



THE SIREN'S SONG OF COAST GUARD BEHAVIORAL NORMS IN THE WESTERN PACIFIC

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Since 2014, naval forces operating in the Western Pacific have agreed on the need to moderate operational assertiveness against the risk that a miscalculation on the water could lead to wider confrontation. Increased activity by coast guards in these waters dictates that the same considerations should apply to white hull vessels. In 2015, President Obama and President Xi Jinping of China committed to developing behavioral norms for coast guards. The fact that six years later no such coast guard norms have materialized even though the naval services provide a readily adaptable blueprint is curious, to put it diplomatically.

In April 2014, the 21 member-navies of the Western Pacific Naval Symposium approved the Code for Unplanned Encounters at Sea (CUES) to promote communication and operational safety when their vessels met. In November 2014, the United States Secretary of Defense and the Chinese Minister of Defense signed a bilateral Memorandum of Understanding on The Rules of Behavior for Safety of Air and Maritime Encounters (The Rules or Rules of Behavior). The Rules, which took root during the 2013 Sunnylands Summit between President Obama and President Xi, are meant to reduce the risk of an incident at sea and to promote confidence building between the United States and Chinese military. CUES and The Rules are similar in many respects and

share the same fundamental purpose of reducing the risk of an incident at sea. During the 2015 Sunnylands Summit, President Obama and President Xi committed to developing similar measures for coast guards. At the time, China took the position that the China Coast Guard was not covered by the existing instruments. While no such coast guard version of The Rules exists, the China Coast Guard's astounding growth and militarization, combined with the United States Coast Guard's increased regional presence, serve to underscore the need. As detailed in this article, the very bureaucratic reorganization that transformed the China Coast Guard into a military service now make the existing Rules of Behavior easily applicable. The two sides do not need a new coast guard specific agreement but could voluntarily apply the existing Rules of Behavior to white-hulled vessels as they do to gray-hulled vessels. The solution of adapting the Rules of Behavior used by the People's Liberation Army-Navy (PLA-N) and the United States Navy (USN) to the United States and China Coast Guards is so simple that its failure to materialize begs the question of whether China wants shared expectations for coast guards or if it believes that operational unpredictability better serves its strategic interests.

THE IMPORTANCE OF SHARED EXPECTATIONS

The 2014 instruments were born out of incidents that demonstrated the need for shared expectations of professionalism in navigation and communication. For example, in March 2009, two Chinese fishing vessels,

two Chinese maritime law enforcement vessels,¹⁰² and a PLA-N intelligence vessel recklessly harassed the USNS IMPECCABLE while it was operating in international waters¹⁰³ more than 75 nautical miles off Hainan Island.¹⁰⁴ In November 2013, a PLA-N amphibious vessel shouldered the USS COWPENS. Again, the incident occurred in international waters.¹⁰⁵

Maritime incidents between Chinese vessels and competing regional claimants persist and demonstrate even greater brinkmanship. The majority of incidents between China and her neighbors have involved coast guard vessels on one or both sides.¹⁰⁶ Lyle Morris, a well-versed commentator on the topic, describes the China Coast Guard and her regional counterparts as “‘blunt defenders of sovereignty,’ undertaking actions such as ramming other states’ coast guard and fishing vessels, rather than acting as traditional instruments of law enforcement.”¹⁰⁷ The need for shared expectations that extend to coast guards is underscored when the China Coast Guard’s “blunt defender” operational practices are overlaid with its rapid growth (infra) and the increased regional presence of the United States Coast Guard. In 2019, USCGC BERTHOLF conducted a 164-day deployment to the region under the Indo-Pacific Command,¹⁰⁸ and in October 2020, Robert O’Brien, the National Security Advisor, announced that the Coast Guard would be “strategically homeporting significantly enhanced Fast Response Cutters . . . in the western Pacific.”¹⁰⁹

THE CHINA COAST GUARD

One must understand the evolution, and current posture, of the China Coast Guard to understand how international instruments that were not thought to apply to the service in 2015 could very clearly apply today.

