EVOLUTION OF THE LEGAL FRAMEWORK FOR MARITIME SECURITY AND ITS IMPACT ON WESTERN PACIFIC

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Recent updates of coast guard laws in SE/NE Asia
Potentially excessive maritime claims
Standards on the use of weapons
RECENT UPDATES OF COAST GUARD LAWS IN SE/NE ASIA
### RECENT UPDATES OF COAST GUARD LAWS

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Reorganization of the coast guard agency has taken place in China, Indonesia, Malaysia, Thailand, Vietnam.

China, Malaysia, Thailand and Vietnam explicitly authorize the law enforcing agencies to act to protect its maritime security and sovereignty.
THE STRUCTURE OF EACH COUNTRY’S MARITIME SECURITY LAW

The mandates of the coast guard and the navy

The maritime entitlement

The standard for the use of weapons

Brill, 2022
POTENTIALLY EXCESSIVE MARITIME CLAIMS
MARITIME ZONES UNDER THE UNITED NATIONS CONVENTION ON LAW OF THE SEA (UNCLOS) OF 1982

### THE CONCEPT OF THE “MARITIME ZONE”

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Article 20 authorizes CCG to use coercive measures to stop foreign organizations and individuals from constructing buildings or structures and installing fixed or floating devices in China’s jurisdictional maritime area and islands.

Article 21 authorizes CCG to coercively evict or tow foreign warships and government ships used for non-commercial purposes from jurisdictional maritime area when those vessels violate Chinese law and cause serious danger or threats against China.

Article 22 authorizes CCG to take necessary measures to stop foreign organizations and individuals from infringing China’s sovereignty, sovereign rights and jurisdiction.
"Malaysian Maritime Zone" means the internal waters, territorial sea, continental shelf, exclusive economic zone and the Malaysian fisheries waters and includes the air space over the Zone.


(1) The Agency shall have powers to carry out the purposes mentioned in subsection 3(2) and to do all things reasonably necessary for or incidental to the performance of its functions under section 6.

(2) In particular, but without prejudice to the generality of subsection (1), the Agency shall have power-

(i) to expel any vessel which it has reason to believe to be detrimental to the interest of or to endanger the order and safety in the Malaysian Maritime Zone.

NB: = Potentially an excessive maritime claim.
Section 27 The protection of Maritime National Interests in general shall be conducted in compliance with the duties and powers of the State Agencies within the scope of laws which confer the rights and powers to such State Agencies.

In abnormal circumstances contributed to any incidents which impact or may impact the Maritime National Interests or Maritime Activities expansively or aggressively, in a case where the state of emergency under the law on Emergency Decree on Public Administration in Emergency Situation is announced, or in a case of necessity where the abnormal circumstance must be announced, the cabinet shall resolve to assign Thai-MECC to control and command the State Authorities as to supervise, oversee, prevent, suppress, terminate, withhold, manage, solve or mitigate the problems which impact or may impact the Maritime National Interests or Maritime Activities within a determined area and specified period. The prime minister, with approval of the cabinet, must announce the abnormal circumstance for the public knowledge. When the abnormal circumstance has ended, the prime minister must announce the revocation of abnormal circumstance and the mission in the abnormal circumstance of Thai-MECC shall end and shall be reported to the cabinet.
Section 30  In carrying out the mission under section 27, if it appears that an action has been committed or that there is a reasonable cause to suspect that the Vehicle or a person in it has committed an offence under the laws of Thailand, within the Maritime Zone, concerning the maritime national interests or other maritime activities whether there is another offence committed or not, the competent official shall have the duties to conduct the investigation and inquiry. In case the competent official conducts the inquiry, he/she shall have the same duties and power as the inquiry officer under the Criminal Procedure Code. The competent official within the respective Maritime Zone shall become the inquiry officer. Determination of area for investigation and designation of a responsible inquiry officer shall be as promulgated by the Director in the Government Gazette as well as empowerment to take action in so far as it is necessary as follows:
(1) To order a Vehicle to stop or take a compulsory measure in so far as necessary to stop such Vehicle as well as order and force a master of the Vehicle and the persons on board to take the Vehicle to any place.

(2) To order a person or a Vehicle that prevents, obstructs or hinders the performance of mission out of the designated area.

(3) To board a Vehicle to examine its documentation and the documentation of the persons on board.

(4) To search a suspected Vehicle and the persons on board, dismantle or remove the things on a Vehicle for the search without a search warrant.

(5) To detain the suspect and the Vehicle and the things to be used or having been used for a commission of offence or obtained from a commission of offence. If the search of Vehicle or inquiry shows a reasonable cause to suspect that an offence will be committed or has been committed, it is prohibited to detain the Vehicle, an operator of Vehicle or the person on board in excess of what necessary in the circumstances of the case.

(6) To tow a Vehicle or do other thing to take such Vehicle to the place which is convenient for the search, inquiry or prosecution.

The following part is omitted.
STANDARDS ON THE USE OF WEAPONS
The use of force must be avoided

If unavoidable, it must not go beyond what is reasonable and necessary

Consideration of humanity must apply

The use of force must be avoided

If unavoidable, it must not go beyond what is reasonable and necessary

Consideration of humanity must apply
Article 48: In one of the following circumstances, the staff of the CCG may use not only hand weapons, but also shipborne or airborne weapons:

- (1) Performing maritime anti-terrorism missions;
- (2) Dealing with serious incidents of violence at sea;
- (3) Law enforcement ships or aircraft are being attacked by weapons or other dangerous methods.

Article 49: If the staff of the CCG use weapons in accordance with the law, and they are too late to warn or may cause more serious harm after warning, they may use the weapons directly. [NB: Exception to the Prior Warnings]

Article 50: The staff of the CCG shall, based on the nature, degree and urgency of the illegal and criminal acts and the perpetrators of the crime, reasonably judge the necessary limits of the use of weapons, and try to avoid or reduce unnecessary casualties and property losses. [NB: No complimentary requirement and the humanity principle]

Article 51: The use of police equipment and weapons by the staff of CCG, which is not provided for in this law, shall be implemented in accordance with the provisions of the People’s Police on the use of police equipment and weapons and other relevant laws and regulations.
Article 14. Use of weapons, explosives and combat gears

1. When performing their duties, officers and soldiers of the Vietnam Coast Guard shall use military weapons, explosives, combat gears and firearms according to the provisions of the Law on Management and Use of Weapons, gases, explosives and supporting tools.

2. In addition to the cases of military shooting according to the provisions of the Law on Management, use of weapons, explosives and combat gears, when performing the task of combating crime and law violations, to ensure security, order and safety, Vietnam Coast Guard officers and soldiers are allowed to open fire on ships at sea, except for ships of diplomatic missions, foreign consular offices, and foreign consular offices, representatives of international organizations, ships carrying people or hostages, to stop ships, in one of the following cases:
   
   a) The subject operating the boat attacks or directly threatens the life of the official duty enforcer or other person;
   
   b) When it is clear that the vessel piloted by a fleeing offender;
   
   c) When it is clear that ships carrying criminals or illegally carrying weapons, explosives, reactionary documents, state secrets, drugs or national treasures;
   
   d) When a vessel is involved in an act of piracy or armed robbery in accordance with the provisions of international treaties to which the Socialist Republic of Vietnam is a contracting party, the provisions of the criminal law; deliberately run away.

3. In case of shooting as prescribed in Clause 2 of this Article, Vietnam Coast Guard officers and soldiers must warn by actions, orders, words or shoot in the air before opening fire on ships; must obey the orders of a competent person when performing an organized task.

NB: There seems to be no explicit provision on the reasonableness, complimentary and humanity requirements.