

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA
AND THE MINISTRY OF NATIONAL DEFENSE OF THE PEOPLE'S
REPUBLIC OF CHINA REGARDING THE RULES OF BEHAVIOR FOR
SAFETY OF AIR AND MARITIME ENCOUNTERS**

The Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China (hereinafter the Sides):

Honor the June 2013 discussion between President Barack Obama of the United States of America and President Xi Jinping of the People's Republic of China about the importance of rules of behavior for safety of encounters between the naval vessels and military aircraft of the two Sides;

Recognize that the People's Republic of China is a Party to the *United Nations Convention on the Law of the Sea* and that the United States supports and observes customary international law as reflected in the *United Nations Convention on the Law of the Sea*;

Recognize that the United States of America and the People's Republic of China are Parties to the *Convention on the International Regulations for Preventing Collisions at Sea, 1972*, and the Collision Regulations (COLREGs) contained therein, which apply to all vessels flagged by both Sides, including naval ships, in order to "maintain a high level of safety at sea";

Recognize that the United States of America and the People's Republic of China are Parties to the *Convention on International Civil Aviation* ("Chicago Convention");

Recognize that both Sides concluded the *Agreement on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety (MMCA)*, which endorsed "the need to promote common understandings regarding activities undertaken by their respective maritime and air forces when operating in accordance with international law, including the principles and regimes reflected in the *United Nations Convention on the Law of the Sea*"; and

Recognize as members of the Western Pacific Naval Symposium (WPNS), that both the United States Navy and the People's Liberation Army Navy contributed to the development and adoption of the *Code for Unplanned Encounters at Sea (CUES)* in order to maximize safety at sea.

SECTION I

This Memorandum of Understanding and its Annexes (hereinafter referred to collectively as “Memorandum”) describes the purpose, principles, and processes of an effort to strengthen adherence to existing international law and norms, to improve operational safety at sea and in the air, to enhance mutual trust, and to develop a new model of military-to-military relations between the two Sides.

Both Sides affirm their commitment to the rules of behavior for safety of military vessels and military aircraft of the two Sides when they encounter each other at sea or in the air.

Both Sides consider that this effort contributes directly to risk reduction and to strengthening regional peace and stability.

SECTION II

The United States Department of Defense and the People’s Republic of China Ministry of National Defense are the authorized agencies for the purposes of implementing this Memorandum.

SECTION III

The Annexes of this Memorandum (terms of reference and surface-to-surface), including the international laws and norms reflected therein, comprise the technical content of the Rules of Behavior for Safety of Air and Maritime Encounters.

Both Sides decided to complete another annex (air-to-air encounters) in 2015.

After completion of the air-to-air encounters annex, the contents of the existing Annexes can be conformed and finalized with the approval of both sides.

SECTION IV

Both authorized agencies should conduct an annual assessment meeting, led by senior colonel/senior captain/colonel/captain-level officers or civilian equivalents, to review the previous year’s events relating to the application of the rules of behavior and consult on potential revision and improvements for future implementation.

The annual assessment meeting should take place under the MMCA mechanism and be hosted in the United States and China on a rotating basis by the

U.S. and Chinese Sides, consistent with the rotation cycle of MMCA meetings.

No less than four (4) weeks prior to the annual assessment meeting, both authorized agencies should propose and set the topics for inclusion in the Rules of Behavior portion of the MMCA agenda and exchange papers on operational safety issues involving air and maritime encounters that took place after the previous assessment meeting. The outcome of that review should be provided to the Defense Policy Coordination Talks and other mutually decided-upon policy dialogues.

In addition to the annual assessment meeting, both authorized agencies may hold periodic and ad hoc consultations as mutually determined for the purpose of exchanging information and to consider questions related to activities within this Memorandum or to discuss the inclusion of future annexes.

SECTION V

Both Sides voluntarily support this Memorandum, which is of unlimited duration and may be discontinued by either Side upon written notice to the other Side.

This Memorandum is not intended to be binding under international law.

