



# Assessing Military and Non-Military Incidents at Sea in the Asia-Pacific

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# ASSESSING MILITARY AND NON-MILITARY INCIDENTS AT SEA IN THE ASIA-PACIFIC

Rebecca Strating

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## INTRODUCTION

Safety at sea and in the airspace above it has gained new prominence in Asian security. The contested waterways of East Asia have become increasingly saturated with naval and non-naval vessels such as coastguards and fishing fleets raising concerns about the potential for unplanned encounters and military-to-military incidents. There are also concerns about the use of risky, unsafe and provocative manoeuvres by aircraft and naval vessels especially by the People’s Republic of China (PRC), which is also the world’s fastest growing naval power. In 2022, representatives of the Biden administration in the United States accused the PRC of increasing ‘provocations’ against Southeast Asian claimants in the South China Sea (SCS), saying ‘its “aggressive and irresponsible behaviour” meant it was only a matter of time before a major incident or accident’ occurred.<sup>1</sup> They pointed to “a clear and upward trend of PRC provocations against South China Sea claimants and other states lawfully operating in the region.” While these dynamics raise serious concerns regarding the ability of ‘good order at sea’ – the safe, stable and predictable use of the seas and oceans – there are also concerns that an unplanned encounter might escalate into great power conflict.

Regional and extra-regional states such as the United States (US), Australia, the United Kingdom (UK), and Germany have committed naval vessels to East Asia to reinforce norms of ‘freedom of navigation and overflight’ by exercising their transit rights. The US routinely conducts Freedom of Navigation Operations (FONOP) as part of its Freedom of Navigation Program, a global initiative for the US to protest what it considers excessive maritime claims by using bilateral diplomacy, diplomatic protests, and operational assertions (known as FONOPs). From 2007, the US has more consistently used FONOPs to protest Beijing’s excessive maritime claims in the South China Sea.

In its narratives, the PRC casts US FONOPs and surveillance operations as destabilising to regional order. Vice Foreign Minister Xie Feng’s interview in 2022 on the topic of *UNCLOS at 40: Retrospect and Prospect*, for example, touched on recurrent themes in the PRC strategic



narratives: China is not restricting freedom of navigation in the SCS, the US itself has not ratified the United Nations Convention on the Law of the Sea (UNCLOS), and its FONOPs are destabilising. According to Beijing's view, the US is "flexing its military muscle" by threatening "other countries security and maritime rights and interests" and allowing "its warships and military flights to continue having their way without restraint on the sea."<sup>2</sup> At least six military-to-military incidents over the past decade involved Chinese fighter jets interacting with US surveillance aircraft in airspace above seas – and this is counting just what has been publicly reported.

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'Incidents' at sea, however, appear more likely to involve vessels that are conventionally considered to be 'non-military', such as coastguard and fishing vessels, across the maritime Asia-Pacific since 2010. Non-military incidents are becoming more prevalent in the East and South China Seas as the PRC engages in 'grey zone' tactics that involve the use of non-military assets such as coastguards, fishing and survey vessels for strategic ends and to incrementally change the facts on the ground. 'White hull warfare', for example, is the use of coastguards to defend national security interests, when such civil vessels are generally responsible for the enforcement of domestic maritime law. Such coercive statecraft activities are said to fall short of war and are designed to pressure smaller powers and prevent them from using or exploiting maritime space while not provoking bigger powers into a conflict. Military-like activities of non-military actors are particularly problematic under international law because they allow the perpetrator to avoid some of the risks associated with military escalation.

In the context of East Asia's maritime domains, the PRC uses non-military assets and personnel to coerce or pressure other states. These tactics make it difficult for regional states to respond adequately as they blur the lines between civil and military vessels and are not technically classified as warships, even though China's coastguard in particular has become increasingly militarised. For example, in 2018, the PRC's coastguard was moved under the control of the Central Military Commission, the PRC's highest defence organisation. In 2021, the PRC's Coastguard Law laid the foundation for the potential assertion of even more excessive jurisdictional rights, giving coastguard permission to employ 'all means necessary including the

use of force’ to stop foreigners infringing its ‘sovereignty, sovereign rights and jurisdictional rights’.<sup>3</sup>

Maritime incidents in Asia are increasingly likely to involve non-naval vessels. The research undertaken for this paper finds that non-military incidents have been more widely prevalent and reported on over the period from 2010 to 2022, rather than military-to-military incidents, and with implications for conflict avoidance in the maritime domains of Asia-Pacific. The review captured 20 military-to-military incidents in this time period. In contrast, 59 incidents involving non-military vessels were identified.

## *Maritime incidents in Asia are increasingly likely to involve non-naval vessels.*

### **Method**

This paper reviews military-to-military incidents reported through open-source news from 2010 until 2022. It is difficult to find comprehensive data for the rate at which encounters between naval vessels and aircraft have increased over time in the Asia-Pacific, perhaps because they have become so normalised and militaries do not always publicly discuss encounters. Incidents may occur during surveillance activities, which often involve sensitive information. This paper considers the period after 2010 primarily because it follows the 2009 joint submission made by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf (CLCS)<sup>4</sup> that sparked China to respond with its own note verbale to the United Nations that contained its now infamous ‘nine-dash line’ map in the SCS. This period also captures the fallout from Japan’s nationalisation of the Senkaku Islands (which China called Diaoyu) in 2012. The research has examined news reports in the New York Times, Australian Broadcasting Commission, Japan Times, Bloomberg, BBC, The Hindu, Strait Times, Jakarta Post, Manila Times and Hanoi Times. The review also covers several well-known Chinese news outlets - South China Morning Post (owned by Alibaba organisation) and Global Times - as well the South China Sea Probing Initiative<sup>5</sup> in an attempt to mitigate bias.

