

# Study on the Use of Force Measures in Maritime Law Enforcement by China Coast Guard\*

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In recent years, China's fishing boats have been repeatedly attacked by the armed forces of other countries' maritime law enforcement forces. Whether the use of these armed measures conforms to the provisions of international law deserves our deep thinking. Since the establishment of China Coast Guard Bureau, as the main force of maritime law enforcement, according to the relevant provisions of domestic law and international law, it is possible to use force measures reasonably when it is necessary. However, the current regulations on the use of maritime enforcement of force measures in China are still not perfect and still need to be further clear in the law.

*Keywords:* maritime law enforcement, force measures, legal restrictions

In recent years, it has been common for countries to use force measures against ships and crews of other countries during the maritime law enforcement process. Incidents of armed attacks on Chinese ships and crew are also escalating. Since the establishment of China Coast Guard Bureau in 2013, it has been assuming the important task of maritime rights protection and law enforcement, and within the scope of international law, the use of force can be used reasonably when necessary. However, the use of force measures by the relevant international conventions such as the United Nations Convention on the Law of the Sea (hereinafter referred to as the "Convention") is mostly a principled provision. There is no clear provision in our laws regarding the use of force by the sea police at sea. The use of force by maritime law enforcement has not been effectively regulated.

## Thoughts on Triggered by Several Law Enforcement Incidents

On September 23, 2003, Chinese fishing boats "Guibei Fishing 63055" and "Guibei Fishing 82018" were chased by a Vietnamese armed gunboat during the normal operation of the traditional fishing grounds in Beibu Gulf. After the call, owner of the fishing boat owner confirmed that the fishing boat was in the China sea area, so he ignored it and then proceeded. Then the Vietnamese gunboat fired two fishing boats and the fishing boat "Guibei Fishing 63055" was arrested.

On July 16, 2012, the Chinese fishing boat "Lu Rongyu 80-117" was mistakenly broke into the Russian exclusive economic zone. When the Russian patrol ship requested the ship to stop the inspection, the ship did not stop, and quickly fled on site. After the Russian patrol ship fired a warning, the ship continued to leave, and then

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the Russian ship fired at the fishing boat. The fishing boat remained unstopped. Finally, the Russian ship's bow hit the fishing boat. After the fishing boat stopped moving forward, it was found that one of the crew members was missing.

On March 14, 2016, when the Chinese fishing boat "Luyan Yuanyu 010" was operating in the Argentine fishing grounds, the Argentine Navy law enforcement team believed that it was suspected of illegal fishing and asked him to stop the ship without listening to the order to sail to the high seas. After chasing the ship for several hours, the Afghan shot and fired, causing the hull to enter the water and gradually sink. The Afghan side said that it had issued a signal warning before the use of force, as the fishing boat tried to collide with its law enforcement ship, and it fired and fired.

On September 29, 2016, the South Korean Coast Guard attempted to board a Chinese fishing boat that claimed to cross-border fishing. During the period, three earthquake bombs were launched, causing Chinese fishing boats to catch fire and three Chinese crew members to die. On October 7, the South Korean Coast Guard had another speedboat of coast guard in the Yellow Sea to carry out the task of expelling Chinese fishing boats. On November 1, the South Korean Coast Guard fired 600-700 rounds of Chinese fishing boats with M60 machine guns. This was the first time that South Korea used large weapons to shell Chinese fishing boats. At the same time, South Korean frigates and missile ships rounded up two Chinese fishing boats. On November 12th, the incident was upgraded again. The South Korean Coast Guard whistled the Chinese fishing boat first, and then issued a warning of broadcasting, fired a powerful water column, and finally the machine gun raided 95 rounds of bullets (Sun, 2016).

In the attack of armed fishing vessels in Vietnam, can the Vietnamese armed personnel directly use force to shoot after they yell at Chinese fishing boats? After the Russian patrol ship fired a warning, can it directly fire the hull of the fishing boat? After the Argentine law enforcement ship issued a warning, is it legal to catch up with Chinese fishing boats and shoot? Has the law enforcement vessel of the Korean law enforcement vessel repeatedly violated the provisions of international law for the violent law enforcement of Chinese fishing vessels? The provisions on the use of force have existed in international law, including international legal documents, such as the United Nations Convention on the Law of the Sea and the United Nations Code of Conduct for Law Enforcement Officials. However, the use of force in maritime law enforcement has not been effectively regulated. In the process, the use of force often exceeds the necessary limits, and the measurement standards vary from country to country.

