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Law Enforcement Measures Against Chinese Maritime Militia

Kentaro Furuya

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I. INTRODUCTION

China's maritime militia is a quasi-governmental force that has yet to be formally established as a State organ. During peacetime, it is involved in fishing activities and low-intensity military operations. However, in times of conflict, it carries out operations such as reconnaissance and intelligence gathering. An illustration of this was seen during the armed conflict between China and Vietnam in 1974 regarding the sovereignty of the Paracel Islands, where the Chinese maritime militia safeguarded the surface vessels of the Chinese military, rescued Chinese naval vessels, and conveyed troops.¹ Similarly, during the USNS *Impeccable* incident in March 2009, the maritime militia undertook low-intensity invasive activities from Chinese fishery trawlers around 120 kilometers south of Hainan Island, China. These activities included impeding the *Impeccable's* activities and safety of navigation by approaching within fifteen meters of her bow.²

Maritime militias are often employed in situations within the gray zone. A gray zone situation can be defined as a scenario that is not considered a pure peacetime or a contingency situation. It pertains to a situation where actions are taken to instigate a change in the status quo by means of demonstrating presence to claim jurisdiction over a particular territory or area.³ During a gray zone situation, there is no state of armed conflict; thus, the military does not resort to high-intensity conflict actions. Hence, maritime militias aid in maintaining control over waters where territorial claims are contested by obstructing and harassing ships of opposing parties and conducting intelligence gathering, surveillance, and reconnaissance activities.⁴ Such a strategy is necessary for gray zone situations that do not escalate into

1. Andrew S. Erickson & Conor M. Kennedy, *Trailblazers in Warfighting: The Maritime Militia of Danzhou*, CENTER FOR INTERNATIONAL MARITIME SECURITY (Feb. 1, 2016), <https://cimsec.org/trailblazers-warfighting-maritime-militia-danzhou/>.

2. Andrew S. Erickson & Conor M. Kennedy, *Countering China's Third Sea Force: Unmask Maritime Militia Before They're Used Again*, NATIONAL INTEREST (July 6, 2016), <https://nationalinterest.org/feature/countering-chinas-third-sea-force-unmask-maritime-militia-16860>.

3. JAPAN MINISTRY OF DEFENSE, 2023 DEFENSE OF JAPAN 1 (2023), https://www.mod.go.jp/en/publ/w_paper/index.html (last visited Oct. 6, 2023).

4. See Conor M. Kennedy, *Gray Forces in Blue Territory: The Grammar of Chinese Maritime Militia Gray Zone Operations*, in CHINA'S MARITIME GRAY ZONE OPERATIONS 168 (Andrew S. Erickson & Ryan D. Martinson eds., 2019).

a state of conflict, and the activities of the maritime militia are highly effective.

This article examines the legal status of maritime militias, their vessels, and the possibility of law enforcement operations by a coastal State. Andrew Ericsson and others have conducted an all-inclusive investigation into the status and structures of maritime militia, as well as their activities.⁵ Their research has focused on establishing whether maritime militia vessels can be considered military targets according to the law of international armed conflict and whether members of the maritime militia are entitled to the status of prisoners of war if captured. The actions of maritime militia groups, which undermine the international law of armed conflict by blurring the distinction between civilians and military targets, are of particular concern.⁶ Furthermore, the question of whether maritime militias—who may present a military threat—should be regarded as legitimate military targets has the potential to cause confusion in the field.

Nevertheless, there remains a significant gap in the investigation regarding the potential law enforcement measures that coastal States can employ when confronted with maritime militias operating in gray zone situations. The term “gray zone situation” denotes a state of emergency that occurs prior to an outright conflict. If a maritime militia violates relevant laws and regulations of a coastal State, that State may resort to coercive law enforcement actions within its maritime zones in accordance with international law. This article explores the specific conditions under which a coastal State may deploy such law enforcement measures against maritime militia vessels.

With this background, this article critically examines the legal framework and standing of maritime militia with the objective of determining whether maritime militia vessels qualify as warships or ships operated by a government for non-commercial purposes, which enjoy sovereign immunity under international law. Hence, in such situations, the coastal State cannot assert enforcement jurisdiction over these vessels. Additionally, this article explores

5. As for the primary research findings on the system and activities of maritime militias led by Erickson et al., refer to Erickson’s website at <https://www.andrewerickson.com> (last visited Oct. 6, 2023).