The datasets (see appendix below) list ‘incidents’ in Asia’s maritime domains, concentrated on the oceans and seas of Asia, including the Pacific and Indian Oceans and the South and East China Seas. A “military-to-military incident” is defined here as an accidental or deliberate encounter between naval vessels or military aircraft or any occurrence that is associated with the operation of a ship and/or aircraft which affects or could affect the safety of operation. Search terms included “incident”, “collision”, “unplanned incident at sea”, and “unsafe manoeuvre”. Examples of military-to-military incidents searched included: fighter jet

intercepting aircraft of another military; unsafe/close manoeuvres; shots fired; interference; and, ramming of vessels.

Given the nature of the incidents and the challenges with access and reliability of information, such a methodology risks missing incidents or having a particular narrative bias towards portraying some actors as perpetrators of unsafe provocations and some as victims of such manoeuvres. While accepting that the dataset does not cover all incidents, the data collected does permit analysis of how specific events were reported and how states responded to these incidents. It also can be used to illustrate the tempo of non-military assets being used for strategic ends.

## **MILITARY-TO-MILITARY INCIDENTS IN MARITIME ASIA-PACIFIC**

On 24 February 2023, a CNN team onboard a US Navy P-8 Poseidon surveillance aircraft flying near the Paracel Islands in the South China Sea (SCS) reported a confrontation with the People's Liberation Army (PLA) of the PRC.<sup>6</sup> Concerned about the P-8 entering what the PRC considers its airspace (although the US does not recognise it as the PRC's airspace), the PLA issued a warning to the aircraft to stop approaching. A Chinese fighter jet carrying missiles intercepted and then tailed the P-8. The US commander of the mission described this as just "another Friday afternoon in the South China Sea."<sup>7</sup> This sort of encounter in the airspace above East Asia's contested maritime domains appears to be becoming more frequent, and therefore more 'normal'. Earlier in January, a similar incident occurred over the SCS when a Chinese navy J-11 fighter jet flew within 20 feet of a US RC-135 Rivet Joint, forcing it to manoeuvre to avoid collision.<sup>8</sup> In late May 2023, a PLA plane crossed in front of an American surveillance aircraft over the South China Sea, with the US calling the action 'aggressive' and the PRC blaming US 'provocation'.<sup>9</sup>

Military-to-military incidents in and over Asian maritime areas are not new. A US Navy EP-3 signals intelligence aircraft and a PLAN J-8 fighter jet collided on 1 April 2001 near the island province of Hainan, killing a Chinese pilot. This was one of the most dangerous and high-profile mid-air collisions in Asia in the 21st century. In March 2009, the Pentagon also reported that five Chinese vessels 'shadowed and aggressively manoeuvred in dangerously close proximity to USNS Impeccable' in the SCS, forcing the US surveillance ship to make an emergency manoeuvre to avoid a collision.

Of the 20 military-to-military incidents examined in this study, five involved two Northeast Asian states (one dyad each involving China and Japan, China and South Korea and South Korea and

Japan, two dyads involving South Korea and North Korea). These disputes arose due to a combination of politics, history, and geography as these proximate states have ongoing conflicts over maritime boundaries and sovereignty of land features. These Northeast Asian disputes are notable as all other military-to-military incidents captured in this data set – except one between the US and Russia - involved China and a non-proximate state (12 involving China and the US, three involving China and Australia).

## Incidents in Northeast Asia

In the East China and Yellow Seas, there have been several incidents. The most significant incident recorded in the concerned time frame involved the Republic of Korea (ROK) or South Korea and North Korea. In March 2010, the ROK Navy corvette *Cheonan* sank in the Yellow Sea, killing 46 people, with evidence pointing towards North Korean involvement. The cause of the Cheonan incident – whether it was an accident or a deliberate attack – is contested. An investigation by ROK, United States, the United Kingdom, Canada, Australia, and Sweden found overwhelming evidence that a torpedo launched from the North Korean *Yeono* class miniature submarine sank the vessel. This finding was not without its critics, including among researchers with some in ROK arguing that the sinking was a result of an accident rather than deliberate incident.

This was followed in November 2010, with North Korea firing dozens of artillery shells at ROK's Yeonpyeong Island in the Yellow Sea. This occurred during US-ROK military drills, setting more than 60 houses ablaze, killing two ROK soldiers and injuring a dozen.<sup>10</sup> In response, North Korea said the attack 'was in response to a live-fire exercise [by ROK] that led to shells falling in its territorial waters.'<sup>11</sup> The ROK stopped short of military retaliation, instead focusing on significant economic and migration restrictions. ROK cut off almost all trade with North Korea as part of the 'May 24 measures', restrictions that were still in place at the five-year anniversary of the sinking.<sup>1213</sup> While these measures still appear technically in place, ROK's unification ministry in 2020 and 2021 announced the sanctions to be effectively "useless".<sup>14</sup> While retaliation may have been viewed as risking escalation by ROK,<sup>15</sup> the incidents did increase tensions between the two countries and contributed to the stalling of their diplomatic talks. While North Korea had declared in April 2009 that it would pull out of the Six Party Talks (aimed at managing security concerns arising from North Korea's nuclear weapons program), after the sinking of the *Cheonan*, the ROK government also refused to resume the talks.