We can see that from the attack of armed fishing vessels in Vietnam, the "Lu Rongyu 80-117" was hit, "Lu Yan Yuan Yu 010" was sunk, and then the law enforcement violence in South Korea repeatedly strongly challenged China. Violent law enforcement of unreasonable use of force has seriously violated the personal safety and legitimate rights and interests of Chinese fishermen. China Coast Guard has the power of administrative law enforcement and criminal law enforcement in the enforcement of maritime rights protection. When protecting Chinese fishing boats and fishermen from illegal force by other countries, they can use force measures when necessary, which is permitted by international law. Then, how to use force, what conditions and limits should be reached by using force measures, and how to deal with foreign countries' violent law enforcement against China, China has no clear legal provisions. Nevertheless, the use of force by the China Coast Guard in the process of maritime law enforcement should still comply with the relevant provisions of international law and domestic law.

## **Definition of Force Measures in Maritime Law Enforcement**

### **China's Regulations on the Use of Force**

In ancient Chinese, the term “force” was interpreted. In “Old Tang Book, Wei Zheng Chuan”, “force” was interpreted as a force and strength to balance violence and stop violence. Western countries believe that “force” refers to armed forces or military forces, while Eastern European countries believe that “force” is all means of coercion and violence, including military forces. China’s law does not have a clear definition of the term “force”, but relevant laws and regulations have relevant provisions on the use of “force”. For example, Article 10 of the Law of the People’s Armed Police of the People’s Republic of China promulgated and implemented in 2009 stipulates: “In case of emergency situations involving arrest, riot, jailbreak, gun robbing or other violent acts, the people’s police of the public security organs shall comply with relevant state regulations. Weapons can be used”. Article 11 stipulates: “In order to stop the need for serious criminal activities, the people’s police of the public security organs may use police equipment in accordance with relevant state regulations”. Article 10 of the “Law of the People's Armed Police of the People's Republic of China” amended in 2012 stipulates: “In case of emergency situations such as resisting arrest, rioting, jailbreaking, robbing guns or other violent acts, the people’s police of the public security organs may use weapons in accordance with relevant state regulations”. “Regulations of the People's Republic of China on the Use of Police Arms and Weapons by Police”, promulgated and implemented in 1996, also specify the specifications for the use of weapons and police. There are also other regulations on the use of force that are scattered in relevant legal norms. In accordance with the provisions of the “Programme for the Reform of the State Council’s Institutions and the Transformation of Its Function”, the newly formed Marine Police Bureau accepts the guidance of the Ministry of Public Security to enforce law enforcement at sea. At present, China has not formulated relevant laws and regulations for the enforcement of sea police. Therefore, the use of force by the China Coast Guard for maritime rights enforcement can refer to China’s relevant regulations on the use of force.

### **International Law on the Use of Force**

The provisions on the use of force in international law are mainly embodied in Article 2, Paragraph 4, “Prohibition of the Use of Force” and the United Nations Convention on the Law of the Sea in the Charter of the United Nations, specifically the 1979 United Nations Resolution “Code of Conduct for Law Enforcement Officials” and the United Nations in 1990. There are also relevant legal provisions in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and in other international treaties and international legal documents. For example, the 1995 Agreement on Migratory Fish Stocks stipulates that the use of force should be in accordance with the principle of proportionality, 1988. The Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its 2005 Protocol reaffirm the conditions of use of force and the extent of their use of force.

In the practice of international justice, the famous “Lonely Case”, “Red Crusade”, and “Sega” are sufficient to show that the use of force by law at sea has become an international habit, and the rational use of force is the principle of proportionality. The judicial practice of various countries has been recognized by the international community. In the process of law enforcement and use of force by sea, countries should consider whether the use of force is consistent with the purpose of law enforcement, whether it is equivalent to the law and crime level of

the law enforcement target, and whether it is commensurate with the degree of damage to be caused. If the necessary limits are exceeded international law is violated.