6. See Jonathan G. Odom, *Guerrillas in the Sea Mist*, 3 ASIA-PACIFIC JOURNAL OF OCEAN LAW AND POLICY 31 (2018); James Kraska & Michael Monti, *The Law of Naval Warfare and China’s Maritime Militia*, 91 INTERNATIONAL LAW STUDIES 450 (2015); Katsuya Yamamoto, *Kousetsu Busou Gyomin to Bunmin no Hogo [Publicly Armed Fishers and Protection of Civilians]*, 9 JINDOU KENKYU JOURNAL 32 (2020); Katsuya Yamamoto, *Chugoku no Kaijouninpei to Jindou [Chinese Maritime Militias and Humanity]*, 2 KAIGAIJOU 69 (2019).

the circumstances under which a coastal State may undertake measures, using the East China Sea as an illustration, to address potential maritime militia activities that violate the laws of Japan as a coastal State.

II. MARITIME MILITIA LEGAL SYSTEM, STATUS, AND SUBSIDIES

First, this article examines the legal status and funding sources of maritime militias in China. Article 22 of the Chinese National Defense Law specifies that China's military forces comprise the Chinese People's Liberation Army, the Chinese People's Armed Police Force, and the Militia.⁷ The militia's duties are detailed in Article 22, paragraph 4 of the same law, which states that the militia is responsible for combat readiness, defense operations, and maintenance of public order.⁸ Moreover, Article 14 of the Emergency Response Law of the People's Republic of China mandates the People's Liberation Army, the Chinese People's Armed Police Force, and the militias to engage in rescue and disaster relief activities in compliance with pertinent laws and regulations.⁹ Hence, it is apparent that the maritime militia is a constituent of China's military force according to the law and collaborates with the People's Liberation Army and the Chinese People's Armed Police Force.

According to the research conducted by Gregory Poling and others, maritime militias can be classified into two categories. The first category is known as the professional or primary militia, which is specialized in conducting maritime militia activities. The ships manned by this professional militia are specifically designed and constructed ships financed by special funds allocated for maritime militia operations.¹⁰ The second category is the Spratly-based maritime militia, which primarily engages in fishing operations within the Spratly Islands. To be registered as a militia-operated fishing vessel, fishing ships must meet certain minimum requirements, such as being capable of navigating offshore waters over ten nautical miles from the coast

7. Law of the People's Republic of China on National Defense art. 22 (adopted by the Eighth Nat'l People's Cong., Mar. 14, 1997), http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/11/content_1383547.htm.

8. *Id.* ("The Militia, under the command of military organs, shoulders the tasks of preparations against war and defense operations and assists in maintaining public order").

9. Emergency Response Law of the People's Republic of China (adopted by the Standing Comm. Tenth Nat'l People's Cong., Aug. 30, 2007, effective Nov. 1, 2007), http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content_1471589.htm.

10. Gregory B. Poling et al., *Pulling Back the Curtain on China's Maritime Militia*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (Aug. 17, 2012), <https://www.csis.org/analysis/pulling-back-curtain-chinas-maritime-militia>.

and weighing over fifty tons.¹¹ Additionally, the Chinese Military Service Law mandates that male citizens between the ages of eighteen and thirty-five who are not members of an active-duty unit suitable for military service are to be enrolled in a militia unit as reservists.¹² Consequently, all Chinese male citizens on board fishing vessels registered as maritime militia-operated vessels could be regarded as part of the maritime militia.

It has been observed that visually differentiating between maritime militia and civilian fishing vessels in the Spratly Islands can be challenging. Thus, the question of whether maritime militia vessels constitute legitimate military targets or are considered protected civilian objects remains unanswered.¹³ The Spratly-based maritime militias form an integral part of China's armed forces but spend much of their time engaged in private fishing operations.¹⁴ Moreover, even when carrying out their militia duties, they do not wear uniforms or display signs, such as flags, that indicate their involvement in military activities or official duties, making them indistinguishable through external observation.¹⁵ It can be concluded that the maritime militia is a symbolic system of the Chinese Communist Party that blurs the line between combatants and non-combatants through the integration of the military and civilians.¹⁶

