

The Implementation, Influence and Countermeasures of China's Coast Guard Law

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Abstract: To expedite the reform of China's marine management institutions and clarify the responsibilities, tasks, requirements, behaviors, and other normative procedures concerning the China Coast Guard, China has promulgated the Coast Guard Law. The adoption and implementation of the Coast Guard Law are of great significance to China's maritime law and can greatly improve and modernize the system and capabilities of China's maritime governance. However, the international society, especially the United States and Japan, have concerns and misjudgments that some provisions of the Law may be against international law, for example, provisions concerning the scope of the "waters under the jurisdiction of China," the conditions for the "use of weapons," the procedures for "performing defense operations," and the attributions of the "law enforcement ships." To alleviate such concerns and eliminate the misunderstandings, China needs to make a systematic interpretation of

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the Coast Guard Law in accordance with international law. China also needs to analyze and improve domestic maritime laws, speed up negotiations with other States over maritime disputes, and make more efforts and achievements in the communication and coordination with foreign maritime law enforcement agencies. Only in this way can China better achieve the goals stipulated in the Coast Guard Law.

Keywords: China’s Coast Guard Law; Maritime Law Enforcement; Maritime Jurisdiction; Use of Weapons; Defense Operations

The Coast Guard Law of the People’s Republic of China (the CGL hereinafter) was adopted by the Standing Committee of the 13th National People’s Congress on 22 January 2021 at its 25th Session. It has entered into force as of 1 February 2021. The adoption of the CGL provides a solid legal basis for China’s maritime law enforcement activities and helps to improve the transparency and predictability of the activities of China’s Coast Guard (CCG). It also presents the reform of China’s maritime management institutions and contributes to the fulfillment of China’s goals and tasks of law-based governance. It is of great significance to the improvement of the national maritime management system and the modernization of the management capabilities.

However, some States have different understandings of the status, nature, functions, tasks, and use of weapons of the CCG. The possible influence of the CGL has become a new topic raised by countries such as the US and Japan to “discuss,” “evaluate,” and “restrain” China. In the 12th round of China-Japan high-level consultations on maritime affairs (held on 3 February 2021), China introduced the relevant content of the CGL upon inquiry and emphasized that the enactment of the CGL is China’s normal legislative activity, which is fully in line with international law and practice.⁽¹⁾ On 4 February 2021, Wang Wenbin, the Chinese Foreign Ministry

Spokesperson, held a regular press conference and answered the questions proposed by reporters. He pointed out that “the Coast Guard Law is a regular legislative activity in China, which is in line with international practice and what other countries do.” “China’s legislation process is open and transparent.” “We hope relevant countries can view it in an objective and correct way instead of hurling groundless suspicions and accusations.”⁽²⁾ Nevertheless, the “misjudgments, misunderstandings and concerns” of other countries, especially the heads of government, and cabinet officials of the US and Japan, are not easily eliminated.⁽³⁾ In this regard, this paper intends to interpret and illustrate the problems and influence of the CGL to enhance the knowledge and understanding concerning the CGL and gradually eliminate misunderstandings. The first step is to give a brief examination of the history and

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- (1) Ministry of Foreign Affairs of the People’s Republic China, *China and Japan Hold the Twelfth Round of High-Level Consultations on Marine Affairs* (4 February 2021), https://www.fmprc.gov.cn/web/wjbxw_673019/t1851118.shtml (last visited February 4, 2021).
- (2) Ministry of Foreign Affairs of the People’s Republic China, *Foreign Ministry Spokesperson Wang Wenbin’s Regular Press Conference* (4 February 2021), https://www.fmprc.gov.cn/web/fyrbt_673021/t1851272.shtml (last visited February 5, 2021).
- (3) For example, the Foreign Ministries of Japan and the United States expressed their concern on the Chinese CGL and China’s intention to unilaterally change the status quo when having the phone meeting on 10 February 2021 and agree to promote their cooperation, see Ministry of Foreign Affairs of Japan, https://www.mofa.go.jp/mofaj/erp/we/gb/page1_000930.html (last visited February 16, 2021). The Spokesperson for the United States State Department pointed out on 20 February 2021 that the CGL grants the power of use of weapon on foreign ships to the CCG, which may increase the neighbours’ concern of being threatened and strengthen China’s maritime claims based on the CGL. The US will enhance its cooperation with its alliance and some ASEAN States, see NHK News, <https://www3.nhk.or.jp/news/html/20210220/k10012877841000.html> (last visited February 20, 2021). When the Foreign Ministries of China and Japan holding a phone meeting, Japanese Foreign Ministry Motegi Toshimitsu expressed his deep concern on the CGL and urged China to take actions, see Ministry of Foreign Affairs of Japan, https://www.mofa.go.jp/press/release/press6_000787.html (last visited April 6, 2021).

legal basis of the CGL.

