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13. SUPPLEMENTARY NOTES A paper submitted to the faculty of the NWC in partial satisfaction of the requirements of the curriculum. The contents of this paper reflect my own personal views and are not necessarily endorsed by the NWC or the Department of the Navy.					
14. ABSTRACT South China Sea (SCS) islands, reefs, and shoals have been a point of regional contention for over seven decades, and the sovereignty claims over the entirety of the SCS by the People's Republic of China (PRC) comes at the expense of the sovereignty of other nations. This paper argues the US should build partner capacity, strengthen alliances and demonstrate an enduring commitment to support regional solutions by establishing an ASEAN member-led Combined Task Force-Maritime Domain Awareness (CTF-MDA) tasked to employ information operations and "lawfare" to challenge the PRC in the SCS. This paper first proposes a framework for CTF-MDA. Next, the paper suggests CTF-MDA employ information operations to document and report on illegal, unreported, and unregulated (IUU) fishing, the negative environmental impacts from IUU fishing, and the environmental impacts of the PRC's militarization of the SCS. Finally, the paper recommends CTF-MDA develop a "lawfare" strategy that leverages the accepted authority and legitimacy of the United Nations (UN), bringing international attention to those (PRC) identified as violating the Law of the Sea. This paper concludes that CTF-MDA would provide a means to leverage competition mechanisms (ways) to challenge and compete with the PRC in the gray zone.					
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Slaying Dragons with One Thousand Cuts - Gray Zone Competition in the South China Sea

INTRODUCTION

The People's Republic of China (PRC) persistently claims sovereignty rights over the maritime features and resources within the "Nine-Dashed Line," which encompasses the South China Sea (SCS).¹ See Figure 1 at Appendix A. Attempts to deter PRC aggression and coercion in the SCS through US Freedom of Navigation Operations (FONOPS), Association of Southeast Asian Nations (ASEAN) regional conduct agreements, and diplomatic pressure following the 2016 Permanent Court of Arbitration decision in favor of the Republic of the Philippines have been unsuccessful. The Secretary of State's recent declaration that the PRC's maritime claims, along with its coercion campaign, across most of the SCS are unlawful is a shift in US policy.² This clear statement condemns PRC activities and presents an opportunity for the US and regional allies and partners to challenge the PRC in the SCS. The US needs to employ a comprehensive integrated regional strategy that strengthens allies, improves partner capacity, and directly challenges and de-legitimizes the PRC in the gray zone.³ Specifically, US Indo-Pacific Command (USINDOPACOM) should establish an ASEAN member-led⁴ Combined Task Force-Maritime Domain Awareness (CTF-MDA) tasked to employ information operations and

¹ US Office of the Secretary of Defense, *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2020* (Washington, DC: U.S. Department of Defense, 2020), 9, 99-100. <https://media.defense.gov/2020/Sep/01/2002488689/-1/-1/2020-DOD-CHINA-MILITARY-POWER-REPORT-FINAL.PDF>.

² US Secretary of State, Michael R. Pompeo, *U.S. Position on Maritime Claims in the South China Sea* (Washington, D.C.: U. S. Department of State, 13 Jul 2020), last accessed at <https://www.state.gov/u-s-position-on-maritime-claims-in-the-south-china-sea>.

³ Lyle J. Morris, Michael J. Mazarr, et al., *Gaining Competitive Advantage in the Gray Zone: Response Options for Coercive Aggression Below the Threshold of Major War*. Vol. no. 2942. Santa Monica, California: RAND Corporation (2019), iii; US Department of Defense, *Indo-Pacific Strategy Report: Preparedness, Partnerships, and Promoting Networked Region*, 1 Jun 2019, accessed 12 Oct 2020, <https://media.defense.gov/2019/Jul/01/2002152311/-1/-1/1/DEPARTMENT-OF-DEFENSE-INDO-PACIFIC-STRATEGY-REPORT-2019.PDF>.

⁴ NOTE: The author is not proposing for an ASEAN-led CTF-MDA, but one with a willing ASEAN member in charge (e.g., Indonesia).

“lawfare” to challenge and deter the PRC in the SCS. Through information operations, CTF-MDA could document and report on IUU fishing, the negative environmental impacts of IUU fishing, and the environmental impacts of the PRC’s militarization of the SCS. CTF-MDA would also use “lawfare” to leverage the accepted authority and legitimacy of the UN, bringing international attention to those (PRC) identified as violating the Law of the Sea. This proposed CTF aligns with US National Security Strategy and the USINDOPACOM Commander’s strategic goals.

THE OPERATIONAL ENVIRONMENT

SCS islands, reefs, and shoals, such as the Spratly Islands and Paracels, have been a point of regional contention for over seven decades.⁵ Stakeholders such as Malaysia, the Republic of the Philippines, Vietnam, Brunei, and the Republic of China (Taiwan) have territorial claims in the SCS, with the PRC claiming indisputable sovereignty and jurisdiction over the islands, relevant waters, seabed, and subsoil within the “nine-dashed line”⁶ See Figure 2 in Appendix A. The PRC is not the only country with excessive maritime claims within the SCS.⁷ Simply stated, the SCS dispute encompasses overlapping claims of jurisdiction and territorial disputes over features. In reality, the SCS presents a complex problem with tensions from competing claims serving as a potential flashpoint that could lead to international armed-conflict if not correctly managed.⁸

⁵ Office of the Secretary of Defense, *Annual Report to Congress: Military and Security Developments Involving the PRC 2020*, 9.

⁶ Ibid.

⁷ See US Department of State, Office of Ocean and Polar Affairs, *Limits of the Seas*, available at <https://www.state.gov/limits-in-the-seas/>.

⁸ Dong Manh Nguyen, "Settlement of Disputes Under the 1982 United Nations Convention on the Law of the Sea: The Case of the South China Sea Dispute," *University of Queensland Law Journal* 25, no. 1 (2006): 145-180, 146.