Next, this article reviews the subsidy system for the maritime militia from both central and local governments. Initially, the militia's fishing vessels are subsidized for their fuel costs. Specifically, fishing vessels that have a length of fifty-five meters or more and an output of 1200 kilowatts or more and operate in designated waters like the Spratly Islands receive a special subsidy that exceeds their operating expenses. In other words, if militia vessels go to the Spratly Islands, even if they do not engage in fishing, they can cover not only fuel costs but also labor costs through subsidies.¹⁷ This is likely the reason why Chinese fishing vessels stationed at Whitsun Reef can make ends meet without engaging in fishing activities. This is a *de facto* system where

11. *Id.*

12. Military Service Law of the People's Republic of China art. 37 (adopted at the Second Session of the Sixth Nat'l People's Cong., May 31, 1984), <http://www.asianlii.org/cn/legis/cen/laws/mslotproc463/>.

13. Odom, *supra* note 6.

14. *Id.*

15. Poling et al. pointed out that the standard to distinguish between fishery operation and maritime militia depends on the activities observed. Poling et. al., *supra* note 10, at 35–46.

16. *Id.*

17. *Id.*

the Chinese government charters fishing vessels for the purposes of the militia. Additionally, there are generous systems such as subsidies for building maritime militia fishing vessels operating in the Spratly Islands, subsidies for constructing specialized militia fishing vessels, subsidies for fishing vessel equipment, and preferential loans for construction and remodeling costs. Furthermore, full-time professional militiamen working in the maritime militia, not just on the hull, receive salaries and undergo military training from their companies.¹⁸

It has been reported that the maritime militia is equipped with the necessary tools to conduct their operations. The People's Liberation Army Navy (PLA Navy) expects the maritime militia to carry out surveillance activities, and local governments provide the requisite equipment, such as satellite navigation systems, navigation radar, and radio communication systems, to carry out these activities at sea.¹⁹ Notably, the Bei Dou system, the Chinese equivalent of GPS, is installed to enable communication between shore and fishery vessels. The system communicates ships' positions and arrival and departure times. This system has become an indispensable tool for enhancing cooperation between the Chinese Navy, Coast Guard, and maritime militia.²⁰ It is estimated that the Bei Dou system has been installed in seventy thousand fishing vessels and is used to issue necessary instructions to maritime militia ships and to receive information.²¹

Maritime militias are sanctioned by domestic law to function as an integral part of China's armed forces. Additionally, the well-funded government subsidy system has made maritime militias a vital tool of policy in China. According to a study, a fleet of over two hundred thousand Chinese fishing vessels is collaborating with the China Coast Guard,²² and these well-organized militias pose a serious threat to the littoral States of the South China Sea. With such a large number of fishing vessels, the maritime militias have a formidable presence in the disputed waters of the South China Sea, yet their characterization as a military threat is not immediately apparent due to

18. *Id.*

19. Odom, *supra* note 6.

20. Masaaki Yatusduka, *Hokuto Riyoude Kyoni masu Kajjouninpei-Osiyoseru Chugokuno Kyoni Kikiba UmikaraYattekururu* [Increasing Threat of Maritime Militias Utilizing "Hokuto" System—Emerging Chinese Threats and the Crisis Emerging from the Sea], WEDGE REPORT (June 14, 2021), <https://wedge.ismedia.jp/articles/-/23152>.

21. *Id.*

22. Kraska & Monti, *supra* note 6.

their ostensibly benign fishing activities. Therefore, maritime militias create grey-zone situations and actively support China's territorial claims.

III. LAW ENFORCEMENT AGAINST MARITIME MILITIA

This article will now scrutinize the circumstances in which a coastal State may exercise its jurisdiction over maritime militias and take coercive measures based on concrete examples.

Though there is no uniform definition of "maritime law enforcement" in international law, a State can conduct maritime law enforcement operations provided that the person, vessel, or incident in question falls under its jurisdiction and breaches the domestic laws of the coastal State. Under these circumstances, the coastal State may investigate the act, suppress criminals, and arrest them for prosecution if necessary. These functions allow coastal States to maintain legal order in their waters and ensure the safety and stability of maritime activities, such as shipping and fishing.