### **The Differences Between the Use of Force in Maritime Law Enforcement and the Use of Force in International Law**

The use of force is theoretically divided into the use of force in international relations and the use of force in law enforcement. The former is considered to be the use of force between countries, that is, war or armed conflict, and belongs to the Charter of the United Nations and international law, such as international humanitarian law. The latter belongs to the scope of domestic law enforcement, including maritime law enforcement, and is regulated by domestic laws, such as the Constitution and administrative law (Fu, 2013, p. 13). Many scholars in the world believe that the use of force by law at sea is the use of force in international relations, because the use of force does not violate the territorial integrity and political independence of other countries in violation of the provisions of the Charter of the United Nations. The same coastal states use force to treat foreign ships as long as they are not. It is not illegal for the purpose of violating the territory of another country (Kaye, 2005).

The author believes that although maritime law enforcement force measures and international law force are both mandatory and forceful acts, they are essentially different. First, the nature is different. Maritime law enforcement of force measures are a kind of police law enforcement force aimed at maintaining maritime security and legal order; force in international law is a kind of military force, which aims to resolve foreign disputes and self-defense against foreign aggression and interference. Second, the sources of power are different. The use of maritime law enforcement of force comes from domestic law and is the national jurisdiction conferred by domestic law; the use of force in international law is derived from international law and is the national self-defense right conferred by international law. Third, the applicable law is different. The maritime law enforcement of force measures are applicable to domestic law, mainly subject to the adjustment of domestic laws such as the Constitution and Administrative Law; the use of force in international law is mainly regulated by international laws such as international treaties. Fourth, legal responsibilities are different. The illegal or unreasonable use of maritime law enforcement of force measures may result in the legal liability of the law enforcement State to the flag State or crew of the target ship and compensation; the illegal use of military force in international law may result in international liability to the injured State. Therefore, the use of force by maritime law enforcement is essentially different from the use of force by international law.

### **Conditions and Restrictions on the Use of Maritime Law Enforcement Force Measures**

International conventions and international legal documents, such as the Charter of the United Nations, the United Nations Convention on the Law of the Sea, the Code of Conduct for Law Enforcement Officials, and our domestic laws all make relevant provisions on the conditions and restrictions on the use of force.

#### **Conditions for the Use of Maritime Law Enforcement Force Measures**

**Subjects of the use of force measures.** The use of force by law enforcement at sea is a violent means and a coercive measure involving the life safety of law enforcement targets, as well as the basic content of international human rights law and international humanitarian law. As the main body of law enforcement at sea, its enforcement by force must be law enforcement and comply with the law. After the reorganization of the State

Oceanic Administration, China Coast Guard, as the main force in China's maritime rights enforcement, fulfilled its duties as the former border police, sea surveillance, fishery administration, and customs in accordance with the law, and fulfilled the corresponding duties of the Chinese police in accordance with the law. The qualifications of its law enforcement entities are granted by our laws.

**Reasons for the use of force measures.** According to the provisions of the United Nations Convention on the Law of the Sea, coastal States must have "reasonable and sufficient grounds and grounds for compelling measures, and there is clear evidence that foreign ships are suspected of violating the law". When it is confirmed that foreign ships are illegal, using force measures are not a prerequisite, but a last resort. In international practice, the enforcement of force by various countries generally has the following situations: First, foreign ships have illegal acts, second, their own sea life and property safety are threatened, and third, foreign illegal ships escape.

**Situation of use of force measures.** With regard to the conditions of use of maritime law enforcement measures, there are already relevant provisions in relevant international conventions, that is, the use of force measures must comply with specific circumstances and necessary limits, and in general, the use of force should be avoided. "People's Republic of China Police Law" and other domestic laws also make provisions on the use of "weapons" and "police" conditions. The "weapons" and "police" prescribed by our country's laws correspond to "fatal weapons" and "non-lethal weapons" commonly used in international law, but they cannot meet the needs of China Coast Guard to use force measures at sea. The situation in which countries initiate military measures mainly includes active law enforcement and passive law enforcement. Active law enforcement is the use of coercive means including the use of force measures in the law enforcement process to impose necessary force suppression on the offending objects to eliminate law enforcement obstacles. Passive law enforcement is the purpose of eliminating the danger by law enforcement officers taking force measures to avoid unlawful attacks on their own lives. In the process of law enforcement, the China Coast Guard encounters illegal law enforcement of ships or Chinese ships by foreign law enforcement vessels. If necessary, they can take measures to protect the lives and property of our citizens and safeguard our maritime rights and interests.

