

由「以警代戍」之行政組織法理析述 海域執法與國防安全政策之實踐

趙晞華*、蔡浩志**

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關鍵詞：南海主權問題與爭端、國防法、海岸巡防法、海域執法、東南亞國家協會（東協）

Keywords：Sovereignty over South China Sea issues and disputes, National Defense Act, The Coast Guard Act, Maritime Law Enforcement, Association of Southeast Asian Nations(ASEAN)

* 輔仁大學法學碩士，國防部法律事務司法律服務處處長。

** 海洋大學法學碩士，國防部法律事務司法規研審處法制官。

摘要

近來東、南海主權與海域衝突熾烈，各鄰國對海洋資源利益與區域治理權限之爭奪，從 2013 年 10 月東南亞國協各國領袖會議對於「南海行為準則」的關注，回溯至 2012 年 4 月南海黃岩島海域捕魚權爭端中、菲兩國對峙，2012 年 7 月間，越南海軍實彈演習與「東南亞國家協會區域論壇」外交周旋場域達到高峰，深刻影響區域安全和平穩定發展。

本文從主權觀點出發，研析東、南海問題歷史發展，首先彙整法政學者對東、南海主權宣示與爭端處理之晚近論述主張，再由憲法、國防法及海岸巡防法等法制架構，評析我國自 2000 年起責由海巡署衛戍東、南海之法規範基礎及前瞻作法。

最後，再由國內海域執法相關法令執行之實證觀點，探討警察機關職司事前危害防止及事後犯行追緝之任務，延伸觀察區域衝突一旦產生時，外交斡旋及國際法律組織協處作為之首要措置，國軍如何在文民統治與國家安全政策指導原則下，遂行衛疆作戰計畫之軍事任務。

Analysis of maritime law enforcement and national security policy practice by the legal basis of administrative organization

Zhao, Xi-Hua; Tsai, Hao-Chih

Abstract

Recently the conflicts of the East and the South China Sea sovereignty and waters blazing. Neighboring countries compete for the interests of the marine resources and regional governance rights. October 2013, ASEAN leaders meeting focused on "the South China Sea Code of Conduct". April 2012, the Huangyan Island Sea fishing rights disputes, triggering a confrontation of China and the Philippines. In July 2012, the Vietnamese Navy live-fire exercises occur simultaneously with the Association of Southeast Asian Nations Regional Forum. When the diplomatic field controversy reached its peak, it's profound impact on peace and stable development of the regional security. This article research and analysis the historical development of the East and the South China Sea issue from the sovereignty perspective. This departure compiled Hosei scholars' discussion on the recent declaration of sovereignty in the South China Sea. This article further Comment on the legal system architecture of Constitution, the National Defense Law and the Coast Guard Law. Finally, the paper reviews the normative basis and forward-looking practice of the Executive Yuan Coast Guard Administration garrison the East and the South China Sea. Finally, from the national law enforcement perspective, we analysis police authorities to perform the functions of domestic laws and regulations. Extension of international and regional conflicts observed, how the military carry out tasks battle plan under the guidance of the text and the principle of national security policy.