The PRC uses a progression of incremental actions in the gray zone between peaceful relations and overt hostilities, while remaining below the threshold of armed conflict, to secure its end state.⁹ These gray-zone activities of political warfare include a coordinated use of multiple tools that include information operations, military intimidation, subversion, legal and diplomatic measures, and paramilitary activities.¹⁰ As part of its coordinated and systematic strategy to exercise control, the PRC has also installed weapons systems and infrastructure in the SCS as part of its island-building strategy.¹¹ Since adopting the "Three Warfares" concept as part of its gray-zone campaign, the PRC has skillfully used the non-kinetic tools of psychological warfare, media warfare, and legal warfare to support its strategic ends.¹² The PRC is playing a strategic long game as it seeks to change the world order and establish new norms related to the Law of the Sea. CTF-MDA would demonstrate a long-term commitment to allies and partners while also developing an information operations and "lawfare" capability that directly counters and challenges the PRC's strategy in the SCS.

POLICY AND STRATEGIC GUIDANCE

The National Defense Strategy and National Military Strategy require integration across multiple elements of national power, and a joint force that can integrate joint capabilities in all

⁹ Department of Defense, *Indo-Pacific Strategy Report*, 8.

¹⁰ Ibid.; Morris, Mazarr, et al., *Gaining Competitive Advantage in the Gray Zone*, 30-38.

¹¹ Peter Apps, "Commentary: How Beijing is Winning in the South China Sea," Reuters, 28 Mar 2018, <https://www.reuters.com/article/us-apps-china-commentary/commentary-how-beijing-is-winning-in-the-south-china-sea-idUSKBN1H42JY>.

¹² Orde E. Kittrie, "The Chinese Government Adopts and Implements a Lawfare Strategy." In *Lawfare: Law as a Weapon of War*, edited by Orde F. Kittrie, New York: Oxford University Press (2016) 161-195, 162 (PRC doctrine defined the "Three Warfares" as: "1) Psychological Warfare: the use of propaganda, deception, threats, and coercion to affect the enemy's ability to understand and make decisions; 2) Media Warfare: the dissemination of information to influence public opinion and gain support from domestic and international audiences for China's military actions; and 3) Legal Warfare: the use of international and domestic laws to gain international support and manage possible political repercussions of China's military actions").

domains.¹³ Through partnership, presence, and military readiness, “USINDOPACOM is committed to enhancing stability in the Asia-Pacific region by promoting security cooperation, encouraging peaceful development, responding to contingencies, deterring aggression, and, when necessary, fighting to win.”¹⁴ However, to date, US responses to the PRC’s asserted dominance in the SCS have been limited to FONOPS and partner engagements that have fallen short of having any deterrent effect on PRC expansionism.¹⁵ CTF-MDA would fill this gap with two overarching objectives. First, CTF-MDA will “improve the resiliency of our institutions, alliances, and partnerships to prevail against the challenges” presented by the PRC.¹⁶ Second, CTF-MDA’s use of information operations and “lawfare” will “compel Beijing to cease or reduce actions harmful to the United States’ vital, national interests and those of our allies and partners.”¹⁷

COMBINED TASK FORCE-MARITIME DOMAIN AWARENESS (CTF-MDA)

Since increased naval operations have been ineffective at changing the PRC’s behavior, the US needs to think of creative ways to use existing authorities and capabilities to compete and challenge the PRC in the gray zone.¹⁸ The US must support regional partners and organizations

¹³ US Office of the Secretary of Defense, *Summary of the 2018 National Defense Strategy of the United States of America, Sharpening the American Military’s Competitive Edge* (Washington, DC), 4; U.S. Office of the Chairman of the Joint Chiefs of Staff, *Unclassified Description of the National Military Strategy 2018*, Washington D.C.: CJCS, 2018, 2.

¹⁴ U.S. Indo-Pacific Command Official Web Page, *About USINDOPACOM, USPACOM Area of Responsibility*, last accessed 5 Oct 2020, <https://www.pacom.mil/About-USINDOPACOM/USPACOM-Area-of-Responsibility/>.

¹⁵ Apps, “Commentary: How Beijing is Winning in the South China Sea,” Oriana Skylar Mastro, *Military Confrontation in the South China Sea*, Council on Foreign Relations, 2020, available at <https://www.cfr.org/report/military-confrontation-south-china-sea>; Andrew Scobell, “The South China Sea and U.S.-China Rivalry,” *Political Science Quarterly* 133, no. 2 (2018): 199-224, 201 & 219; See also House, *Seapower and Projection Forces in the South China Sea: Hearings before the Subcommittee on Seapower and Projection Forces of the Committee on Armed Services*, 114th Cong., 2nd sess., 2016.

¹⁶ President of the United States, “United States Strategic Approach to the People’s Republic of China,” accessed 5 October 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/05/U.S.-Strategic-Approach-to-The-Peoples-Republic-of-China-Report-5.20.20>.

¹⁷ Ibid.

¹⁸ Scobell, “The South China Sea and U.S.-China Rivalry,” 201. Louis Martin McCray and Naval War College (U.S.), *Illegal Fishing in the South China Sea: Why a US-Indonesia Partnership on Illegal, Unreported, and*

and inspire them to develop capabilities to subdue the PRC's illicit activities in the SCS without escalation to armed conflict.¹⁹ To achieve this pinnacle of skill, USINDOPACOM should establish an ASEAN member-led CTF-MDA in cooperation with Australia, Japan, and India (QUAD).

There are two types of authorities required to establish CTF-MDA: fiscal authority and operational authority. Section 1263 of the FY16 National Defense Authorization Act (NDAA) established the INDOPACOM Maritime Security Initiative (MSI), which permits assistance and training for Indonesia, Malaysia, Philippines, Thailand, Vietnam, Sri Lanka, and Bangladesh.²⁰ Additionally, there is a provision that allows incremental expenses for personnel from Taiwan, Singapore, and Brunei to participate in training.²¹ The Under Secretary of State for Arms Control and International Security has delegated authority, as authorized by law, to concur with the Secretary of Defense's use of the Southeast Asia MSI initiative authority under Section 1263 of the FY 2016 NDAA.²² Additionally, the US has already transferred decommissioned US Coast Guard cutters to Vietnam, the Philippines, Bangladesh, and Sri Lanka as part of the Excess Defense Articles (EDA) Program.²³ Finally, 10 U.S.C. 164 gives the Commander,

Unregulated Fishing Complicates Matters for China, Newport, RI: NWC, 2019, 8, citing James Holmes and Toshi Yoshira, "Five Shades of Chinese Gray-Zone Strategy," *The National Interest* (2 May, 2017), accessed 2 Oct, 2020, <https://nationalinterest.org/feature/five-shades-chinese-gray-zone-strategy-20450>.