On July 9, 2013, Order 52 of the General Office of the State Council merged the functions of the China Maritime Police Bureau, the Fisheries Law Enforcement Command, China Maritime Surveillance, and the Anti-Smuggling Bureau under the China Coast Guard.¹¹⁰ The newly created Coast Guard was placed under the State Oceanic Administration but would receive operational guidance from the Ministry of Public Security, via the People’s Armed Police Force. Order 52 also directed the State Oceanic Administration to coordinate Coast Guard matters with the Ministries of Agriculture, Transportation, and Environmental Protection.¹¹¹ While the Coast Guard inherited a paramilitary flavor from the Maritime Police Bureau, it was branded a civilian agency and government officials and academics refuted attempts to characterize it as a military service.¹¹²

China Coast Guard personnel have always carried the hallmarks of a military service despite the civilian facade. A 2017 blog portraying recruit training featured pictures of uniformed cadets with clean shaven heads. The cadets marched in formation, received indoctrination training, and ate meals in a setting that would be familiar to anyone who has ever gone through bootcamp. Captions accompanying the photos characterize the cadets as soldiers in training.¹¹³ A separate 2017 article from a

Chinese news service described China Coast Guard basic training as the cadets’ first step into a military career.¹¹⁴

The military nature of the China Coast Guard and the importance of developing shared expectations are underscored by the growth of its combatant fleet. In 2014, the China Coast Guard had 370 vessels.¹¹⁵ Today it is the largest Coast Guard in the world, boasting approximately 130 high-endurance vessels (>1,000 tons), 70 medium-endurance vessels (>500 tons), 400 coastal patrol vessels, and 1,000 inshore craft.¹¹⁶ The service is projected to add 25-30 additional high and medium endurance vessels in the next 10 years.¹¹⁷

While the fleet features many recommissioned PLA-N frigates and destroyers, the most impressive vessels are the two recently christened ZHAOTOU-class cutters.¹¹⁸ The ZHAOTOU-class cutters, which displace over 10,000 tons, are larger than the U.S. Navy’s TICONDEROGA-class cruiser and ARLEIGH BURKE-class destroyer.¹¹⁹ These vessels are armed with a 76mm cannon, 2 auxiliary guns, and 2 anti-aircraft guns.¹²⁰ They can accommodate a large helicopter and 2 unmanned aerial vehicles and can steam in excess of 25 knots.¹²¹ Analysts have also reported that China Coast Guard cutters are routinely outfitted with a HN-900 data-link that provides a common operational picture with PLA-N assets.¹²² The capabilities of the China Coast Guard exceed most of the world’s navies.

The civilian facade of the China Coast Guard was completely dismantled in 2018. On January 1, 2018, the Central Committee of the Communist Party moved the People’s Armed Police Force, the agency tasked with providing operational guidance for the China Coast Guard, from the shared control of the Ministry of Public Security and the State Council to China’s Central Military Commission.¹²³ *The People’s Daily* characterized the change as “a significant political decision . . . that will strengthen the Party’s absolute command over the PLA and other branches of the people’s armed forces and will ensure the stability and prosperity of the Party and the nation.”¹²⁴ On July 1, 2018, the China Coast Guard was stripped of a variety of “non-military” missions and transferred to the People’s Armed Police Force, within the Central Military Commission.¹²⁵

The China Coast Guard’s move to the People’s Armed Police Force under the Central Military Commission scuttled any plausible deniability of the service’s military character. Official state documents define the People’s Armed Police Force as a component of China’s armed forces: “China’s armed forces are composed of the People’s Liberation Army, the People’s Armed Police Force and the militia.”¹²⁶ *The People’s Daily* indicated that the decision to move the People’s Armed Police Force complied with a constitutional requirement to place leadership and responsibility for all armed forces with the Central Military Commission.¹²⁷ The legislation that shifted the China Coast Guard to the Central Military Commission explained that the change was needed “to fully implement the Party’s absolute leadership over the People’s Liberation Army and other armed forces.”¹²⁸ As noted by Professor Anguang Zheng, “One



The Coast Guard Cutter Morgenthau and China coast guard vessel 2102 steam alongside each other. U.S. Coast Guard photo by Coast Guard Cutter Morgenthau. CC BY-NC-ND 2.0

of the principles of the Institutional Reform of Party and Administration in 2017 is 'military is military, police is police, and civilian is civilian.' Under this principle, the People's Armed Police Force transformed from 'armed police' into a military force and is no longer a police agency. Because the CCG has been returned to PAPF, it has become part of the Chinese military system."¹²⁹

THE CODE FOR UNPLANNED ENCOUNTERS AT SEA (CUES)

The Code for Unplanned Encounters at Sea was approved at the Western Pacific Naval Symposium's (WPNS) April 2014 meeting in Qing Dao, China.¹³⁰ CUES is a non-binding multilateral arrangement seeking to minimize uncertainty and the risks associated with miscommunication and antagonistic tactics when naval vessels meet unexpectedly. CUES does this by outlining safety procedures, basic communication plans, and maneuvering instructions.¹³¹ The WPNS developed CUES based on internationally recognized norms of seamanship that were already enshrined in the 1972 International Regulations for Preventing Collisions at Sea (COLREGS), the International Code of Signals (ICS), and international law, including the United Nations Convention on the Law of the Sea (UNCLOS).