Therefore, this article first scrutinizes the circumstances under which maritime militias are subject to the exercise of jurisdiction by coastal States. Initially, it examines whether maritime militia vessels fall under the definition of warships. Under international law, warships are subject to the exclusive jurisdiction of the flag State. Hence, if maritime militia vessels qualify as warships, they are exempt from the jurisdiction of other States, thereby substantially limiting law enforcement efforts by littoral States. Conversely, if they do not fall within the category of a warship, they will be treated as civilian vessels and subject to law enforcement. Additionally, the article briefly explores the implications of the status of maritime militias on law enforcement operations.

A. Definition of Warship

A warship is defined in Article 29 of the United Nations Convention on the Law of the Sea (UNCLOS) as follows.

For the purposes of this Convention, "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.²³

This definition inherits the provisions of Article 8(2) of the 1958 Convention on the High Seas and is widely accepted by the international community. Therefore, the definition of a warship has four components:

- 1) The vessel must be under the exclusive jurisdiction, supervision, and responsibility of the flag State;
- 2) it must bear external marks distinguishing it as a warship of that State;
- 3) it must be under the command of a duly commissioned officer; and
- 4) it must be manned by a crew under armed forces discipline.

Auxiliary ships (for example, ships only engaged in naval transport but not engaged in combat operations) may also meet these requirements and thus fall within the classification of warships. Similarly, U.S. Coast Guard cutters meet these requirements and are warships.

Next, we examine whether a maritime militia vessel can be categorized as a warship based on the above criteria. Maritime militias are known to carry out tasks specified by Chinese law, receive military training, and engage in operations to support the Navy and Coast Guard. These activities suggest that maritime militia vessels fall within the jurisdiction, supervision, and responsibility of the flag State. However, these vessels lack any external distinguishing marks or numbers that differentiate them from civilian fishing vessels. Furthermore, maritime militia ships are not integrated into the PLA Navy or commanded by commissioned officers, thus failing to fulfill all the requirements of the international law definition of warships.

As previously discussed, warships are not the only vessels entitled to sovereign immunity. "Other government ships operated for non-commercial purposes," such as naval auxiliaries, are also entitled to immunity. However, since China's maritime militia vessels usually engage in commercial fishing, they do not fall into this category.²⁴ Militia vessels, therefore, are subject to enforcement jurisdiction by the coastal State.

23. United Nations Convention on the Law of the Sea art. 32, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

24. *See id.*

B. Status of Maritime Militia

If, during an on-site inspection of a fishing vessel as part of a law enforcement operation, a maritime militia is found on board, how would it be evaluated? This is a possible scenario due to the fact that maritime militia ships do not have external markings that distinguish them, as do sovereign immune warships and government vessels. In such a case, the question arises as to whether the Chinese government would be liable if the maritime militia engaged in any activity that violates the laws of the coastal State. If the activities of the militia are attributed to the State, the criminal responsibility of individual maritime militia members may be attributed to the State as an act of the State. This raises the issue of how the status of the militia would be treated in such a case.

During the *Impeccable* incident, the maritime militia collaborated with Chinese naval vessels and government vessels belonging to the Fisheries Administration to impede the activities of *Impeccable* and create a collision risk. Such activities conducted in collaboration with warships and government vessels are highly likely to result from the government's instructions to the militia. The Chinese government has the ability to subsidize ships and fuel, provide training, and supervise militias. Thus, the activities carried out by the militia can be attributed to the State and may be subject to immunity *ratione materiae* rather than individual punishment of the militia.²⁵

In accordance with Article 4 of the Responsibility of States for Internationally Wrongful Acts, the actions of a State organ are attributable to that State's activities.²⁶ While maritime militias are considered part of China's military force and their duties are governed by law, they are also considered part-time fishermen and are not formally organized as part of the military. As a result, the actions of the maritime militia cannot simply be attributed to the State's conduct.

25. See, e.g., "Enrica Lexie" Incident (It. v. India), Case No. 2015-28, Award, (Perm. Ct. Arb. 2020). The vessel protection detachment (VPD) personnel on board the M/T *Enrica Lexie* were marines belonging to the Italian Navy. The tribunal found that the actions of the marines were attributable to the government of Italy. Consequently, the tribunal held that India could not exercise its jurisdiction over the case by virtue of the concept of functional immunity.

26. Int'l Law Comm'n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, 56 U.N. GAOR Supp. No. 10, art. 4(1), U.N. Doc. A/56/10 (2001), reprinted in [2001] 2 Yearbook of the International Law Commission 26, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2).