This Memorandum is not intended to affect the rights or obligations of either Side under relevant international agreements or customary international law.

This Memorandum is made without prejudice to either Side's policy perspective on military activities in the Exclusive Economic Zone.

Although this Memorandum is in the public domain, neither Side should disclose to any third parties the content of assessments conducted under this Memorandum without the written approval of the other Side. Related discussions conducted under the MMCA framework are subject to the disclosure provision in the MMCA charter.

Any disagreement concerning the interpretation and application of this Memorandum should be resolved by consultation between the two Sides.

This Memorandum may be modified *mutatis mutandis* to allow for adoption by other government agencies with their written consent.

This Memorandum contains:

Annex I: Terms of Reference for Safety of Air and Maritime Encounters

Annex II: Rules of Behavior for Safety of Surface-to-Surface Encounters

The content of these Annexes may be modified upon the consent of both Sides. Additional annexes may be added upon the consent of both Sides.

This Memorandum is signed at WASHINGTON , BEIJING
on NOVEMBER 9 , NOVEMBER 10 , 2014 in both English and Chinese.

The Department of Defense of
The United States of America

The Ministry of National Defense of
The People's Republic of China





ANNEX I

Terms of Reference of the Rules of Behavior for Safety of Air and Maritime Encounters

SECTION I

Definitions

- i. Where applicable, definitions used in the Annexes to the Memorandum of Understanding between the Department of Defense of the United States of America and the Ministry of Defense of the People's Republic of China Regarding the Rules of Behavior for Safety of Air and Maritime Encounters (Memorandum) are those definitions found in the *United Nations Convention on the Law of the Sea* (UNCLOS), the *Convention on International Civil Aviation* (Chicago Convention), the *Convention on the International Regulations for Preventing Collisions at Sea, 1972* and the *Collision Regulations* (COLREGs) contained therein, the *Code for Unplanned Encounters at Sea* (CUES), and other existing international agreements or established multilateral rules of behavior.
- ii. A “military vessel” includes warships¹ and naval auxiliaries.²
- iii. 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.³ For the purpose of this document, the term “naval auxiliary” in English will be translated as “military auxiliary” in Chinese.
- iv. A “formation” means an ordered arrangement of two or more military vessels proceeding together and normally maneuvered together.
- v. A “vessel restricted in her ability to maneuver” is defined in the COLREGs.⁴

¹ UNCLOS Article 29.

² CUES, Para. 1.3.3.

³ See, e.g., *The San Remo Manual On International Law Applicable to Armed Conflicts at Sea* at 13(h) (Louise Doswald-Beck ed., 1995); the Convention regarding the Régime of the Straits (Montreux Convention, 1936); CUES, Para. 1.3.4.

⁴ COLREGs, Rule 3.g.

SECTION II

The Rights, Obligations, and Immunities of Military Ships and Military Aircraft

- i. Nothing in this Memorandum or its Annexes absolves a commander (commanding officer) or master (as applicable) of the consequences of any neglect of precautions to avoid collision or avoid taking any other course of action that may be required by the ordinary practice of seamen, or by the special circumstances of the case.⁵
- ii. Every flag State should take such measures for military vessels flying its flag as are necessary to ensure safety at sea.⁶
- iii. Military vessels and military aircraft enjoy sovereign immunity and are therefore immune from the jurisdiction of any State other than their flag State.⁷
- iv. Because naval auxiliaries are State owned or operated and used for the time being only on government non-commercial service, they enjoy sovereign immunity.⁸
- v. Military vessels and military aircraft may act to defend themselves.⁹
- vi. When military vessels and military aircraft of a Side exercise their rights, freedom, and lawful uses of the sea and airspace under international law, they are to have due regard for the rights, freedoms, and lawful uses of the sea and airspace by the other Side's military vessels and military aircraft under international law.¹⁰

⁵ CUES, Para. 1.4.2.

⁶ UNCLOS, Art. 94.

⁷ CUES, Para. 1.5.1.