In the East China Sea in January 2013, a Chinese frigate directed fire-control radar at a Japanese Maritime Self-Defense Force destroyer in the East China Sea near the Senkaku/ Diaoyu/ Diaoyutai Islands. Japan alleged that the PRC had used weapons-targeting rather than

monitoring radar. Japan protested China's actions, as such actions 'could complicate efforts to cool tension in a territorial row between the rivals.'<sup>16</sup> Chinese military officials admitted to the Japanese allegations but claimed that the act was not planned. In December 2018, Japan accused a South Korean destroyer of locking its fire-control radar onto a Japanese patrol plane last week "multiple times" over the Sea of Japan. Seoul also insisted that its warship lock-on the Japanese patrol plane in 2018 was not intentional, but Japan's Defence Ministry rejected its latest rebuttal of Seoul's insistence but arguing that it occurred 'multiple times'.<sup>17</sup> Japan's defence minister Takeshi Iwaya protested to South Korea for locking in weapons guiding radar on a patrol plane, with the defence minister arguing that such 'extremely dangerous behaviour that could create unexpected consequences.'

### **Australia and PRC encounters**

Australia has also been involved in military-to-military encounters. Its military confirmed that during the 2019 iteration of Australia's Indo-Pacific Endeavour activity, helicopter pilots flying from *HMAS Canberra* were struck by lasers from fishing vessels during which time they were being tailed by a Chinese warship.<sup>18</sup> Australian helicopter pilots were forced to land as a precaution. In 2022, there were two military-to-military incidents recorded involving Australia and Chinese ships. The first, over the Arafura Sea in February, involved a Chinese warship shining a laser at an Australian surveillance aircraft (C18). The second incident in May involved a Chinese J-16 fighter jet and a RAAF P-8 surveillance plane in the airspace over the South China Sea. Australia's Defence Minister Richard Marles said the Chinese jet flew very close in front of the RAAF aircraft and released a "bundle of chaff" containing small pieces of aluminium that were ingested into the Australian aircraft's engine. Australian Prime Minister Anthony Albanese told reporters in Perth that his government had expressed concerns to China "through appropriate channels".

There is no observable evidence of Australia retaliating in a similar manner. There would be two key reasons for this: first, Australia does not want to provoke Beijing into conflict and escalate tensions any further. Second, Australia's 'business as usual' approach to operational presence in and over maritime domains is rules-based. That means, its own reputation requires it to uphold a certain normative standard around enforcing and defending the 'rules of the road' and contributing positively to maritime safety and 'good order at sea'. Criticising the PRC and then using the same actions would likely allow Beijing to declare Australia hypocritical in its 'rules-based order' rhetoric. Therefore, the risks for middle-power states such as Australia in like-for-like retaliation are much greater than any perceived benefits.

In the 2022 incident in the Arafura Sea, however, the PRC accused Australia of 'provocative actions' for close surveillance of its PLA flotilla by an Australian patrol plane and dropping of a

sonobuoy (a sonar system) 4km from its ships. Canberra released two press releases revealing that a PLA-N warship used a laser to illuminate the Australian P-8 surveillance aircraft.<sup>19</sup> Although the PRC did not deny the accusations, it countered Canberra's narratives by accusing Australia of 'maliciously spreading disinformation'.<sup>20</sup> Beijing is concerned about the ability of such sonar systems to collect intelligence about its submarines and their movements.<sup>21</sup>

## **PRC and US encounters**

Most military-to-military incidents have occurred between the US and the PRC. Given the increase in strategic competition between these powers and the consequence it has on regional and maritime order, these incidents are assessed in further detail below. Military-to-military encounters have occurred more often in maritime airspace rather than between naval vessels, and it appears to be a consequence of PRC fighter jets interacting with US surveillance patrol aircraft. This might be a sign of the PRC's growing confidence and status as a military power. Yet it is problematic from the standpoint of maritime and air safety because the PRC's frequent sorties in airspace over the Taiwan Strait and East China Sea increases risks of encounters with other aircraft. With the increased use of drones and other unmanned underwater vehicles (UUVs), potential problems arise in how these might potentially contribute to incidents between states, as well as what counts as a 'warship' under international law.

### ***Naval vessels***

The first serious confrontation in SCS, in the time period covered in this paper, happened at sea. On 5 December 2013, the US navy reported a Chinese ship cut across the bow of an American ship less than 200 metres away, almost leading to collision in the SCS.<sup>22</sup> The American ship was observing the PRC's new aircraft carrier, *Liaoning*, making its first voyage from its home base in Qingdao when the incident occurred. At the time, the Western press reported it as another example of the rising tensions between the US and the PRC.<sup>23</sup> The context was important in this incident: the US had recently condemned the PRC for creating an Air Defence Identification Zone (ADIZ) over parts of the East China Sea that clashed with Japan's claims.

In response, the US ship manoeuvred to avoid collision. The vessels conducted contact in English in a professional manner, underscoring the importance of communication to avoid escalation. The battle over the narrative, however, persisted after the incident. The PRC blamed US surveillance. A *South China Morning Post* headline presented a very different story from the US narrative: 'US navy accused of 'harassing' carrier Liaoning in South China Sea incident'.<sup>24</sup> An official Chinese newspaper accused the US Navy of harassing a PLA squadron before the near collision. Foreign ministry spokeswoman Hua Chunying insisted China 'always respects and observes international laws and the freedoms of normal navigation and overflight'.