However, another question arises as to whether the actions of the maritime militia are “empowered by the law of that State to exercise elements of the governmental authority” under Article 5²⁷ or whether the actions of the maritime militia are carried out on the “instructions of, or under the direction or control” of that State under Article 8.²⁸

Firstly, while the maritime militia is established by law, it lacks a clear chain of command and is not authorized to exercise governmental authority. Therefore, it would not satisfy the requirements of Article 5. However, it is reasonable to suggest that the maritime militia is acting under the direction of the Chinese government.²⁹ In such cases, the actions of the maritime militia would be attributed to the actions of the Chinese government. Consequently, these actions would fall under the responsibility of the State³⁰ and may be subject to immunity *ratione materiae* rather than individual criminal liability.

In the present scenario, it is possible that the Chinese government may refuse to acknowledge the activities of the maritime militia. As an illustration, in 2021, the Chinese government refuted the claim that more than two hundred Chinese fishing vessels had amassed near the Whitsun Reef in the Spratlys as part of their maritime militia.³¹ The Chinese government asserted that these fishing vessels had voluntarily gathered for the purpose of seeking ref-

27. *Id.* art. 5.

28. *Id.* art. 8.

29. Odum, *supra* note 6 (suggesting the possibility that the maritime militia may be a State agency of China empowered to exercise a part of the governing authority).

30. The decision rendered in the *Enrica Lexie Incident*, *supra* note 25, may serve as a reference regarding this issue. In this decision, it was determined that the actions of the embarked Italian vessel protection detachment constituted a matter of functional immunity, and that India was not entitled to exercise jurisdiction. However, there are opinions critical of this decision. For instance, Ishii argues that the issue of functional immunity and attribution of State responsibility should be treated separately based on the distinct concepts of individual criminal responsibility and State responsibility. She observes that State practice on the question of whether acts beyond authority can be attributed to State responsibility is not uniform. Yurika Ishii, *Immunity Ratione Materiae of the Marines as Vessel Protection Detachments: A Case Note on the M/V Enrica Lexie Case*, 13 ASIAN JOURNAL OF INTERNATIONAL LAW 1 (2023).

31. Nanshasbotou ni Chugokusen, Choukika, Firipinba Shukensingai to Hinan [Chinese Ships Prolonged in the South China Sea: Philippines Condemns as “Sovereignty Infringement”], NIKKEI (Apr. 8, 2021), <https://www.nikkei.com/article/DGKKZO70788830X00C21A4FFJ000/>; Katsuya Yamamoto, *Gyomin wo Kokueki Mamoru Ningengo Tate nisuru Chugokuno Ayausa* [The Peril of China’s Utilization of Fishermen as “Human Shields” to Safeguard National Interests], TOYO KEIZAI ONLINE (Apr. 16, 2021), <https://toyokeizai.net/articles/-/422734>.

uge from inclement weather and that their actions were not due to instructions, directions, or control by the government. In such a case, even if the maritime militia on board a fishing vessel claimed to have acted at the direction of the government, they would not be covered by immunity *ratione materiae* and could be subject to the criminal jurisdiction of the coastal State. Therefore, the key issue is whether the maritime militia acted under the instructions, directions, or control of the Chinese government.

Considering the possible pursuit of State responsibility, different investigative activities for the international community are necessary. At least a record of the situation at the scene and law enforcement operations taken must be recorded and documented. Common investigative activities may include requesting the vessel to stop if suspected of violating laws and regulations, boarding the vessel, verifying the ship's ownership and flag State, identifying the crew, and confirming whether there has been any violation of applicable laws and regulations. In addition to taking these actions, law enforcement officers must demonstrate to the international community that all those processes have been taken in accordance with international and national law.

C. Coastal State Jurisdiction Over Foreign Vessels

This article scrutinizes alternative maritime law enforcement measures employed by a coastal State. UNCLOS elucidates the jurisdictional boundaries of coastal States through the delineation of maritime zones. Therefore, this article first explores various authorities conferred by UNCLOS and potential countermeasures against maritime militia vessels.