¹⁹ Sun Tzu, *The Art of War*, translated by Samuel B. Griffith. Oxford: Oxford University Press, 1980, 77 ("To subdue the enemy without fighting is the acme of skill").

²⁰ Defense Security Cooperation Agency, Programs, *INDO-PACOM Maritime Security Initiative (MSI)*, accessed 5 Oct 2020, <https://www.dsca.mil/programs/section-1263-indo-pacific-maritime-security-initiative-msi>.

²¹ Ibid.

²² U.S. Department of State, "Delegation of Authority to the Under Secretary of State for Arms Control and International Security to Concur with the use of the Southeast Asia Maritime Security Initiative Authority," *Federal Register*, 83, no.179 (14 Sep 2018): 46772.

²³ Amy E. Searight, "Testimony," *U.S. Coast Guard cooperation with Southeast Asia: Maritime Challenges and Strategic Opportunities: Hearing on The International Role of the U.S. Coast Guard before the Subcommittee on Coast Guard and Maritime Transportation of the Committee on Transportation and Infrastructure*, 116th Cong., 2nd sess., 10 March 2020, 4; U.S. Department of Defense, *The Asia-Pacific Maritime Security Strategy: Achieving U.S. National Security Objectives in a Changing Environment*, 2015, accessed 5 Oct 2020, https://dod.defense.gov/Portals/1/Documents/pubs/NDAA%20A-P_Maritime_Security_Strategy-08142015-1300-FINALFORMAT.PDF, 11; Wyatt Olson, "US to Give Vietnam another Coast Guard Cutter Amid Rising Tensions in South China Sea," *Stars and Stripes*, 20 Nov 2019, accessed 30 Sep 2020, <https://www.stripes.com/news/pacific/us-to-give-vietnam-another-coast-guard-cutter-amid-rising-tensions-in-south-china-sea-1.608059>.

USINDOPACOM the authorities needed to employ allocated and assigned forces to carry out assigned missions.²⁴ MSI, the EDA program, and 10 U.S.C. 164 provide the fiscal and operational authority to establish CTF-MDA.

With legal authority established, USINDOPACOM should next look to Australia's Pacific Maritime Security Program (PMSP) as an existing successful framework with Pacific Island Nations (PIN) in Oceania. PMSP is a \$2 billion Australian dollar commitment over the next 30 years, consisting of three components: Pacific patrol boat replacement, integrated regional aerial surveillance, and efforts to strengthen regional coordination.²⁵ The transferred vessels come with a package deal that includes long-term Australian sustainment, training, infrastructure, and advisory support.²⁶ In March 2020 Australia transferred a Guardian-class patrol boat to Fiji as part of a shared commitment to support strategic security, economic stability, and political sovereignty in the region.²⁷ The PMSP is a proven program that enhances PIN capabilities to patrol and protect their exclusive economic zones (EEZs), support humanitarian assistance and disaster relief, and combat illegal activities in their maritime domains.²⁸ The PMSP framework should be replicated for the proposed CTF-MDA.

To support the framework of CTF-MDA, the US should also dedicate funding from the USINDOPACOM MSI to facilitate participation and ensure long-term commitments in maintenance and training on gifted capabilities, such as cutters, drones, surveillance, radar, and support to MDA centers.²⁹ The US should also tie ships transferred as part of the EDA program

²⁴ 10 U.S.C.S. § 164, *Commanders of Combatant Commands: Assignment; Powers and Duties*, (LexisNexis, Lexis Advance through Public Law 116-158, approved 14 Aug 2020) Commanders of Combatant Commands: Assignment; Powers and Duties.

²⁵ Australian Department of Defence, "Pacific Maritime Security Program," Annual Report 2017-2018, accessed 2 Oct 2020, <https://www.defence.gov.au/annualreports/17-18/Features/Maritime.asp>.

²⁶ Ibid.

²⁷ Australia Department of Defence, "Australia: Australia and Fiji Strengthen Pacific Maritime Security," accessed 5 Oct 2020, <https://www.minister.defence.gov.au/minister/lreynolds/media-releases/australia-and-fiji-strengthen-pacific-maritime-security>.

²⁸ Ibid.

²⁹ John Coyne, *Mice that Roar: Patrol and Coastal Combatants in ASEAN*, Barton: Newstex (2018), 29-30.

to a requirement to participate in CTF-MDA. To incentivize “required” CTF-MDA participation, EDA transfers would include robust long-term sustainment support, training, and advisory support as part of the PMSP-like framework for CTF-MDA. The investment of cutters, sustainment support, and the training to operate them would be an investment in the USINDOPACOM Commander’s priorities and would support national strategy. With the legal and organizational framework established, CTF-MDA then needs to establish legitimacy for its operations.

As a starting point, the ASEAN Code of Conduct,³⁰ ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain,³¹ and the Asian Environmental Compliance and Enforcement Network (AECEN)³² should be used to establish the legal framework to legitimize CTF-MDA operations. In order to maximize the effectiveness of the CTF-MDA, the training structure should include a variety of experts with a focus on members from AECEN, the ASEAN Wildlife Enforcement Network (ASEAN-WEN), the US Environmental Protection Agency, US Fish & Wildlife Service’s Office of Law Enforcement, in addition to coast guard experts in law enforcement from the US as well as allied and partner nations. These agencies have the expertise needed to provide CTF-MDA with direction on collection of information and evidence to support successful information operations and “lawfare.” Additionally, environmental members of AECEN countries should participate in

³⁰ Association of South Asian Nations (ASEAN), *Association of South Asian Nations: Declaration on the Conduct of Parties in the South China Sea*, 4 Nov 2002, http://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-3&category_id=32.

³¹ ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain, Endorsed by the SSOM-36th AMAF, Revision 24 Aug 2015 <https://www.asean.org/wp-content/uploads/images/2015/November/AMAF/App%209%20-%20ASEAN%20Guidelines%20IUU%20SSOM36th%20AMAF%20final.pdf>.

³² United Nations, Sustainable Development Goals Knowledge Platform, <https://sustainabledevelopment.un.org/index.php?page=view&type=99&nr=270&menu=1449> (In 2005, environmental agency leaders from Cambodia, India, Indonesia, Japan, Korea, the PRC, Laos PDR, Malaysia, the Maldives, Nepal, Pakistan, Philippines, Singapore, Sri Lanka, Thailand, and Vietnam established the Asian Environmental Compliance and Enforcement Network (AECEN) to promote improved compliance with environmental legal requirements in Asia).