### **Restrictions on the Use of Maritime Law Enforcement Force Measures**

**Principles of the use of force measures.** Internationally recognized cases, such as the "Lonely Case", "Sega", and "Estel" fisheries jurisdictions have established the basic principle of the use of force measures, namely the principle of proportionality. The principle of proportionality means that measures for the use of force at sea must be lawful, reasonable, and necessary. Legitimate and lawful enforcement is the premise of the use of force by law enforcement at sea. In addition to the explicit authorization of the law, the law enforcement subject must also enforce the law within the scope of the law. The law enforcement content law enforcement must comply with the law, and the selection and use of weapons must comply with the law, too. Necessary means that if all available means are adopted for illegal ships, then no force measures which can be taken to stop and eliminate dangers and obstacles before they can take force measures.

**Procedure for the use of force measures.** According to the judgment of the internationally famous "Sega" Law of the Sea, the procedures for the use of maritime law enforcement forces measures, namely warnings and troop strikes, were determined. After proving their identity, maritime law enforcement personnel should first issue visual and audible warning signals to illegal ships. If an illegal ship does not stop driving, it can be verbally

warned that it will stop immediately. If the illegal ship still does not stop the illegal act or stop the ship after the warning, the warning shooting will be carried out. The warning shooting must first be fired and then fired again. The live ammunition warning cannot aim at the target for shooting, nor can it aim at the dead part of the hull. Shooting should only serve as a warning. When non-military means of exhausting sufficient warnings still cannot stop the illegal acts, the maritime law enforcement personnel can use force to strike. The purpose of such force strikes is not to injure human life or sink the ship. Therefore, the use of force should control the strength and attack location.

**Limits of use of force measures.** The principle of proportionality is a principle generally used in international law. The means of taking military measures must be commensurate with the consequences achieved or the rights to be realized, and must not exceed the necessary limits. Any time, any means of force should be based on the principle of minimum harm, in the protection of human life and respect for human rights, be able to use non-lethal weapons, not to use lethal weapons, can use low-level weapons, do not use high-level weapons; the value of life should be the first consideration for the use of force by law enforcement at sea. The purpose of using force measures is to stop illegal activities. If the illegal ship has lost its resistance or does not resist, the military measures should stop and not exceed the necessary limits, causing unnecessary damage, and avoiding the use of force measures to cause more damage than the legitimate rights and interests to be protected.

### **Problems and Countermeasures in the Use of Forces by Law Enforcement at Sea**

#### **Problems in the Use of Force by Law Enforcement at Sea**

**The conditions for the use of force measures for law enforcement at sea have yet to be clarified.** Chinese legislation does not stipulate the situation of taking enforcement measures against maritime law enforcement. In the actual law enforcement process, how to determine the illegal behavior of ships and crews should refer to China's relevant domestic laws and international treaties, for example, how to determine the illegal behavior, under what circumstances can take self-defense behavior, what is the law enforcement power blocked, and what kind of criminal behavior is a force that can be attacked.

**The procedure for taking enforcement measures against military rights at sea has yet to be clarified.** The International Tribunal for the Law of the Sea summarizes the procedures for intercepting the use of force by ships. There is no provision in our legislation. The China Coast Guard can refer to international practices in law enforcement. However, there is no clear definition of the type and level of warning, the type and method of shooting, the type and method of force strike, and the circumstances under which force can be used. Therefore, it is necessary to clarify the procedures for the use of force measures.

**The boundaries between the uses of force measures for law enforcement at sea have yet to be clarified.** Judging whether the China Coast Guard takes legal measures is often dependent on the purpose of law enforcement, and whether the force measures exceed the necessary limits is difficult to distinguish in practice, which is often the rhetoric that other countries believe that the Chinese sea police are not properly enforced. Then, how to judge whether the law enforcement effect and illegal behavior are commensurate, whether it is necessary to take force measures, whether the force measures exceed the necessary limits, and how to judge whether the damage caused exceeds the need to protect not only the legislative clarification, but also needs to be analyzed in light of the actual situation.