1. Exclusive Economic Zone

In the exclusive economic zone, which lies up to two hundred nautical miles from the baseline, a coastal State has sovereign rights over natural resources and jurisdiction over the establishment of artificial islands, maritime scientific research, and the protection and preservation of the marine environment.³²

The coastal State possesses the authority to conduct inspections on fishery vessels in order to ascertain their compliance with all laws and regulations established for the exploration, exploitation, conservation, and management

32. UNCLOS, *supra* note 23, art. 56.

of living resources within the exclusive economic zone.³³ Hence, in the event that a maritime militia boat in an EEZ is categorized as a fishing vessel or one that is likely engaged in fishing operations, it comes under the jurisdiction of the coastal State.

Conversely, the freedom of the high seas, encompassing the freedom of navigation, prevails within this zone, and vessels on the high seas fall under the exclusive jurisdiction of the flag State. Therefore, foreign vessels are not subject to the exercise of jurisdiction concerning matters beyond those that fall within the purview of the coastal State's sovereign rights and jurisdiction. In other words, even if the intention of navigation is to approach and assert claims over disputed territories, the act of navigation itself would not be deemed illicit at this stage.

In the context of the East China Sea, the exercise of jurisdiction between Japan and China is circumscribed by the Japan-China Fisheries Agreement.³⁴ This agreement prescribes that fishing activities within the exclusive economic zones of the respective parties are subject to consultation in order to determine operational conditions, encompassing fish species and catch quotas. Furthermore, the agreement delineates specific geographical regions, such as the Japan-China Provisional Measures Zone, the intermediate zone, and the waters situated to the south of the 27th parallel north zone. As per the provisions of the agreement, flag States bear sole responsibility for enforcing laws on their own vessels in these zones. Consequently, Japanese law enforcement agencies are only authorized to report violations of the agreement committed by Chinese fishing vessels in these zones to Chinese authorities without any alternative recourse at their disposal.

2. Contiguous Zone

What if the maritime militia enters a contiguous zone of a coastal State? In the contiguous zone, which may extend up to twenty-four nautical miles from the baseline, the freedom of navigation of ships is guaranteed, and the zone is not under the sovereignty of the coastal State. Within the contiguous zone,

the coastal State may exercise the control necessary to:

- (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

33. *Id.* art. 73.

34. Fisheries Agreement, China-Japan, Nov. 11, 1997, 2731 U.N.T.S. 208.

(b) punish infringement of the above laws and regulations committed within its territory or territorial sea.³⁵

With regard to the meaning of “necessary control” in this provision, there exists a debate. Since contiguous zones are outside of territorial seas and outside of the sovereignty of the coastal State, the extent of the coastal State’s authority to take measures is arguable. The first perspective asserts that regulatory measures are confined to those necessary to preventive legal infractions in the territorial sea. These regulatory measures are less than an exercise of enforcement jurisdiction. This perspective does not support the exercise of enforcement jurisdiction in the contiguous zone, such as arrest or seizure, except when relating to the sovereign rights of the coastal State in the EEZ.³⁶ Conversely, the second perspective posits that, historically, certain legislative frameworks, such as customs laws, vested coastal States with the authority to exercise jurisdiction, including the power to effectuate arrests and seizures, in maritime zones situated beyond their territorial waters. This perspective contends that such actions were embedded within the scope of national execution.³⁷

Regardless of these theories, when maritime militia ships intend to illegally enter the territorial sea or land territory of the coastal State, including its islands or maritime features, measures such as conducting on-site inspections within the contiguous zone are permissible.

Moreover, in order to conduct the boarding and inspections in the contiguous zone, the coastal State needs domestic laws authorizing those actions. In the Japanese case, the domestic law basis, Article 5 of the Law Concerning Territorial Seas and Contiguous Zones (Law No. 73 of 1996), extends the authority of Japanese public officials to the contiguous zone.³⁸ As a result, the Japan Coast Guard Act is applied as a law for the execution of duties and on-site inspections based on Article 17, and measures based on Article 18 can be taken.³⁹

35. *Id.* art. 33.

36. *See, e.g.,* Gerald Fitzmaurice, *Some Results of the Geneva Conference on the Law of the Sea. Part I. The Territorial Sea and Contiguous Zone and Related Topics*, 8 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 73 (1959).

37. Shigeru Oda, *The Concept of the Contiguous Zone*, 11 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 131 (1962).

38. Law Concerning Territorial Seas and Contiguous Zones art. 5, Law No. 73 of 1996 (Japan).

39. *See* Rekizo Murakami, *Setsuzoku Suiiki* [Contiguous Zone], SEKAI NENPOU, Mar. 1998, at 44.