I. Legal Basis and Legislative Work of China’s CGL

According to the Decision of the Central Committee of the Communist Party of China (CPC) on Deepening the Reform of the Party and State Institutions (21 March 2018) and the Implementation Plan for the Reform of the People’s Armed Police (27 December 2017, “the Coast Guard, as a whole, is established under the leadership and command of the People’s Armed Police, with the name of China Coast Guard”), the CCG is responsible for performing the duty of enforcing the maritime law. The maritime police team, which used to be under the leadership of the State Oceanic Administration (China Coast Guard), together with its responsibilities and competence, have been assigned to the People’s Armed Police as a whole based on the principle of “handover first and reorganization later.”⁽⁴⁾

To guarantee the enforcement activities of the CCG after the transition of powers to the People’s Armed Police, the Decision of the Standing Committee of the National People’s Congress on the Exercising of the Marine Right Safeguarding and Law Enforcement Functions and Power by the China Coast Guard was adopted on 22 June 2018 and entered into force on 1 July 2018. The CCG was delegated the responsibilities and tasks of safeguarding marine rights and enforcing the maritime law. The Decision also proposed that the authorities should promptly formulate or

(4) The Decision of the Central Committee of the Communist Party of China on Adjusting the Leadership and Command System of the Chinese People’s Armed Police Force (implemented as of 1 January 2018) stated that the Armed Police Forces are organized under the Central Military Commission and will no longer be listed in the State Council. The Armed Police Forces is under the leadership and organized in accordance with the rules of the Central Military Commission. Relevant Departments of the central and national organs, local party committees and governments at all levels, and the armed police forces at corresponding levels should determine the missions and coordination mechanisms.

amend relevant laws and submit them for deliberation in accordance with legal procedures. It also provides the tasks to establish coordination mechanisms for law enforcement among the CCG, the public security organs, and other administrative agencies.

To meet the needs of the reorganization of the CCG, Article 22 of the National Defense Law (revised on 26 December 2020, effective as of 1 January 2021) stipulates that the armed forces of the PRC shall be composed of the People's Liberation Army, the People's Armed Police, and the Militia.⁽⁵⁾ That is to say, the People's Armed Police, including the CCG, is a part of China's armed forces. The above-mentioned discussion is also consistent with the Law on the People's Armed Police (revised on 20 June 2020, effective as of 21 June 2020). Article 2 of the Law stipulated that the People's Armed Police is an important part of the armed forces of China and shall be under the centralized and unified leadership of the CPC Central Committee and the Central Military Commission. Its tasks include guard duty, handling of social security emergencies, prevention and handling of terrorist activities, maritime right safeguarding and law enforcement, emergency rescue, and defensive operations, as well as other tasks assigned by the Central Military Commission (Article 4). In terms of the institutional framework, Article 9 provides that the People's Armed Police shall be composed of internal security forces, mobile forces, maritime police forces, academics, and research institutions. Maritime police forces shall be formed in coastal areas on the basis of administrative divisions and mission areas and their specific formation shall be determined by the Central Military Commission.⁽⁶⁾

(5) The 24th Session of the 13th National People's Congress passed the amendment to the National Defense Law of the People's Republic of China on 26 December 2020. For the details of the National Defense Law, see Xinhua Net, http://www.xinhuanet.com/politics/2020-12/27/c_1126911647.htm (last visited December 27, 2020).

The CGL is composed of 11 chapters and a total of 84 articles. It has the characteristics of an organizational law and functional law in its nature. It provides the objectives of the law, the responsibilities, institutions and the scope of the CCG (maritime police agency). It also stipulates the principles, specific requirements, and procedures that should be followed by the CCG when performing the tasks. The enactment of the CGL not only fulfilled the requirements proposed by the Decision of the Standing Committee of the National People’s Congress on the Exercising of the Marine Right Safeguarding and Law Enforcement Functions and Power by the China Coast Guard, but also corresponded the objectives and tasks stipulated in the Law on the People’s Armed Police. Article 3 of the Decision stipulates that “when conditions are sufficient, relevant authorities should promptly propose proposals for enacting or amending relevant laws and submit them for deliberation in accordance with legal procedures.” Article 47 of the People’s Armed Police Law stipulates that the tasks of the People’s Armed Police concerning the marine rights safeguarding and maritime law enforcement shall be separately provided by other laws. Therefore, the adoption and implementation of the CGL not only responses to the above-mentioned legislative work plans, but also marks the accomplishment of the objective of the CCG to be assigned to the Armed Police Force in accordance with the principle of “handover first, reorganization later.” The CGL has become an important part of Chinese law.

(6) For example, Article 10 of the CGL stipulates that the State shall set up maritime divisions and sub-bureaus of the China Coast Guard, provincial coast guard bureaus, municipal coast guard bureaus and coast guard workstations in accordance with administrative divisions and mission areas in coastal areas. They are respectively responsible for maritime rights safeguarding and law enforcement in their judicial areas.

II. Analysis on Foreign Academia's Misunderstandings of the CGL and Their Possible Influence

As mentioned above, the promulgation of the CGL attracts the attention and concerns of the international society, especially the US and Japan. Some scholars hold that the implementation of the CGL would damage the maritime rights of other countries, encourage China's maritime rights claims that violate international law, and cause anxiety and tension in the international community. Among them, the viewpoints of some Japanese scholars are truly representative. They have paid attention to the draft CGL since its release (November 2020). Generally, they concentrate on the following aspects. The first problem is the nature of CCG's maritime law enforcement; the second issue concerns the ambiguity and illegality of the "waters under the jurisdiction of China" stipulated in the CGL. The third concern is about the exemptions for foreign military ships and government ships that are used for non-commercial purposes. The fourth issue is the nature of the CCG's law enforcement ships and the defense operation.⁽⁷⁾ This paper will give a detailed analysis of these problems.