CTF-MDA exchanges to promote compliance with environmental legal requirements in the SCS.³³ With this basic framework and support from regional and QUAD maritime forces, CTF-MDA would have the tools for success in place.

Since longstanding territorial disputes among allies and partners in the SCS weaken the ability to deal with PRC illicit activities directly,³⁴ CTF-MDA must take an indirect approach to achieve consensus and regional support. CTF-MDA should initially focus on documenting and reporting IUU fishing and the destructive impacts of PRC's activities to the environment. That information should then be transmitted far and wide in support of a synchronized information operations and "lawfare" campaign. The information operations and "lawfare" campaign, both discussed later, will enable security and facilitate free and open access while dissuading illicit and aggressive activities of actors.³⁵ CTF-MDA presents an opportunity to build partner capacity, strengthen alliances and partnerships, create conditions for free and open access in the SCS, weaken the PRC's position, deter acts of aggression and coercion, and provide a shared understanding that encourages cooperation and mutual benefit for all.³⁶ An ASEAN member-led CTF-MDA could play a critical role in deterring PRC's illicit activities in the SCS. See Figure 3 in Appendix A. CTF-MDA would provide the means (capabilities) to leverage competition mechanisms (ways) in the gray zone to address strategic ends while minimizing risk.³⁷

³³ Ibid.

³⁴ Ely Ratner, Daniel Kliman, Susanna V. Blume, Rush Doshi, Chris Dougherty, Richard Fontaine, Peter Harrell, et al. "Rising to the China Challenge," *Center for a New American Security Reports* (2020), 1-64, 36.

³⁵ U. S. Office of the Chairman of the Joint Chiefs of Staff, *Joint Concept for Integrated Campaigning*, Washington D.C., 16 Mar 2018, v.

³⁶ Ibid., 15-16.

³⁷ Ibid. (Example competition mechanisms: strengthen, create, preserve, weaken, position, inform, and persuade).

INFORMATION OPERATIONS

Information Operations are defined as the integrated employment of Information Related Capabilities (IRC) in synchronization “with other lines of operation to influence, disrupt, corrupt, or usurp the decision-making of adversaries and potential adversaries while protecting our own.”³⁸ The PRC and its proxies have developed stratagems to control the narrative in a rapidly changing information environment (IE).³⁹ The PRC’s use of information operations to support such activities as building infrastructure on artificial islands and harassing and intimidating fishing boats and maritime enforcement vessels of other states are examples of its gray-zone strategy.⁴⁰ The US has not kept pace with this challenging aspect of the IE, giving actors, such as the PRC, the advantage in advancing its interests by seizing the initiative, undermining the rule of law, complicating decision making, inhibiting responses, and increasing uncertainty and friction in the region.⁴¹ As a multilateral partnership executing information operations, CTF-MDA supports Department of Defense strategy by gaining an advantage in the gray-zone competition with the PRC.

The July 2016 ruling by the UN’s Permanent Court of Arbitration (PCA) against the PRC presented an unrealized information operations opportunity, especially related to strengthening the connection between the PRC, IUU fishing, and negative environmental impacts from illicit activities.⁴² While the territorial disputes addressed in the ruling are contentious matters, the PCA ruling also found the PRC guilty of devastating and long-lasting damage to the marine environment through its island-building activities and IUU fishing and harvesting of endangered

³⁸ U. S. Office of the Chairman of the Joint Chiefs of Staff, *Information Operations*, Joint Publication (JP) 3-13, Washington D.C., 27 Nov 2012 (As amended through 20 Nov 2014), ix.

³⁹ U. S. Office of the Secretary of Defense, *Department of Defense Strategy for Operations in the Information Environment*, Washington, DC: June 2016, 2.

⁴⁰ Scobell, "The South China Sea and U.S.-China Rivalry," 201.

⁴¹ OSD, *Department of Defense Strategy for Operations in the Information Environment*, 4.

⁴² McCray, *Illegal Fishing in the South China Sea*, 9.

species, such as sea turtles.⁴³ The findings related to environmental harm provide a framework for a robust strategic narrative that 1) links PRC activities to IUU and the link with human-rights abuses and transnational crime, and 2) sheds light on the negative environmental impacts of the PRC's IUU activities and island-building strategy.⁴⁴ This strategic narrative, which originates from the PCA ruling, can be leveraged by CTF-MDA as it observes and collects information to be sent to a CTF-MDA fusion center for coordination and synchronization of distribution activities.⁴⁵ CTF-MDA will distribute information via unclassified video, social media, internet, news sources, regional environmental organizations, etc. Researchers embarked with CTF-MDA could further explore and report on the rapid loss of coral reefs as a result of PRC dredging and filling operations for its island-building.⁴⁶ Experts from around the world could raise concerns over the potential damage to surrounding ecosystems and associated fisheries.⁴⁷ Likewise, these experts could report and message the environmental impact of IUU fishing. Such reports would be problematic for the PRC and disrupt their actions and decision-making in the SCS.⁴⁸

Beyond the PCA ruling, there are many additional activities CTF-MDA could observe and report to challenge the PRC in this area. For example, IUU is estimated to be a \$36.4 billion per year criminal enterprise.⁴⁹ The SCS is plagued with physical disruption of native vegetation

⁴³ Renato Cruz De Castro, "The 12 Jul 2016 Permanent Court of Arbitration's (PCA) Award: The Philippines' Lawfare Versus China's Realpolitik in the South China Sea Dispute," *International Journal of China Studies* 8, no. 3 (2017): 347-372, 359; South China Sea Arbitration, *Government of the Philippines v. People's Republic of China*, Award, PCA Case No 2013-19, (PCA 2016), 12 Jul 2016, Permanent Court of Arbitration, 382 & 396 ("Based on the compelling evidence, expert reports, and critical assessment of Chinese claims described above, the Tribunal has no doubt that China's artificial island-building activities on the seven reefs in the Spratly Islands have caused devastating and long-lasting damage to the marine environment").

⁴⁴ McCray, *Illegal Fishing in the South China Sea*, 9.

⁴⁵ OSD, *Department of Defense Strategy for Operations in the Information Environment*, 6.

