 6
 - 2.3 Legal Doctrinal Method..... 7
 - 2.4 Law in Context: Combining Legalism and Offensive Realism 8
- 3 The International Legal Framework 16
 - 3.1 Differentiating Different Kinds of Jurisdiction..... 16
 - 3.1.1 Prescriptive and Enforcement Jurisdiction 16
 - 3.1.2 Port, Flag and Coastal State Jurisdiction 16
 - 3.2 The United Nations Convention on the Law of the Sea 17
 - 3.2.1 The Territorial Sea 18
 - 3.2.2 The Exclusive Economic Zone 20
 - 3.2.3 The High Seas 20
 - 3.2.4 Other Maritime Zones under the LOSC..... 21
- 4 The People’s Republic of China’s 2021 Maritime Traffic Safety Law and 2021 Coast Guard Law 21
 - 4.1 Legal Status and Structure 21
 - 4.1.1 2021 Maritime Traffic Safety Law 21
 - 4.1.2 2021 Coast Guard Law 22
 - 4.2 Selected Issues 22
 - 4.2.1 General Geographical Scope of Application 22
 - 4.2.2 Prior Notification and other Requirements concerning Foreign Vessels in the Territorial Sea 24
 - 4.2.3 Suspension of and other Restrictions on Navigation within and beyond the Territorial Sea 25
 - 4.2.4 Law Enforcement..... 26

5	Discussion.....	26
5.1	General Geographical Scope of Application	26
5.2	Prior Notification and other Requirements concerning Foreign Vessels in the Territorial Sea	30
5.3	Suspension of and other Restrictions on Navigation within and beyond the Territorial Sea	37
5.4	Law Enforcement.....	43
5.5	Impacts of the MTSL and CGL on Chinese Maritime Power and Claims	46
6	Conclusion	52
	Figures.....	55
	Works cited.....	59
	International Treaties and Documents	59
	National Laws	60
	Cases	60
	Other Literature and Documents.....	61

Figures

Figure 1	Share in Global GDP (PPP Dollar) for the United States and China 1987-2027	55
Figure 2	Military Expenditure 1989-2021: United States and China	56
Figure 3	Power Shift G19 Countries: 2016-2020 by Country	57
Figure 4	Power Distribution G19 Countries: 2020 by Country	58

1 Introduction

*A normative discipline makes progress only in contact with what resists it. International law cannot gather strength by isolating itself from the political realities with which international relations are everywhere impregnated. It can only do so by taking full account of the place that these realities occupy and measuring the obstacle which they present.*¹

In 2021 the People's Republic of China (China) revised her Maritime Traffic Safety Law (MTSL)² and enacted a new Coast Guard Law (CGL)³. These legal developments come at times of high tensions and conflicts in several areas, including the South China Sea, Taiwan and the Senkaku islands, also known as Diaoyu islands.

Tensions between China and several other States in the South China Sea have been rising for many years. These include disputes concerning, inter alia, the validity of sovereignty claims inside the Chinese-proclaimed nine-dash line, illegal fishing, pollution of the marine environment and threats and use of force.⁴ Both China, Malaysia, the Philippines, Indonesia, Vietnam, and Taiwan entertain – in parts overlapping – claims in this area.⁵ In 2013 the Philippines instituted proceedings before an international arbitral tribunal. On 12 July 2016 the arbitral tribunal delivered her decision, declaring effectively that several of China's claims in the South China Sea are not valid under international law.⁶ In her first reaction to the tribunal's

¹ C. De Visscher, *Theory and Reality in Public International Law* (2015), available at <https://www.degruyter.com/document/doi/10.1515/9781400875023/html> (last visited 28 August 2022), at xiv.

² Maritime Traffic Safety Law of the People's Republic of China, adopted 29 April 2021, entered into force 1 September 2021 (MTSL), translation available at <https://www.steamshipmutual.com/Downloads/Articles/2021/Maritime%20Traffic%20Safety%20Law%20of%20the%20PRC%202021%20English.pdf> (last visited 29 March 2021] and <http://en.pkulaw.cn/display.aspx?id=07a6a3607ed7617bbdfb&lib=law> (last visited 29 August 2021).

³ Coast Guard Law of the People's Republic of China, adopted 22 January 2021, entered into force 1 February 2021 (CGL), translation available at <http://en.pkulaw.cn/display.aspx?id=09868c44d041e84ebdfb&lib=law> (last visited 30 August 2022).

⁴ *South China Sea Arbitration (Philippines/China)* (Merits) (2016) 2013-19 PCA Rep i.

⁵ Center for Preventive Action, *Territorial Disputes in the South China Sea*, 4 May 2022, Council on Foreign Relations: Global Conflict Tracker, available at <https://cfr.org/global-conflict-tracker/conflict/territorial-disputes-south-china-sea> (last visited 25 August 2022).

⁶ *South China Sea Arbitration (Philippines/China)*.

decision China attacked both the decision and the tribunal itself. On the same day the decision was delivered the Chinese Ministry of Foreign Affairs publicly stated:

China's territorial sovereignty and maritime rights and interests in the South China Sea shall under no circumstances be affected by those awards. China opposes and will never accept any claim or action based on those awards.⁷

While there are few authors claiming that China subsequently moved towards implementing parts of the tribunal's decision,⁸ the majority sees ongoing non-compliance with the tribunal's ruling.⁹

A second conflict in the area exists in the relations between Taiwan and China. According to her One-China policy, China claims that Taiwan is one of her provinces and belongs to her territory. China does not accept Taiwan as a separate and sovereign state. This conflict increased in the last years as China enacted regulations providing a legal base to use military force towards Taiwan in case Taiwan officially declared her independence from China. Additionally, Chinese fighter jets repeatedly entered Taiwanese airspace during the last years. As the United States of America (United States) is allied with Taiwan and entered legal commitments to help Taiwan be able to defend itself, the United States is also directly involved in this conflict. High tensions could be seen as recently as in the beginning of August 2022 when the Speaker of the House of Representatives of the United States of America, Nancy Pelosi, visited Taiwan in her official capacity. China considers Taiwan to be under her sovereignty and protests actions that could be interpreted differently. As the Speaker of the U.S. House of Representatives simultaneously is in the 3rd position in the presidential line of

⁷ *Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines*, available at https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201607/t20160712_679470.html (last visited 15 June 2022).

⁸ Hayton, 'Denounce but Comply: China's Response to the South China Sea Arbitration Ruling', 18 *Georgetown Journal of International Affairs* (2017) 104.

⁹ Phan and Nguyen, 'The South China Sea Arbitration: Bindingness, Finality, and Compliance with UNCLOS Dispute Settlement Decisions', 8 *Asian Journal of International Law* (2018) 36; Zhao, 'China and the South China Sea Arbitration: Geopolitics Versus International Law', 27 *Journal of Contemporary China* (2018) 1.

succession, Pelosi's visit in her official capacity was seen by China as a dangerous act.¹⁰ On top of strongly worded statements of protest China also engaged in several military maneuvers around Taiwan. On the international stage there is fear that China could attack Taiwan and subdue it forcefully. These fears increased when Russia attacked Ukraine in 2022. Pelosi's visit of Taiwan in August 2022 can be viewed in this context.

A third collection of conflicts surrounds claims on sovereignty concerning several islands and island chains. These include, among others, the Senkaku islands, also known as Diaoyu islands, effectively controlled by Japan.¹¹ As the island's different names suggests, the islands are disputed between Japan and China. There have been several instances where Japan and China claimed illegal penetration of their sovereign waters by the other state.

These three high tension areas are highly important for several reasons. A considerable amount of world trade goes through these areas. Given the involvement of several powerful states, tensions in this region are prone to affect both regional and global security and trade. International law has at its core the purpose of regulating international relations, increasing peaceful conduct and improving the human condition. The preamble to the 1982 United Nations Convention on the Law of the Sea reaffirms this purpose, stating the desire to

contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and [...] promote the economic and social advancement of all peoples of the world¹².

The rule of law has the potential to increase stability and order in the international system, leading to security and prosperity. However, the positive effects law *can* have rely both on its content and its enforcement possibility. Laws can be used for achieving security and prosperity, but also to subdue other entities. For international law's dividend to take effect, it is important that international law is fair and just, as well as not used for its opposite. In other words: law

¹⁰ 'China warnt vor »gefährlichem« Besuch von Pelosi', *Der Spiegel* (2022) , available at <https://www.spiegel.de/ausland/taiwan-china-nennt-besuch-von-nancy-pelosi-gefaehrlich-a-678a29e2-3d77-4842-88b2-bee1fefcf2ab> (last visited 15 August 2022).

¹¹ Kim, 'The Senkaku Islands Dispute Between Japan and China: A Note on Recent Trends', 52 *Ocean Development & International Law* (2021) 260.

¹² United Nations Convention on the Law of the Sea, adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 397 (LOSC), preamble, formatted italic in the original.

must not be used as a weapon. Such a cynical use of law as a weapon can be labelled as lawfare. Legal scholar Charles Dunlap defined lawfare ‘as the strategy of using – or misusing – law as a substitute for traditional military means to achieve an operational objective’¹³ in 2008. Dunlap identifies the use of lawfare as an ‘indelible feature of 21st-century conflicts’¹⁴ and, considering developments in the term’s use since his 2008 definition, promotes its adaptation to conflicts below the level of war, including armed conflicts. In essence, lawfare does not promote security and prosperity but adds a layer to and intensifies conflict. The concept of lawfare is valuable when examining legal developments in their context. Both the MTSL and the CGL are important acts of Chinese state practice and have potential application in the above-mentioned conflicts. The criticism concerning the MTSL and CGL and their potential to seriously increase international tension call for an integrated analysis, taking into account aspects both within and beyond law.

In the following chapter the research questions and methodology used in this study will be introduced. In chapter 3 the relevant rules of international law will be presented before attention is drawn to selected issues in chapter 4. Chapter 5 will follow up with a discussion. Chapter 6 will provide the reader with the conclusion of this study.

2 Methodological Reflections

2.1 Research Questions

The present study focuses on the relationship of the MTSL and the CGL with the relevant rules of international law. Both the MTSL and the CGL have been met with criticism on the international stage.¹⁵ However, so far both have attracted only limited scholarly attention. This

¹³ Dunlap, 'Lawfare Today: A Perspective', 3 *Yale Journal of International Affairs* (2008) 146 , at 146.

¹⁴ Dunlap, 'Lawfare: A Decisive Element of 21st-Century Conflicts?', *Joint Force Quarterly* (2009) 34 , at 39.

¹⁵ Gomez, 'Philippines Protests New China Law as ‘Verbal Threat of War’', *ABC News* (2021) , available at <https://abcnews.go.com/International/wireStory/philippines-protests-china-law-verbal-threat-war-75511461> (last visited 25 August 2022); H. H. Ho, *China’s Coast Guard Law: Japan’s Legal Approach*, 31 May 2021, *Maritime Issues*, available at <http://www.maritimeissues.com/law/chinas-coast-guard-law-japans-legal-approach.html> (last visited 25 August 2022); Linh, 'Vietnam Voices Serious Concern over China’s Newly-Enacted Coast Guard Law', *Hanoi Times* (2021) , available at <https://hanoitimes.vn/vietnam-voices-serious-concern-over-chinas-newly-enacted-coast-guard-law-316101.html> (last visited 25 August 2022); C. Mirasola, *Proposed Changes to China’s Maritime Safety Law and Compliance with UNCLOS*, 21 February 2017, *Lawfare*, available at <https://www.lawfareblog.com/proposed-changes-chinas-maritime-safety-law-and-compliance-unclos>

is supported by Hu Zhang's and Qiuwen Wang's finding that there is a lack of research focused on the effect of Chinese law on maritime traffic in waters under the jurisdiction of China.¹⁶

The first theme concerns the geographical scope of application. The language contained both in the MTSL and the CGL includes unclear formulations concerning their general geographical scope of application. This leads to the formulation of research question 1 (RQ1): *In which areas does China claim the MTSL and CGL enjoy jurisdiction and is this geographical scope consistent with international law?*

The second theme concerns more specific requirements on foreign vessels in the Chinese territorial sea. Under article 54 the MTSL requires foreign vessels to report to the Chinese maritime safety administration and to accept instructions and supervisions. The compatibility of such requirements with international law is debatable. This leads to the formulation of research question 2 (RQ2): *Is the notification requirement and the requirement to accept instructions and supervisions included in article 54 of the MTSL consistent with international law?*

The third potential issue concerns the presumed power to suspend and impose other restrictions on navigation. Navigational rights, however, are of particular importance in today's globalized world. This leads to the formulation of research question 3 (RQ3): *Can China restrict navigation for foreign vessels in a manner and under circumstances as prescribed in article 52 of the MTSL?*

The fourth potential issue concerns enforcement powers granted to the Chinese coast guard. This leads to the formulation of research question 4 (RQ4) is: *Is the enforcement jurisdiction provided in articles 20, 21 and 22 of the CGL consistent with international law?*

(last visited 25 August 2022); *China Flexes Sea Power with New Foreign Ship Law*, 1 September 2021, Asia Times, available at <https://asiatimes.com/2021/09/china-flexes-sea-power-with-new-foreign-ship-law/> (last visited 29 March 2022); 'Philippines Seeks US Help as It Vows to Ignore China Maritime Law', *Aljazeera* (2021), available at <https://www.aljazeera.com/news/2021/9/10/dutertes-defence-chief-says-manila-got-less-from-us-pact> (last visited 25 August 2022).

¹⁶ Zhang and Wang, 'Maritime Safety Management of Foreign Vessels in China: New Institutional Developments and Potential Implications', 218 *Ocean & Coastal Management* (2022) 106023.

Lastly, research question 5 (RQ5) combines the legal analysis with the context in which the MTSL and the CGL exist: *How do the provisions of the MTSL and CGL discussed in research questions 1-4 affect China's power and claims in areas as the South China Sea, the Senkaku/Diaoyu islands and Taiwan?*

On face value multiple provisions included in the MTSL and CGL use vague language, potentially resulting in controversial state practice. Several provisions included in the MTSL and the CGL have been identified as problematic in legal literature.¹⁷ If applied to their fullest extent the relevant provisions of the MTSL and CGL are likely to constitute a domestic legal base for violations of other states' rights. As such, both the MTSL and the CGL could create new and intensify already existing international conflicts.

2.2 Delimitation of Scope

Chinese state practice has also been criticized with respect to other issues, including mandatory pilotage requirements,¹⁸ the requirement to constantly have automatic identification systems turned on,¹⁹ and allegedly excessive interpretations of marine scientific research provisions.²⁰ Due to the limited space available for the present study, the analysis must be confined to the selected issues. Recognizing that these give rise to different questions, they, nevertheless, represent a relatively coherent policy and, thus, call for a joint analysis while allowing for a close investigation of each issue in separation.

Except for RQ1 and RQ5 the analysis will be restricted to the maritime zones of the territorial sea and the exclusive economic zone as these are by far the most relevant for the respective research questions. Furthermore, discussions concerning navigational freedom in the territorial sea is limited to the regime of innocent passage. While the importance of the transit passage

¹⁷ Pedrozo, 'China's Revised Maritime Traffic Safety Law', 97 *International Law Studies* (2021) 956; Kim, 'An International Law Perspective on the China Coast Guard Law and Its Implications for Maritime Security in East Asia', 37 *The International Journal of Marine and Coastal Law* (2022) 241; Pedrozo, 'Maritime Police Law of the People's Republic of China', 97 *International Law Studies* (2021) 465.

¹⁸ Pedrozo, *supra* note 17, at 959–962.

¹⁹ S. Sakamoto, *Searching for the Objectives of China's Revised Maritime Traffic Safety Law of the People's Republic of China*, 22 February 2022, The Japan Forum on International Relations (JFIR), available at https://www.jfir.or.jp/en/studygroup_article/3915/ (last visited 25 August 2022).

²⁰ Pedrozo, *supra* note 17, at 963–964.

regime is recognized in general, it is fair to state that in Chinese maritime zones the transit passage regime enjoys only very limited, if any, relevance. As the Taiwan Strait at its narrowest point is 70 nautical miles²¹ wide, this strait does not qualify as a *legal* strait.

2.3 Legal Doctrinal Method

The legal doctrinal method is one of the main methods used in legal research. It can be divided into two steps: Identifying the relevant legal sources of law and analyzing the meaning of the law in general (1) and applying the relevant legal rules to the specific case at hand (2).²²

In the first step the relevant rules as provided for in international conventions, international custom and general principles of international law are identified and presented. In the present study this mainly includes the 1982 United Nations Convention on the Law of the Sea (LOSC).²³

The second step has been described in legal literature as being of a ‘more nebulous’²⁴ nature and even the possibility of its explanation has been called into question.²⁵ However, the relevant rules of treaty interpretation have been codified in article 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (VCLT), providing, inter alia, that the interpretation must be carried out ‘in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.’²⁶ To confirm the result of treaty interpretation gained by applying article 31 of the VCLT and in cases of treaty interpretation on base of article 31 of the VCLT that ‘(a) leave[...] the meaning ambiguous or obscure; or (b) lead[...] to a result which is manifestly absurd or unreasonable’²⁷ recourse can

²¹ Government Information Office, *The Republic of China Yearbook -- Taiwan 2001: Geography*, 29 December 2010, Internet Archive, available at <https://web.archive.org/web/20101229223825/http://www.gio.gov.tw/taiwan-website/5-gp/yearbook/2001/chpt01-1.htm> (last visited 25 August 2022).

²² Hutchinson and Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research', 17 *Deakin Law Review* (2012) 83, at 110.

²³ LOSC.

²⁴ Hutchinson and Duncan, *supra* note 22, at 110.

²⁵ *Ibid.*, at 110–111.

²⁶ Vienna Convention on the Law of Treaties, adopted 23 May 1969, entered into force 27 January 1980, 1155 UNTS 331 (VCLT), article 31(1).