A. The Nature of the CCG's Law Enforcement Activities: Administrative Enforcement or Military Action

Katsuya Yamamoto, Director of Education Department of the Japanese National Institute for Defense Studies, holds that based on the content of the CGL, the CCG (maritime police agency) is both an administrative law enforcement agency and a military agency (military attributes). The legal basis for it is Articles 2 and 83 of the CGL.

The maritime rights safeguarding and law enforcement tasks are performed by the CCG, which is a maritime police agency belonging to the military departments. In fact, granting the authority to a military agency is not created by China. It is in line

with international practice. The dual attributes of the CCG (administrative law enforcement and defense operations) are in conformity with maritime law enforcement practices of other countries. For example, the US Coast Guard is an important part of the US armed forces. It is the world’s largest and most advanced maritime law enforcer. It is under the leadership of the US Department of Homeland Security during peacetime. The US President can direct that it be transferred to the US Department of the Navy if needed. Congress also has the power to make such declaration during times of war. The Australian Coast Guard, as a maritime police agency, is under the direct leadership of the Australian Defense Force during the war. The Philippine Coast Guard operates under the armed and uniformed force attached to the Department of Transportation and serves as an attached service of the Armed Forces of the Philippines in wartime. The Malaysian Maritime Law Enforcement Agency is under the command and control of the Malaysian Armed Forces during emergencies, special crises and wars. The Vietnam Coast Guard is a people’s armed

(7) Some representative Japanese scholars have questions and views on the content of the CGL, see (Japan) Katsuya Yamamoto, *The China Coast Guard as a Part of the China Communist Party’s Armed Forces* (17 November 2020), https://www.spf.org/iina/articles/yamamoto_05.html (last visited December 5, 2021). See also, (Japan) Katsuya Yamamoto, *Concerns about the China Coast Guard Law – the CCG and the People’s Armed Police* (9 February 2021), http://www.spf.org/iina/articles/yamamoto_06.html (last visited February 10, 2021). (Japan) Shigeki Sakamoto, *The Formulation of China’s Coast Guard Law and Japan’s Response* (25 January 2021), <https://www.jfir.or.jp/j/activities/studygroup/210125.pdf> (last visited February 11, 2021). (Japan) Furuya Kentaro, *China Coast Guard the Challenge of Law to the International Order: Enlightenment and Lessons from the Activities of the China Coast Guard in the Waters Around the Senkaku Islands* (February 18, 2021), https://www.spf.org/iina/article/furuya_04.html (last visited February 25, 2021). In addition to Japanese scholars, Japanese think tanks such as the Nakasone Institute of Peace Research Institute for Maritime Security Studies also issued statement entitled “Emergency Statement against the China Coast Guard Law,” claiming that “the content of Articles 21 and 22 of the CGL violate international law,” see Nakasone Peace Institute, <http://www.iips.org/research/2021/02/04103049.html> (last visited February 27, 2021).

force and a national full-time force.

Observing the content of the CGL, the main power of the CCG is maritime administrative law enforcement. For example, Article 2 of the CGL stipulates that the People's Armed Police Force's Coast Guard, that is, the CCG, shall uniformly perform maritime rights enforcement duties.⁽⁸⁾ Therefore, maritime rights safeguarding and law enforcement is the main responsibility of the CCG, which is authorized by the Decision of the Standing Committee of the National People's Congress on the Exercising of the Marine Right Safeguarding and Law Enforcement Functions and Power by the China Coast Guard. It stipulates that the CCG performs maritime rights enforcement duties, including enforcement tasks in combating maritime illegal and criminal activities, maintaining maritime security and safety, developing and utilizing marine resources, protecting marine ecological environment, managing marine fisheries, and maritime anti-smuggling. The CCG shall establish a law enforcement cooperation mechanism with the public security agencies and relevant administrative agencies during their performance of the duties, to harmonize the standards and paces of the law enforcement.

In addition, the CGL also provides for maritime administrative law enforcement measures, the division of jurisdiction over maritime administrative cases, the procedures of maritime administrative enforcement, and information sharing and collaboration mechanisms with other departments. These provisions highlight the administrative nature of the CCG activities, particularly Articles 23, 34,

(8) Article 2 of the draft CGL (November 2020) provides that “the coast guard organizations are important maritime armed forces and national administrative law enforcement forces.” The term “maritime armed forces” was deleted in the new CGL and provides the powers and functions of the CCG (to uniformly perform the duties of maritime rights safeguarding and law enforcement) in Article 2. However, considering Article 83 of the CGL, it is still impossible to eliminate the nature of the CCG as an armed force.

37, 53, 58, and 76 of the CGL.

Nevertheless, it is clear that according to Article 22 of the Chinese National Defense Law and Article 9 of the Chinese People’s Armed Police Law, the CCG is an armed force. For the maritime police agency which is composed of active-duty troops, the primary duty is maritime rights safeguarding and law enforcement, and the secondary or subsidiary duty is defense operations. The CCG relies on other laws instead of the CGL when performing its defense operations (military activities). Article 83 stipulates that “the coast guard organizations perform defense operation and other tasks in accordance with the National Defense Law of the PRC, the People’s Armed Police Law of the PRC and other relevant laws, military regulations and orders of the Central Military Commission.” China grants authority to the CCG by providing clear legal provisions, which embodies the independence, sovereignty, and rights of the State. It is legitimate and justified.