**The level of use of law enforcement at sea remains to be determined.** In our country's legislation, only the types and use of police equipment and weapons are specified, and this regulation is for land police. Maritime law enforcement is unique, and our legislation cannot be fully applied to maritime law enforcement. Therefore, how to use force and the level of use of force often requires on-site law enforcement commanders to make temporary decisions. It is necessary to clarify and standardize the level of use of force measures at sea enforcement.

### **Countermeasures and Suggestions on the Use of Force Measures in Law Enforcement at Sea**

China Coast Guard's maritime law enforcement power comes from maritime jurisdiction, while maritime jurisdiction is mainly derived from domestic law. The domestic laws mainly include Territorial Sea and Contiguous Zone Law, Exclusive Economic Zones and the Continental Shelf Law, the Law of the People's Police, the Law of the People's Armed Police, the Regulations on the Use of Police and Weapons by the People's Police (1996), and Relevant regulations of the Public Security Organs Maritime Law Enforcement Regulations (2007). It is supplemented by international law, including relevant international treaties and international legal documents, such as the Charter of the United Nations, the Convention on the High Seas, the United Nations Convention on the Law of the Sea, and the Code of Conduct for Law Enforcement Officials. In response to the problems existing in the use of force measures by the Chinese police in the process of maritime law enforcement, the following recommendations are made:

**Taking measures of force should meet one of the following three situations.** (1) Exercise the right to self-defense. The use of force can only be used when suspected ships and crew create real and imminent danger to law enforcement vessels and law enforcement personnel.

(2) The exercise of law enforcement power is blocked. This includes cases where a suspicious vessel refuses to stop or accelerates to get rid of interception and chasing or not in the direction of the indication or multiple communications.

(3) Combating maritime crimes. It includes criminal acts in the waters under our jurisdiction and international crimes in the high seas and other countries.

**The adoption of military measures must comply with the procedural requirements of international law.** (1) Warning of the use of force. Law enforcement officers must issue at least three signals before the effective shooting, that is, stop signal, warning shooting, and live fire warning. Before the force is hit against the hull, sufficient warnings and other non-military means must be exhausted.

(2) Conduct an alert shooting. Including the warning shot and cannon fire, the warning shot can be used to fire empty cannonballs or signal flares. The warning can be fired at the head of the ship or the non-damaging air-fired cannon.

(3) The force of the hull is struck. Try to target the non-lethal parts of the ship to avoid deliberate sinking of the ship.

**The adoption of military measures should be subject to the necessary restrictions.** (1) The purpose of the Coast Guard to use force measures is to implement China's domestic law, which determines the legality of the China Coast Guard's use of military measures.

(2) Reasonable and necessary, that is, legal authorization, law enforcement, legal procedures, legal content, legal form, legal objects, and the absolute necessity to use force.

(3) Minimal injury, that is, not exceeding the necessary limits, minimizing casualties and property losses.

**Distinguish the use level of lethal force and non-lethal force.** The specific use of lethal force (weapons) or non-lethal force (police) should, in principle, be implemented in accordance with the “Regulations on the Use of Police and Weapons by the People’s Police”. However, the special nature of maritime law enforcement in China, coupled with the reorganization of the maritime bureau, will integrate the original law enforcement agencies. Therefore, it is necessary to distinguish between the progressive level of the use of force, the case where the lethal weapon can be used directly under special circumstances, and the authorized department that clarifies the final force strike.

### Conclusion

In terms of the conditions for the use of force measures in the field of maritime rights enforcement, the procedures and the level of force attack and the level of use of force, China lacks specific and clear legal provisions. This is not conducive to the implementation of military measures in China in the process of exercising maritime rights enforcement or in emergencies, such as rebellion. China should clarify legislation on the conditions, procedures, restrictions, and levels of use of force measures, so that the use of force measures has a legal basis, and at the same time limits the force measures to a clear legal framework.

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