²⁷ VCLT, Articles 32(a)-(b).

be made to ‘supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion’.²⁸ Relevant supplementary means of interpretation also include those codified in the statute of the International Court of Justice (ICJ Statute): ‘judicial decisions and the teachings of the most highly qualified publicists of the various nations’.²⁹ In this context it is important to clarify that under international law decisions rendered by international courts and tribunals are only binding between the parties involved³⁰ and, thus, do neither enjoy the status of sources of law nor can set a precedent international courts and tribunals must adhere to in subsequent cases. In this respect the legal principle of *stare decisis* is not adhered to under international law.³¹ Nevertheless, international courts and tribunals, including the International Court of Justice (ICJ), frequently cite decisions rendered by international courts and tribunals,³² providing these decisions with considerable importance under international law. The analysis in the present study will also include Chinese state practice as evidenced, inter alia, in the adoption of the MTSL and CGL and their relevant provisions. To the extent that Chinese laws, regulations, and other texts are not available in an official English version issued by the Chinese government recourse is made to non-authoritative translations.

The legal doctrinal method is of great value when analyzing the meaning of a given set of legal rules. However, its utility is limited to a positivistic understanding of law, constraining the understanding of law to the scope of identifying *what* the law is. Considering the present study aims at going beyond a positivistic understanding, an analysis of law in its context is called for.

2.4 Law in Context: Combining Legalism and Offensive Realism

To apply the concept of law in context means to broaden the scope of understanding legal rules from inner-legal thinking to including other academic disciplines. These disciplines may

²⁸ VCLT, Article 32.

²⁹ Statute of the International Court of Justice, signed 26 June 1945, effective 24 October 1945 (ICJ Statute), article 38(1)(d).

³⁰ ICJ Statute, article 59.

³¹ Guillaume, 'The Use of Precedent by International Judges and Arbitrators†', 2 *Journal of International Dispute Settlement* (2011) 5.

³² *Ibid.*; Nucup, 'Infallible or Final?: Revisiting the Legitimacy of the International Court of Justice as the “Invisible” International Supreme Court', 18 *The Law & Practice of International Courts and Tribunals* (2019) 145.

include political science, sociology, history, economics, among others. Ignoring the connectedness of law and the legal system with wider society, politics, economics, to its history and function does not make law separate, protected and incontestable. Rather, it separates and so detaches the law from its purpose and obscures its effects. Paying attention to the law's context makes it possible to see the wider effect law has. It does not invalidate law but provides a more nuanced and realistic view on the law, its potential, purpose and result. In the words of legal scholar and sociologist Philip Selznick:

This contextual argument, like any such argument, is not a disparagement of rights. Rather, it is a way of vindicating rights by accepting the constraints of a particular context, and by taking advantage of opportunities. It is a way of looking closely at how rights are defined, asserted, and protected.³³

Therefore, this study does not restrict itself to the legal realm alone but understands law in its context. This is done by providing the perspective of the international relations theory of offensive realism, a version under the wider school of realism focusing on the structure of the international system.

Often the international relations theory of realism (realism) and the positivistic approach to international law (legalism) are understood as oil and water: they do not mix and mingle. Realism and legalism often are seen as different approaches that cannot work well together. This, however, is based on a misunderstanding. In 1927 the Permanent Court of International Justice, when called upon to decide on the lawfulness of prosecuting a violation alleged to have taken place outside Turkish territory inside Turkish territory, stated: 'International law governs relations between independent States.'³⁴ One world war and almost a century later there is still debate between scholars on which role international law plays in international politics. The positions range from statements allocating international law no influence on state conduct and calling it dangerous to claim and maintain otherwise³⁵ to statements subjecting states' conduct

³³ Selznick, 'Law in Context' Revisited', 30 *Journal of Law and Society* (2003) 177 , at 184.

³⁴ *S.S. 'Lotus' Case (France/Turkey)* (Judgment) (1927), 11 PCIJ Rep 4, at 18.

³⁵ 'Symposium Debate Transcript: The Promise of International Law: Realism versus Legalism', 11 *Notre Dame Journal of International & Comparative Law* (2021) 91.

to international law at least in some cases.³⁶ It will be shown in this study that international law *is* important for state conduct in international politics and that realism and legalism can work well together as – coming back to the image presented above – oil and water can be mixed both temporarily and permanently depending on the relevant circumstances, providing either a vinaigrette or mayonnaise.³⁷

Academic scholars have analyzed China's rise in the international system from realist perspectives, taking states' power into account.³⁸ Political scientist Robert Gilpin points out:

The most important factor for the process of international political change is not the static distribution of power in the system (bipolar or multipolar) but the dynamics of power relationships over time.³⁹

Offensive realism understands the international system as a zero-sum game in which all states take part. If one state wins one round, another state necessarily loses. This is because on the international realm there exists anarchy. The way realists understand anarchy is that there is no central authority. This structure, realists propose, determines the actions that states as rational actors can take. For this reason, the structure of the international system is of particular importance. It is here where states' interests come in. Each state has clear priorities, so-called state interests. The main priority of each state is her own *survival*. This is because without her own survival, all other priorities she might have could not be fulfilled. Survival, therefore, enjoys primacy in each state's priority list. The combination of anarchy in the international realm and each state's core interest of survival both structure the international system and define the scope of possible policies a state can rationally follow. It is important here to stress that realism depicts states as unitary and rational actors. The state's political system, realism claims, does not matter when it comes to state survival and, therefore, depicts each state as a black box. It is the structure of the international system that defines the state's possible scope of action,

³⁶ Scott, 'International Law as Ideology: Theorizing the Relationship between International Law and International Politics', 5 *European Journal of International Law* (1994) 313, at 314.

³⁷ S. Zielinski, *Oil and Water Do Mix*, Smithsonian Magazine, available at <https://www.smithsonianmag.com/science-nature/oil-and-water-do-mix-38726068/> (last visited 11 August 2022).

³⁸, *supra* note 35.

³⁹ Gilpin, 'Stability and Change', in *War and Change in World Politics* 1 (1981), at 93.

despite differences in states' inner workings.⁴⁰ The image of a black box does not mean that each state *is* the same. On the contrary. It just is understood not to matter when states' priorities, especially the objectives of state survival, are at stake. While the state's political system is understood to not matter, the state's size, geography and capabilities matter. Capabilities are the currency of international relations, determining states' power, i.e., states' ability to influence other entities. A state's capabilities include two main categories: military capabilities and economic capabilities. While the former is often considered the most important one, ultimately, a state's 'combined capability'⁴¹ determines her power, i.e., the ability to influence other entities, including states.

State's capabilities can be used both for offensive and defensive purposes. A sword can be identified as a weapon for offensive purposes. At face value, a shield, on the other hand, can be considered a defensive weapon as its main purpose exists in providing protection against an enemy attack. In practice, however, distinguishing between offensive and defensive weapons is not that clear-cut. Offensive realists refer to weapons' dual use character, understanding that defensive weapons can be used when attacking another entity. In the case of the above-mentioned shield, which at face value falls into the category of defensive weapons: By combining the shield with a sword, the shield can be used for offensive purposes. It provides protection against the other state's capabilities and, by doing so, allows to attack the other state. When protected from enemy capabilities, states can attack other states without the fear of retaliation. It is for this reason that offensive realists claim that offensive and defensive weapons cannot clearly be distinguished in their effect. Thus, the school of so-called *offensive realism* claims that under the *self-help system* of international anarchy, the only way to become secure is to amass capabilities as much as possible so that no other state would dare to attack due to having to fear retaliation in case of an attack. Under this logic, other states would be restrained from attacking in the first place, resulting in peace and security for the rational and powerful state. As a result, only the most powerful state in the international system can be considered secure in the international system under anarchy. A side effect of this system, however, is the so-called *security dilemma*. Political scientist Robert Jervis defined the dilemma as follows: 'many of the means by which a state tries to increase its security decrease the security of

⁴⁰ X. Gu, *Theorien der Internationalen Beziehungen: Einführung* (3rd ed., 2018), available at <https://www.degruyter.com/document/doi/10.1515/9783486855081/html> (last visited 26 August 2022), at 57–98.

⁴¹ *Ibid.*, at 80.

others'.⁴² When states strive to increase their security and, thus, increase their capabilities, they leave other states worse off than in the status quo ante. As decreased security is incompatible with these states' vital interest of survival, they also strive to increase their capabilities. Given all states are capable to increase their capabilities due to their real-world circumstances, after the increase in power in *relative* terms all states enjoy the same level of power and, thus, security they did before. As all states increased their capabilities no state is safer than in the status quo ante. Under the system of international anarchy this logic cannot be stopped easily.

Finally, it must be mentioned that under the described international system states tend to form alliances to increase their security. This leads to alliances confronting each other and balancing each other out. What, at first, might seem counter-intuitive is that states have an incentive to join the weaker of two alliances. This is because the weaker alliance is dependent on the state joining the alliance and, therefore, would not act against this state's will. Would the state join the stronger alliance, the alliance might not require that state for her security and, therefore, act in conflict with her interests. As a result, under the system of international anarchy military alliances tend to balance each other. This, however, does not change the fundamental structure of the self-help system. If circumstances change, the alliance might change. Similarly, as political scientist Joseph Grieco puts it:

According to realists, states worry that today's friend may be tomorrow's enemy in war, and fear that achievements of joint gains that advantage a friend in the present might produce a more dangerous *potential* foe in the future.⁴³

Therefore, for realists, there are no ever-lasting friendships between states but only temporary common interests.

In a 2021 symposium debate, political scientist and principal proponent of offensive realism John Mearsheimer argued for the importance of international institutions and international law for states in the international system. He correctly observes that in today's 'highly globalized world [...] [t]here is a tremendous amount of interdependence in terms of economics, security,

⁴² Jervis, 'Cooperation Under the Security Dilemma', 30 *World Politics* (1978) 167, at 169.

⁴³ Grieco, 'Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism', 42 *International Organization* (1988) 485, at 487, emphasis included in the original.

and politics among nations.⁴⁴ The relations between states are so plentiful and extend over a multitude of different aspects, topics and regions that there is a need to organize and structure them. The international legal system, including international institutions, Mearsheimer argues, is designed for and serves this purpose. Therefore, he argues, international law and institutions play a vital role in the functioning and stabilization of the international system. Without international law, international relations would, thus, be more unstable and dysfunctional. Starting from this premise, Mearsheimer claims that the powerful states shape international law in a way that fits their purpose. They do so, he claims, by forming the law in a way that would benefit them in a state they consider they are likely to occupy in the future. As a result, it is within powerful states' interest to uphold the law, act in accordance with it and punish infringements of international law committed by other states. As powerful states create international law in a way that suits their purpose, they will likely not need to act in ways inconsistent with it. However, this does not mean that powerful states always act within the limits of international law. If acting within international law's limits threatens to jeopardize a state's core interests of survival, realists argue, that state would not let itself be restricted by the confinements of international law. Acting differently would not be rational. At this point realists' and legalists' point of view differ. Legalists claim that states are morally obliged to always act within the limits of international law. Realists expect states to go beyond these limits.

Even though realism and legalism are fruitful approaches, both have limited explanatory power. While realism is far-sighted, legalism is short-sighted. Legalism, by its nature, is confined to the legal realm only. It cannot see beyond the limits of law. To the extent that states act within the scope of what is permitted under international law, a legalist point of view can provide valuable insight. It can map the landscape of international law. However, legalism's scope of interpretative power ends where states leave the map charted by the legal doctrinal method. Legalism cannot offer any explanation of states' actions when these are not in line with international law. Such acts committed by states can only be understood as inconsistent with or a breach of international law. Why and with which goal in mind states act contrary to international law is beyond legalism's scope of explanatory power. Legalists acknowledge that states sometimes act contrary to international law but stress that states have a moral obligation to obey international law.⁴⁵ Realism, on the other hand, allows for the *analysis* of state actions

⁴⁴ , *supra* note 35, at 92.

⁴⁵ Scott, *supra* note 36, at 315.

where states act not in line with international law. However, realism lacks necessary legal methodology to interpret legal provisions. Furthermore, realists are prone to miss the influence international law has on the international system. Indeed, it is debatable, whether the international system of today's world can accurately be depicted as *complete* anarchy. While there is no universally accepted higher institution with the undisputed power to act as enforcement agency for international law, there are different circumstances under which states follow international law even if it is not in their direct interest to do so.⁴⁶ Indeed, most states follow international law most of the time.⁴⁷

One explanation for such actions provided in the literature is that states see *international law as an ideology*. Proponents of this explanation see states as feeling intrinsically bound to conform to international law. Legal and international relations scholar Shirley Scott argues that '[t]he power of international law can only be the power of the idea of international law.'⁴⁸ She points to the fact that accepting this statement means to accept that ideas hold power. Scott refers to the change of the global system of colonialism after the second world war, pointing out that when the idea of colonialism was increasingly rejected this rejection had real-world influences, resulting in a wave of decolonization procedures.⁴⁹ Accepting that ideas hold power opens the debate on what influence the idea of international law has on international politics and the international system. One situation that can shed light on this question is the current war in Ukraine. Russia attacked Ukraine using military force. While Russia claims that the attack is justified⁵⁰ it is widely understood as a breach of international law.⁵¹ As a result, several states condemned the attack and introduced economic sanctions on Russia. These sanctions were claimed to be a reaction to Russia's breach of international law. Two conclusions with respect to the theme of international law as ideology can be drawn here. Firstly, states try to argue that their actions are within the scope of what is permitted under international law. Other states might disagree on the interpretation, but states clearly go to lengths to claim that their

⁴⁶ , *supra* note 35.

⁴⁷ Koh, 'Why Do Nations Obey International Law?', 106 *The Yale Law Journal* (1997) 2599 , at 2600.

⁴⁸ Scott, *supra* note 36, at 317.

⁴⁹ *Ibid.*

⁵⁰ *Full Text: Putin's Declaration of War on Ukraine*, 24 February 2022, The Spectator, available at <https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine> (last visited 26 August 2022).

⁵¹ Resolution Adopted by the General Assembly on 2 March 2022 (A/RES/ES-11/1), 18 March 2022.

own actions are within such limits. Implicitly, therefore, states accept that international law has power. Secondly, even though the international system lacks a *central and independent authority* international law enjoys some enforcement by states sanctioning breaches of the latter, as could be seen, inter alia, in the cases of Russia's annexation of Crimea⁵² and North Korea disregarding international law.⁵³ While some realists argue that states only adhere to international law if this is within their direct interest, this is not correct. There are incidents where states act against their own direct interests. One such incident is the United States' decision not to intercept a vessel carrying missiles in the Persian Gulf even though this decreased the security of their vessels.⁵⁴ In conclusion, to some extent states adhere to the rules of international law also in cases where it would be more beneficial for them not to do so. Furthermore, states even enforce international law on their own in specific cases. Thus, in today's world the international system is none of *complete* anarchy anymore.

All this considered, combining the legal doctrinal method with the theory of offensive realism presents itself as an adequate scholarly tool to analyze Chinese state practice within and beyond the legal realm.⁵⁵ Like oil and water can mix temporarily, providing a vinaigrette, or permanently, if emulsifiers are added, providing mayonnaise,⁵⁶ legalism and realism can complement each other. Accordingly, this interdisciplinary approach is taken when answering the research questions posed above.

⁵² Wang, 'Impact of Western Sanctions on Russia in the Ukraine Crisis', 8 *Journal of Politics and Law* (2015) 1.

⁵³ Noland, 'North Korea: Sanctions, Engagement and Strategic Reorientation', 14 *Asian Economic Policy Review* (2019) 189.

⁵⁴ Scott, *supra* note 36, at 314.

⁵⁵ Brzezinski and Mearsheimer, 'Clash of the Titans', *Foreign Policy* (2005) 46; Mearsheimer, 'China's Unpeaceful Rise', 105 *Current History* (2006) 160; J. J. Mearsheimer, *Can China Rise Peacefully?*, 25 October 2014, *The National Interest*, available at <https://nationalinterest.org/commentary/can-china-rise-peacefully-10204> (last visited 26 August 2022); A. Østhagen, *Ocean Geopolitics: Marine Resources, Maritime Boundary Disputes and the Law of the Sea* (2022), *Ocean Geopolitics*, available at <https://www.elgaronline.com/view/book/9781802201567/9781802201567.xml> (last visited 31 August 2022); L. Zhu, *China's Foreign Policy Debates* (2010), available at <https://data.europa.eu/doi/10.2815/19538> (last visited 26 August 2022).

⁵⁶ Zielinski, *supra* note 37.

3 The International Legal Framework

Before presenting the relevant rules of international law for the present study, it is necessary to differentiate between different kinds of jurisdiction.

3.1 Differentiating Different Kinds of Jurisdiction

3.1.1 Prescriptive and Enforcement Jurisdiction

Rothwell et al. define jurisdiction as ‘the ability of a State to make and enforce its laws’⁵⁷. Two types can be distinguished: prescriptive and enforcement jurisdiction. The former refers to the state’s valid power to enact laws and other regulations, the latter to the state’s valid use of judicial and executive power to enforce the enacted regulations.⁵⁸

3.1.2 Port, Flag and Coastal State Jurisdiction

Maritime jurisdiction is commonly differentiated by referring to the capacities states assume in their actions. While neither the term ‘port state’ nor the term ‘coastal state’ is defined in universally accepted international agreements,⁵⁹ detailed analyses of states’ power concerning their different capacities are found in literature.⁶⁰ In short, *port state jurisdiction* refers to the state’s rights and obligations concerning vessels voluntarily visiting her ports,⁶¹ *flag state jurisdiction* refers to the state’s rights and obligations concerning vessels flying her flag,⁶² *coastal state jurisdiction* refers to the state’s rights and obligations concerning activities in her maritime zones, i.e. internal waters, territorial sea, contiguous zone, archipelagic waters, exclusive economic zone and continental shelf.⁶³ To enjoy coastal state jurisdiction, the state must enjoy sovereignty over land territory connected directly to the oceans.⁶⁴ For the research

⁵⁷ Rothwell et al., 'Jurisdiction', in *International Law: Cases and Materials with Australian Perspectives* 1 (2010) 294, at 294.