B. The Scope of the “Waters under the Jurisdiction of China”

Some scholars from Japan and some other countries devote their attention to the scope of application of the CGL. Article 3 of the CGL stipulates that “the Law shall apply to coast guard organizations carrying out maritime rights safeguarding and law enforcement activities in and above the sea areas under the jurisdiction of the People’s Republic of China (hereinafter referred to as the sea areas under China’s jurisdiction).”⁽⁹⁾ These scholars suppose that China ignores the South China Sea arbitral award and expands its jurisdiction in the CGL. The South China Sea arbitral

(9) Although Article 3 of the CGL stipulates the scope of the CCG’s law enforcement, it does not provide the scope of the “sea areas under the jurisdiction of China.” In Article 74(2) of the draft CGL, there is a definition of the “sea areas under the jurisdiction of China.” According to the provision, it includes internal seas, territorial seas, contiguous zones, exclusive economic zones, continental shelf, and other sea areas under the jurisdiction of China.

award denied China's claims to the maritime areas in the South China Sea exceed the limits of the United Nations Convention on the Law of the Sea (hereinafter UNCLOS) based on historic rights (that is, as a party to the Convention, China does not have the right to claim more maritime areas of the South China Sea based on the Nine-dash Line because they exceed the limits of China's maritime entitlements under the Convention).⁽¹⁰⁾ The provisions in the CGL would strengthen China's maritime rights and interests, and may cause conflicts and accidents between China and the relevant countries when China is safeguarding its maritime rights and enforcing the maritime law. Therefore, China needs to further clarify the specific jurisdictional maritime areas in compliance with international law. The scholars hold that China's promulgation of domestic laws that are against international law based on its own logic would undermine international law and international order. It is needed that China changes the way and degree of law enforcement.⁽¹¹⁾

In fact, the "sea areas under the jurisdiction of the People's Republic of China" provided in the CGL has followed similar provisions adopted in other domestic laws, for example, Article 2 of the Regulation on the Prevention and Control of Vessel-induced Pollution to the Marine Environment (1983), Article 2 of the Regulation Concerning Environmental Protection in Offshore Oil Exploration and Exploitation (1983), and Article 2 of the Regulation on the prevention of Environmental Pollution due to Disassembling Vessels (1988). That is to say, there have already been laws and regulations that directly adopted the term "maritime areas under the jurisdiction of China" before the CGL.⁽¹²⁾

(10) For a comprehensive rebuttal of the South China Sea arbitral award, see the Chinese Society of International Law, *Criticism of the South China Sea Arbitral Award 1-395* (Foreign Languages Publishing House 2018).

(11) (Japan) Katsuya Yamamoto, *China Maritime Police Law and the Domestic Ethics of Expansion*, 66 *Diplomacy*, 54-57 (March 31, 2021).

From the perspective of the content and system of the United Nations Convention on the Law of the Sea, the jurisdictional maritime zones of the coastal States include internal waters, territorial waters (archipelagic waters of archipelagic States), exclusive economic zones,⁽¹³⁾ and contiguous zones and exclusive economic zones based on the equidistance principle.⁽¹⁴⁾ The types and definitions of these maritime zones have become a universal consensus in UNCLOS system, but they do not include other types of sea areas based on general principles and systems of international law, for example, historic waters. This is a loophole in UNCLOS system.⁽¹⁵⁾ For issues concerning this loophole, general rules and principles of international law have to be applied.⁽¹⁶⁾

It is not clear whether the “sea areas under China’s jurisdiction” only include maritime zones stipulated in UNCLOS when only considering words of Article 3. However, when taking the relevant content of Chinese maritime laws into consideration, sea areas under China’s jurisdiction should also include maritime zones

(12) For the contents of China’s regulations related to marine vessel pollution and marine development activities, see Selected Marine Laws and Regulations of the People’s Republic of China 117, 110 and 148 (Policy and Regulations Office of the State Oceanic Administration eds., Ocean Press, 3rd ed. 2001).

(13) For example, Article 86 of Part VII (High Seas) of the UNCLOS stipulates that the provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. The scope and spatial dimension of the national jurisdictional sea areas can be deduced from this.

(14) For example, Articles 33 and 57 of the UNCLOS.

(15) Provisions concerning “historic bays,” “historic ownership” and “historic rights” can be found in Articles 10, 15 and 298 in the UNCLOS. That is to say, the UNCLOS does not exclude maritime zones based on historic rights, but respect them.

(16) For example, the preamble of the UNCLOS pointed out that “the States Parties to this Convention affirm that matters not regulated by this Convention continue to be governed by the rules and principles of general international law.”

that are not covered by UNCLOS. For example, Article 14 of the Law on the Exclusive Economic Zone and Continental Shelf of the People’s Republic of China (1998) provides that “the provisions in this Law shall not affect the rights that the People’s Republic of China has been enjoying ever since the days of the past.” Put differently, China enjoys jurisdiction over maritime zones that are based on historic rights (such as historic waters).⁽¹⁷⁾ Article 2 of the Marine Environment Protection Law of the People’s Republic of China stipulates that “this Law shall apply to the internal waters, territorial seas, contiguous zones, exclusive economic zones and continental shelves of the People’s Republic of China and all other sea areas under the jurisdiction of the People’s Republic of China.” Similar words can be seen in Article 2 of the Fisheries Law (1986) (any other sea areas under the jurisdiction of the People’s Republic of China), Article 2 of the Regulation on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises, Article 3 (1) and (3) of the Regulations on the Dumping of Wastes at Sea (1985), Article 2 of the Mineral Resources Law (1986), Article 2 of the Surveying and Mapping Law (1992), Article 2 of the Provisions on Administration of Foreign-related Marine Scientific Research (1996), Article 2 of Regulations for Navigation Marks (1995),⁽¹⁸⁾ and Article 2 of the Provisions on the Protection and Utilization of Non-inhabited Islands (2003).