⁴⁶ John W. McManus "Offshore Coral Reef Damage, Overfishing, and Paths to Peace in the South China Sea," *The International Journal of Marine and Coastal Law* 32, no. 2 (2017): 199-237, 200 & 220.

⁴⁷ Ibid.

⁴⁸ McCray, *Illegal Fishing in the South China Sea*, 12.

⁴⁹ World Wildlife Fund, "Overfishing," accessed 2 Oct 2020, <https://www.worldwildlife.org/threats/overfishing> ("These illegal catches move through opaque supply chains due to a lack of systems to track fish from catch to consumer—something called traceability—and import controls in much of the sector").

and wildlife, commercial exploitation of natural resources, and environmental pollution.⁵⁰

Furthermore, PRC gray-zone activities include using coast guard and maritime militia vessels to deter or, in some cases, aggressively deny free and lawful access to resources in the SCS.⁵¹

Examples of such actions date back to March 2014 when a PRC coast guard cutter intercepted and blocked two Filipino vessels trying to deliver resupply to their shoal.⁵² Several countries in Southeast Asia, including the Philippines, Indonesia, Malaysia, and Vietnam, endure constant harassment and intimidation with the PRC maritime militia, an allegedly passive “agency,” acting as aggressors to deny access to resources within their exclusive economic zones (EEZs).⁵³

PRC paramilitary tactics involve ramming, shouldering, using water cannons, and boarding fishing boats.⁵⁴ With video cameras attached to ships, drones, and other surveillance support, CTF-MDA would be able to observe and record illicit activities, to include the PRC’s paramilitary harassment and intimidation. This information would then be reported globally via social media and news agencies. CTF-MDA presence would increase unclassified maritime domain awareness capabilities in the SCS, increase INDOPACOM’s ability to use information operations against PRC activities there, and ultimately improve regional stability and security.⁵⁵

⁵⁰ World Wildlife Fund, “South China Sea, between the Philippines, Borneo, Vietnam, and China,” accessed 2 Oct 2020, <https://www.worldwildlife.org/ecoregions/im0148> (“Both the green turtle (*Chelonia mydas*) and the hawksbill turtle once inhabited these islands in large numbers, but they have since been subjected to heavy commercial exploitation”).

⁵¹ Morris, et al., *Gaining Competitive Advantage in the Gray Zone*, 92; Searight, “Testimony,” *U.S. Coast Guard cooperation with Southeast Asia*, 2; Stevie R. Greenway and Corey J Sipes, “Maritime Domain Awareness in the South China Sea: An Operational Picture Design,” Naval Post Graduate School (2018), 6.

⁵² Scobell, “The South China Sea and U.S.-China Rivalry,” 200, citing Michael Green, Kathleen Hicks, Zack Cooper, John Shaus, and Jake Douglas, “Counter-Coercion Series: Second Thomas Shoal Incident,” Asia Maritime Transparency Initiative, *Center for Strategic and International Studies*, 9 Jun 2017, accessed 2 Oct 2020 at <https://amti.csis.org/counter-co-2nd-thomas-shoal/>.

⁵³ Morris, et al., *Gaining Competitive Advantage in the Gray Zone*, 107-108 & 115; Greenway and Sipes, “Maritime Domain Awareness in the South China Sea,” 6 (The PRC has taken to using its maritime militia, a supposedly passive “agency,” as aggressors to harass and intimidate other nation’s fishermen).

⁵⁴ Morris, et al., *Gaining Competitive Advantage in the Gray Zone*, 107.

⁵⁵ Greenway and Sipes, “Maritime Domain Awareness in the South China Sea,” 1.

“LAWFARE”

As part of its “Three Warfares,” PRC legal warfare includes “activities conducted by using the law as the weapon and through measures and methods such as legal deterrence, legal attack, legal counterattack, legal restraint, legal sanctions, and legal protections.”⁵⁶ As far back as 2008 US State Department officials from the International Security Advisory Board noted the PRC’s “Three Warfares” and the importance of a US understanding and response to the PRC’s comprehensive approach to strategic rivalry below the threshold of armed conflict.⁵⁷ The PRC’s strategic goal is to either change customary international law over time or force neighbors to acquiesce to its claims.⁵⁸ This is what Major General (Ret) Charles J. Dunlap, Jr. referred to as a strategy of using or misusing the law in place of traditional military means to achieve a warfighting objective.⁵⁹ As a concept, “lawfare” should not be confused and simply applied to a glorified information operations campaign.⁶⁰ Therefore, “lawfare” should not be viewed as a mere component of information operations that attempts to provide damaging information on adversaries through the media.⁶¹ CTF-MDA should include legal experts who can assimilate information gathered by law enforcement and environmental participants and use that information in various legal forums to deter the PRC’s activities in the SCS.

Although the PRC refused to acknowledge the arbitration court’s jurisdiction, PRC violations of international law should be highlighted to de-legitimize these activities and indirectly challenge the PRC’s excessive sovereignty claims. IUU fishing is the source of “huge

⁵⁶ Kitting, “The Chinese Government Adopts and Implements a Lawfare Strategy,” 162, citing PLA PLA’s published text “Under Informatized Conditions: Legal Warfare.”

⁵⁷ *Ibid.*, 163.

⁵⁸ *Ibid.*, 167.

⁵⁹ Major General (Ret) Charles J. Dunlap, Jr. “Lawfare Today . . . and Tomorrow,” in *International Law and the Changing Character of War* 87, Naval War College (2011), 315.

⁶⁰ Gregory P. Noone, “Lawfare Or Strategic Communications?” *Case W. Res. J. Int’l L.* 43, no. 1-2 (2010): 73-85, 79, citing Charles J. Dunlap, Jr., “Lawfare: A Decisive Element of 21st -Century Conflicts?” 54 *Joint Force Quarterly* 34, 36 (2009).