⁸ CUES, Para. 1.3.4.

⁹ *Charter of the United Nations*, Art. 51.

¹⁰ UNCLOS, Arts. 58 and 87.

ANNEX II

Rules of Behavior for Safety of Surface-to-Surface Encounters

SECTION I

Military vessels that encounter each other at sea are to abide by the *Convention on the International Regulations for Preventing Collisions at Sea, 1972* and the *Collision Regulations (COLREGs)*¹ contained therein and implement in good faith the *Code for Unplanned Encounters at Sea (CUES)* developed and adopted by the Western Pacific Naval Symposium.²

SECTION II

Military vessels that encounter each other at sea should ensure navigation safety through active communications and coordinated actions. The *International Code of Signals (ICS)*, the *Radio Regulations of the International Telecommunication Union*, the *Standard Marine Communication Phrases (SMCP)*, and CUES are to be the fundamental basis of communication and contact for military vessels.³

SECTION III

The following principles of communication should be observed during encounters between military vessels:

- i. Take active measures for proactive and timely communication.⁴
- ii. When one Side initiates a call, the other Side should respond promptly.⁵
- iii. With reference to Paragraph 3.6. of CUES, the information communicated may include but is not limited to the following:
 1. Clarification of identity;⁶
 2. Courtesy greetings;⁷
 3. Vessel maneuvering intentions;⁸

¹ COLREGs, Rule 1.

² CUES, Para. 2.0.

³ CUES, Paras. 3.2. and 3.3.

⁴ COLREGs, Rule 8(a).

⁵ COLREGs, Rule 8(a).

⁶ CUES, Paras. 3.4. and 3.6.

⁷ CUES, Para. 3.5.2.

⁸ CUES, Para. 3.6.1.

4. Events in progress or planned that may concern the safety of nearby vessels; and
 5. Other information relating to navigation safety.⁹
- iv. Further, the Sides should:
1. Maintain effective communication until the risk of collision or miscalculation has passed;¹⁰ and
 2. Refrain from using uncivil language or unfriendly physical gestures.
- v. Communications between military vessels during an emergency may be conducted using all possible methods to achieve communication and contact, including the use of plain language messages.¹¹

SECTION IV

General Navigation Safety Rules

- i. When military vessels of either Side encounter each other at sea, they are to maintain a safe distance to avoid the risk of collision.¹²
 1. Military vessels of both Sides are to consider the relevant provisions of the COLREGs and CUES and the special circumstances at sea at the time, to be the primary basis for determining safe distance.¹³
 2. A safe distance determined during specific circumstances between the military vessels of both Sides applies only in that situation and is not to be used as the basis for determining safe distance under other circumstances.
- ii. If a military vessel of either Side encounters a military vessel of the other Side that is restricted in its ability to maneuver, or both encounter each other and are restricted in their ability to maneuver, they are to abide by the terms and spirit of the COLREGs.¹⁴
- iii. When a single military vessel encounters a formation or convoy at sea, it should not hinder the navigation of the formation or convoy, should take early measures to steer clear of the route of the formation or convoy, and should not pass through the formation or convoy.

⁹ CUES, Para. 2.2.

¹⁰ COLREGs, Rule 8(d) and CUES, Para. 3.3.1.

¹¹ COLREGs, Rule 36 and ICS, Chapter 4 Section 3.

¹² CUES, Para. 2.6.2.

¹³ CUES, Para. 2.6.1.

¹⁴ COLREGs, Rule 2, 3, 18, 27, and 35.