(17) Article 3 of the “Statement of the Government of the People’s Republic of China on China’s Territorial Sovereignty and Maritime Rights and Interests in the South China Sea” claims that China has territorial sovereignty and maritime rights and interests in the South China Sea, including, inter alia: i. China has sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao; ii. China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao; iii. China has exclusive economic zone and continental shelf, based on Nanhai Zhudao; iv. China has historic rights in the South Chia Sea. See the Boundary and Maritime Affairs Department of the Ministry of Foreign Affairs of China (eds.), *Compilation of Documents on China’s Response to the South China Sea Arbitration* 86-87 (World Knowledge Publishing House 2016).

According to Article 2 (2) of the Detailed Rules for the Implementation of the Fisheries Law (approved by the State Council on 14 October 1987, issued by the Ministry of Agriculture, Animal, Husbandry and Fisheries on 19 October 1987), “any other sea areas under the jurisdiction of China” provided in Article 2 of the Fisheries Law refers to “the seas under the jurisdiction of China in accordance with the Chinese laws and the international treaties, agreements or other relevant international laws concluded or acceded to by China.”⁽¹⁹⁾ Put differently, “any other sea areas under the jurisdiction of China” are based on two types, domestic rules, and relevant international law. The methods for determining jurisdictional sea areas in accordance with China’s domestic law are to directly define the territorial sea base points and baselines of land territories and islands to determine the jurisdictional maritime zones, and to clearly define the extent of the sea areas (or distance). Using these methods requires that the definition of the sea areas should conform to the norms of international law; that is the content of the domestic law should comply with the international law.⁽²⁰⁾ The two methods of determining the sea areas in accordance with the content of relevant international law include defining the sea areas based on international treaties and agreements and concluding maritime delimitation agreements with neighboring or opposing States.⁽²¹⁾

(18) For laws and regulations related to the above content, see Selected Marine Laws and Regulations of the People’s Republic of China 95, 128, 53, 64, 80 and 173 (Policy and Regulations Office of the State Oceanic Administration eds., Ocean Press, 3rd ed. 2001).

(19) *Id.*, at 177.

(20) For example, Article 3 of the Law of China’s Territorial Sea and Contiguous Zone (1992) stipulates that the width of the territorial sea of China is 12 nautical miles from the baseline of the territorial sea. Article 2 (1) of the Law of China’s Exclusive Economic Zone and Continental Shelf (1998) stipulates that China’s exclusive economic zone is the area beyond and adjacent to the territorial sea of the People’s Republic of China, extending to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

So far, China has not announced the base points and baselines of the territorial waters of the Nansha Islands for various reasons, and there are not yet maritime boundary delimitation agreements between China and most of the ASEAN countries (except for the Sino-Vietnam Beibu Gulf Delimitation Agreement and the Sino-Vietnam Beibu Gulf Fisheries Agreements). In this regard, management and enforcement activities conducted by the CCG based on the domestic law within the territories and territorial waters that are unilaterally claimed by China may lead to controversy. In particular, management and enforcement activities in the waters surrounding the Diaoyu Islands, especially within China's territorial waters, will attract a lot of attention. It is tolerated by the international society for States to conduct enforcement activities within territorial waters claimed based on their own domestic laws. It is a way of exercising sovereignty and no State would give up doing so. The key is that if conducting management and enforcement activities in disputed sea areas, States should meet the obligations of being prudent and restrained. Particularly, communication and coordination between the relevant States are important. In the spirit of understanding and cooperation, States should make and implement temporary measures such as joint development through consultations and comply with the agreed principles and systems to manage crises. More importantly, judicial sea areas claimed by China based on domestic law should conform to the norms of international law. Article 27 of the Vienna Convention on the Law of

(21) For example, the Joint Statement of the Foreign Ministers of ASEAN Members States and China on the Full and Effective Implementation of the Declaration on the Conduct of Parties in the South China Sea (25 July 2016) pointed out that the Parties promise to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UNCLOS, see Ministry of Foreign Affairs of the People's Republic China, <http://www.fmprc.gov.cn/web/zyxw/t1384157.shtml> (last visited July 25, 2016).

Treaties provides that a party may not invoke its domestic law as a reason for not performing a treaty. That is to say, the content of China’s domestic law should conform to international law and the legal basis for China’s claims on the territorial and jurisdictional sea areas should be in line with international law. Evidence should be presented by China to let most States accept China’s claims. This is a big challenge for China to claim historic waters based on historic rights and a major task for China to refute and eliminate other States’ accusations that China has violated international law.