⁵⁸ *Ibid.*, at 294–295.

⁵⁹ Molenaar, 'Port and Coastal States', in D. Rothwell et al. (eds.), *The Oxford Handbook of the Law of the Sea* 1 (2016) 280, at 280.

⁶⁰ Barnes, 'Flag States', in D. Rothwell et al. (eds.), *The Oxford Handbook of the Law of the Sea* 1 (2016) 304; Molenaar, *supra* note 59; A. Proelss et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017).

⁶¹ Molenaar, *supra* note 59.

⁶² Barnes, *supra* note 60.

⁶³ Molenaar, *supra* note 59.

⁶⁴ *Ibid.*, at 281.

questions of this study the state's coastal state jurisdiction is of central importance. Therefore, the following chapters will mainly focus on coastal state jurisdiction.

3.2 The United Nations Convention on the Law of the Sea

The main international convention concerning the international law of the sea is the LOSC, a comprehensive and very widely accepted international treaty, ratified by 168 states,⁶⁵ often referred to as the 'Constitution of the Oceans'⁶⁶.

The LOSC provides 320 Articles in its main body, accompanied by nine annexes. It heavily draws on its two predecessors, the so-called Geneva Conventions: The 1958 Convention on the Territorial Sea and the Contiguous Zone⁶⁷ and the 1958 Convention on the High Seas⁶⁸. It was deliberated on since 1973 in several sessions at the third United Nations Conference on the Law of the Sea (UNCLOS III).⁶⁹ In 1994 the United Nations General Assembly adopted the 1994 Implementation Agreement,⁷⁰ which substantially amended the 1982 LOSC concerning Part XI of the LOSC. While most members states of the United Nations are parties to the LOSC, few are not, including the United States.⁷¹ However, to the extent that the LOSC is part of customary international law, the LOSC is also binding on these states.⁷²

The LOSC divides all ocean space into maritime zones. These are internal waters (mainly rivers and legal bays), territorial sea (up to twelve nautical miles (nm) off the state's coastal baselines),

⁶⁵ United Nations, *Chapter XXI 6. Law of the Sea*, United Nations Treaty Collection, available at https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&lang=en (last visited 19 August 2022).

⁶⁶ Rothwell et al., 'Charting the Future for the Law of the Sea', in *The Oxford Handbook of the Law of the Sea* (2015) 888, at 888.

⁶⁷ Convention on the Territorial Sea and the Contiguous Zone, adopted 29 April 1958, entered into force 10 September 1964, 516 UNTS 205.

⁶⁸ Convention on the High Seas, adopted 29 April 1958, entered into force 30 September 1962, 450 UNTS 11.

⁶⁹ *Diplomatic Conferences — Codification Division Publications*, available at https://legal.un.org/diplomaticconferences/1973_los/ (last visited 26 July 2022).

⁷⁰ Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, adopted 28 July 1994, entered into force 28 July 1996, 1836 UNTS 42.

⁷¹ United Nations, *supra* note 65.

⁷² Bellinger III and Haynes II, 'A US Government Response to the International Committee of the Red Cross Study Customary International Humanitarian Law', 89 *International Review of the Red Cross* (2007) 443.

contiguous zone (up to 24 nm off the states' baselines used to establish the territorial sea), archipelagic waters, the exclusive economic zone (up to 200 nm off the baselines used to establish the territorial sea), and high seas. The latter one is a residual category, meaning that all ocean space that is not covered under one of the other zones is part of the High Seas. In the following the rules of the LOSC to the extent relevant for the present study are introduced.

3.2.1 The Territorial Sea

Part II of the LOSC refers to the territorial sea ('TS'). Article 3 establishes that every state may establish a territorial sea up to twelve nm measured from baselines established following the LOSC.⁷³ The territorial sea legally is an extension of the coastal state's land mass, resulting in the coastal states *sovereignty* over the water column, air space above and soil and subsoil beneath this water column. This sovereignty must be exercised subject to the LOSC and other rules of international law.⁷⁴

One of these limits is other states' right of *innocent passage*, provided for in section 3 of part II of the LOSC. Article 17 provides that *all* states enjoy the right of innocent passage in other states' territorial sea. Article 24(1), furthermore, provides that the coastal state may not hamper the right of innocent passage. Articles 18 and 19 establish the meaning of the terms 'passage' and 'innocent'. Passage means that the vessel in question is required to navigate in a 'continuous and expeditious'⁷⁵ manner. Stops are allowed only to the extent that they are required by the nature of navigation itself or due to force majeure.⁷⁶ The meaning of the word 'innocent' is elaborated on in Article 19. Paragraph 1 introduces a negative definition: the passage is considered innocent *unless* it is 'prejudicial to the peace, good order or security of the coastal State'⁷⁷. Paragraph 2 further elaborates on this by providing a list of activities that would render a passage prejudicial in the above-mentioned sense. The list includes the elements of threat or use of force against the coastal state, exercise or practice of weapons, intelligence gathering, acts of propaganda, activities concerning other aircraft or military devices, infringements of customs, fiscal, immigration or sanitary laws and regulations of the coastal

⁷³ LOSC, Article 3.

⁷⁴ LOSC, Article 2(1)-2(3).

⁷⁵ LOSC, Article 18(2).

⁷⁶ LOSC, Article 18(2).

⁷⁷ LOSC, Article 19(1).

state, willful and serious pollution, fishing, conducting research and surveys, interfering with the coastal state's communication or other facilities or installations and activities that are not directly connected to passage.⁷⁸ Importantly, the list provided under article 19(2) only refers to *activities*, neither a vessel's *type* nor a vessel's *mode* of navigation.⁷⁹

Article 21, referring to the regime of innocent passage, provides the coastal state with the right to 'adopt laws and regulations [...] in respect of [...] the safety of navigation and the regulation of maritime traffic'⁸⁰. Such laws and regulations have to be 'in conformity with the provisions of this Convention [i.e. the LOSC] and other rules of international law, relating to innocent passage through the territorial sea'. Articles 22 and 23 provide further relevant regulations.⁸¹

Article 25(3) of the LOSC provides the coastal state with the right to 'temporarily [suspend] in specific areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises.'⁸² The suspension must be published in an appropriate manner before it can take effect.⁸³

Article 24(1) obliges the coastal state not to hamper innocent passage of foreign vessels and specifically refers to practical effects of impaired or denied passage and direct and indirect discrimination against any state as constituting such offence.⁸⁴ Article 24(2) obliges the coastal state to appropriately publish dangers to navigation to the extent she is aware of such.⁸⁵

Article 22 provides the coastal state with the right to enact laws and regulations concerning the usage of specific sea lanes and the implementation of traffic separation schemes. Article 22, however, does not provide for differences in the navigational safety due to shifted circumstances.

⁷⁸ LOSC, Article 19(2)(a)-(l).

⁷⁹ LOSC, Article 19(2).

⁸⁰ LOSC, Article 21(1).

⁸¹ LOSC, Articles 22-23.

⁸² LOSC, Article 25(3).

⁸³ LOSC, Article 25(3).

⁸⁴ LOSC, Article 24(1).

⁸⁵ LOSC, Article 24(2).

3.2.2 The Exclusive Economic Zone

One of the major developments during UNCLOS III was the introduction of the exclusive economic zone (EEZ). The exclusive economic zone is a maritime zone adjacent to the territorial sea and extends to an area up to 200 nm from the baselines used to establish the territorial sea.⁸⁶ In the exclusive economic zone the coastal state does not enjoy sovereignty as it does in the territorial sea. However, the coastal state enjoys *sovereign rights* in her EEZ. They refer to the exploration and exploitation, conservation and management of the living and non-living natural resources found in the zone and to economic activities concerning exploration and exploitation of the EEZ, e.g., energy production by offshore wind parks.⁸⁷ Moreover, the coastal state enjoys jurisdiction concerning artificial islands, structures and installations, marine scientific research and the protection and preservation of the marine environment.⁸⁸

During UNCLOS III a balance between different state interests was sought. This is apparent in the EEZ regime.⁸⁹ Both article 56(2) and 58(3) provide a *due regard obligation*. Both the coastal and the flag state must have due regard to the rights and duties of the other state when exercising their rights and duties in the EEZ.⁹⁰ This includes, importantly, the right of freedom of navigation as article 58(1) imports, inter alia, this right into the EEZ regime.⁹¹ Article 58(2) imports articles 88-115 into the EEZ regime to the extent of their compatibility with the latter.⁹²

3.2.3 The High Seas

The LOSC defines the high seas as a residual maritime zone: maritime areas not forming part of internal waters, territorial seas or archipelagic waters are considered high seas.⁹³ Importantly, no part of the high seas can be subjected to national sovereignty.⁹⁴ Furthermore, in this maritime

⁸⁶ LOSC, Articles 55, 57.

⁸⁷ LOSC, Article 56(1)(a).

⁸⁸ LOSC, Article 56(1)(b).

⁸⁹ Prezas, 'Foreign Military Activities in the Exclusive Economic Zone: Remarks on the Applicability and Scope of the Reciprocal 'Due Regard' Duties of Coastal and Third States', 34 *The International Journal of Marine and Coastal Law* (2019) 97.

⁹⁰ LOSC, Articles 56(2), 58(3).

⁹¹ LOSC, Article 58(1).

⁹² LOSC, Article 58(2).

⁹³ LOSC, Article 86.

⁹⁴ LOSC, Article 89.

zone all states enjoy the so-called freedoms of the high seas, inter alia, the freedoms of navigation, overflight, laying submarine cables and pipelines, construction of artificial islands and installations, fishing and scientific research.⁹⁵

The freedom of navigation on the high seas is also explicitly provided for in article 90: ‘Every State [...] has the right to sail ships flying its flag on the high seas.’⁹⁶ Importantly, on the high seas the flag state enjoys *exclusive* jurisdiction over vessels flying her flag.⁹⁷

3.2.4 Other Maritime Zones under the LOSC

The LOSC also provides regulations for other maritime zones, including the contiguous zone, the continental shelf, and archipelagic waters. However, as they are not of particular relevance for the present study they are not further introduced at this point.

4 The People’s Republic of China’s 2021 Maritime Traffic Safety Law and 2021 Coast Guard Law

4.1 Legal Status and Structure

4.1.1 2021 Maritime Traffic Safety Law

The Maritime Traffic Safety Law of the People’s Republic of China was first adopted on 2 September 1983 and amended on 7 November 2016. A revised version was adopted on 29 April 2021 and entered into force on 1 September 2021. The MTSL provides a regulatory framework for the exercise of prescriptive jurisdiction by including both direct substantial requirements and providing the base for additional substantive requirements in the future. The MTSL consists of 122 Articles, divided into ten chapters.

The MTSL refers both to Chinese and foreign vessels. However, several provisions target only foreign vessels. Several of the latter provisions have attracted criticism,⁹⁸ including vague language providing the geographical scope of application, requirements of prior notification, allowing for navigational restrictions within and beyond the territorial sea, including suspension

⁹⁵ LOSC, Article 87(1).

⁹⁶ LOSC, Article 90.

⁹⁷ LOSC, Article 92(1).

⁹⁸ Pedrozo, *supra* note 17.

of navigation and requirements of mandatory pilotage and acceptance of instructions and supervision.

4.1.2 2021 Coast Guard Law

The 2021 Coast Guard Law of the People's Republic of China (CGL) was adopted on 22 January 2021 and entered into force 1 February 2021. It consists of eleven chapters, comprising 84 articles in total, mainly providing the Chinese Coast Guard (CCG) with enforcement jurisdiction.

The CGL tasks the CCG with

regulating and guaranteeing the performance of duties by coast guard agencies, safeguarding national sovereignty, security, and maritime rights and interests, and protecting the lawful rights and interests of citizens, legal persons, and other organizations.⁹⁹

Several regulations provided in the CGL have attracted criticism. Such criticism includes the use of unclear language concerning the geographical scope of application and the level of force allowed to use against foreign vessels, the right to forcefully expel or detain vessels entering the Chinese territorial sea and the right to use force against foreign military vessels.¹⁰⁰

4.2 Selected Issues

While the MTSL provides prescriptive jurisdiction, the CGL mainly provides enforcement jurisdiction to the CCG. Recognizing that both the MTSL and the CGL use vague language, were adopted in 2021 and complement each other in terms of combining prescriptive and enforcement jurisdiction, suggests analyzing the relevant provisions together, where applicable.

4.2.1 General Geographical Scope of Application

Both the MTSL and the CGL include the same language concerning the general geographical scope of application, i.e., 'sea areas within the jurisdiction of the People's Republic of China'¹⁰¹. Concerning the MTSL, this is a change to the respective provision in its 1983 version

⁹⁹ CGL, Article 1.

¹⁰⁰ Pedrozo, *supra* note 17.

¹⁰¹ MTSL, Article 2; CGL, Article 3. While the MTSL and the CGL use the same formulation in the authoritative Chinese text, the English translations provided slightly differ. Concerning the general geographical

where it referred to ‘coastal waters’¹⁰² and provided a more clear-cut definition for this term.¹⁰³ In contrast to the MTSL, the CGL purports jurisdiction also above the water column.¹⁰⁴ In August 2018 the Supreme People’s Court of the People’s Republic of China (Supreme People’s Court) issued a ruling, clarifying that the sea areas under Chinese jurisdiction include internal waters, the territorial sea, the contiguous zone, the exclusive economic zone, the continental shelf and ‘other maritime areas’¹⁰⁵. A similar statement has been made by the Supreme People’s Court before.¹⁰⁶ The term ‘other maritime areas’ does not provide a clear definition on the geographical scope.

While the formulation chosen in the MTSL and CGL does not necessarily constitute an issue, in the past China assumed jurisdiction over maritime space contrary to the relevant rules of international law. Jurisdictional claims concerning maritime areas issued by China repeatedly resulted in tensions between China and other states. This was especially apparent in the *South China Sea Arbitration* where the international tribunal, inter alia, found China’s claim to historical fishing rights in the South China Sea beyond the limits of the LOSC not to be consistent with international law.¹⁰⁷

For these reasons it is important to analyze where the MTSL and CGL purport to enjoy jurisdiction and whether the relevant provisions of the MTSL and the CGL are consistent with international law.

scope and for the purpose of this study the English translation provided for the MTSL will be considered for the analysis of both the MTSL and the CGL.

¹⁰² Maritime Traffic Safety Law of the People’s Republic of China, adopted 2 September 1983, entered into force 1 January 1984 (1983 MTSL), translation available at http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1383972.htm (last visited 26 June 2022], Article 2.

¹⁰³ 1983 MTSL, Article 50.

¹⁰⁴ CGL, Article 3.

¹⁰⁵ Ministry of Defense, Japan, *The Coast Guard Law of the People’s Republic of China*, The Coast Guard Law of the People’s Republic of China, available at <https://www.mod.go.jp/en/> (last visited 30 July 2022].

¹⁰⁶ Y. Zhang, *Top Court Clarifies Law at Sea*, 4 August 2016, The Supreme People’s Court of the People’s Republic of China, available at https://english.court.gov.cn/2016-08/04/c_767975.htm (last visited 31 July 2022].

¹⁰⁷ *South China Sea Arbitration (Philippines/China)*, para 278.

4.2.2 Prior Notification and other Requirements concerning Foreign Vessels in the Territorial Sea

Article 54 of the MTSL provides requirements of notification and acceptance of instructions and supervision. It provides in full:

The following vessels of foreign nationality entering or exiting the territorial sea of China shall report to the maritime safety administration:

- (1) Submersibles.
- (2) Nuclear-powered vessels.
- (3) Vessels carrying radioactive materials or other toxic and hazardous substances.
- (4) Other vessels that may endanger the maritime traffic safety of China as prescribed by laws, administrative regulations or the State Council.

To pass through the territorial sea of China, a vessel as prescribed in the preceding paragraph shall hold the relevant certificates, take special precautions in compliance with the laws, administrative regulations and rules of China, and accept the instructions and supervision of the maritime safety administration.¹⁰⁸

The notification requirement refers to vessels entering or exiting the Chinese territorial sea and belonging to specific categories of vessels. The formulation of vessel category (4) includes open-ended language, simply referring to potential danger to maritime traffic safety. This vague formulation provides the relevant Chinese authorities with a considerable margin of appreciation concerning the application of this provision. Furthermore, article 54 does not clearly provide a time upon when the maritime safety administration must be notified.

Next to the notification requirement, article 54 obliges the specified vessels traversing through the territorial sea, *inter alia*, to accept supervision and instructions by the Chinese maritime safety administration.

In conclusion, article 54 of the MTSL provides both requirements of notification and to accept supervision and instruction for specific vessels navigating in the territorial sea. The language

¹⁰⁸ MTSL, Article 54.

used in this provision is unclear and renders the provision potentially inconsistent with international law.

4.2.3 Suspension of and other Restrictions on Navigation within and beyond the Territorial Sea

Article 52 provides regulations concerning different restrictions on navigation. It provides in full:

Where under any of the following circumstances, there is relatively significant impact on maritime traffic safety, the maritime safety administration shall take corresponding traffic control measures such as suspending navigation, setting speed limit or demarcation of traffic control zones in light of the specific circumstances, and make an announcement to the public:

- (1) Where weather and sea conditions are hostile.
- (2) There is a maritime distress situation or maritime traffic accident that affects navigation.
- (3) Military training, drills or other related activities are carried out.
- (4) Large-scale water and underwater activities are carried out.
- (5) The traffic density in a specific sea area is close to saturation.
- (6) Other circumstances that have relatively significant impact on maritime traffic safety.¹⁰⁹

Article 52 of the MTSL provides the maritime safety administration with the power to limit navigation, including the suspension of navigation and introduction of traffic control zones under several circumstances. These include incidences in which maritime traffic safety is ‘relatively significant[ly] impact[ed]’¹¹⁰ by hostile weather and sea conditions, navigational accidents or other incidents, military activities, including training and drills, large-scale

¹⁰⁹ MTSL, Article 52.