In an incident in the SCS in September 2018, the Pentagon accused the Chinese Navy of using ‘an unsafe and unprofessional maneuver’ when one of its destroyers challenged the American destroyer, the *Decatur*, as it sailed through the Spratly archipelago.<sup>25</sup> The *Decatur* was forced to manoeuvre to avoid collision. This also needs to be understood in the context of Britain, France and Japan also conducting operations in or around the Spratly Islands, raising concerns in Beijing that these states were coordinating operations against it. Hence, a spokesman for China’s Ministry of National Defence argued that ‘[t]he United States has repeatedly sent military ships to South China Sea islands and its adjacent waters, threatened China’s *sovereignty and security*, seriously damaged the relations between the two countries and militaries, and endangered regional peace and stability [italics added]’.<sup>26</sup> These examples suggest that unsafe manoeuvres occur when Beijing’s sense of ‘*sovereignty and security*’ in the SCS is being challenged.

### **Aircraft**

On 19 August 2014, in an incident that became known as ‘Top Gun’, a Chinese fighter Chinese J-11B fighter ‘dangerously intercepted a U.S. Navy P-8A Poseidon patrol aircraft 135 miles east of Hainan Island’. The Pentagon filed a diplomatic complaint calling the Chinese move as ‘very, very close, very dangerous’ and ‘unsafe and unprofessional’.<sup>27</sup> Disclosing information about earlier incidents, the US called it ‘just the latest in a string of at least four unsafe encounters since March of that year’, maybe at the behest of a ‘rogue’ PLA commander.<sup>28</sup>

On 15 September 2015, the Pentagon reported that two Chinese fighter jets passed in front of an American RC-135 reconnaissance plane, reportedly using an unsafe manoeuvre 80 miles east of the Shandong Peninsula in the Yellow Sea.<sup>29</sup> The Pentagon, however, appeared less concerned this time than the August 2014 incident, suggesting there was no ‘near collision.’ They refrained from using the word ‘dangerous’.<sup>30</sup> The announcement coincided with a state visit by Chinese President Xi Jinping to the US.<sup>31</sup>

The next reported incident came from the Pentagon in May 2016, when Chinese aircraft flew within 50 feet of an American surveillance plane over the SCS.<sup>32</sup> Only a month later, in June, a similar incident occurred in the ECS, when the US accused a Chinese fighter jet of manoeuvring too fast and too close to a US Air Force RC-135 reconnaissance plane, calling it ‘improper airmanship’.<sup>33</sup>

We can observe several trends from these incidents: first, they generally involved a Chinese fighter jet and a US surveillance plane. In the 2016 examples, for instance, the context was that the PRC was in the middle of its rapid artificial island-building and militarisation of the SCS. The US was using surveillance to gather information about its progress. To reassure the Philippines of US support, Defense Secretary Ashton B. Carter had visited a US aircraft carrier in the SCS with his Filipino counterpart, angering Beijing.

Second, while there may be protests by the US and denials by Beijing, nearly all the examples demonstrated some evidence of opening up diplomatic talks to enhance air safety. In the 2014 incident, Beijing refused to apologise or explain refuted the US version (including knowledge of US reconnaissance plans), and instead blamed the US surveillance of the PRC as the root cause of the incident. Both sides, however, sought to reduce tensions, with the US emphasising PLA's safe and professional conduct in the majority of interceptions, and Beijing reportedly re-assuring Washington that this behaviour would not be repeated.<sup>34</sup> By November of the same year, US and PRC leaders had signed two confidence-building agreements.<sup>35</sup> Obama and Xi announced a Memorandum of Understanding (MOU) on the Rules of Behaviour for the Safety of Air and Maritime Encounters during a summit in November 2014.

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In the 2015 incident, the efforts of both states centred around finalising rules for aerial encounters. The PRC and the US finalized the 'Annex of the Rules of Behaviour for Air-to-Air Encounters' in September 2015, including rules for communication to maintain flight safety.

Third, US officials made the effort to emphasise that the PRC behaved responsibly in the air most of the time. Between the August 2014 and September 2015 incidents, the Pentagon observed that it had 'seen improvements in PRC behaviour, specifically the safety and professionalism with which they intercept our aircraft.'<sup>36</sup> This is a reminder that focusing solely on high profile military-to-military incidents may mean missing the bigger picture about how regularly states and their militaries following the rules of the road in maritime areas and airspace.

In the 2016 incidents, the Pentagon also emphasised the progress the two states had made on dialogue and risk reduction.<sup>37</sup> China, however, denied it happened. Whereas US Republicans such as John McCain publicly criticised the Obama administration for not responding adequately to the risks posed by China, the Pentagon's approach did not appear to change much from the Obama to the Trump administrations. After a close call in 2017 involving US surveillance plane and Chinese fighter jet in the airspace above the ECS,<sup>38</sup> the US defence officials were again at pains to point out that this was 'out of the ordinary for China', 'uncharacteristic' and 'the exception, not the norm'.<sup>39</sup> China again blamed US surveillance, urging the US to cease these activities to 'avoid a recurrence'.<sup>40</sup>

On 21 December 2022, the US military reported that a Chinese fighter jet flew in front of and within 20 feet of the nose of a US surveillance plane. The US once again had to undertake



evasive manoeuvres to avoid collision.<sup>41</sup> With multiple reported incidents in 2023, it appears that the PRC's use of dangerous manoeuvres in airspace is becoming more regular.