In addition, concerning the scope of China’s maritime-related domestic laws, the term “the coastal waters” is also used other than “sea areas under the jurisdiction of China,” for example, Article 2 of the Regulations Governing Supervision and Control of Foreign Vessels (1979), Article 2 of Maritime Traffic Safety Law (1983), Article 3 of the Regulations on the Investigation and Handling of Maritime Traffic Accidents (1990), Article 2 of the Regulations on the Management of Maritime Navigation Warnings and Notices (1992).⁽²²⁾ Based on Article 50 of China’s Maritime Traffic Safety Law, the “coastal waters” refer to harbors, internal waters, territorial waters and all other water areas under China’s jurisdiction.⁽²³⁾

C. Disposal of Foreign Military Ships and Foreign Government Ships Operated for Non-Commercial Purpose

Some scholars believe that the “forced eviction” and “use of weapons” of foreign military ships and foreign government ships operated for non-commercial purposes stipulated in the CGL violate Articles 32 and 236 of UNCLOS concerning

(22) Selected Marine Laws and Regulations of the People’s Republic of China 71, 35, 154 and 168 (Policy and Regulations Office of the State Oceanic Administration eds., Ocean Press, 3rd ed. 2001).

(23) *Id.*, at 42.

the immunity of these ships. In this regard, the contents of the CGL should be comprehensively examined and analyzed.

Article 21 of the CGL stipulates that the CCG has the right to take necessary warning and control measures to stop foreign military ships and foreign governments ships operated for non-commercial purposes that violate Chinese laws and regulations in the waters under China's jurisdiction, and order them to leave the relevant sea areas immediately. For those who refuse to leave and cause serious harm or threats, the maritime policy agency has the right to take measures such as forced eviction and forced towing.

This article mainly refers to the contents of the Part of UNCLOS (territorial sea and contiguous zone) concerning a warship or other government ship operated for non-commercial purposes (Articles 30 and 31), together with Articles 24 and 25. Therefore, this article is applicable to activities in the territorial waters.

As can be seen from Article 32 of UNCLOS, the measures taken by the coastal States in accordance with Articles 30 and 31 do not affect the immunities of the warships and other government ships operated for non-commercial purposes. In other words, sovereign immunity cannot exempt the warships and government ships operated for non-commercial purposes from the liability they own to the coastal States. Accordingly, the relevant coastal State could exercise jurisdiction over the foreign warships and government ships and hold them accountable based on the law and regulations.

In fact, the freedom of navigation and overflight provided in UNCLOS is based on the nature of the sea areas and the air above them. Therefore, the CGL should also define the jurisdiction on the basis of the nature of the sea areas, so as to avoid any damage to the freedom of navigation, including the immunity of warships and government ships operated for non-commercial purposes (Article 32 of UNCLOS). It could also help to avoid the suspicion that the measures taken by

Chinese authorities may violate international law. Take Article 25 (1) of UNCLOS as an example, it provides that the coastal State may take the necessary steps in its territorial sea to prevent passage that is not innocent. However, specific measures of the “necessary steps” are not provided in the Article. This may lead to a loophole.

It is generally believed that foreign ships that are navigating, berthing, and operating in the waters under the jurisdiction of China should be able to be identified and verified, so as to determine the basic information of the ships and their navigation and operation. For foreign ships suspected of violating the law, the CCG should have the right to take measures such as tracking and monitoring. If the ships have conducted activities violating the laws and regulations in the territorial waters, the authority should have the right to require the ships to leave immediately and take measures to evict them. Measures such as boarding and hot pursuit must be taken subject to certain procedural provisions, for example, Article 18 of the CGL. Regarding illegal activities conducted by foreign ships in other sea areas (such as the contiguous zones and the exclusive economic zones), the form and extent of the measures to be taken should be determined after analyzing and examining UNCLOS and the Chinese domestic law.⁽²⁴⁾

Correspondingly, the law enforcement activities of the maritime police agencies are also controversial concerning the activities of foreign organizations and individuals to construct facilities in the waters and islands under China’s jurisdiction. According to Article 20 of the CGL, without the approval of the Chinese competent authority, if foreign organizations and individuals construct buildings, structures and

(24) For example, regarding the content of the provisions concerning security-related matters in the contiguous zones of China, there are differences between Article 33 of the UNCLOS and Article 13 of the Law of China’s Territorial Sea and Contiguous Zone. See Jin Yongming, *An Introduction to Chinese Maritime Law System and Several Issues*, 5 *Journal of Ocean University of China* (Social Science Edition), 20-29 (2020).

install various fixed or floating devices in the sea areas and islands under China's jurisdiction, the CCG has the right to order them to stop the above illegal acts or demolish within a time limit; for those who refuse to stop the illegal activities or fail to tear down within the time limit, the CCG has the right to stop the activities or force the demolition. Therefore, activities enforcing laws and controlling the constructions (such as the stop or forced demolition of the construction of facilities, islands and reefs) on Diaoyu Islands and waters surrounding them, Nansha Islands and waters surrounding them, and disputed waters are also disputed. The reason for this situation is that Japan and China both claim sovereignty over the Diaoyu Island and its affiliated islands, and China and other ASEAN countries (for example, Vietnam and the Philippines) all claim sovereignty over the Nansha Islands and the adjacent waters. Every State asserts jurisdiction and rights to establish facilities over their claimed territory and sea areas, which easily triggers disputes and conflicts.