¹¹⁰ Maritime Traffic Safety Law of the People’s Republic of China, Adopted 29 April 2021, Entered into Force 1 September 2021 (MTSL), Translation Available at <https://www.steamshipmutual.com/downloads/articles/2021/maritime%20traffic%20safety%20law%20of%20the%20prc%202021%20english.pdf> (Last Visited 29 March 2021] and <http://en.pkulaw.cn/display.aspx?id=07a6a3607ed7617bbdfb&lib=law> (Last Visited 29 August 2021], 79, 1 September 2021, p. 52.

activities in and under water, traffic density close to its maximum potential or other circumstances resulting in a ‘relatively significant impact on maritime traffic safety’¹¹¹. The vague wording ‘relatively significant’ provides the maritime safety administration with a considerable margin of appreciation in the application of article 52. Additionally, article 52 does not specify its geographical scope of application, allowing for its application within and beyond the Chinese territorial sea.

In conclusion, article 52 of the MTSL provides regulations for different restrictions in unspecified maritime areas. This unclear geographical and functional scope renders the provision potentially inconsistent with international law.

4.2.4 Law Enforcement

The CGL provides regulations concerning several law enforcement activities. Article 20 allows the CCG to compel the demolition of structures built in areas under Chinese jurisdiction illegally. Article 21 allows the CCG to use force against foreign military vessels and other government vessels operated for non-commercial purposes. Article 22 allows the CCG to take enforcement measures against foreign entities in cases of infringement of Chinese sovereignty, sovereign rights and jurisdiction.

In conclusion, the CGL provides the CCG with broad array of enforcement jurisdiction. Furthermore, articles 20, 21 and 22 of the CGL each on their own have the potential to seriously increase international tension.

5 Discussion

5.1 General Geographical Scope of Application

Both the MTSL and the CGL define their geographical scope of application as ‘the sea areas within the jurisdiction of the People’s Republic of China’¹¹². This wording is vague and leaves unclear where the MTSL and the CGL can validly be applied. As the geographical scope of application is at the base of understanding the provisions included in the MTSL and the CGL an analysis of the language used concerning the geographical scope of application is required.

¹¹¹ *Ibid.*

¹¹² MTSL, Article 2 ; CGL, Article 3.

Is the geographical scope as defined in the MTSL and the CGL consistent with international law?

Neither the MTSL nor the CGL provide a detailed definition on the term sea areas or specify in which maritime zones they purport to enjoy jurisdiction. Moreover, the terms used in the MTSL and the CGL differ from the terms used in the LOSC. In August 2018 the Chinese Supreme People's Court issued a ruling, clarifying that the sea areas under Chinese jurisdiction include internal waters, the territorial sea, the contiguous zone, the exclusive economic zone, the continental shelf and 'other maritime areas'¹¹³. A similar statement has been made by the Supreme People's Court before.¹¹⁴ The term 'other maritime areas', however, is open-ended. By its nature this term does not specify which sea areas are subsumed under it. This unclear meaning calls for an analysis on what is to be understood under the terms 'sea areas' and 'jurisdiction of the People's Republic of China'.

Neither under the CGL, nor the MTSL nor international law the term 'sea areas' is defined. Clearly, 'sea areas' are 'areas' and concern the 'sea'. Given the context and purpose of the MTSL¹¹⁵ and the CGL,¹¹⁶ the term 'areas' clearly refers to those *in* or *on* the sea, not to those on land connected to the sea. Furthermore, the LOSC distinguishes between several maritime zones. These are internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf, as provided by the ruling of the Supreme Court referred to above, and, additionally, archipelagic waters and high seas. The LOSC refers to the high seas as a residual category encompassing all ocean space not covered under the other maritime zones. The contiguous zone marks an exception due to its ambiguous status as simultaneously constituting either high seas or exclusive economic zone. Thus, the LOSC's maritime zones classification encompasses all possible sea areas. As the ruling issued by the Supreme People's Court uses the terminology provided by the LOSC and the maritime zones defined in the LOSC cover all ocean space, the term 'sea areas'¹¹⁷ as used in article 2 of the MTSL and article 3 of the CGL is to be understood as areas forming the maritime zones internal waters, territorial sea,

¹¹³ Ministry of Defense, Japan, *supra* note 105.

¹¹⁴ Zhang, *supra* note 106.

¹¹⁵ MTSL, Articles 1-2.

¹¹⁶ CGL, Articles 1-3.

¹¹⁷ MTSL, Article 2 ; CGL, Article 3.

contiguous zone, archipelagic waters, exclusive economic zone, continental shelf, and high seas as defined in the LOSC.

Neither the MTSL nor the CGL state in which of these zones China enjoys jurisdiction. Thus, it is necessary to use other sources of law to establish where the MTSL and the CGL can validly be applied. According to the principle of *the land dominates the sea* under international law a coastal state's maritime entitlements follow from her sovereignty over land territory. Accordingly, China's jurisdiction depends on where she enjoys sovereignty over land. The 1992 Law on the Territorial Sea and the Contiguous Zone (TSCZL) provides information on where China claims and understands to enjoy jurisdiction:

The land territory of the People's Republic of China includes the mainland of the People's Republic of China and its coastal islands; Taiwan and all islands appertaining there to including the Diaoyu Islands; the Penghu Islands; the Dongsha Islands; the Xisha Islands; the Zhongsha Islands and the Nansha Islands; as well as all the other islands belonging to the People's Republic of China.¹¹⁸

Under article 2 of the 1992 TSCZL China claims land territory on her continental mainland, coastal islands and several other islands, including the Xisha islands (also known as Parcel islands), the Nansha islands (also known as Spratly islands) and the Diaoyu islands (also known as Senkaku islands). At least the three island groups Parcel islands, Spratly islands and Senkaku islands are disputed between different states.

Under international law there is doctrinal uncertainty concerning the question whether a dispute about sovereignty over land must be settled for a state to enjoy coastal state jurisdiction in the maritime areas adjacent to the respective land territory. One view is that agreement on the state's sovereignty over land territory is a prerequisite, meaning that the land territory must not be disputed internationally. The alternative position is that effective control over the land and maritime area is sufficient, claiming that the law of the sea regime itself constitutes maritime

¹¹⁸ Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, adopted 25 February 1992, in force 25 February 1992 (TSCZL), Article 2.

entitlements, given effective state control.¹¹⁹ In her ruling in *Maritime Delimitation in the Area between Greenland and Jan Mayen* the International Court of Justice (ICJ)

observe[d] that the attribution of maritime areas to the territory of a State, which, by its nature, is destined to be permanent, is a legal process based solely on the possession by the territory concerned of a coastline.¹²⁰

Accordingly, the ICJ acknowledged the principle of *the land dominates the sea* and simultaneously stressed the importance of the *possession* of the land territory.

Therefore, to enjoy valid jurisdiction over sea areas China must validly possess the respective land territory. China's claim over such title over land is disputed, inter alia, in the South China Sea and several islands, including the Senkaku/Diaoyu islands. Accordingly, China does not enjoy valid coastal state jurisdiction in the respective potential maritime zones. However, where China enjoys a valid legal title over land China enjoys jurisdiction in the respective territorial sea, contiguous zone, exclusive economic zone and continental shelf to the extent permitted under the LOSC and established in relevant documents, with the exception of the continental shelf, where the coastal state holds exclusive sovereign rights *ab initio*.¹²¹

Furthermore, where China and another state enjoy valid titles over land territory and have overlapping claims concerning the EEZ or CS the states involved are under a due diligence obligation to cooperate. Articles 74(3) and 83(3) of the LOSC oblige these states to 'make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement.'¹²² Thus, in areas where China and another state have valid overlapping EEZ or CS claims China may exercise jurisdiction only to the extent that such exercise conforms to a common understanding or agreement between these states.

¹¹⁹ Nasu, 'The Regime of Innocent Passage in Disputed Waters', 94 *International Law Studies* (2018) 241.

¹²⁰ *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark/Norway)* (Judgment) (1993), 78 ICJ Rep 38, para 80.

¹²¹ LOSC, Article 77(1)-(3).

¹²² LOSC, Articles 74(3), 83(3).

Lastly, attention is drawn to ‘other maritime areas’ mentioned in the ruling by the Supreme People’s Court.¹²³ The fact that China enjoys jurisdiction over her internal waters does not require further elaboration. The extent to which China enjoys jurisdiction in her territorial sea, contiguous zone, exclusive economic zone and continental shelf has been elaborated in the preceding paragraphs. Logically, ‘other maritime areas’ must refer to other areas than those. Considering that the LOSC provides a comprehensive categorization of all ocean space, the ‘other maritime areas’ must refer to sea areas partially or entirely consisting of archipelagic waters or high seas. Clearly, China does not qualify as an archipelagic state under the LOSC.¹²⁴ Furthermore, no part of the high seas can be subjected to national sovereignty under international law.¹²⁵ Thus, to the extent that ‘other sea areas’ refers to the maritime zones archipelagic waters or high seas, Chinese claims on coastal state jurisdiction over these maritime zones is inconsistent with international law.

Considering the arguments made above, RQ1 is answered as follows: Chinese state practice does not provide a clear definition on where China claims the MTSL and the CGL enjoy jurisdiction. The geographical scope of application of the MTSL and the CGL is consistent with international law to the extent that jurisdiction is limited to the maritime zones internal waters, territorial sea, contiguous zone, exclusive economic zone, and continental shelf to the extent that China enjoys sovereignty over the relevant land territory and, safe only in the case of the continental shelf, established the breadth of these maritime zones in accordance with the relevant rules of international law. Any claim on jurisdiction beyond this is inconsistent with international law.

5.2 Prior Notification and other Requirements concerning Foreign Vessels in the Territorial Sea

Article 54 of the MTSL imposes a duty for specific foreign vessels entering or exiting the Chinese territorial sea to report to the Chinese maritime safety administration. Next to the notification requirement, article 54 obliges the specified vessels traversing through the territorial sea to accept instructions and supervision by the Chinese maritime safety administration. Both duties concern the innocent passage regime.

¹²³ Ministry of Defense, Japan, *supra* note 105.

¹²⁴ LOSC, Article 46.

¹²⁵ LOSC, Article 89.

Do vessels specified under article 54 of the MTSL enjoy the right of innocent passage in the Chinese territorial sea?

Article 54 of the MTSL applies to vessels of foreign nationality.¹²⁶ Under article 18 of the LOSC vessels of all states enjoy the right of innocent passage. To qualify as an exercise of innocent passage the navigational activity must constitute an activity of *passage* and be of an *innocent* nature. For the general meaning of these terms under the international law of the sea it is referred to chapter 3.2.1 of this study.

Article 54 of the MTSL applies only to specific categories of foreign vessels, i.e.,

- (1) Submersibles.
- (2) Nuclear-powered vessels.
- (3) Vessels carrying radioactive materials or other toxic and hazardous substances.
- (4) Other vessels that may endanger the maritime traffic safety of China as prescribed by laws, administrative regulations or the State Council.¹²⁷

Article 6 of the TSCZL acknowledges the right of innocent passage for foreign vessels operated for non-military purposes and subjects vessels operated for military purposes to a prior authorization regime.¹²⁸ Nuclear-powered vessels and submarines are often operated by navies and, thus, article 6 of the TSCZL does not provide a right of innocent passage for these vessels to the extent that they are operated for military purposes. Article 20 and, respectively, article 30 in conjunction with article 29 of the LOSC acknowledge the right of innocent passage for submarines and vessels operated for military purposes.¹²⁹ Thus, independent of article 6 of the TSCZL also vessels operated for military purposes enjoy the right of innocent passage under international law.

In conclusion, the vessels specified under article 54 of the MTSL enjoy the right of innocent passage in the Chinese territorial sea.

¹²⁶ MTSL, Article 54.

¹²⁷ MTSL, Article 54.

¹²⁸ TSCZL, Article 6.

¹²⁹ LOSC, Article 20.

Is the notification requirement of article 54 of the MTSL compatible with the obligation under article 24(1) of the LOSC not to hamper the exercise of innocent passage?

Article 54 of the MTSL requires the specified vessels to ‘report to the maritime safety administration’¹³⁰ Neither the content nor the time frame when the report must be issued is clarified in article 54. Considering the purpose of reporting systems in general and China’s stance on prior authorization regimes,¹³¹ for the purpose of this study it is understood that article 54 of the MTSL requires notification *prior* to the navigational activity. In any case, from the perspective of vessels the time frame does not make a considerable difference. Nevertheless, it must be noted, that article 54 is not clear on these two points.

Article 24(1) of the LOSC clearly states that the coastal state must not hamper the exercise of innocent passage.¹³² This includes, *inter alia*, the prohibition to ‘impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage’.¹³³ One reason for rejecting prior notification requirements is that the coastal state could use the information gained as a pretext to deny the right of innocent passage. Additionally, a denial of innocent passage due to not having received active consent by the coastal state would equal active denial of innocent passage in its effects and, thus, hamper innocent passage, rendering such state practice a violation of international law.¹³⁴ At the same time, however, the prior notification requirement could be used strictly to be aware of any potentially dangerous vessel navigating in the coastal state’s territorial sea – an area very close to the coastal state’s land territory and central for both economic and other activities – and to ensure the passage of those vessels is conducted in accordance with the laws and regulations adopted by the coastal state in accordance with article 21(1) of the LOSC and other rules of international law. Legal scholar Richard Barnes notes that the list of regulatory topics provided under article 21(1) resembles the list of activities provided under article 19(2), indicating that there is an inherent connection between the right of innocent passage and a vessel’s conduct

¹³⁰ MTSL, Article 54.

¹³¹ TSCZL, Article 6.

¹³² LOSC, Article 24(1).

¹³³ LOSC, Article 24(1)(a).

¹³⁴ Barnes, 'Article 24 Duties of the Coastal State', in A. Proelss et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017) 217, at 221.

while navigating in the territorial sea.¹³⁵ This implies that vessels severely violating the coastal state's laws and regulations do not exercise their right of innocent passage, allowing the coastal state to 'take necessary steps in its territorial sea to prevent passage which is not innocent.'¹³⁶

During UNCLOS III there was intense debate on whether coastal states should be allowed to require prior notification in the context of a vessel's exercise of innocent passage. The group of states in favor of such a provision did not generate enough support for the adoption of such a rule with the other states and agreed not to put this question to a vote. Thus, neither in the LOSC's draft nor final text the issue of prior notification was included, Barnes notes with respect to article 21 of the LOSC, providing the coastal state with the right to enact laws and regulations concerning innocent passage. This is of especially high importance since states sought an exhaustive list of coastal state regulatory powers concerning innocent passage.¹³⁷ Ambassador Koh, president of UNCLOS III in 1982, publicly stated at the Duke Symposium on the Law of the Sea on 30 October 1982 with respect to the regime of innocent passage:

I think the Convention [i.e., the LOSC] is quite clear on this point. Warships do, *like other ships*, have a right of innocent passage through the territorial sea, and there is *no need for warships to acquire the prior consent or even notification* of the coastal State.¹³⁸

Additionally, Ambassador Koh announced that the above-mentioned states

would, however, like to reaffirm that their decision is without prejudice to the rights of coastal States to adopt measures to safeguard their security interests, in accordance with article 19 and 25 of the convention.¹³⁹

In 1989 the United States and the Soviet Union declared in a joint statement:

¹³⁵ Barnes, 'Article 21: Laws and Regulations of the Coastal State Relating to Innocent Passage', in A. Proelss et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017) 199, at 201.

¹³⁶ LOSC, Article 25(1).

¹³⁷ Barnes, *supra* note 135, at 202.

¹³⁸ As cited in Oxman, 'The Regime of Warships Under the United Nations Convention on the Law of the Sea', 24 *Virginia Journal of International Law* (1984) 809, at 854, emphasis added.

¹³⁹ As cited in *Ibid.*

*All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.*¹⁴⁰

China made the following declaration concerning the innocent passage regime:

The People's Republic of China reaffirms that the provisions of the United Nations Convention on the Law of the Sea concerning innocent passage through the territorial sea shall not prejudice the right of a coastal state to request, in accordance with its laws and regulations, a foreign state to obtain advance approval from or give prior notification to the coastal state for the passage of its warships through the territorial sea of the coastal state.¹⁴¹

Other states' declarations and wider state practice ranges from requirements of prior notification and authorization for vessels carrying inherently dangerous cargo to a rejection of both prior authorization and notification in general.¹⁴² It is fair to conclude that state practice concerning prior notification regimes has not transcended to a customary rule of international law yet.¹⁴³

When considering the arguments brought forward above, it must be acknowledged that the coastal state has an inherent and legitimate interest to protect her territorial sea and the navigation in it from serious danger and damage. For this it must be recognized that the coastal state exercises sovereignty over her territorial sea subject to the relevant rules of international law. This includes the obligation not to hamper innocent passage. Considering that the term 'security'¹⁴⁴ used in article 19 of the LOSC is not further defined, it is, nevertheless clear from its plain reading that a maritime accident resulting in a serious discharge of nuclear or otherwise highly dangerous material into the territorial sea is not compatible with the legitimate security interest of the coastal state. In this context, it can be understood as necessary for the coastal

¹⁴⁰ USA-USSR Joint Statement on the Uniform Interpretation of Rules of International Law Governing Innocent Passage, adopted 23 September 1989, emphasis added.

¹⁴¹ United Nations, *supra* note 65.

¹⁴² D. Rothwell and T. Stephens, *The International Law of the Sea* (2nd ed., 2016), at 78.

¹⁴³ R. R. Churchill and A. V. Lowe, *The Law of the Sea* (3rd, 8th reprint ed., 2010), at 81–92.