## **Drones**

The use of drones (or unmanned underwater vehicle (UUV) has also been an interesting if unconventional example of military-to-military exchange. In 2015, it was reported that China jammed US drones<sup>42</sup> again to prevent surveillance, this time of its artificial island-building activities in the SCS. The Chinese navy also was reported by the *Global Times* as handing back an American underwater drone in December 2016 that it had captured in the SCS, with the article noting the 'proper' handling of the situation and expressing concerns about US approach to freedom of navigation under an incoming Donald Trump Presidency.<sup>43</sup> This was reported in Western media as 'among the most serious military confrontations between the two powers for decades.' The Pentagon said the UUV was being used for scientific purposes, and demanded its return, before an agreement was reached between Washington and Beijing.<sup>44</sup>

It is important to consider alternative views, narratives and sources of information. The South China Sea Probing Initiative (SCSPI) provides yearly reports on US activities in the waters and airspace of the SCS. Its 2021 report, for example, highlights an increase in US operational presence in the SCS. It also noted that an accident involving the USS Connecticut running into an underwater mountain was 'caused by human errors', an example of Chinese narratives that highlight the challenges the US has faced in maintaining the safety of its naval fleet.

In cases where there have been publicly reported military-to-military incidents, the SCSPI has tended to cast the blame on the US for conducting FONOPs in what Beijing ambiguously refers to as its jurisdictional waters. The 2019 report stated:

In addition, the intensity and risk of U.S. military FONOPS have significantly increased. In September 2018, USS Decatur (DDG-73), which belongs to the Third Fleet, sailed into the sea area near Gaven Reefs of Spratly islands, and almost collided with the Chinese Destroyer Lanzhou with a closest distance of 45 yards from each other.<sup>45</sup>

But who nearly collided with whom is subject to debate. For its part, the Pentagon accused the Chinese Navy of using "an unsafe and unprofessional manoeuvre".<sup>46</sup> Western media reported the US Navy destroyer *USS Decatur* having to 'maneuver to avoid a collision on Sunday after a Chinese warship came within 45 yards of its bow.'<sup>47</sup> The US Pacific Fleet Spokesman stated that the Chinese Navy "destroyer conducted a series of increasingly aggressive manoeuvres accompanied by warnings for DECATUR to depart the area"... "[t]he PRC destroyer approached within 45 yards of DECATUR's bow, after which DECATUR maneuvered to prevent a collision".<sup>48</sup> The US provided photos to support its version of events.<sup>49</sup>

An SCSPI opinion piece suggests that most ‘confrontational encounters’ between two militaries happen in situations where US forces enter waters or airspace claimed by China that results in warships and aircraft operating in very close proximity, and/or the PLA warning them to leave.<sup>50</sup> In other words, the reason why aircraft and vessels are at risk of unplanned encounters is because the US is sailing and flying in those areas and provoking China.

While not recorded here as an ‘incident’ as such, in August 2020, a Chinese military spokesperson voiced firm opposition to US reconnaissance aircraft trespassing into a no-fly zone, accusing the US of acting provocatively and undermining regional peace and stability.<sup>51</sup> According to the SCSPI, the US military ‘usually pays little attention to traffic warnings and just enters’ even when the PLA is conducting live-fire drills.<sup>52</sup>

One of the concerns evident from Chinese narratives is that some of the US reconnaissance sorties are ‘too close and aggressive’.<sup>53</sup> Moreover, the evidence provided suggests that ‘close’ in this context means not too close to other aircraft, but too close to China’s territorial sea baseline – an entirely different meaning to concerns about operational flight safety and reflecting different views of where international law allows militaries to fly. As such, there seems to be some difference in opinion over what a provocative or unsafe action means. For China, US flying in areas that it claims as sovereign airspace is viewed as provocative whereas the US views these flights as legal according to international law.

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The rise in US military activities in the SCS are thus viewed by the PRC as provocative, regardless of what the vessels and aircraft are doing, and also that China’s claims are viewed by the US and others as ‘excessive’ according to international law. According to Chinese narratives, US presence and surveillance ‘poses increasingly high risks of China-US friction and conflict in the air and at sea.’<sup>54</sup> Their argument is that US deterrence is actually aggressive and will lead to China responding with ‘decisive counter-measures’.<sup>55</sup> There are, however, no military-to-military incidents in this data set that suggest the US has provoked China with deliberately unsafe manoeuvres or intercepts that compromises safety in the air.

## **MARITIME INCIDENTS INVOLVING NON-MILITARY VESSELS**

In ‘grey-zone’ maritime coercion activities, what constitutes ‘military’ is not always clear. The flooding of waterways with coastguard and fishing vessels has become normalised in the seas of East Asia. Naval vessels may engage with coastguards or other non-military vessels. There appears to be more examples of incidents involving non-military vessels, involving a greater range of states, than military- to-military across the maritime Asia-Pacific since 2010. This has consequences for the responses of states to harassment and intimidation by non-state actors. The data set below includes incidents involving the harassment from or of fishing vessels, national coastguard, or oil and gas vessels in the South and East China Sea.<sup>56</sup> Military-like activities of non-military actors can allow the perpetrator to avoid some of the risks associated with military escalation. It is not always clear, however, whether vessels are controlled by government.