In addition, it is also controversial for China to take all necessary measures, including the use of weapons, when China's sovereignty, sovereignty rights, and jurisdiction are illegally infringed by foreign organizations and individuals. According to Article 22 of the CGL, when national sovereignty, sovereign rights, and jurisdiction are being illegally infringed by foreign organizations and individuals at sea, or are facing an imminent danger of illegal infringement, the CCG has the right to take all necessary measures, including using weapons, to stop the infringement and eliminate danger in accordance with this law and other relevant laws and regulations.

Actually, for illegal infringement of China's maritime rights and interests conducted by foreign individuals (such as fishing boats and fishermen), the use of weapons should be subject to certain restrictions. The International Tribunal for the Law of the Sea has pointed out three requirements for use of force aiming at individuals *Saiga* (1999). (1) The use of force should be avoided; (2) the degree of force used shall not exceed that reasonably required in the circumstances; (3) the

safety of the ships and the persons on board shall be guaranteed.⁽²⁵⁾ Also, when applying Article 22 of the CGL, Article 50 should also be considered. Articles 46 and 49 related to this will also be disputed as they provide the procedures and standards for determining the serious harm to legally take measures.⁽²⁶⁾ In this regard, following the principles of necessity, reasonableness, and proportionality are important prerequisites and guarantees for the CCG to use various types of weapons to safeguard the rights and enforce the law. In other words, the CGL provides the conditions and procedures for the use of various weapons. It does not lower the conditions for the use of weapons and thus scholars do not need to concern about the arbitrariness and rigor of the Law. How the CCG uses force to enforce the law needs not only continuous observation but also follow-up policy adjustments and improvements. But it is certain that the long-term practices of the CCG for rights safeguarding and law enforcement are unlikely to be changed.

D. The Nature of the CCG Vessels and Their Accessory Functions

As mentioned above, the CCG’s main responsibility is to uniformly safeguard maritime rights and enforce maritime laws. Its accessory responsibility is to perform defense operations (for instance, Article 83 of the CGL).

Article 20 of the National Defense Law stipulates that the tasks of the armed

(25) Shigeki Sakamoto, *The Formulation of China’s Coast Guard Law and Japan’s Response* (25 January 2021), <https://www.jfir.or.jp/j/activities/studygroup/210125.pdf> (last visited February 11, 2021).

(26) Regarding Article 49 of the CGL, similar rule can be seen in Article 9 of the Regulations on Use of Police Implements and Arms by the People’s Police, which provides that the people’s police can directly use weapons according to the previous paragraph, if it is too late to warn or the warning may cause more serious harmful consequences. Article 9 (1) provides 15 conditions in which the people’s police can directly use weapons after the warning if they decide that there is emergency where violent crimes are found and if the warning does not work.

forces of the People's Republic of China are to consolidate national defense, resist aggression, defend the motherland, safeguard the people's peaceful labor, participate in national construction and serve the people whole-heartedly. The Central Military Commission shall exercise unified command of the armed forces nationwide and unified lead the defense of the frontiers, seas, air space, and other major security fields (Articles 15 (1), 31 of the National Defense Law).

Hence, under specific circumstances, the CCG undertakes the task of defense operations that feature armed forces (military activities). However, it is not clear under what circumstances will the CCG's responsibility shift from safeguarding maritime rights and enforcing maritime laws to performing defensive operations. The procedures and conditions for it are also unclear. This will be the future focus and essential controversial problem in other countries.⁽²⁷⁾ It is also worth noting that the CGL does not define the identification or nature of the CCG vessels when they are enforcing the law. Put differently, it is not clear whether these ships are vessels used for official purposes or military vessels. This is also an issue that continues to attract the attention of other States.

According to Article 111 of UNCLOS, the right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect. In this regard, the CCG vessels carrying out activities of maritime rights safeguarding and law enforcement may be regarded as military ships. However, the ships are

(27) It should be noted that the whether the controversy will focus on whether the "defense operations" in Article 83 is consistent with the meaning of the "security tasks" in Article 18 of the CLG. If they are inconsistent, the CCG's power and duty of "defense operations" would exceed the scope of authorization of the "Decision of the Standing Committee of the National People's Congress on the Exercise of Maritime Rights and Law Enforcement Powers of the China Coast Guard."

exercising administrative law enforcement powers. It is generally believed that these are ships for administrative law enforcement belonging to the Chinese armed force (military). Whether they are warships (military ships) depends on whether these ships are registered in the armed forces’ active-duty roster.⁽²⁸⁾ Pursuant to Article 6 of the 1907 Hague Seventh Convention (Convention Relating to the Conversion of Merchant Ships into Warships), which has become customary international law at present, when ships other than warships, including auxiliary ships, are converted into warships, the belligerents should announce such conversion in the list of warships as soon as possible. Put differently, according to Article 83 of the CGL, when the duty of the CCG vessels shifts from maritime rights safeguarding and law enforcement into defense operations, registration should be done promptly. Otherwise, it will be regarded as a violation of the international customary laws.

III. The Impact and Countermeasures of the CGL

As discussed above, the promulgation and implementation of the CGL, a

(28) Regarding the concept of warships, Article 29 of the UNCLOS stipulates that “warship means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.” Based on this definition, whether the CCG vessels are registered in the armed forces’ active-duty roster would be an important mark for distinguishing whether a Coast Guard vessel is an official ship or a military ship (warship). In Article 3 of the Declaration of the Government of the People’s Republic of China on the Territorial Sea (4 September 1958) and Article 6 (2) and Article 10 of the Law of China’s Territorial Sea and Contiguous Zone (25 February 1992), the term “foreign military ships” is used; in Article 4 of the Decision of the Standing Committee of the National People’s Congress on the Ratification of the United Nations Convention on the Law of the Sea, the term “foreign warships” is used. It can be seen that the Chinese government has basically the same rules regarding the activities of “foreign military ships” and “foreign warships” in the territorial waters. That is, the two terms have the same meaning.