¹⁴⁴ LOSC, Article 19(1).

state to receive relevant information on vessels potentially causing serious damage to the coastal state.¹⁴⁵ If only used to the extent of receiving such a prior notification requirement does not *necessarily* hamper the exercise of innocent passage by foreign vessels. However, it must be raised that not all vessel categories listed in article 54 of the MTSL satisfy the element of potentially causing serious damage to the coastal state. When operated on the surface, submersibles do not cause a seriously higher risk to the coastal state than, e.g., small recreational vessels. Furthermore, vessel category (4), i.e., '[o]ther vessels that may endanger the maritime traffic safety of China as prescribed by laws, administrative regulations or the State Council',¹⁴⁶ is very vaguely defined, providing the maritime traffic safety administration with a considerable margin of appreciation concerning her application of article 54. When interpreted extensively, the maritime safety administration runs the risk of violating the obligation not to hamper innocent passage.

Lastly, given the vague language used in the definition of vessel category (4) of article 54 of the MTSL, individual vessels might incorrectly identify themselves as *not* falling under this category. Passage by *potentially* dangerous vessels, including vessel categories (2)-(3) of article 54 of the MTSL does not *necessarily* pose serious danger or damage to the coastal state when conducted in accordance with good navigational practices. For these reasons, non-compliance with the prior notification requirement of article 54 of the MTSL does not, by its own, render the passage non-innocent in the sense of article 19(1)-(2) of the LOSC, elaborated in chapter 3.2.1 above. Furthermore, article 54 of the MTSL does neither specify which information must be reported nor does it specify the point in time when such report must be issued, potentially providing the vessels with some leeway on the time of reporting. For these reasons, the exercise of innocent passage must not be made conditional on compliance with the prior notification requirement of article 54 of the MTSL.

In conclusion, the notification requirement of article 54 of the MTSL is only compatible with the obligation under article 24(1) of the LOSC not to hamper the exercise of innocent passage

¹⁴⁵ Barnes, 'Article 23: Foreign Nuclear-Powered Ships and Ships Carrying Nuclear or Other Inherently Dangerous or Noxious Substances', in A. Proelss et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017) 213 , at 215–216, paras 5-8; Barnes, 'Article 22: Sea Lanes and Traffic Separation Schemes in the Territorial Sea', in A. Proelss et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017) 208 , at 212, para 10.

¹⁴⁶ MTSL, Article 54.

to the extent that it is used only to become aware of potentially dangerous vessels and concerns vessel categories (2)-(4) of article 54 of the MTSL. A notification requirement beyond this limit, including any notification requirement for vessels falling only under category (1) and any attempt to make the innocent passage conditional on complying with the prior notification regime is not compatible with the obligation under article 24(1) of the LOSC not to hamper the exercise of innocent passage.

Is the requirement to accept instructions and supervision provided in article 54 of the MTSL consistent with international law?

Article 54 of the MTSL obliges the vessels defined in article 54 traversing the Chinese territorial sea and discussed above to hold relevant certificates, take special precautionary measures as provided in Chinese laws, administrative rules and regulations and ‘accept the instructions and supervision of the maritime safety administration.’¹⁴⁷

Article 21 of the LOSC provides the coastal state with a broad but still limited right to adopt laws and regulations concerning innocent passage. Importantly, paragraph 3 obliges the coastal state to ‘give due publicity to all such laws and regulations’.¹⁴⁸ Article 22 of the LOSC provides further clarification concerning the adoption of sea lanes (SL) and traffic separation schemes (TSS). Paragraph 1 grants the coastal state a general right to require foreign vessels exercising the right of innocent passage right to use such TSS and SL if the designation or prescription of such TSS and SL is necessary for navigational safety and was done in accordance with other requirements, including, inter alia, taking into account the recommendations issued by the International Maritime Organization (IMO) and having duly publicized such TSS and SL on charts clearly indicating them.¹⁴⁹ Importantly, paragraph 2 allows the coastal state to require nuclear-powered vessels, vessels carrying nuclear or otherwise inherently dangerous or noxious substances and tankers to confine their passage to such sea lanes in the territorial sea. Furthermore, Article 23 obliges nuclear-powered vessels and vessels carrying nuclear or inherently dangerous or noxious substances to carry relevant documents and take special precautionary measures established in relevant international agreements.

¹⁴⁷ MTSL, Article 54.

¹⁴⁸ LOSC, Article 21(3).

¹⁴⁹ LOSC, Article 22(1) and (3)-(4).

The regulations provided in articles 21-23 of the LOSC mention general traffic systems. None of these allow the coastal state to require these vessels to accept individual supervision and instructions. Indeed, the coastal state is not within her rights to take ad-hoc decisions on restricting passage of vessels to specific sea lanes but, instead, must follow relevant procedures, including taking into account recommendations by the IMO when establishing TSS and SL and duly publicize such on charts. Not conforming to these regulations makes innocent passage unpredictable for the vessels concerned and, thus, is prone to infringe their rights. Arguments that the requirement to accept instructions and supervisions establishes a mandatory pilotage system (MPS) would be incorrect since pilotage systems are established separately in articles 30, 31 and 102 of the MTSL.¹⁵⁰ Furthermore, it is submitted that MPS' consistency with international law is disputed and requires international acknowledgement.¹⁵¹

In conclusion, the requirement to accept instructions and supervision provided in article 54 of the MTSL is not consistent with international law.

Considering the arguments made above, RQ 2 is answered as follows: The requirement of notification included in article 54 of the MTSL is only consistent with international law to the extent that it does not hamper the exercise of innocent passage by foreign ships. A vessel's exercise of innocent passage must not be denied, even given non-compliance with the prior notification regime established in article 54 of the MTSL. Requiring the vessels defined in article 54 to accept instructions and supervision is not consistent with international law.

5.3 Suspension of and other Restrictions on Navigation within and beyond the Territorial Sea

Article 52 of the MTSL provides Chinese authorities with prescriptive jurisdiction concerning navigational restrictions in Chinese maritime areas. The following paragraphs will focus on the Chinese territorial sea and the exclusive economic zone.

Can China restrict navigation in her territorial sea for foreign vessels in a manner and under circumstances as prescribed in article 52 of the MTSL?

¹⁵⁰ LOSC, Articles 30, 31 and 102.

¹⁵¹ Barnes, *supra* note 135, at 21, para 10; Roberts, 'Compulsory Pilotage in International Straits: The Torres Strait PSSA Proposal', 37 *Ocean Development & International Law* (2006) 93.

Article 52 of the MTSL is triggered when there is a ‘relatively significant impact on maritime traffic safety’¹⁵² due to one or more of the following circumstances.

- (1) Where weather and sea conditions are hostile.
- (2) There is a maritime distress situation or maritime traffic accident that affects navigation.
- (3) Military training, drills or other related activities are carried out.
- (4) Large-scale water and underwater activities are carried out.
- (5) The traffic density in a specific sea area is close to saturation.
- (6) Other circumstances that have relatively significant impact on maritime traffic safety.¹⁵³

This legal trigger is vague on two accounts. Firstly, category (6) is defined using the vague term ‘relatively significant impact’. Secondly, the opening clause of article 52 includes the same open-ended terminology. neither the term ‘relatively’ nor the term ‘significant impact’ are defined in the MTSL itself, demanding a closer analysis. The Oxford Advanced American Dictionary provides the meaning of the word ‘relatively’ as ‘to a fairly large degree, especially in comparison to something else’¹⁵⁴. Hence, the ‘significant impact’ mentioned in article 52 must be of a ‘fairly large degree’. In deciding whether such a circumstance exists in a specific case it can be compared to other circumstances to establish whether it satisfied this element.

The Oxford Advanced Learner’s Dictionary provides the meaning of the word ‘significant’ as ‘large or important enough to have an effect or to be noticed’, ‘having a particular meaning’ ‘having a special or secret meaning that is not understood by everyone’.¹⁵⁵ Accordingly, the impact the circumstances listed under article 52 must amount to a scale that has a clearly noticeable effect. It is not sufficient for this effect to be only possible or potential. Instead, this

¹⁵² MTSL, Article 52.

¹⁵³ MTSL, Article 52.

¹⁵⁴ *Relatively Adverb - Definition, Pictures, Pronunciation and Usage Notes | Oxford Advanced American Dictionary at OxfordLearnersDictionaries.Com*, Oxford Advanced American Dictionary, available at https://www.oxfordlearnersdictionaries.com/definition/american_english/relatively (last visited 5 August 2022).

¹⁵⁵ *Significant Adjective - Definition, Pictures, Pronunciation and Usage Notes | Oxford Advanced Learner’s Dictionary at OxfordLearnersDictionaries.Com*, Oxford Advanced Learner’s Dictionary, available at <https://www.oxfordlearnersdictionaries.com/definition/english/significant?q=significant> (last visited 5 August 2022).

effect must be manifested to qualify. When these elements are satisfied the Chinese maritime safety administration is obliged to ‘take corresponding traffic control measures such as suspending navigation, setting speed limit or demarcation of traffic control zones in light of the specific circumstances, and make an announcement to the public’¹⁵⁶. The wording ‘measures such as’ implies that the list of measures is not of an exhaustive nature. This interpretation is supported by the use of the term ‘corresponding’ in the same sentence. The language used in this provision obliges the maritime safety administration to make a case-by-case decision when deciding on the actions to be taken. There must not be a one-size-fits-all approach, but each maritime situation must be interpreted individually and responded to in light of its specific circumstances.

Article 25(3) of the LOSC specifically provides the coastal state with the right to suspend innocent passage in her territorial sea ‘temporarily in specified areas [...] if such suspension is essential for the protection of its security, including weapons exercises.’¹⁵⁷ Article 52 of the MTSL does not include specific language mentioning the size of the area where navigation can be restricted. However, as pointed out above article 52 demands a case-by-case analysis and actions correspondent to the situation’s seriousness. Therefore, article 52 of the MTSL does not necessarily violate the limited area requirement of article 25(3) of the LOSC. Furthermore, article 52 of the MTSL includes a list of circumstances which can trigger its application. Only category (3), providing the wording ‘[m]ilitary training, drills or other related activities’,¹⁵⁸ potentially suffices the security element required under article 25(3) of the LOSC. The other circumstances on the list of article 52 of the MTSL clearly do not qualify the requirement of article 25(3) of the LOSC. Indiscriminate use of article 25(3) of the LOSC to justify the suspension of navigation under article 54 of the MTSL is prone to an abuse of rights under the LOSC, constituting a violation of international law in the process.¹⁵⁹ Therefore, the coastal state can suspend navigation in its territorial sea only temporarily and in specified areas for reasons ‘essential for the protection of its security’. From the list of circumstances provided in article

¹⁵⁶ MTSL, Article 52.

¹⁵⁷ LOSC, Article 25(3).

¹⁵⁸ MTSL, Article 52.

¹⁵⁹ LOSC, Article 300.

52 of the MTSL only category (3) qualifies as element of security exception. Suspension of navigation in the territorial sea beyond this limit is inconsistent with international law.

Concerning other navigational restrictions articles 17-19 and 21-24(1) of the LOSC are relevant. These have been discussed in chapters 3.2.1 and 5.2. In short, the coastal state is within her rights to adopt traffic separation schemes (TSS) and sea lanes (SL) and demand foreign vessels to use these if necessary for navigational safety and given the TSS and SL have been adopted correctly, i.e., inter alia, recommendations by the IMO have been taken into account and charts clearly indicating the TSS and SL have been published appropriately. Ad-hoc restrictions are not supported by these regulations. Recognizing that the coastal state has a larger margin of appreciation concerning the adoption of restrictions of navigation other its suspension, restrictions, nevertheless, must not hamper the exercise of innocent passage. The vague language used in article 52 of the MTSL, including the use of the words ‘relatively’ and ‘corresponding’, gives the relevant Chinese authorities a considerable margin of appreciation. With this considerable margin of appreciation, the maritime safety administration runs the risk of violating international law by entertaining overly broad interpretations, abusing their rights under the LOSC.¹⁶⁰

For the reasons listed above, China can restrict navigation in her territorial sea for foreign vessels in a manner and under circumstances as prescribed in article 52 of the MTSL only to the extent that they do not hamper the exercise of innocent passage by the specified vessels, safe only where suspension of navigation is essential for the coastal state’s security and enacted temporarily and in specified areas.

Can China restrict navigation in her exclusive economic zone for foreign vessels in a manner and under circumstances as prescribed in article 52 of the MTSL?

In the exclusive economic zone, the high seas freedom of navigation applies.¹⁶¹ However, states are obliged to ‘have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention [i.e., the LOSC] and other rules of international law in so far as they are not

¹⁶⁰ LOSC, Articles 17-19, 21-24(1), 300.

¹⁶¹ LOSC, Article 58(1).

incompatible with this Part [i.e. Part V of the LOSC]¹⁶². The coastal state, similarly, is obliged to ‘have due regard to the rights and duties of other States, and shall act in a manner compatible with the provisions of this Convention [i.e. the LOSC]’¹⁶³. Accordingly, both the coastal state and the flag state are obliged to have due regard to the legitimate exercise of the other’s rights and duties. Therefore, the question at hand is whether a restriction on navigation as prescribed in article 52 of the MTSL is compatible with the due regard obligations provided for in the LOSC. Neither the LOSC nor the MTSL or the CGL provide a definition on the meaning of *due regard*. In the *Chagos Marine Protected Area Arbitration*, where the arbitral tribunal had to decide, inter alia, whether the United Kingdom was entitled to declare a Marine Protected Area (MPA) in an area where Mauritius enjoyed specific rights, the tribunal ‘decline[d] to find in this formulation any universal rule of conduct.’¹⁶⁴ Furthermore, the tribunal found that ‘the ordinary meaning of ‘due regard’ calls for [...] hav[ing] such regard for the rights [...] as is called for by the circumstances and by the nature of those rights.’¹⁶⁵ Thus, there cannot be a fixed understanding of due regard obligations. In *M/V ‘Virginia G’* the International Tribunal for the Law of the Sea was called upon to decide, inter alia, whether bunkering in the exclusive economic zone was within the rights of the flag state or whether the coastal state was within her rights to enact laws and regulations prohibiting the bunkering in her exclusive economic zone. The tribunal considered the coastal state’s sovereign rights in her exclusive economic zone and considered the coastal state to be within her rights to enact such laws and regulations that refer to ‘the bunkering of foreign vessels engaged in fishing in the exclusive economic zone’¹⁶⁶. The tribunal, furthermore, decided that the coastal state was not within her rights to regulate ‘other bunkering activities, unless otherwise determined in accordance with the Convention [i.e., the LOSC].’¹⁶⁷ By extension, the coastal state is not within her rights to regulate activities in her exclusive economic zone unless such activities directly affect her sovereign rights. In the exclusive economic zone, the coastal state enjoys sovereign rights to explore, exploit, conserve and manage the living and non-living natural resources and to

¹⁶² LOSC, Article 58(3).

¹⁶³ LOSC, Article 56(2).

¹⁶⁴ *Chagos Marine Protected Area Arbitration (Mauritius/United Kingdom)* (Judgment) (2015), PCA 1, para 519.

¹⁶⁵ *Chagos Marine Protected Area Arbitration*, para 519.

¹⁶⁶ *M/V ‘Virginia G’ (Panama/Guinea-Bissau)* (Judgment) (2014), 19 ITLOS Rep 4, para 223.

¹⁶⁷ *M/V ‘Virginia G’ (Panama/Guinea-Bissau)*, para 223.

economically explore and exploit this zone with other activities. To the extent that a restriction of navigation is necessary and reasonable, the coastal state potentially can enact respective laws and regulations. This can include such concerning the establishment of installations to explore and exploit energy, e.g., offshore wind parks. Reasonable restriction on navigation to ensure the safety of navigation around respective installations can be enacted by the coastal state to the extent that they are in line with the requirements of international law. The coastal state, however, is not within her rights to enact laws and regulations restricting navigational freedom of foreign vessels beyond this limit. Under the list of circumstances provided under article 52 of the MTSL only category (4), i.e., '[l]arge-scale water and underwater activities are carried out'¹⁶⁸, to the extent that this formulation refers to the 'economic exploration or exploitation of the zone [i.e., the EEZ]',¹⁶⁹ can be regulated by the coastal state. Navigational restrictions around corresponding installations must be confined to a safety zone not exceeding a limit of 500 meters.¹⁷⁰ Thus, navigational restrictions based on this element must be confined to a relatively small area.

Importantly, the language used in the definition of circumstance category (6) of article 52, providing '[o]ther circumstances that have relatively significant impact on maritime traffic safety' is considerably vague. This use of language provides the maritime safety administration with a considerable margin of appreciation. Considering that in the exclusive economic zone the high seas freedom of navigation applies, the maritime traffic safety administration runs the risk of violating international law when entertaining a broad interpretation of circumstance category (6).

Lastly, article 25 of the CGL also provides regulations on navigational restrictions. Due to the limited space available only a short comparison is made here. In contrast to article 52 of the MTSL article 25 of the CGL clearly provides that navigational restrictions must be temporary. Nevertheless, as does article 54 of the MTSL also article 25 of the CGL goes beyond what is allowed under international law, inter alia, allowing suspension of navigation for other reasons than the protection of the coastal state's security, rendering article 25 inconsistent with international law. However, article 25 could be read to limit the scope of article 52 of the MTSL

¹⁶⁸ MTSL, Article 52.

¹⁶⁹ LOSC, Article 56(1)(a).

¹⁷⁰ LOSC, Article 60.

to the extent that when restricting maritime traffic based on article 52 of the MTSL the CGL must do so conforming to article 25 of the CGL, obliging the CCG, inter alia, to establish the navigational restrictions only temporarily and to give due notice. However, it is not clear whether this would be interpreted so by the CCG. Only state practice will tell.

Considering the arguments made above, RQ3 is answered as follows: China cannot restrict navigation for foreign vessels in a manner and under circumstances as prescribed in article 52 of the MTSL.

5.4 Law Enforcement

The CGL mainly provides the CCG with enforcement jurisdiction. The following discussion will focus on articles 20, 21 and 22 of the CGL which provide a concerted enforcement policy.