When there is a risk of collision between vessels in formation or convoy and a single military vessel, actions to avoid collisions should be taken in accordance with the COLREGs.¹⁵

- iv. When the formations and/or convoys of military vessels of both Sides encounter each other at sea, they should avoid maneuvering in a manner that hinders each other's passage and should actively communicate with one another to coordinate the actions of both Sides.¹⁶

SECTION V

Rules for Specially Designated Areas

i. Maritime Navigation Warning Areas

1. When conducting activities that may affect the safety of nearby military vessels and military aircraft, commanders (commanding officers) on scene are to ensure the appropriate warning or warning area is established and the related activities occur within that area.¹⁷
2. When conducting activities that may affect the safety of nearby military vessels and military aircraft, such as military exercises and live weapons firing, the on-scene forces are to provide timely hazard warnings to vessels or aircraft in the vicinity of the warning area.¹⁸ If there are operational safety concerns, military vessels or military aircraft in the vicinity of or inside the area should conduct timely, active communication to coordinate their actions and ensure safety.¹⁹
3. The military vessels and military aircraft of one Side should to refrain from interfering with the activities in a warning area declared by the other Side; however, military vessels and military aircraft always enjoy the rights of freedom of navigation, overflight, and other internationally lawful uses of the sea related to these freedoms.²⁰
4. Military vessels or formations should actively notify nearby military vessels or military aircraft of activities that may affect their safety and coordinate safe distance in accordance with CUES and the ICS.²¹

¹⁵ CUES, Paras. 2.3.1., 2.3.2., and 2.3.3.

¹⁶ CUES, Para. 2.3.3.

¹⁷ Joint International Hydrographic Organization (IHO)/International Maritime Organization (IMO)/World Meteorological Organization (WMO) Manual on Maritime Safety Information (MSI), Para. 4.2.2.; ICS, Chapter 4, Section 3 and Appendix.

¹⁸ MSI, Para. 4.2.2.; ICS, Chapter 4, Section 3 and Appendix.

¹⁹ COLREGs, Rule 8(a).

²⁰ UNCLOS, Articles 56 and 58.

²¹ CUES, Para. 2.6. and ICS, Chapter 4, Section 3.

SECTION VI

Rules for Establishing Mutual Trust at Sea

i. Peacetime Security Assurance Measures

1. The commander (commanding officer) or master is responsible for determining whether his or her vessel is threatened by a vessel or aircraft. That determination must balance the potential threat from other military vessels and military aircraft and their right to operate in the area.
2. When conducting operations, military vessels and military aircraft should in a timely manner communicate maneuvering intentions and determine safe distance.²² In addition to the normal factors in determining safe distance, it should be considered that military vessels and military aircraft may have safety concerns based on the prevailing tactical and operational conditions that may necessitate additional communication.²³
3. The primary method to assure peaceful intent in the air and maritime domain for the military vessels of both Sides is adherence to the existing safety rules and standards reflected in the *United Nations Law of the Sea Convention* and the COLREGS combined with positive and timely communication to clarify actions.

ii. Commanders (commanding officers) or masters need to consider the potential ramifications before engaging in actions that could be misinterpreted. Actions that the prudent commander (commanding officer) or master generally should avoid include:²⁴

1. Simulation of attacks by aiming guns, missiles, fire-control radars, torpedo tubes, or other weapons in the direction of military vessels or military aircraft encountered;²⁵
2. Except in cases of distress, the discharge of signal rockets, weapons, or other objects in the direction of military vessels or military aircraft encountered;²⁶
3. Illumination of the navigation bridges of military vessels or military aircraft cockpits;²⁷

²² CUES, Para. 2.6.2.

²³ *Charter of the United Nations*, Article 51; See e.g., Brierly, *The Law of Nations*, 7th ed. (2012); and Randerlzhofner, Article 51, in *The Charter of the United Nations, A Commentary*, 2d ed. (2002).

²⁴ CUES, Para. 2.8.1.

²⁵ CUES, Para. 2.8.1.

²⁶ CUES, Para. 2.8.1.

²⁷ CUES, Para. 2.8.1.