In remarks before the WPNS, Admiral Harry Harris, Commander U.S. Pacific Fleet, stated that CUES was "an important step forward to reduce tensions at sea in the

region." Admiral Harris' statement was representative of the comments made by his international peers.¹³² However, commentators have highlighted CUES' shortcomings. The most significant complaint being that CUES only applies to naval assets even though most international incidents that have occurred in the region have involved coast guard vessels.¹³³

APPLYING CUES TO COAST GUARDS

WPNS membership is limited to "capital N" navies,¹³⁴ and the 21 navies involved in drafting CUES were focused on navy-to-navy encounters. No coast guard representatives were present for the negotiation of CUES.¹³⁵ Further, the plain language of CUES applies only to warships and naval auxiliaries.¹³⁶

Section 1.4 of CUES provides in part that, "WPNS navies that choose to adopt CUES . . . do so on a voluntary and non-binding basis." Even though CUES was written for navies, nothing prohibits any coast guard from also voluntarily adopting its provisions. Because CUES defines a "warship" by reference to Article 29¹³⁷ of UNCLOS, the voluntary adoption of CUES would be straightforward for any coast guard that is part of its nation's armed forces.¹³⁸

The majority of the countries involved, China included, have taken the view that their coast guards operate maritime law enforcement vessels, as opposed to warships or naval auxiliaries to which CUES would apply.¹³⁹ The

United States Coast Guard, which voluntarily adopts CUES when operating under the Indo-Pacific Command, is the only example that the author has found of a coast guard applying CUES.¹⁴⁰

THE RULES OF BEHAVIOR FOR SAFETY OF AIR AND MARITIME ENCOUNTERS (THE RULES)

The Rules of Behavior were a result of the June 2013 meeting between President Obama and President Xi in Sunnylands, California.¹⁴¹ At the 2013 meeting



President Barack Obama and President Xi Jinping of the People's Republic of China walk on the grounds of the Annenberg Retreat at Sunnylands in Rancho Mirage, California, June 8, 2013. (Official White House Photo by Pete Souza) / Public Domain

the two leaders agreed to increase military-to-military communication.¹⁴² The Rules of Behavior, which take the form of a “voluntary” and non-binding Memorandum of Understanding between the United States Department of Defense and China’s Ministry of National Defense, were signed by Secretary Hagel and his Chinese counterpart 16 months later.

The substance of The Rules is straightforward, invoking fundamental principles of seamanship, airmanship, and communication that are found in UNCLOS, the Convention on International Civil Aviation (Chicago Convention), COLREGs, and CUES.¹⁴³ The drafters set aside the issues that would be most contentious. For example, The Rules were “made without prejudice to either Side’s policy perspective on military activities in the Exclusive Economic Zone.”¹⁴⁴ While The Rules themselves are in the public domain, consultation between the two sides regarding the application of the rules is kept confidential.¹⁴⁵ Any disagreement concerning the interpretation or application of The Rules is resolved by consultation between the sides. This confidentiality provision is a blade that cuts two ways. The provision was unquestionably critical to gaining Chinese concurrence on The Rules, but the lack of transparency is clearly detrimental to the development of norms in the region. From the Chinese perspective, this confidentiality provision enables dialogue that can reduce the risk of

an escalatory incident with the United States without otherwise undermining its “blunt defender” strategy.

Section V provides that The Rules “may be modified mutatis mutandis to allow for adoption by other government agencies with their written consent.” More importantly, in contrast to CUES, where the scope extends to “naval ships and naval aircraft,” The Rules extend to “military vessels and military aircraft.” Annex I contains a short definitions section and recalls “The Rights, Obligations, and Immunities of Military Ships and Aircraft.” The definitions provide that military vessels include warships, as defined in Article 29 of UNCLOS,¹⁴⁶ and naval auxiliaries. A naval auxiliary is “a vessel, other than a warship, that is owned by or is under the exclusive control of the armed forces of a State and used for the time being on government non-commercial service.” The mutually agreed upon English language translation goes on to explain that “For the purpose of this document, the term ‘naval auxiliary’ in English will be translated as ‘military auxiliary’ in Chinese.”¹⁴⁷

APPLYING THE RULES TO THE UNITED STATES AND CHINA COAST GUARDS

When President Obama and President Xi next met at Sunnylands in 2015, they committed to have the United States Coast Guard and the China Coast Guard pursue an arrangement equivalent to The Rules.¹⁴⁸ Six years later, no such equivalent coast guard arrangement has come to fruition. Yet, the likelihood of encounters between the China Coast Guard and United States Coast Guard has grown dramatically with the China Coast Guard’s rapid expansion and the United States Coast Guard’s increased regional presence.¹⁴⁹

As noted above, The Rules are voluntarily supported and are non-binding.¹⁵⁰ The United States Coast Guard has voluntarily supported The Rules when operating in the region.¹⁵¹ The China Coast Guard could choose to do so as well.