3. Territorial Sea

If a maritime militia boat enters territorial waters, the coastal State can exercise jurisdiction in accordance with international and domestic law. Article 2 of UNCLOS stipulates that the sovereignty of a coastal State extends over its territorial waters and that the exercise of its sovereignty is subject to UNCLOS and other international laws.⁴⁰ UNCLOS provides the definition of innocent passage in Article 18 and lists the specific activities in the territorial sea that render passage not innocent in Article 19. Simultaneously, UNCLOS guarantees foreign ships the right of innocent passage in territorial waters⁴¹ and imposes an obligation on coastal States not to hamper the right.⁴²

In a case where a maritime militia vessel is sailing in the territorial sea attempting an illegal landing on an island subject to overlapping claims between States, it corresponds to “the loading or unloading of goods, currency or persons in violation of the customs, financial, immigration or sanitary laws and regulations of the coastal State” in UNCLOS Article 19(2)(g). The coastal State can determine that the passage of the militia boat is not innocent. In this case, the right of innocent passage can be denied and enforcement jurisdiction can be exercised, including stopping the vessel and conducting an on-site inspection. In addition, even though maritime militia vessels enjoy the right of innocent passage, the coastal State may exercise enforcement jurisdiction in cases where the activities of the militia violate domestic laws and affect the coastal State or jeopardize the legal order in the territorial waters.⁴³

IV. MEASURES BY OTHER THAN THE FLAG AND COASTAL STATE

States other than the flag State and coastal State may encounter jurisdictional complexities when engaging in maritime law enforcement operations. On the high seas, vessels, including maritime militias onboard, fall under the exclusive jurisdiction of the flag State.⁴⁴ Consequently, States other than the flag State must seek a legal basis under international law to intervene.

For instance, every State possesses the right to take law enforcement measures against pirate vessels in accordance with Article 105 of UNCLOS.

40. UNCLOS, *supra* note 23, art. 2.

41. *Id.* art. 17.

42. *Id.* art. 24.

43. *Id.* art. 27.

44. *Id.* art. 92.

The definition of piracy is contained in Article 101 of the Convention. The elements of piracy encompass: 1) illicit acts of violence, detention, or depredation; 2) motivated by private ends; 3) committed on the high seas; and 4) directed against another vessel. Considering these elements, the activities of maritime militias do not always align with acts of piracy. First, their actions would be carried out under the instructions of the Chinese government, which does not qualify as private ends. Second, simply operating a vessel, halting, or congregating on the high seas or within the EEZs of other States would not constitute illegal acts of violence.

An alternative approach could involve the conclusion of a law enforcement agreement with coastal States to exercise jurisdiction jointly. A bilateral agreement, such as a ship-rider agreement, could empower a warship or cutter from a third State to collaboratively authorize the interception of foreign vessels within the EEZ of the coastal State. Consequently, the third State could participate in law enforcement operations targeting maritime militia vessels. However, accepting the involvement of a third State in such an agreement presents significant political challenges, as it can potentially encroach upon the sovereignty of the coastal State. Additionally, the third State would require a resolute political determination to assume the associated risks and intervene in matters concerning maritime militia vessels.

V. CONCLUSION

This article has focused on the Chinese maritime militia, endeavoring to conduct a legal assessment of their activities from a law enforcement standpoint, drawing upon prior cases and earlier research findings. Consequently, it was elucidated that maritime militia vessels do not enjoy immunity under international law akin to naval warships or government-operated non-commercial vessels. Instead, they fall under the purview of law enforcement, and although the utilization of minimal necessary force is permissible in law enforcement activities, it bears mentioning that any use of force against Chinese maritime militia carries the potential to escalate the situation into an international armed conflict.

The maritime militia functions within a nuanced environment, existing in a gray zone that is neither peacetime nor wartime. In such circumstances, there are inherent constraints on the military's capacity to respond. In such instances, the actions of the maritime militia are regarded as disruptive to the established legal framework and transgressive of regulations, thereby necessitating the implementation of law enforcement measures. In order to tackle

this issue, it becomes imperative to augment the capabilities of coast guard agencies through measures such as enhancing their maritime and aerial assets while also providing comprehensive education and training to personnel, with the ultimate goal of fortifying institutional and structural prowess.