Chinese domestic law with the attributes of both organization law and functional law, not only enriched and improved the reform of China's management institutions, established the authority to safeguard the maritime rights and enforce the maritime law, but also clarified the legal basis for the CCG (the coast guard organizations)'s law enforcement activities to the outside world. It promotes and enriches Chinese maritime laws, especially the law enforcement system of marine management. However, the international society has different understandings of some key provisions of the CGL. This stems from the long-term ambiguity and generality of the content and provisions of China's maritime legal system, especially when China has disputes over the sovereignty of islands and reefs or the maritime delimitation with other States, such as the Diaoyu Islands in the East China Sea and the Nansha Islands. In this regard, if the CCG conducts the rights safeguarding and law enforcement activities or manages the maritime features and offshore facilities purely in accordance with the domestic law and norms, it would inevitably cause disputes and conflicts concerning maritime rights between the relevant States. It may even cause confrontations when the authorities are conducting law enforcement activities. This further affects the stability, maritime order, and political and diplomatic relations between the relevant States.

In order to achieve the expected goals of the CGL and eliminate possible adverse effects, China needs to take the following measures to better safeguard the national sovereignty, security, and maritime rights and interests, as well as to protect the legal rights of the citizens, legal persons, and other organizations.

Firstly, China needs to explain the key provisions of the CGL and their consistency with international maritime law. The key elements and procedures for the "use of weapons," "execution of defense operations" and "control of foreign military ships" provided in the CGL will continue to be focused on by other States. Therefore, bilateral and multilateral mechanisms need to be enhanced to strengthen the

communication and coordination concerning the content and system of the maritime law among China and other States. The CGL needs to be integrated with international maritime law.

Second, to clarify the ambiguous content of the Chinese maritime laws. As mentioned above, the “sea areas under the jurisdiction of China” provide a controversial scope for the application of the CGL. Considering the two types of the “sea areas under the jurisdiction of China,” it can be clarified in two ways. That is, to timely announce basis points and baselines of the territorial sea concerning part or all of the islands in the South China Sea and to speed up the negotiation of maritime delimitation with other States in order to conclude final delimitation agreements to define the scope of sea areas under the jurisdiction of China. Prior to this, the law enforcement and management activities of the CCG in the disputed areas should be prudent and restrained. China should promote communication and coordination with other States in the spirit of understanding and cooperation. Temporary measures and arrangements such as joint development are needed, and particularly, the existing crisis management mechanisms should be followed. In these ways, marine and air security and order can be guaranteed and the interests of marine resources and space can be shared.

Third, to improve the content of the CGL and relevant maritime laws and regulations. This includes improving the coordination mechanisms among the coast guard organizations, public security agencies, and other administrative organs. It will help to realize the goals of the Decision of the Standing Committee of the National People’s Congress on the Exercising of the Marine Right Safeguarding and Law Enforcement Functions and Power and accomplish the tasks provided in Articles 8 and 12 (2) of the CGL. Meanwhile, to elaborate the jurisdictional sea areas and the air above them based on their different attributes and the legal system of maritime rights safeguarding and law enforcement is also an important aspect of improving the CGL.

Fourth, to strengthen coordination and cooperation with other States' maritime law enforcement authorities. It is needed to effectively enhance the communication and coordination between the CCG and foreign maritime law enforcers. This helps to reasonably avoid, handle and manage various incidents or accidents caused by the activities of maritime rights safeguarding and law enforcement so as to realize the goals, tasks, and requirements provided by Articles 63-65 of the CGL concerning international cooperation.

IV. Concluding Remarks

In the end, it should be pointed out that even if China made some achievements and progress in improving the CGL, States like the United States and Japan will not stop criticizing and making threat assessments of the CGL. It is because their intentions and behaviors to restrain China's access to the oceans and to impair China's maritime rights are still strong. They will continue the stigmatization in different approaches and methods.⁽²⁹⁾ Therefore, in the near future, further elaboration and response to the problems concerning the CGL will be an important task for the Chinese government, people and scholars.

(29) For example, in response to the repeated "infringements" and tracking of Japanese fishing boats of the CCG vessels on the waters of the Diaoyu Islands, the Japanese government has the shifted the "intelligent liaison room" set up in the Crisis Management Center in the residence of the Prime Minister to the "Mansion Countermeasures Room," to strengthen the intelligent collection and security surveillance, see NHK News, https://www3.nhk.or.jp/news/html/20210215/k10012868071000.html?utm_int=detail_contents_news-related_002 (last visited February 16, 2021). Meanwhile, the ruling party in Japan (the Liberal Democratic Party) has also issued a request to ease the conditions for the use of weapons by the Coast Guard and enact new laws. The Liberal Democratic Party will collect these opinions and submit them to the Japanese government for decision-making references, see NHK News, https://www3.nhk.or.jp/news/html/20210210/k10012858651000.html?utm_int=detail_contents_news-related_003 (last visited February 16, 2021).