Unlike CUES, which by the strictest reading would only apply to “naval vessels,” The Rules apply to “military vessels”¹⁵² of both the United States and the People’s Republic of China. The United States Coast Guard is “a military service and a branch of the armed forces of the United States at all times.”¹⁵³ Similarly, the China Coast Guard’s move from the State Oceanic Administration to the Central Military Commission in July 2018, removed any doubt that the China Coast Guard is a military service of the People’s Republic of China. United States Coast Guard cutters meet the Article 29 definition of a warship. The Article 29 definition of warships can also be applied to China’s Coast Guard vessels. Even if China Coast Guard vessels could somehow escape classification as warships, they are without question “military auxiliary” vessels.

CONCLUSION

The Code for Unplanned Encounters at Sea and The

Rules of Behavior were developed for the participant navies because those involved realized that an incident arising from miscommunication or unsafe navigation could unintentionally spark broader conflict. Circumstances suggest that a similar framework is needed for coast guards. While CUES was written for navies, it would not be difficult for a coast guard that is part of the armed forces to voluntarily adopt. Unfortunately, this may not be an option for the region's many civilian coast guards.

The Rules of Behavior may be applied without amendment to the United States Coast Guard and the China Coast Guard. Both coast guards are military services that fall within the scope of The Rules. The question is not whether China can apply The Rules to the China Coast Guard. The question is whether the country's leadership will find that it is in their strategic interest to do so.

As explained above, The Rules provide for confidential consultations to address incidents involving U.S. and Chinese assets. Since the confidential nature of those consultations dampens the potential for regional norm setting that might otherwise harm China's grey zone strategic advantage vis-a-vis its neighbors, one may wonder why China would hesitate to apply The Rules to the United States and China Coast Guard. The conclusion that the author has come to is that China's reluctance to establish such an easily achievable bilateral coast guard behavioral standard may indicate that China's leadership has already decided that there is strategic advantage in leveraging what it perceives as asymmetric resolve in the face of ambiguous risk.

¹⁰²The Chinese law enforcement vessels engaged in this incident came from the Fisheries Law Enforcement Command and China Maritime Surveillance, two of China Coast Guard's predecessor organizations.

¹⁰³The term "international waters" is used in this article as a general reference to those waters seaward of the territorial sea of any nation.

¹⁰⁴Michael Green et al., "Counter-Coercion Series: Harassment of the USNS Impeccable," Center for Strategic and International Studies, Asia Maritime Transparency Initiative, May 9, 2017, <https://amti.csis.org/counter-co-harassment-usns-impeccable/>.

¹⁰⁵Carl Thayer, "USS Cowpens Incident Reveals Strategic Mistrust Between U.S. and China," The Diplomat, December 17, 2013, <https://thediplomat.com/2013/12/uss-cowpens-incident-reveals-strategic-mistrust-between-u-s-and-china/>.

¹⁰⁶Anh Duc Ton, "Code for Unplanned Encounters at Sea and Its Practical Limitations in the East and South China Seas," *Australian Journal of Maritime & Ocean Affairs* 9, no. 4 (October 2, 2017): 227-39, <https://doi.org/10.1080/18366503.2017.1326075>.

¹⁰⁷Lyle J. Morris, "Blunt Defenders of Sovereignty: The Rise of Coast Guards in East and Southeast Asia," *Naval War College Review* 70, no. 2 (2017): 75+.

¹⁰⁸"Cutter Bertholf's Indo-Pac Deployment Highlighted Coast Guard's National Security Role," USNI News (blog), July 24, 2019, <https://news.usni.org/2019/07/24/cutter-bertholfs-indo-pac-deployment-highlighted-coast-guards-national-security-role>.

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¹¹⁰Anguang Zheng, "Integrating the China Coast Guard with the PLA Navy," in *Grey and White Hulls: An International Analysis of the Navy-Coastguard Nexus*, ed. Ian Bowers and Swee Lean Collin Koh (Singapore: Springer Singapore, 2019), 17-36, <https://doi.org/10.1007/978-981-13-9242-9>.

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¹¹³"今天的'荣耀', 来自'王者'," Weixin Official Accounts Platform, October 21, 2017, http://mp.weixin.qq.com/s?__biz=MzAwMjgzNzMyNw==&mid=2247483958&idx=1&sn=18d6111b-8cf4a0eb02fd1c19beb92b9db&chksm=9ac51c16adb2950046e7996c1ad2c24129e73a3da734c-c9df82fd437d2c677f2f3412578743#rd.

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¹³⁵UNCLOS Art. 29: 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.

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