4. The use of a laser in such a manner as to cause harm to personnel or damage to equipment onboard military vessels or military aircraft encountered;²⁸
 5. Aerobatics and simulated attacks in the vicinity of vessels encountered;²⁹
 6. The unsafe approach by one Side's small craft to another Side's vessel; and
 7. Other actions that may pose a threat to the other Side's military vessels.
- iii. When engaging in military training while underway, military vessels or formations should actively notify nearby military vessels or military aircraft of possible safety concerns. Both Sides should coordinate maneuvering intentions not to hinder the training and avoid misperception and miscalculation.
- iv. Rules for Emergency On-Scene Coordination
1. During encounters at sea, military vessels should avoid dangerous approaches and situations that could result in misperception and miscalculation. Once such a situation occurs, the two Sides involved should increase communication and take active measures to reduce navigation and flight hazards.³⁰
 2. During encounters at sea, in case of collision, whatever the cause, the military vessels of the two Sides should separate immediately after damage control and life-saving measures are taken and should avoid taking any action that leads to escalation of the situation. Both Sides should conduct active rescue of personnel as required by international law and in the spirit of safety of life at sea, as their capacity allows. However, one Side may not board or salvage the other Side's military vessel or military aircraft without prior explicit consent.³¹
 3. For situations occurring at sea, such as a dangerous approach and collision, or other actions that could lead to misperception and miscalculation, both Sides should take active measures to reduce tension and communicate with each other, conduct professional assessment, and explore improvement measures through military and diplomatic channels and the Military Maritime Consultative Agreement (MMCA) mechanism.

²⁸ CUES, Para. 2.8.1.

²⁹ CUES, Para. 2.8.1.

³⁰ CUES, Para. 3.2. and 3.3.; COLREGs, Rule 36; and ICS, Chapter 4, Section 3.

³¹ UNCLOS, Articles 32, 58(2), 95, and 236.

SECTION VII

Relevant Communication Rules

- i. During encounters at sea, military vessels are to use sound, light, flag signals, semaphore, radio, et cetera to communicate with one another according to the ICS and the *International Radio Regulation of the International Telecommunication Union*.
- ii. Communication call signs for military vessels.³²
 1. Individual vessel call signs are the vessel NAME, or HULL NUMBER, or INTERNATIONAL RADIO SIGNAL CALLSIGN. Vessels and aircraft should also identify their nationality.³³
 2. Formation call signs are the vessel NAME or HULL NUMBER or INTERNATIONAL RADIO SIGNAL CALLSIGN of the commanding vessel.
 3. When the call sign of the platform being called is unknown, it should be addressed as UNKNOWN STATION with sufficient supplementary information; for example, position, course, and speed; to alert the station that it is being called. Units called as UNKNOWN STATION should answer using their INTERNATIONAL RADIO SIGNAL CALLSIGN.³⁴
- iii. Unless decided by the two Sides, all voice communications should be conducted in ENGLISH, as required by International Maritime Organization (IMO) standards and CUES.³⁵ Use plain language whenever possible. Both Sides are encouraged to use communication methods that do not rely on a common spoken language. If spoken language difficulties are likely to arise, the Sides should use the selected signals vocabulary in the annex of CUES³⁶ or Tables 2 and 3 of ICS.³⁷
- iv. Radio Communication Frequency
 1. Vessel-to-vessel radio communication frequency³⁸:
 - Main frequency: VHF Channel 16 - 156.8 MHz
 - Secondary frequency: HF Channel 2182 KHZ

³² CUES, Para. 3.4.

³³ CUES, Para. 3.4.1

³⁴ CUES, Para. 3.4.2

³⁵ CUES, Para. 3.5.1.

³⁶ CUES, Annex A.

³⁷ ICS, Chapter 4, Section 3.

³⁸ CUES, Para. 3.12.1.

- Working frequency: Decided by the two Sides through discussion after communication is established.
2. Military vessel-to-aircraft radio communication frequency³⁹:
- Main frequency: International Air Distress – VHF Channel 121.5 MHz, or International Military Air Distress – VHF Channel 243 MHz⁴⁰
 - Secondary frequency: HF Channel 3023 KHz
 - Working frequency: Decided by the two Sides through discussion after communication is established.

³⁹ CUES, Para. 3.12.2.

⁴⁰ ITU, *Radio Regulations*, Article S5.111.