Article 20 concerns activities with respect to the construction of installations and structures by foreign entities in areas under Chinese jurisdiction without approval by the relevant Chinese authorities. Under article 20 of the CGL the CCG is within her rights to order the entities to stop the activity or to demolish the respective installations and structures. In cases where the order is not followed the CCG is provided with the right to forcefully stop the activity and to demolish respective installations and structures. Under international law, both in the territorial sea, the exclusive economic zone and on the continental shelf the coastal state enjoys the exclusive right of construction, authorization and regulation of installations and structures.¹⁷¹ Article 20 of the CGL refers to islands and sea areas under Chinese jurisdiction. To the extent that China validly enjoys jurisdiction in these areas, article 20 of the CGL is consistent with international law. However, China's jurisdictional claims include claims inconsistent with international law, as pointed out above. To the extent that article 20 of the CGL refers to such, article 20 is inconsistent with international law.

Article 21 of the CGL refers to foreign government vessels operated for non-commercial purposes, including military vessels, and provides the CCG with the right to 'order'¹⁷² such vessels violating Chinese law to immediately leave Chinese waters. No restriction on the geographical scope of application is included in the provision. Furthermore, article 21 provides the CCG with the right to forcefully evict and tow those whose violation causes threat or serious

¹⁷¹ LOSC, Articles 2, 60, 80.

¹⁷² CGL, Article 21.

harm. Under international law the coastal state is within her rights to ‘require [... a warship] to leave the territorial sea immediately’¹⁷³ if two elements are met: Firstly, the warship must have violated the coastal state’s laws and regulations. Secondly, the warship must have ‘disregard[ed] any request for compliance therewith which is made to it’.¹⁷⁴ While this provision only refers to warships, similar protection is given to other government vessels operated for non-commercial purposes¹⁷⁵ as these vessels enjoy sovereignty as an extension of the flag state. Using force against such vessels would infringe on the flag state’s sovereignty. Thus, other states must not use force against these vessels. Article 21 of the CGL does not require the warship’s repeated disregard to be applicable. Only if a warship repeatedly disregards compliance requests the coastal state is within her rights to *request* (not ‘order’) the vessel to leave the territorial sea under international law. Thus, Article 21 of the MTSL is inconsistent with this element of international law. Secondly, article 21 of the CGL allows the use of force against vessels operated for non-commercial purposes. Under international law, however, government vessels operated for non-commercial purposes enjoy immunity from enforcement actions by a foreign state within the foreign territorial sea as per article 32 of the LOSC and complete immunity from foreign enforcement action in the exclusive economic zone and on the high seas as per articles 92(1) and 95-96 in conjunction with article 58(2) of the LOSC. Therefore, enforcement actions against foreign government vessels operated for non-commercial purposes allowed for under article 21 of the CGL are not compatible with international law independent on the maritime zone where the enforcement action is taken on this account, too.¹⁷⁶ Lastly, it warrants mentioning that exercising force against a vessel operated for non-commercial purposes is contrary to the overall purpose of the LOSC to provide for peaceful ocean management.¹⁷⁷ For the reasons listed above, article 21 of the CGL is inconsistent with international law on several accounts.

Article 22 of the CGL provides the CCG with the right to take all necessary measures within her power, including the use of weapons, to prevent and stop illegal infringements of Chinese sovereignty, sovereign rights, and jurisdiction. Article 22 does not refer to a specific maritime

¹⁷³ LOSC, Article 30.

¹⁷⁴ LOSC, Article 30.

¹⁷⁵ LOSC, Article 32.

¹⁷⁶ LOSC, Articles 30, 32, 58(2) and 92(1).

¹⁷⁷ LOSC, Article 301.

zone. However, the use of the terms sovereignty, sovereign rights and jurisdiction implies that article 22 purports application in the territorial sea, the exclusive economic zone and continental shelf as well as in other areas where China claims jurisdiction. The language used in article 22 is vague and, thus, provides the CCG with a considerable margin of appreciation. Article 22 is hardly confined to reasonable use of force. The only limit included in article 22 is the wording ‘all necessary measures’¹⁷⁸. However, also this wording is permissively vague and provides the CCG with considerable leeway. General principles of international law oblige states to act with reasonable measures. This is, inter alia, codified in the 1979 UN Code of Conduct for Law Enforcement Officials.¹⁷⁹ Several cases before international courts and tribunals stressed the importance of taking *reasonable* measures. This includes the *I’m Alone case*, the *Red Crusader case* and the *M/V Saiga case*.¹⁸⁰ Considering the CGL’s provisions concerning appropriate use of force provided in chapter VI of the CGL, legal scholar Raul Pedrozo concludes : ‘[O]n its face, Chapter VI could be applied in a manner that is consistent with international maritime law enforcement standards regarding the use of weapons.’¹⁸¹ Similarly, Article 22 of the CGL could be applied in a manner consistent with the rules established in the LOSC and in the 1979 UN Code of Conduct for Law Enforcement Officials. However, as Pedrozo further points out: China does not have a good track record concerning reasonable use of force in maritime activities.¹⁸² This is especially alarming considering the Chinese understanding of where the MTSL and CGL purport to enjoy jurisdiction, discussed in chapter 5.1.

Considering the arguments made above, RQ4 is answered as follows: The enforcement jurisdiction provided in articles 20 and 21 of the CGL is inconsistent with international law. The enforcement jurisdiction provided in article 22 of the CGL is not inconsistent with international law, but provides the CGG with considerable leeway, potentially giving rise to enforcement actions considered breaches of international law.

¹⁷⁸ CCG, Article 22.

¹⁷⁹ Code of Conduct for Law Enforcement Officials, adopted by General Assembly Resolution 34/169 of 17 December 1979.

¹⁸⁰ Pedrozo, *supra* note 17, at 475.

¹⁸¹ *Ibid.*, at 476.

¹⁸² *Ibid.*

5.5 Impacts of the MTSL and CGL on Chinese Maritime Power and Claims

The previous discussion on the MTSL's and the CGL's geographical and substantial scope of application opens the floor for RQ5.

How do the provisions of the MTSL and CGL discussed in chapters 5.1-5.4 affect China's power and claims in areas as the South China Sea, the Senkaku/Diaoyu islands and Taiwan?

One finding runs through chapters 5.1-5.4: Both the MTSL and the CGL use vague language in several of their provisions. Vague language has been identified with respect to the general geographical scope of application of both the MTSL and the CGL. Indeed, in the case of the MTSL the geographical scope of application even increased in its definition's vagueness from its 1983 version to its 2021 revision. This general uncertainty on where the MTSL and the CGL purport to enjoy jurisdiction must be recognized in the context of China's claims on jurisdiction in disputed areas and in areas where China does not hold rights as decided by the arbitral tribunal in the *South China Sea Arbitration*.¹⁸³ By providing unclear language China prevents itself to some extent from openly acting in contradiction to international law. The discussion on article 54 of the MTSL showed that state practice concerning prior notification requirements is far from uniform. In this light China's enactment of the MTSL might be interpreted as an act of a stance in the context of international practice and debate. Under this lens China could be viewed as a state accepting the rules international law, trying to develop these in her favor by enacting the MTSL and CGL as a legitimate act of state practice. However, this view does not appreciate the full picture. Using vague language serves to blur lines. Providing generic language with respect to the geographical scope of application in both the MTSL and the CGL keeps other states in the dark about where China claims jurisdiction for these two laws and where she will enforce their provisions. Several articles provided in the MTSL and CGL do not discriminate between different maritime zones. This leads to a situation in which provisions are to some extent within the limits of international law when considered in one maritime zone and inconsistent with international law when considered in a different maritime zone. In the case of article 52 of the MTSL this translates as follows: In the territorial sea China can suspend navigation in specified areas temporarily when necessary for weapons exercises. However, in the exclusive economic zone and beyond China may not suspend navigation due to weapons

¹⁸³ *South China Sea Arbitration (Philippines/China)*.

exercises. As article 52 does not specify where it purports to enjoy jurisdiction, Chinese authorities might violate international law based on their appreciation of article 52 of the MTSL and, simultaneously, use the smokescreen of vague language when justifying their actions. In this context it is of considerable importance that under international law government vessels operated for non-commercial purposes enjoy immunity from foreign prosecution pursuant to articles 30-32, (2), 58(2), 92(1) and 95-96 of the LOSC.¹⁸⁴ Furthermore, state officials enjoy immunity *ratione materiae* from prosecution by a foreign state as elaborated by the arbitral tribunal in the ‘*Enrica Lexie*’ incident.¹⁸⁵ By analogy to the arbitral tribunal’s findings on the status and immunities of the marines employed by Italy in the ‘*Enrica Lexie*’ incident, also military and coast guard personnel employed by the Chinese government enjoy immunity from foreign prosecution when acting in official capacity. This is even the case when the acts committed by the personnel are not specifically ordered or sanctioned by the relevant Chinese authority¹⁸⁶ and ‘might be found to be *ultra vires* or contrary to their instructions or orders’¹⁸⁷. This, furthermore, is strengthened by article 6 of the CGL, providing in full:

A coast guard agency and its employees performing their duties in accordance with the law shall be under the protection of the law, and no organization or individual may illegally interfere in, refuse, or obstruct such performance.¹⁸⁸

Thus, both under international law and Chinese domestic law Chinese official government personnel acting in their official capacity enjoys protection from foreign prosecution. Nevertheless, article 6 of the CGL goes beyond what is recognized under international law: article 6 does not only refer to prosecution but to all acts considered by China as ‘illegal’ interference, refusal or obstruction of the CCG’s ‘performance’. Considering the discussion in chapters 5.1-5.4, the use of the term ‘illegal’ in article 6 of the CGL and China’s expansive maritime and jurisdictional claims makes apparent that article 6 of the CGL provides the CCG with another layer of domestic legal reinforcement to deploy her power and force, including in

¹⁸⁴ LOSC, Articles 30-32, 58(2), 92(1) and 95-96.

¹⁸⁵ ‘*Enrica Lexie*’ incident (Italy/India) (Award) (2020), 2015-28 PCA i, paras 843-846.

¹⁸⁶ ‘*Enrica Lexie*’ incident’, para 857.

¹⁸⁷ ‘*Enrica Lexie*’ incident’, para 860, emphasis in the original.

¹⁸⁸ CGL, Article 6.

internationally disputed areas. This proves especially important considering the CCG's wide areas of responsibilities and tasks provided for in articles 5 and 12 of the CGL.¹⁸⁹

Under international law both legal provisions violating international law and enforcement activities violating international law are understood as internationally wrongful acts attributable to the respective state.¹⁹⁰ However, as legal scholar Erik Molenaar points out, states enacting vague legislation do not necessarily intend to infringe on other states' rights. The degree of uncertainty concerning a state's intentions is less ominous when enforcement actions are analyzed. While mere legislation can be adequately described as *inconsistent* with international law, enforcement actions contrary to international law are better understood as *breaches* of international law.¹⁹¹ As the MTSL and the CGL have been introduced only relatively recently, enforcement of these laws cannot be analyzed yet. The differentiation promoted by Molenaar, however, can be used to identify the reason behind the language used in the MTSL and CGL. The adoption of the MTSL and the CGL potentially influences other states' and entities' actions even if the relevant provisions were not *necessarily* always enforced. The simple *possibility* of enforcement by the CGL can cause others, e.g., fishers, to choose not to exercise their lawful rights in areas claimed by China as exercise of such rights might be answered with force by the CCG. Thus, the provisions enacted with the MTSL and CGL can have real-world consequences even when not enforced. This uncovers the enactment of the MTSL and CGL as part of Chinese lawfare. While the LOSC includes provisions on compulsory dispute settlement, states can choose not to accept these where sovereignty issues, military activities and specific law enforcement activities concerning marine scientific research or fishing in the exclusive economic zone are involved. On 25 August 2006 China declared:

The Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all

¹⁸⁹ CGL, Articles 5, 12.

¹⁹⁰ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, International Law Commission, 2001, available at https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (last visited 22 April 2022), Articles 2 and 12.

¹⁹¹ E. J. Molenaar, *Coastal State Jurisdiction over Vessel-Source Pollution* (1998), available at https://books.google.no/books?id=f5QV4MRIHd8C&printsec=copyright&redir_esc=y#v=onepage&q&f=false (last visited 31 August 2022), at 4–6.

the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298 of the Convention [i.e., the LOSC].¹⁹²

Accordingly, China does not accept compulsory dispute settlement for international disputes concerning issues of, inter alia, sovereign disputes, military activities, and specific law enforcement activities. As customary international law does not provide a different source for compulsory dispute settlement for these cases, recourse can only be made to the general obligation under international law to resolve international disputes peacefully as codified, inter alia, in the UN Charter under articles 2(3) and 33 and article 279 of the LOSC.¹⁹³ Under these circumstances, the MTSL and the CGL considerably increase Chinese capabilities and, thus, general and maritime power. The maritime power translates to Chinese claims in disputed areas to the extent that other entities are deterred from exercising their rights. This, again, provides China with a higher degree of effective control and – and on the long term - potentially with a stronger case concerning a legal title over land and maritime territory in *some* of the disputed areas.

This calculus is inherently linked to China's position and ambition on the international stage. The international system after the breakdown of the Soviet Union has been described as unipolar. The only remaining superpower in the world was the United States, enjoying her so-called *unipolar moment*. In the meantime, however, China increased her power. China's rise is measurable both in economic and military power. Measured by purchasing power parity China has already surpassed the United States as largest economy. Measured by other metrics China will surpass the United States within the next ten years. With the Regional Comprehensive Economic Partnership (RCEP) China today leads the largest free trade block in the world. In 2018 more countries enjoyed higher trade sums with China than they did with the United States.¹⁹⁴ Figure 1 illustrates China's relative rise in economic power. Numbers on military expenditure illuminate states' military power. In 2020 the United States spent 2.7 times more on her military than China did. According to the military expenditure database of the Stockholm

¹⁹² China: Declaration under Article 298: C.N.666.2006.TREATIES-5, 25 August 2006.

¹⁹³ UN Charter, Articles 2(3) and 33; LOSC, Article 279.

¹⁹⁴ G. Allison, N. Kiersznowski and C. Fitzek, *The Great Economic Rivalry: China vs the U.S.* (2022), available at https://www.belfercenter.org/sites/default/files/files/publication/GreatEconomicRivalry_Final_2.pdf (last visited 23 August 2022).

Peace Research Institute the United States' military expenditure amounted to USD 801 billion in 2020, setting the United States' military expenditure far above all other states. Nevertheless, China increased her military expenditure considerably. While in 1989 China spent USD 11 billion, by 2020 her military expenditure rose to USD 293 billion.¹⁹⁵ Figure 2 illustrates the military expenditure from 1989 to 2021 for the United States and China. It must be mentioned that the United States maintains several military bases in different countries around the world, providing the United States with considerable power projection capabilities. The United States' military *engagement* in the world, accordingly, requires high amounts of military *expenditure*. China, on the other hand, opened her first overseas military base only in 2017.¹⁹⁶ Accordingly, her military power projection capabilities are not as comprehensive as the United States'. With active personnel adding up to over two million China has the largest number of military personnel.¹⁹⁷ The Bonn Power Shift Monitor 2020 accounts both China and the United States high status in their overall power ranking. While the curve of the United States' power decline flattened in recent years, China moves toward closing the gap between these countries. Figure 3 illustrates the overall power shift of the G19 countries, including China and the United States, from 2016 to 2020. Figure 4 projects the power distribution of these states as they were in 2020 on a world map.¹⁹⁸ In short, both the United States and China are powerful states in the international system. While the United States' relative power is declining, China's relative power is increasing. As highlighted in the methodology section, the long-term *change* in power distribution is of importance when analyzing the international system. What political scientist and international relations scholar Jonathan Kirshner emphasized, referring to classical realism, is also true to the prognosis of offensive realism: 'it expects the ambition of rising states to

¹⁹⁵ SIPRI, *SIPRI Military Expenditure Database*, Stockholm International Peace Research Institute (SIPRI), available at <https://milex.sipri.org/sipri> (last visited 24 August 2022).

¹⁹⁶ M. Tanchum, *China's New Military Base in Africa: What It Means for Europe and America – European Council on Foreign Relations*, 14 December 2021, European Council on Foreign Relations, available at <https://ecfr.eu/article/chinas-new-military-base-in-africa-what-it-means-for-europe-and-america/> (last visited 24 August 2022).

¹⁹⁷ S. Yuan, *Just How Strong Is the Chinese Military?*, 29 October 2021, Aljazeera, available at <https://www.aljazeera.com/news/2021/10/29/just-how-strong-is-the-chinese-military> (last visited 24 August 2022).

¹⁹⁸ Center for Global Studies, *Power Ranking*, Universität Bonn – Center for Global Studies (CGS): Bonn Power Shift Monitor, available at <https://www.cgs-bonn.de/zh/bonn-power-shift-monitor/ranking/> (last visited 24 August 2022).

expand along with their capabilities'.¹⁹⁹ Several instances illustrate this in the case of China. At UNCLOS III China submitted only 'three short and simple working papers',²⁰⁰ hardly trying to influence the development of ocean governance on the international stage. In her 14th Five Year Plan, adopted 11 March 2021, China states with respect to her long-term goals:

Looking forward to 2035, China will have basically realized socialist modernization. Economic strength, S&T strength, and overall national strength will rise sharply, the total economic output and the per capita income of urban and rural residents will reach new levels, major breakthroughs will be achieved in key and core technologies (关键核心技术), and China will enter the first rank of innovation-oriented countries.²⁰¹

Furthermore, China's attempts to change the international system can be seen in her attempts concerning, inter alia, the Belt and Road Initiative²⁰² and the above-mentioned incidents in the South China Sea, Taiwan and Senkaku/Diaoyu islands. All these incidences show that China's ambitions increased considerably during the last decades: Rising in power China demands an increasingly bigger share of the cake.

The MTSL and the CGL display both increased Chinese ambitions and prove a considerable power source for China. In combination these two laws provide the Chinese authorities and personnel with a considerable amount of power in the international sphere through increased capabilities. In other words: Their cumulative effect is more than their sum. If it were not for these two laws, China would require additional economic and military power to achieve her objectives. Thus, the enactment of the MTSL and the CGL with their vague language must be

¹⁹⁹ Kirshner, 'The Tragedy of Offensive Realism: Classical Realism and the Rise of China', 18 *European Journal of International Relations* (2012) 53, at 54.