⁶¹ Noone, “Lawfare Or Strategic Communications?” at 83.

economic losses” for Southeast Asia and “contributes to depleting fish stocks and declining biodiversity.”⁶² As part of a “lawfare” strategy, the US should support linking PRC activities to the criminality that comes with IUU fishing and negative environmental impacts. For example, the US could support imposing sanctions or propose UN Security Council measures designating IUU as a transnational crime.⁶³ Such a measure would force the PRC to choose between 1) voting for the measure forcing a change in course and drawing attention to its illegal activities, or 2) vetoing or abstaining and indicating tacit support for criminal activity.⁶⁴ The 1976 Treaty of Amity and Cooperation, to which all ASEAN countries, as well as dialogue partners, are a party, also provides a mechanism of recourse through the “modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations.”⁶⁵ The means listed in Article 33(1) include “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” Information and evidence collected by CTF-MDA would also provide the bases for getting cases to the International Court of Justice (ICJ) and UN specialized tribunals, such as the International Tribunal for the Law of the Sea (ITLOS).⁶⁶ CTF-MDA would play a critical role to enable the use of the law to compel the PRC “to cease or reduce that harmful to the United States' vital national interests and those of our allies and partners.”⁶⁷

⁶² Searight, “Testimony,” *U.S. Coast Guard cooperation with Southeast Asia*, 3.

⁶³ McCray, *Illegal Fishing in the South China Sea*, 10.

⁶⁴ Ibid.

⁶⁵ ASEAN, Treaty of Amity and Cooperation in Southeast Asia Indonesia, 24 Feb 1976, <https://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/>.

⁶⁶ Nguyen, “Settlement of Disputes Under the 1982 United Nations Convention on the Law of the Sea,” 165.

⁶⁷ President of the United States, “United States Strategic Approach to the People’s Republic of China,” 1.

COUNTERARGUMENTS

Potential counterarguments are that intra-ASEAN participation in CTF-MDA is unlikely and that the PRC is not the only country participating in illegal activities in the SCS. First, one could argue that ASEAN and its members are ill-suited to lead this effort, as evidenced by the inability to come to an agreed upon code of conduct for almost two decades. Additionally, estimates are that one in five fish caught around the world originate from IUU fishing.⁶⁸ “93% of the world’s major marine fish stocks are classified as fully exploited, overexploited, or significantly depleted.”⁶⁹ Thus, it is impossible to argue or conclude that the PRC is not the only country in the SCS participating in IUU fishing. As such, the argument would be that an ASEAN member-led CTF-MDA is unlikely because of disunity within ASEAN and its own members’ involvement in IUU fishing.

To counter the argument that intra-ASEAN participation in CTF-MDA is unlikely or that they are ill-suited to lead this effort, ASEAN States, as well as Japan, have used maritime law enforcement as a common ground for coast guard cooperation in the past.⁷⁰ Despite disunity within ASEAN, there are plenty examples of successful intra-ASEAN member participation in cooperative activities. For example, the Malacca Strait patrols with Singapore, Malaysia, and Thailand serves as a success story for coast guard cooperation.⁷¹ Another good example of intra-ASEAN cooperation is the sea-air trilateral agreement in Sulu and Celebes seas with Indonesia, Malaysia, the Philippines, and other ASEAN member states with observer status.⁷² The initial limited scope of CTF-MDA and historical examples of cooperation should limit controversy and

⁶⁸ US Coast Guard, *Illegal, Unreported, and Unregulated Fishing Strategic Outlook*, September 2020, Washington, D.C., 3, accessed 17 October 2020, https://www.uscg.mil/Portals/0/Images/iuu/IUU_Strategic_Outlook_2020_FINAL.pdf.

⁶⁹ Ibid., citing Food and Agriculture Organization of the United Nations, (2020), *The State of World Fisheries and Aquaculture*, Rome, doi:10.4060/ca9229en.

⁷⁰ Coyne, *Mice that Roar*, 11.

⁷¹ Ibid., 29.

⁷² Ibid.

encourage ASEAN member participation for the effort. In Southeast Asia most states welcome US support, and CTF-MDA would provide a consistent and coherent structure that demonstrates an enduring commitment to support regional solutions.⁷³

While the PRC may not be the only country participating in illegal activities, PRC coast guard or PRC maritime militias have been involved in 71% of the 45 major SCS incidents between 2010 and 2016.⁷⁴ CTF-MDA will not have an explicitly stated goal to deter or influence the PRC, but will observe and report all IUU fishing, wildlife trafficking, and negative environmental impacts from illicit activity in violation of the Law of the Sea. The goal will be an ASEAN goal of enabling security and facilitating free and open access to all. By encouraging all actors to comply with the law, the PRC would once again be placed in a difficult position if it counters CTF-MDA and its goals of supporting equality and mutual respect for all parties in the SCS. This will, of course, require all participating nations to enforce laws and regulations even if it is against one of their own vessels, but that is no different than what the US Coast Guard does as part of its law enforcement duties.

CONCLUSION

USINDOPACOM should establish an ASEAN member-led CTF-MDA tasked to employ information operations and “lawfare” to challenge and deter the PRC in the SCS. By focusing on the transfer of cutters to countries willing to participate in CTF-MDA, the US can ensure long-term sustainment support, training, and advisory support is worth the investment. Operations focused on observing, collecting, and reporting IUU fishing and negative environmental impacts of illicit activities should not be overly controversial. Once initial

⁷³ Ratner, et al. "Rising to the China Challenge," 34.

⁷⁴ Coyne, *Mice that Roar*, 4, citing China Power Team, “Are Maritime Law Enforcement Forces Destabilizing Asia?” *ChinaPower*, Center for Strategic and International Studies, 18 Aug 2016, updated 31 May 2018.

operational capability is established with information operations and “lawfare,” CTF-MDA operations should later be expanded to address combating other areas of transnational crime, such as human trafficking, drug trafficking, piracy and armed robbery at sea, and illegal traffic in arms. CTF-MDA will use the law (“lawfare”) by leveraging the accepted authority and legitimacy of the UN, bringing international attention to those (PRC) identified as violating the Law of the Sea. CTF-MDA also presents an opportunity to implement USINDOPACOM plans for a “Mission Partner Environment” with “assured command, control, and communications (C3)” and fusion centers that support maritime domain awareness.⁷⁵ CTF-MDA supports a comprehensive integrated regional strategy that strengthens allies, improves partner capacity, and directly challenges and de-legitimizes PRC activities in the SCS. Finally, CTF-MDA aligns military and non-military activities and employs competition mechanisms to overcome the complex challenges in the SCS in order to achieve sustainable political objectives.⁷⁶ Information operations and “lawfare” employed by CTF-MDA could be the source of one thousand cuts that ultimately challenge and deter PRC aggression in the SCS.