### **Military-to-non-military incidents**

There are different ways of classifying incidents involving non-naval vessels. The first is through incidents that involve both military and non-military vessels. A good example is the standoff at Scarborough Shoal in April 2012, a high-tide feature located within the Philippines-claimed Exclusive Economic Zone (EEZ). At the time, it was administered by the Philippines but also claimed by the PRC and Taiwan. On 8 April, Manila dispatched a frigate to disrupt what it viewed as illegal fishing by Chinese fishing vessels around the Shoal. A standoff ensued when two unarmed China Marine Surveillance (CMS) vessels ‘took position just outside the narrow mouth of Scarborough Shoal’s lagoon’.<sup>57</sup> Four days later, Manila ‘demilitarized its presence by replacing the navy frigate with a coast guard ship’.<sup>58</sup> Until 25 July, the standoff involved the presence of Chinese and Philippines coastguards and fishing vessels, with their numbers shifting over this time. According to a CSIS report, by May 21, the Philippines’ two vessels were in standoff against five Chinese cutters and over a dozen fishing trawlers.<sup>59</sup> While this maritime presence led to Manila withdrawing its two ships, ‘communication errors’ between the Philippines, US and China also contributed.<sup>60</sup> While the Philippines stepped back in order to de-escalate the situation, the PRC did not. The CSIS report suggests that the use of Philippines Navy vessel to respond to the illegal fishing instead of its coastguard may have contributed to the standoff.

There have been other examples of incidents involving naval and non-naval assets. An incident in November 2022, for example, involved a Chinese coastguard ‘forcibly seizing Chinese rocket debris in possession of Filipino navy staff’ off Philippine-occupied Thitu island in the South China Sea.<sup>61</sup> In July 2017, the Indonesian navy reportedly shot and wounded four Vietnamese

fishermen aboard a fishing boat about 132 nautical miles southeast of Vietnam's Con Dao island, close to the area Indonesia refers to as the North Natuna Sea.<sup>62</sup> There were a number of skirmishes involving navy and fishing vessels between Indonesia and Vietnam in the South China Sea. In 2019, Indonesia's Maritime Affairs and Fisheries Minister 'lambasted the Vietnam Fisheries Resources Surveillance (VFRS) agency for allegedly disrupting the Indonesian Navy's efforts to seize four Vietnam-flagged vessels for illegally fishing in Indonesian waters.'<sup>63</sup>

Over the time period, there have also been maritime incidents involving military and commercial vessels. In October 2022, for example, a North Korean merchant ship crossed the Northern Limit Line (NLL) in the Yellow Sea, a *de facto* maritime boundary. South Korea's military responded by firing warning shots. There have also been accidents involving naval vessels and cargo vessels. In August 2018, ten Navy sailors went missing and at least 5 were injured after a US destroyer collided with an oil tanker off the coast of Singapore. Two months earlier, seven people were killed when another US Navy destroyer collided with a freighter off the coast of Japan.<sup>64</sup> A third incident occurred in 2017 when a US guided-missile destroyer sustained damages after a Japanese tug drifted into it.<sup>65</sup>

There have also been examples where research vessels have become embroiled in maritime incidents. In 2019, the Indian Navy forced a Chinese research vessel out of Indian EEZ off the coast of its Andaman and Nicobar Islands. India accused the Chinese ship of operating within its EEZ without permission.<sup>66</sup> The incident resulted in a diplomatic back and forth for several weeks. It is these sorts of activities that have raised concerns in New Delhi about China's increased presence in the Indian Ocean.

*Over the time period, there have also been maritime incidents involving military and commercial vessels. There have also been examples where research vessels have become embroiled in maritime incidents.*

### **Non-military-to-non-military**

Another type of incident are non-military-to-non-military. On the face of it, these are incidents that do not appear to involve military vessels at all – but in the era of grey zone maritime coercion, the distinction between what is 'military' and 'non-military' has become increasingly blurred. More than half of the incidents involving non-military vessels (excluding accidents) have involved coastguards interacting with fishing vessels. There are also a number of incidents involving just coastguards (see appendix below).

China – Japan: In the East China Sea in September 2010, for example, Chinese fishing boat collided with Japanese Coastguard, creating a diplomatic incident near the Senkaku/ Diaoyu/ Diaoyutai Islands. Bilateral ties deteriorated when two Japanese Coastguard cutters tried to push the fishing vessel away from the islands and Japan arrested the captain of the Chinese vessel. Beijing urged Japan to stop such ‘illegal interception’. In 2014, ‘the Japanese government filed a claim in an Okinawa court against the captain, who was detained but later released as a result of ‘Chinese diplomatic pressure and the threat of economic retaliation’.<sup>67</sup>

China-Vietnam: In one of the major incidents during the relevant period, in May 2014, Vietnamese vessels confronted Chinese ships trying to place an oil rig near the disputed Paracel Islands, just 120 nautical miles off the main coastline of Vietnam.<sup>68</sup> Chinese coastguards were accused of firing water cannons at the Vietnamese vessels, and both sides accused the other of ramming their vessels. But the dispute soon headed on shore. At least 21 people were killed and nearly 100 injured in Vietnam during violent protests against China, constituting ‘one of the deadliest confrontations between the two neighbours since 1979.’<sup>69</sup> Chinese nationals fled the country while Vietnam was forced to crackdown on the protestors. This shows how maritime disputes have become increasingly linked to national conceptions of sovereignty.