²⁰⁰ Zou, 'China and the Law of the Sea: Historical Aspects', in D. Tamada and K. Zou (eds.), *Implementation of the United Nations Convention on the Law of the Sea: State Practice of China and Japan* (2021) 3, at 11.

²⁰¹ Ben Murphy (ed.), Outline of the People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 / 中华人民共和国国民经济和社会发展第十四个五年规划和 2035 年远景目标纲要, 12 May 2021, Article 3.

²⁰² A. Chatzky and J. McBride, *China's Massive Belt and Road Initiative*, 28 January 2020, Council on Foreign Relations, available at <https://www.cfr.org/backgrounders/chinas-massive-belt-and-road-initiative> (last visited 29 August 2022).

viewed as acts of lawfare.²⁰³ Legal scholar Douglas Guilfoyle points out that China uses law as a source of power in the context of maritime security. He, furthermore, explains that China cannot divulge the 9-dash-line's legal significance and simultaneously bring the MTSL's and the CGL's provisions clearly in line with the LOSC. While doing so might increase the effectiveness of Chinese maritime law enforcement,²⁰⁴ render the MTSL and CGL more consistent with international law, leave these laws less criticized on the international state and result in a decrease in international tensions it would simultaneously decrease China's power. Offensive realism's lens shows that such course of action would be irrational. In line with theoretical assumptions, China adopted versions of the MTSL and CGL that increase her capabilities and, thus, power in the international system. Doing so, China supports her military and other activities, e.g., in the Paracel and Spratly islands where China has built more than 25 outposts.²⁰⁵

Considering the arguments made above, RQ 5 is answered as follows: The MTSL and the CGL provide the CCG with a domestic legal base to deploy her power and force against foreign entities in a wide range of areas, including such as the South China Sea, the Senkaku/Diaoyu islands and Taiwan while simultaneously granting the CCG immunity from foreign prosecution. This combination severely strengthens Chinese maritime power and claims irrespective of whether the relevant provisions are consistent with international law or not.

6 Conclusion

The present study analyzed the relationship of the 2021 Maritime Traffic Safety Law of the People's Republic of China and the 2021 Coast Guard Law of the People's Republic of China with international law. In light of the research theme *law in context* an interdisciplinary approach was taken, combining the legal doctrinal method and the international relations theory offensive realism. The five research questions structuring this study concerned the MTSL's and

²⁰³ Kim, *supra* note 17.

²⁰⁴ Guilfoyle and Chan, 'Lawships or Warships? Coast Guards as Agents of (in)Stability in the Pacific and South and East China Sea', 140 *Marine Policy* (2022) 105048 , at 6.

²⁰⁵ *China Island Tracker*, Asia Maritime Transparency Initiative, available at <https://amti.csis.org/island-tracker/china/> (last visited 29 August 2022).

CGL's general geographical scope, specific provisions' substantial scope and the effects the MTSL and the CGL have on Chinese power and claims in several areas.

The main findings of this study are as follows. Both the MTSL and the CGL use vague language in several provisions. Unclear language is used both with respect to the general geographical scope of application and with respect to the substantial scope of application in several provisions. While the international law of the sea provides states with different rights and obligations dependent on the relevant maritime zone, several provisions included in the MTSL and the CGL grant rights and jurisdiction to Chinese authorities without differentiating between different maritime zones. Several provisions were found to be inconsistent with international law, including the requirement of prior notification under article 54 of the MTSL, an unlimited power to suspend and otherwise restrict navigation in several maritime zones under article 52 of the MTSL and providing the CCG with the right to use force against foreign military vessels and other government vessels operated for non-commercial purposes in the Chinese territorial sea under article 21 of the CGL. The enactment of the MTSL and CGL in 2021 was identified as part of China's larger strategy to increase her power and strengthen her maritime claims. Combined, the MTSL and the CGL have the potential to deter other entities from engaging in areas claimed by China. In this context the enactment of the MTSL and CGL was identified as an activity of lawfare.

Combining research tools from legal studies and international relations theory has enabled what would otherwise not have been possible: understanding the MTSL's and the CGL's combined effect within *and* beyond the legal sphere. The UN Charter and the LOSC refer to the human ambition to establish a world of peace, justice, and cooperation in their preambles.²⁰⁶ Lastly, in the words of legal scholar and officer Frederick Dunn:

Development toward an effective world order can proceed only as power is coordinated to the ends of human welfare, and as the need for a universal law and society finds intimate recognition in the minds of men. The legal theory that can accelerate this necessarily slow process must take full account of the findings of contemporary social

²⁰⁶ UN Charter, preamble; LOSC, preamble.

science, and especially of the recent advances made in the study of international politics.²⁰⁷

Therefore, further interdisciplinary studies combining legal and other disciplines are necessary to speed up the process of creating a world of peace, justice and cooperation as envisioned in the UN Charter and the LOSC.

²⁰⁷ Dunn, 'Foreword', in C. D. Visscher (ed.), *Theory and Reality in Public International Law* vol. 2420 (2015) v , at v.

Figures

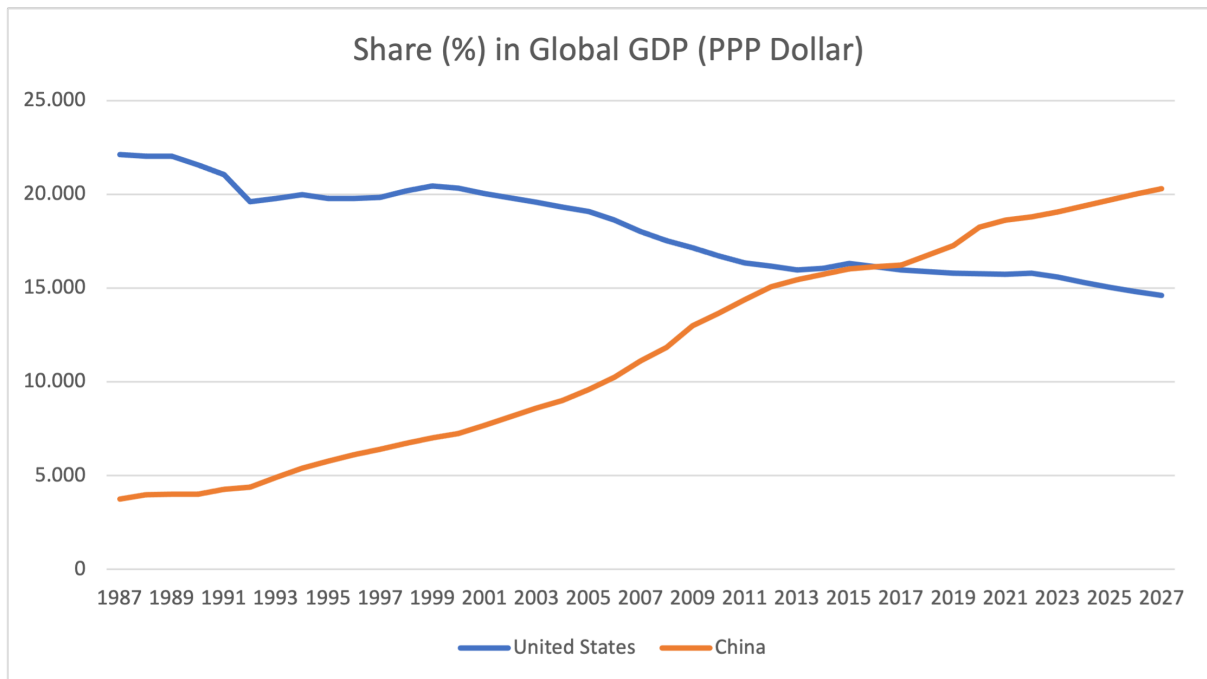


Figure 1 Share in Global GDP (PPP Dollar) for the United States and China 1987-2027 (estimates starting with 2022)
(Data Source: IMO World Economic Outlook Database²⁰⁸)

²⁰⁸ *World Economic and Financial Surveys: World Economic Outlook Database*, International Monetary Fund, available at <https://www.imf.org/en/Publications/WEO/weo-database/2022/April/select-country-group> (last visited 24 August 2022)].

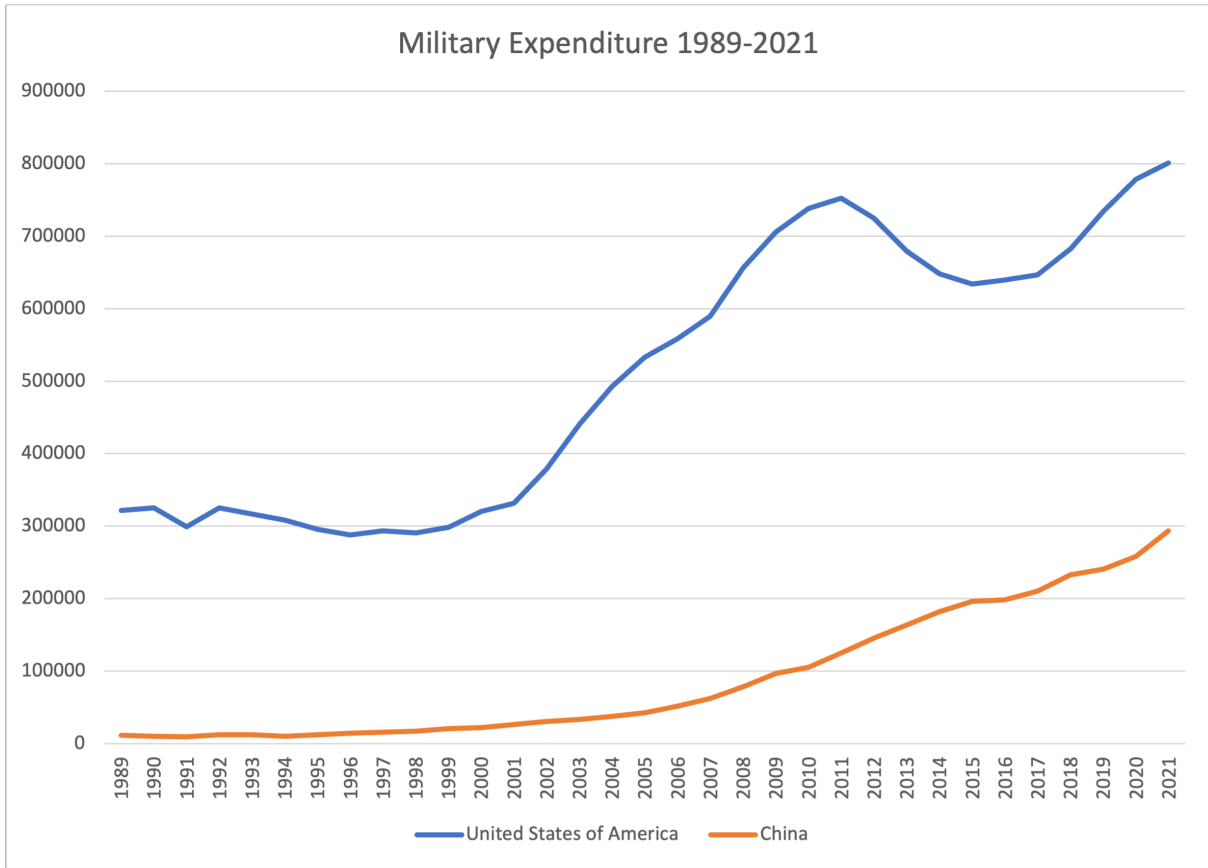


Figure 2 Military Expenditure 1989-2021: United States and China (Data Source: SIPRI MILEX²⁰⁹)

²⁰⁹ SIPRI, *supra* note 195.

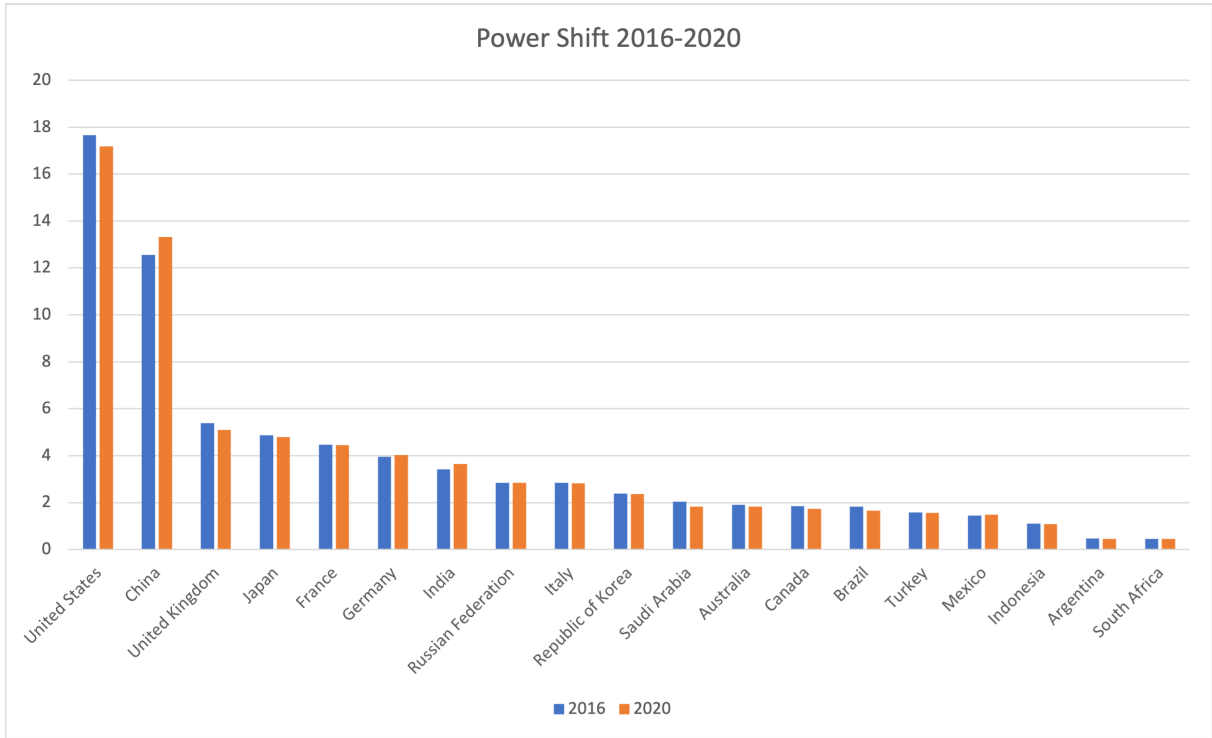


Figure 3 Power Shift G19 Countries: 2016-2020 by Country (Data Source: Bonn Power Shift Monitor 2022²¹⁰)

²¹⁰ Center for Global Studies, *supra* note 198.

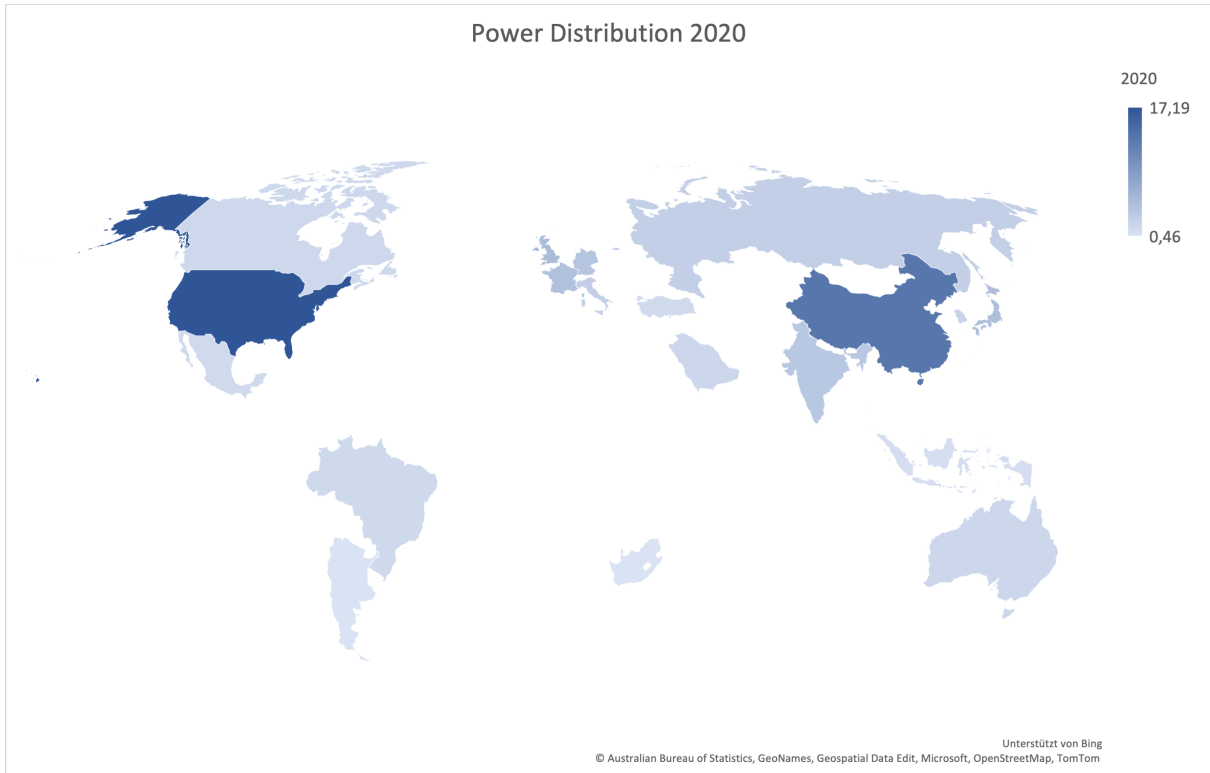


Figure 4 Power Distribution G19 Countries: 2020 by Country (Data Source: Bonn Power Shift Monitor 2022²¹¹)

²¹¹ *Ibid.*

Works cited

International Treaties and Documents

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, adopted 28 July 1994, entered into force 28 July 1996, 1836 UNTS 42.