⁷⁵ Commander USINDOPACOM, Executive Summary of NDAA 2020 Section 1253 Assessment to Congress, “Regain the Advantage” – USINDOPACOM Investment Plan (FY 22-26).

⁷⁶ CJCS, *Joint Concept for Integrated Campaigning*, 4-5.

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APPENDIX A

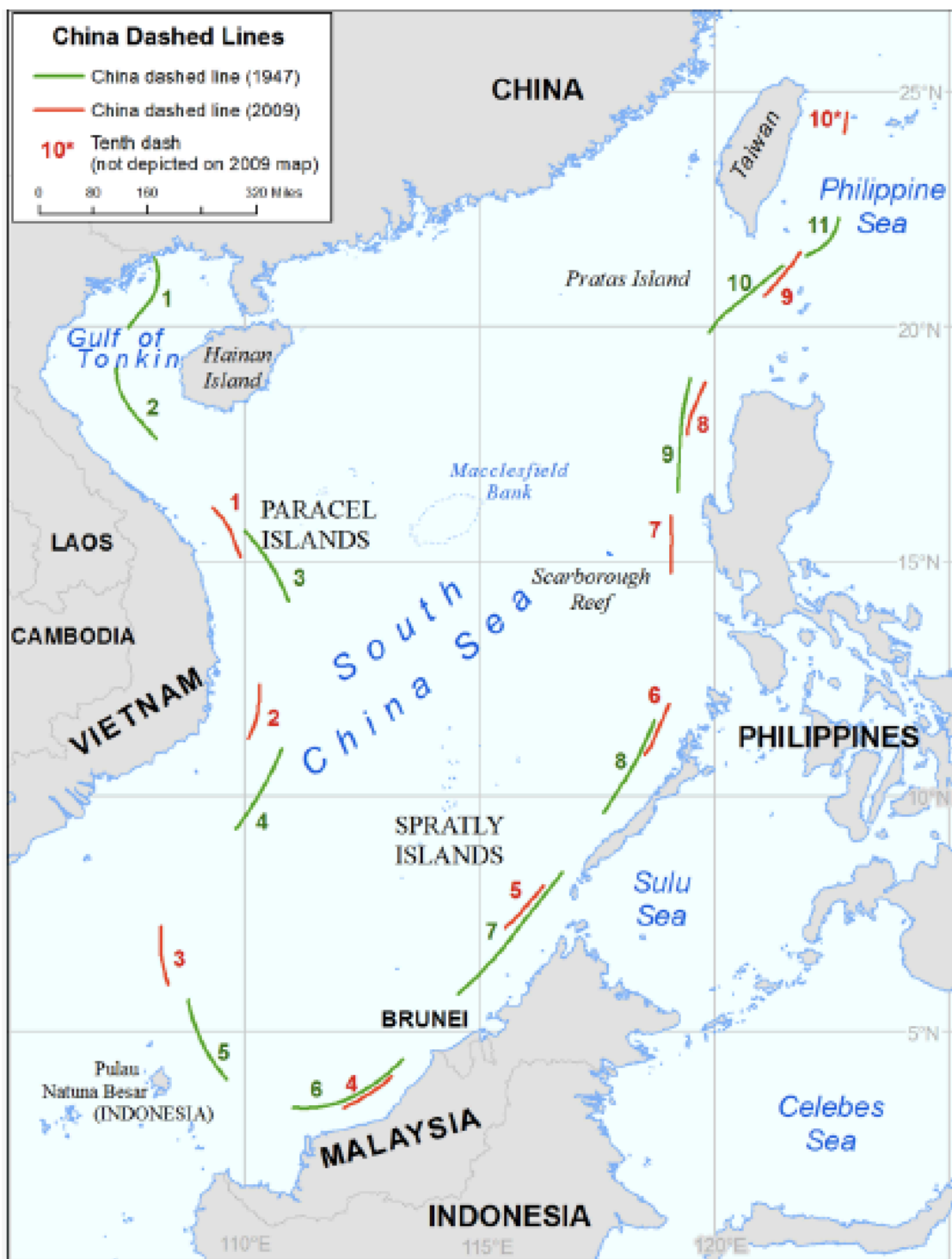


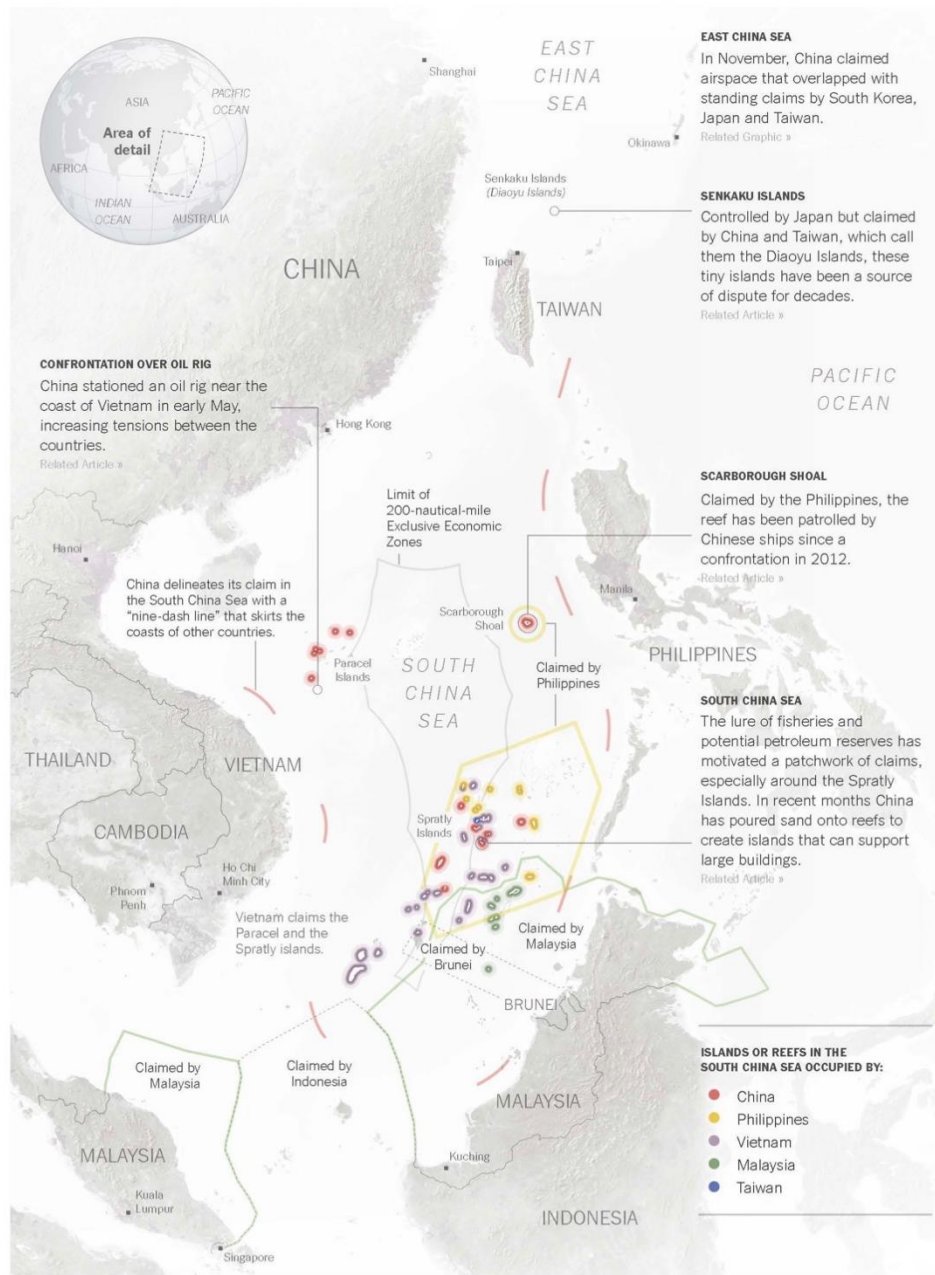
Figure 1. Department of State Comparison of Nine-Dashed Line in 2009 and 1947 Maps⁷⁷