In March 2019, a Vietnamese fishing vessel moored near the Paracel archipelago was chased by a China Maritime Surveillance Vessel, which fired a water cannon at it. The Vietnamese vessel sank, and Vietnam responded by lodging a protest. The foreign minister said that ‘the Chinese vessel committed an act that violated Vietnam’s sovereignty over the Hoang Sa archipelago’.<sup>70</sup>

China-Philippines: In January 2014, the Philippines lodged a diplomatic protest after accusing a Chinese Coastguard vessel of firing water cannons at Filipino fishers near the Scarborough Shoal. By March 2022, the Philippines had lodged more than 200 diplomatic protests around China’s grey zone tactics, including the presence of over a hundred fishing vessels around disputed reefs and Chinese Coast Guard vessels engaging in dangerous transits and heightening risks of collision. In March 2022, for example, the Philippine Coast Guard reported a “close distance manoeuvring” incident in the vicinity of Scarborough Shoal located 124 nautical miles northwest of the Philippines, ‘the ‘fourth such incident in 10 months’.<sup>71</sup>

China-South Korea: Off the South Korean peninsula, Korean coast guard vessels respond to illegal fishing by Chinese vessels, which has resulted in deadly confrontations.<sup>72</sup> In 2011, a Chinese sailor reportedly stabbed a South Korean Coast Guard officer in 2011 during an operation to seize an illegal fishing boat in the Yellow Sea.<sup>73</sup> In October 2016, one of South Korea’s patrol boats sank during an anti-illegal fishing operation. China responded by saying that the incident happened in an area ‘where, according to a bilateral fishing agreement, South Korean vessels should not be carrying out law enforcement operations’.<sup>74</sup> A month before this incident, three

Chinese fishermen were killed when a South Korean coast guard crew tried to apprehend them for illegal fishing by throwing flash grenades into the room where they were hiding.<sup>75</sup>

Taiwan-Philippines: In May 2013, a Taiwanese fishing boat was fired upon by Philippine coastguard killing one crew member. Philippine authorities claimed that the fishing boat was operating illegally in their country's EEZ and it provoked the shooting by trying to ram the Filipino Maritime Surveillance vessel. Taiwan denied attempts to ram and countered that the incident occurred in an area of overlapping EEZ.<sup>76</sup> Taiwan imposed sanctions against the Philippines and recalled its envoy to the Philippines.<sup>77</sup>

Japan-Taiwan: In September 2022, National Taiwan University research vessel was issued a warning by a Japanese patrol ship that said it was operating within Japan's EEZ. Taiwan called for talks with Japan to resolve issues around overlapping EEZ claims following the 10-hour stand-off between after Taiwanese coastguard protested Japan's patrol vessel interfering in a marine research project.<sup>78</sup>

## DISCUSSION

Political, historical and strategic context matters for understanding military-to-military incidents. The East China Sea has been described as a potential “flashpoint” of interstate conflict and great-power rivalry.<sup>79</sup> The Cheonan and Yeonpyeong island incidents need to be put into context of a longer history of tensions between the ROK and North Korea, particularly in naval incidents, and the specific bilateral dynamics of escalation/de-escalation over seven decades of war. The more significant incidents with diplomatic, military and political ramifications – such as Cheonan – are those that have involved the loss of life. South Korea maintained as it did not engage in a tit-for-tat retaliation against North Korea, despite the loss of 46 lives.

There are three cases involving China and Australia, which means this is an interesting case of a great power skirmishing with a non-great *and* non-proximate power. Why – given the power differential between the states, the fact that the PRC is Australia's biggest trading partner, and the absence of maritime and territorial disputes among the two countries – are these incidents occurring? Partly it is because Australia, particularly under previous Coalition governments (2013-2022), has sought to insert itself operationally and rhetorically much more forcefully within these areas of regional maritime contestation. In 2021, the unexpected announcement of the new AUKUS partnership between US, United Kingdom and Australia was met with anger by Chinese officials, who described it as a ‘path of error and danger’.<sup>80</sup> This is expected to deliver nuclear powered submarines to Australia, which Canberra views as important for contributing to regional stability and deterrence. While a new Labor government has toned down its rhetoric on the PRC and some form of diplomatic normalisation may be possible, it is unlikely to rollback its

own Australian-style of operational presence in maritime domains such as the SCS and has continued to pursue the AUKUS plan started by its predecessor.

Unsurprisingly, incidents involving the US and the PRC reflect growing strategic competition and a declining level of trust. The two states have very differing narratives when it comes to the rights they possess in maritime space and airspace. It is no surprise that most incidents in the Asia-Pacific have actually occurred in areas closer to the PRC, as Beijing deems these its ‘jurisdictional waters’ (a term that has no legal basis). Protecting its maritime and sovereign interests in these domains has become viewed as a ‘vital’ interest. PRC officials have argued that FONOPs and surveillance patrols in these domains ‘treat China like the enemy’.<sup>81</sup> In response, the US does not recognise the PRC’s nine-dash line claims or efforts to restrict freedom of navigation and overflight in a way it views as violating international law. It rejects China’s arguments assertions of jurisdictional waters on the basis that they do not accord with international law. Not only does the US view itself as legally entitled to conduct such transits and overflights, but US narratives suggest that it is compelled to do reconnaissance because the PRC is not transparent about its activities or its claims.<sup>82</sup>

The complex maritime and sovereignty claims in Asia and the Pacific also help explain the enduring nature of the conflicts.<sup>83</sup> In particular, cases of ‘mixed disputes’ – concurrently involving sovereignty *and* maritime disputes are difficult to resolve, as they are governed by two sets of international regimes: territorial acquisition and law of the sea, respectively. The presence of different legal principles that states can draw on to defend their national interests makes these disputes more intractable, as states inconsistently use international legal principles to maximize their maritime entitlements.