Charter of the United Nations, adopted 26 June 1945, entered into force 24 October 1945 (UN Charter).

Code of Conduct for Law Enforcement Officials, adopted 17 December 1979, United Nations General Assembly Resolution 34/169, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials> (last visited 23 August 2022).

Convention on the High Seas, adopted 29 April 1958, entered into force 30 September 1962, 450 UNTS 111958 Convention on the Territorial Sea and the Contiguous Zone.

Convention on the Territorial Sea and the Contiguous Zone, adopted 29 April 1958, entered into force 10 September 1964, 516 UNTS 205.

Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, International Law Commission, 2001, available at https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (last visited 22 April 2022).

Statute of the International Court of Justice, signed 26 June 1945, effective 24 October 1945 (ICJ Statute).

United Nations Convention on the Law of the Sea, adopted 10 December 1982, entered into force 16 November 1994 (LOSC), 1833 UNTS 397.

USA-USSR Joint Statement on the Uniform Interpretation of Rules of International Law Governing Innocent Passage, adopted 23 September 1989, available at <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/1989-USA-USSR-Joint-Statement-with-Attached-Uniform-Interpretation-of-Rues-of-International-Law-Governing-Innocent-Passage.pdf> (last visited 26 July 2022).

Vienna Convention on the Law of Treaties, adopted 23 May 1969, entered into force 27 January 1980 (VCLT), 1155 UNTS 331.

National Laws

Coast Guard Law of the People's Republic of China, adopted 22 January 2021, entered into force 1 February 2021 (CGL), translation available at <http://en.pkulaw.cn/display.aspx?id=09868c44d041e84ebdfb&lib=law> (last visited 30 August 2022)].

Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, adopted 25 February 1992, in force 25 February 1992 (TSCZL), translation available at <http://en.pkulaw.cn/display.aspx?id=4a18c05ad484f933bdfb&lib=law> (last visited 2 August 2022)].

Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China, adopted 26 June 1998, entered into force 26 June 1998 (EEZCSL), Order No. 6 of the President of the People's Republic of China, translation available at <http://en.pkulaw.cn/display.aspx?id=58a2239cf8366fbdbdfb&lib=law> (last visited 2 August 2022)].

Maritime Traffic Safety Law of the People's Republic of China, adopted 29 April 2021, entered into force 1 September 2021 (MTSL), translation available at <https://www.steamshipmutual.com/Downloads/Articles/2021/Maritime%20Traffic%20Safety%20Law%20of%20the%20PRC%202021%20English.pdf> (last visited 29 March 2021] and <http://en.pkulaw.cn/display.aspx?id=07a6a3607ed7617bbdfb&lib=law> (last visited 29 August 2021)].

Maritime Traffic Safety Law of the People's Republic of China, adopted 2 September 1983, entered into force 1 January 1984 (1983 MTSL), translation available at http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1383972.htm (last visited 26 June 2022)].

Cases

Chagos Marine Protected Area Arbitration (Mauritius/United Kingdom) (Judgment) (2015), PCA 1.

Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark/Norway) (Judgment) (1993), 78 ICJ Rep 38.

M/V 'Virginia G' (Panama/Guinea-Bissau) (Judgment) (2014), 19 ITLOS Rep 4.

South China Sea Arbitration (Philippines/China) (Merits) (2016) 2013-19 PCA Rep i.

S.S. 'Lotus' Case (France/Turkey) (Judgment) (1927), 11 PCIJ Rep 4.

'Enrica Lexie' incident (Italy/India) (Award) (2020), 2015-28 PCA i.

Other Literature and Documents

Allison G., Kiersznowski N. and Fitzek C., *The Great Economic Rivalry: China vs the U.S.* (2022), available at

https://www.belfercenter.org/sites/default/files/files/publication/GreatEconomicRivalry_Final_2.pdf (last visited 23 August 2022)].

Barnes, 'Flag States', in D. Rothwell et al. (eds.), *The Oxford Handbook of the Law of the Sea* 1 (2016) 304.

Barnes, 'Article 21: Laws and Regulations of the Coastal State Relating to Innocent Passage', in A. Proelss et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017) 199.

Barnes, 'Article 22: Sea Lanes and Traffic Separation Schemes in the Territorial Sea', in A. Proelss et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017) 208.

Barnes, 'Article 23: Foreign Nuclear-Powered Ships and Ships Carrying Nuclear or Other Inherently Dangerous or Noxious Substances', in A. Proelss et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017) 213.

Barnes, 'Article 24 Duties of the Coastal State', in A. Proelss et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017) 217.

Bellinger III and Haynes II, 'A US Government Response to the International Committee of the Red Cross Study Customary International Humanitarian Law', 89 *International Review of the Red Cross* (2007) 443.

Ben Murphy (ed.), Outline of the People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 / 中华人民共和国国民经济和社会发展第十四个五年规划和 2035 年远景目标纲要, 12 May 2021.

Brzezinski and Mearsheimer, 'Clash of the Titans', *Foreign Policy* (2005] 46.

Center for Global Studies, *Power Ranking*, Universität Bonn – Center for Global Studies (CGS): Bonn Power Shift Monitor, available at <https://www.cgs-bonn.de/zh/bonn-power-shift-monitor/ranking/> (last visited 24 August 2022).

Center for Preventive Action, *Territorial Disputes in the South China Sea*, 4 May 2022, Council on Foreign Relations: Global Conflict Tracker, available at <https://cfr.org/global-conflict-tracker/conflict/territorial-disputes-south-china-sea> (last visited 25 August 2022].

Chatzky A. and McBride J., *China's Massive Belt and Road Initiative*, 28 January 2020, Council on Foreign Relations, available at <https://www.cfr.org/backgrounders/chinas-massive-belt-and-road-initiative> (last visited 29 August 2022).

Churchill R.R. and Lowe A.V., *The Law of the Sea* (3rd, 8th reprint ed., 2010).

De Visscher C., *Theory and Reality in Public International Law* (2015), available at <https://www.degruyter.com/document/doi/10.1515/9781400875023/html> (last visited 28 August 2022].

Dunlap, 'Lawfare: A Decisive Element of 21st-Century Conflicts?', *Joint Force Quarterly* (2009] 34.

Dunlap, 'Lawfare Today: A Perspective', 3 *Yale Journal of International Affairs* (2008] 146.

Dunn, 'Foreword', in C. D. Visscher (ed.), *Theory and Reality in Public International Law* vol. 2420 (2015) v.

Gilpin, 'Stability and Change', in *War and Change in World Politics* 1 (1981).

Gomez, 'Philippines Protests New China Law as 'Verbal Threat of War'', *ABC News* (2021] , available at <https://abcnews.go.com/International/wireStory/philippines-protests-china-law-verbal-threat-war-75511461> (last visited 25 August 2022).

Government Information Office, *The Republic of China Yearbook -- Taiwan 2001: Geography*, 29 December 2010, Internet Archive, available at <https://web.archive.org/web/20101229223825/http://www.gio.gov.tw/taiwan-website/5-gp/yearbook/2001/chpt01-1.htm> (last visited 25 August 2022).

Grieco, 'Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism', 42 *International Organization* (1988] 485.

Gu X., *Theorien der Internationalen Beziehungen: Einführung* (3rd ed., 2018], available at <https://www.degruyter.com/document/doi/10.1515/9783486855081/html> (last visited 26 August 2022).

Guilfoyle and Chan, 'Lawships or Warships? Coast Guards as Agents of (in)Stability in the Pacific and South and East China Sea', 140 *Marine Policy* (2022) 105048.

Guillaume, 'The Use of Precedent by International Judges and Arbitrators†', 2 *Journal of International Dispute Settlement* (2011) 5.

Hayton, 'Denounce but Comply: China's Response to the South China Sea Arbitration Ruling', 18 *Georgetown Journal of International Affairs* (2017) 104.

Ho H.H., *China's Coast Guard Law: Japan's Legal Approach*, 31 May 2021, Maritime Issues, available at <http://www.maritimeissues.com/law/chinas-coast-guard-law-japans-legal-approach.html> (last visited 25 August 2022).

Hutchinson and Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research', 17 *Deakin Law Review* (2012] 83.

Jervis, 'Cooperation Under the Security Dilemma', 30 *World Politics* (1978] 167.

Kim, 'An International Law Perspective on the China Coast Guard Law and Its Implications for Maritime Security in East Asia', 37 *The International Journal of Marine and Coastal Law* (2022] 241.

Kim, 'The Senkaku Islands Dispute Between Japan and China: A Note on Recent Trends', 52 *Ocean Development & International Law* (2021] 260.

Kirshner, 'The Tragedy of Offensive Realism: Classical Realism and the Rise of China', 18

European Journal of International Relations (2012] 53.

Koh, 'Why Do Nations Obey International Law?', 106 *The Yale Law Journal* (1997] 2599.

Linh, 'Vietnam Voices Serious Concern over China's Newly-Enacted Coast Guard Law', *Hanoi Times* (2021] , available at <https://hanoitimes.vn/vietnam-voices-serious-concern-over-chinas-newly-enacted-coast-guard-law-316101.html> (last visited 25 August 2022).

Mearsheimer J.J., *Can China Rise Peacefully?*, 25 October 2014, *The National Interest*, available at <https://nationalinterest.org/commentary/can-china-rise-peacefully-10204> (last visited 26 August 2022].

Mearsheimer, 'China's Unpeaceful Rise', 105 *Current History* (2006] 160.

Ministry of Defense, Japan, *The Coast Guard Law of the People's Republic of China*, *The Coast Guard Law of the People's Republic of China*, available at <https://www.mod.go.jp/en/> (last visited 30 July 2022).

Mirasola C., *Proposed Changes to China's Maritime Safety Law and Compliance with UNCLOS*, 21 February 2017, *Lawfare*, available at <https://www.lawfareblog.com/proposed-changes-chinas-maritime-safety-law-and-compliance-unclos> (last visited 25 August 2022].

Molenaar, 'Port and Coastal States', in D. Rothwell et al. (eds.), *The Oxford Handbook of the Law of the Sea* 1 (2016) 280.

Molenaar E.J., *Coastal State Jurisdiction over Vessel-Source Pollution* (1998], available at https://books.google.no/books?id=f5QV4MRIHd8C&printsec=copyright&redir_esc=y#v=onepage&q&f=false (last visited 31 August 2022).

Nasu, 'The Regime of Innocent Passage in Disputed Waters', 94 *International Law Studies* (2018) 241.

Noland, 'North Korea: Sanctions, Engagement and Strategic Reorientation', 14 *Asian Economic Policy Review* (2019) 189.

Nucup, 'Infallible or Final?: Revisiting the Legitimacy of the International Court of Justice as the "Invisible" International Supreme Court', 18 *The Law & Practice of International Courts and Tribunals* (2019) 145.

Østhagen A., *Ocean Geopolitics: Marine Resources, Maritime Boundary Disputes and the Law of the Sea* (2022), Ocean Geopolitics, available at <https://www.elgaronline.com/view/book/9781802201567/9781802201567.xml> (last visited 31 August 2022)].

Oxman, 'The Regime of Warships Under the United Nations Convention on the Law of the Sea', 24 *Virginia Journal of International Law* (1984] 809.

Pedrozo, 'Maritime Police Law of the People's Republic of China', 97 *International Law Studies* (2021] 465.

Pedrozo, 'China's Revised Maritime Traffic Safety Law', 97 *International Law Studies* (2021] 956.

Phan and Nguyen, 'The South China Sea Arbitration: Bindingness, Finality, and Compliance with UNCLOS Dispute Settlement Decisions', 8 *Asian Journal of International Law* (2018] 36.

Prezas, 'Foreign Military Activities in the Exclusive Economic Zone: Remarks on the Applicability and Scope of the Reciprocal 'Due Regard' Duties of Coastal and Third States', 34 *The International Journal of Marine and Coastal Law* (2019] 97.

Proelss A. et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2017)].

Roberts, 'Compulsory Pilotage in International Straits: The Torres Strait PSSA Proposal', 37 *Ocean Development & International Law* (2006] 93.

Rothwell D. and Stephens T., *The International Law of the Sea* (2nd ed., 2016)].

Rothwell, et al., 'Charting the Future for the Law of the Sea', in *The Oxford Handbook of the Law of the Sea* (2015) 888.

Rothwell, et al., 'Jurisdiction', in *International Law: Cases and Materials with Australian Perspectives* 1 (2010) 294.

Sakamoto S., *Searching for the Objectives of China's Revised Maritime Traffic Safety Law of the People's Republic of China*, 22 February 2022, The Japan Forum on International

Relations (JFIR), available at https://www.jfir.or.jp/en/studygroup_article/3915/ (last visited 25 August 2022).

Scott, 'International Law as Ideology: Theorizing the Relationship between International Law and International Politics', 5 *European Journal of International Law* (1994) 313.

Selznick, 'Law in Context' Revisited', 30 *Journal of Law and Society* (2003) 177.

SIPRI, *SIPRI Military Expenditure Database*, Stockholm International Peace Research Institute (SIPRI), available at <https://milex.sipri.org/sipri> (last visited 24 August 2022).

Tanchum M., *China's New Military Base in Africa: What It Means for Europe and America – European Council on Foreign Relations*, 14 December 2021, European Council on Foreign Relations, available at <https://ecfr.eu/article/chinas-new-military-base-in-africa-what-it-means-for-europe-and-america/> (last visited 24 August 2022).

United Nations, *Chapter XXI 6. Law of the Sea*, United Nations Treaty Collection, available at https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&lang=en (last visited 19 August 2022).

Wang, 'Impact of Western Sanctions on Russia in the Ukraine Crisis', 8 *Journal of Politics and Law* (2015] 1.

Yuan S., *Just How Strong Is the Chinese Military?*, 29 October 2021, Aljazeera, available at <https://www.aljazeera.com/news/2021/10/29/just-how-strong-is-the-chinese-military> (last visited 24 August 2022).

Zhang and Wang, 'Maritime Safety Management of Foreign Vessels in China: New Institutional Developments and Potential Implications', 218 *Ocean & Coastal Management* (2022) 106023.

Zhang Y., *Top Court Clarifies Law at Sea*, 4 August 2016, The Supreme People's Court of the People's Republic of China, available at https://english.court.gov.cn/2016-08/04/c_767975.htm (last visited 31 July 2022).

Zhao, 'China and the South China Sea Arbitration: Geopolitics Versus International Law', 27 *Journal of Contemporary China* (2018] 1.

Zhu L., *China's Foreign Policy Debates* (2010), available at <https://data.europa.eu/doi/10.2815/19538> (last visited 26 August 2022).

Zielinski S., *Oil and Water Do Mix*, Smithsonian Magazine, available at <https://www.smithsonianmag.com/science-nature/oil-and-water-do-mix-38726068/> (last visited 11 August 2022).

Zou, 'China and the Law of the Sea: Historical Aspects', in D. Tamada and K. Zou (eds.), *Implementation of the United Nations Convention on the Law of the Sea: State Practice of China and Japan* (2021) 3.

China: Declaration under Article 298: C.N.666.2006.TREATIES-5, 25 August 2006.

China Flexes Sea Power with New Foreign Ship Law, 1 September 2021, Asia Times, available at <https://asiatimes.com/2021/09/china-flexes-sea-power-with-new-foreign-ship-law/> (last visited 29 March 2022).

China Island Tracker, Asia Maritime Transparency Initiative, available at <https://amti.csis.org/island-tracker/china/> (last visited 29 August 2022).

'China warnt vor »gefährlichem« Besuch von Pelosi', *Der Spiegel* (2022) , available at <https://www.spiegel.de/ausland/taiwan-china-nennt-besuch-von-nancy-pelosi-gefaehrlich-a-678a29e2-3d77-4842-88b2-bee1fefcf2ab> (last visited 15 August 2022).

Diplomatic Conferences — Codification Division Publications, available at https://legal.un.org/diplomaticconferences/1973_los/ (last visited 26 July 2022).

Full Text: Putin's Declaration of War on Ukraine, 24 February 2022, The Spectator, available at <https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine> (last visited 26 August 2022).

Maritime Traffic Safety Law of the People's Republic of China, Adopted 29 April 2021, Entered into Force 1 September 2021 (MTSL), Translation Available at <https://www.steamshipmutual.com/downloads/articles/2021/maritime%20traffic%20safety%20law%20of%20the%20prc%202021%20english.pdf> (Last Visited 29 March 2021] and <http://en.pkulaw.cn/display.aspx?id=07a6a3607ed7617bbdfb&lib=law> (Last Visited 29 August 2021], 79, 1 September 2021.

'Philippines Seeks US Help as It Vows to Ignore China Maritime Law', *Aljazeera* (2021) , available at <https://www.aljazeera.com/news/2021/9/10/dutertes-defence-chief-says-manila-got-less-from-us-pact> (last visited 25 August 2022)].

Relatively Adverb - Definition, Pictures, Pronunciation and Usage Notes | Oxford Advanced American Dictionary at OxfordLearnersDictionaries.Com, Oxford Advanced American Dictionary, available at https://www.oxfordlearnersdictionaries.com/definition/american_english/relatively (last visited 5 August 2022).

Resolution Adopted by the General Assembly on 2 March 2022 (A/RES/ES-11/1), 18 March 2022.

Significant Adjective - Definition, Pictures, Pronunciation and Usage Notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.Com, Oxford Advanced Learner's Dictionary, available at <https://www.oxfordlearnersdictionaries.com/definition/english/significant?q=significant> (last visited 5 August 2022)].

Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines, available at https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201607/t20160712_679470.html (last visited 15 June 2022).

'Symposium Debate Transcript: The Promise of International Law: Realism versus Legalism', 11 *Notre Dame Journal of International & Comparative Law* (2021) 91.

World Economic and Financial Surveys: World Economic Outlook Database, International Monetary Fund, available at <https://www.imf.org/en/Publications/WEO/weo-database/2022/April/select-country-group> (last visited 24 August 2022)].