⁷⁷ United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas, No. 143 China: Maritime Claims in the South China Sea*, Washington D.C. 5 Dec 2014, 6

Territorial Disputes in the Waters Near China

By DEREK WATKINS MAY 8, 2014

In recent years China has increased its pursuit of territorial claims in the East China and South China seas, leading to tense exchanges with neighboring countries. A look at some of the most notable disputes.



Sources: C.I.A., NASA, China Maritime Safety Administration

Figure 2. Territorial Disputes in the Waters Near China⁷⁸

⁷⁸ Derek Watkins, "Territorial Disputes in the Waters near China," *New York Times*, 8 May 2014, accessed 4 Oct 2020, https://www.nytimes.com/interactive/2014/02/25/world/asia/claims-south-china-sea.html?_r=0

PROPOSED ORGANIZATIONAL STRUCTURE OF CTF-MDA PACIFIC

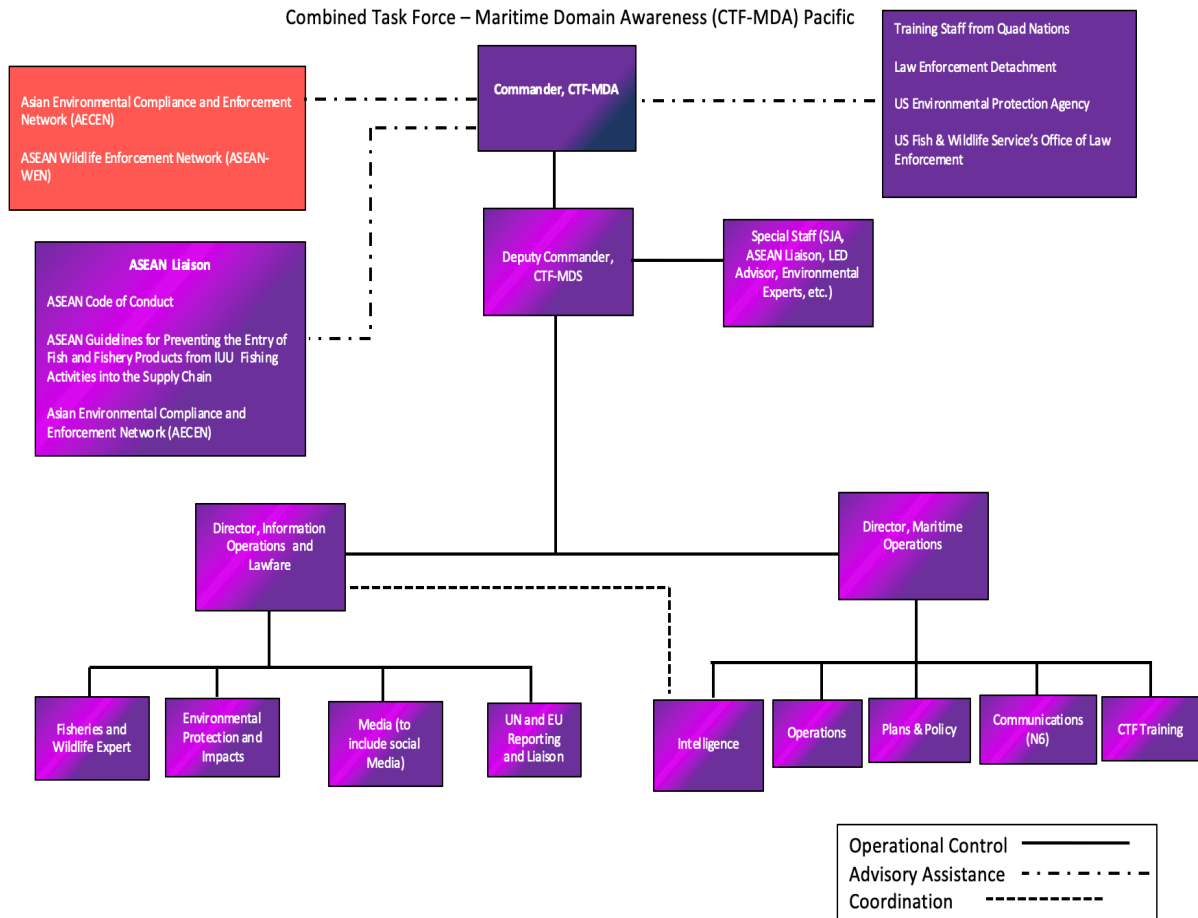


Figure 3. Proposed Organizational Structure of CTF-MDA Pacific