*The presence of different legal principles that states can draw on to defend their national interests makes these disputes more intractable, as states inconsistently use international legal principles to maximize their maritime entitlements.*

Unsettled maritime boundaries can provide the conditions for military-to-military incidents to occur. The sinking of the Cheonan occurred in a contested maritime area in the Yellow Sea that has seen other naval skirmishes. Baengnyeong Island lies near the Northern Limit Line, a *de facto* maritime boundary between the states. It is an ROK island less than 10 miles (16 km) from the North Korean coast, and over 100 miles (160 km) from the ROK mainland. This area is contested, and there were clashes over-fishing as both states attempted to police what they regard as their

waters. Yeonpyeong island lies 3km (2 miles) from the disputed maritime border in the Yellow Sea and has also been ‘the scene of inter-Korean naval clashes over the years’.<sup>84</sup>

‘Maritime sovereignty’ disputes – i.e. those that relate to ownership over land features in maritime areas – can also foment incidents in the surrounding seas and in the airspace above them. The East China Sea incidents, for example, were close to the contested sovereignty areas of Senkaku/ Diayou/ Diaoyutai.

In the SCS, the clashing claims between the PRC and Southeast Asian states are one factor driving military-to-non-military incidents, including clashes with coastguard, fishing vessels and other non-naval vessels. The key area of contention in military-to-military incidents has been the PRC’s excessive maritime claims in the SCS and the US’s lack of recognition of those claims. In some instances, for example, what China classifies as its airspace over claimed land features, the US classifies as international airspace. The issue of ‘who owns what’ in terms of land features spills over into the maritime and air domains.

Like the US, Australia has clarified through a diplomatic note in 2020 that it does not recognise China’s nine-dash line claim in the SCS as complying with international law. Therefore, Australia’s defence department views the RAAF P-8 maritime surveillance aircraft in 2022 as conducting its “routine maritime surveillance activity” in international airspace.<sup>85</sup> While it is not clear where the incident took place precisely, it is likely that Australia’s interpretation of ‘international airspace’ and its rights within it is not shared by the PRC, who has been deliberately ambiguous in the rights it claims in the maritime and airspace within the nine-dash line.

Recent incidents in the air in 2023 raise questions about what constitutes a military-to-military incident. The presence of a Chinese spy balloon in US airspace in January-February 2023, for example, raises concerns that such incursions could provoke military incidents or accidents in future. Drones complicate the picture as well. Japan is currently reportedly considering relaxing requirements for using weapons against aircraft violating the country’s airspace, driven by concerns about suspected Chinese spy balloons and other unmanned objects. Japan is currently only permitted under law to take “necessary measures” in cases of self-defence or emergency evacuation, but the ruling LDP party is considering expanding this in order to ensure ‘air traffic safety’.<sup>86</sup> Clarifying or resolving the ambiguity and gaps in the maritime ‘rules-based order’ and/or building the knowledge and legal training of maritime operators would be useful. Regional codes of conduct like the COLREGS (Convention on the International Regulations for Preventing Collisions at Sea) and CUES (Code for Unplanned Encounters at Sea) should form the basis for avoiding collisions at sea, applicable not just to naval vessels but also to coastguards and potentially other vessels as well.



## APPENDIX

Table 1: Military-to-military incidents in the Indo-Pacific region, 2010-2022

Date of Incident	Place of Incident	States Involved	Type of Vessels Involved
26 March 2010 <sup>87</sup>	Yellow Sea	South Korea and North Korea (not confirmed officially, but investigations implies NK involvement)	Korean Naval ship <i>Cheonan</i> , Pohang-class corvette
1 December 2010 <sup>88</sup>	Yeonpyeong	SK & NK	Shelling
19 January 2013	Senkaku Islands, East China Sea	China & Japan	Chinese frigate
5 December 2013 <sup>89</sup>	South China Sea	China & US	Navy vessels
10 August 2014 <sup>90</sup>	International airspace just off Chinese coast	US & China	US Navy P-8 Poseidon & Chinese fighter
23 May 2015	South China Sea	China & US	Drones
15 September 2015	Yellow Sea	US & China	Chinese fighter jet & US spy plane
18 May 2016	South China Sea	China & US	China aircraft & US surveillance plane
8 June 2016 <sup>91</sup>	East China Sea	China & US	Chinese fighter jet & US Air Force RC-135
15 December 2016 <sup>92</sup>	South China Sea	China & US	Drone
17 May 2017	East China Sea	China & US	Two Chinese fighter jets SU-30 & US WC-135 Constant Phoenix aircraft
23 July 2017	East China Sea	China & US	US Navy spy plane & two Chinese fighter jets
2 October 2018	Spratly Islands, South China Sea	China & US	Chinese Navy & US Destroyer
22 December 2018 <sup>93</sup>	Sea of Japan	South Korea & Japan	South Korean <i>Gwanggaeto</i> the Great-class destroyer & Japan P-1 patrol craft
29 May 2019 <sup>94</sup>	South China Sea	China & Australia	HMAS Canberra

7 June 2019 <sup>95</sup>	Philippines Sea	US & Russia	USS Chancellorsville & Russian Destroyer <i>Udaloy I</i> DD 572
22 December 2020	South China Sea	US and China	US Navy Destroyer/Chinese ships/aircraft are unclear
17 February 2022 <sup>96</sup>	Arafura Sea	China & Australia	PLA flotilla and Australia P-8 Poseidon patrol
1 June 2022 <sup>97</sup>	Near North Korea	China & Canada	People's Liberation Army Air Force (PLAAF) harassed a Royal Canadian Air Force CP-140
26 May 22 <sup>98</sup>	South China Sea	China & Australia	RAF P-8 maritime surveillance aircraft & Chinese J-16 fighter
21 December 2022 <sup>99</sup>	South China Sea	China & US	Chinese fighter jet & US Air Force Aircraft

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