

## USINDOPACOM J06/SJA TACAID SERIES

## TOPIC: AIR INTERCEPTS

### BLUF

- Open-source reports reflect an emerging trend of concerning air intercepts<sup>i</sup> by the People's Liberation Army (PLA) against U.S. and allied aircraft operating lawfully in international airspace.
- International law requires that air intercepts be executed safely and with due regard for all nations' rights and freedoms in international airspace.
- Despite these obligations, reports indicate that PLA aircraft have executed exceptionally close approaches; engaged in reckless or aggressive maneuvers; and breached safety of flight protocols. In contrast, U.S. forces routinely conduct flight operations safely and in accordance with international law.

### WHY THIS MATTERS

- These reports suggest an emerging pattern of behavior by the PLA that disregards international law and creates significant risks of mishap, collision, miscalculation, or loss of life. An unintended incident resulting from a dangerous air intercept could spark an international crisis.
- This reported trend is likely an element of a broader campaign by the People's Republic of China (PRC) to exert jurisdiction within its excessive maritime claims in the South and East China Seas.
- If left unchecked, the PLA's behavior could become a norm that erodes the force of international law; compromises the rules-based international order; legitimizes excessive claims; emboldens further non-compliance with international law and international safety norms; destabilizes the security environment across the Indo-Pacific; and foments risk of miscalculation.

### DETAILED DISCUSSION

#### 1. Background

- Open-source reports reflect an emerging trend of concerning air intercepts by the PLA against U.S. and allied aircraft operating lawfully in international airspace. For example:
  - In June 2022, Canadian news sources reported on a trend of unsafe PLA intercepts of its CP-140 Aurora patrol aircraft. Reports indicated that the Canadian aircrew experienced "over two dozen" intercepts "as close as 20 to 100 feet," including some where the Canadian aircraft had to change course to avoid a collision.<sup>ii</sup> All reported intercepts occurred in international airspace while the Canadian aircraft was monitoring compliance with United Nations (U.N.) Sanctions against North Korea that were approved unanimously by U.N. Security Council members including the PRC.
  - In June 2022, a PLA J-16 fighter aircraft intercepted an Australian P-8 reconnaissance aircraft, maneuvered in front, and "released flares and chaff that entered at least one of the Australian aircraft's engines." Chaff is typically made of small pieces of aluminum, which can damage an aircraft engine.<sup>iii</sup>
  - In December 2022, a PLA Navy J-11 fighter aircraft "flew in front of and within 20 feet of the nose of" a U.S. Air Force RC-135 reconnaissance aircraft. The US aircraft was lawfully conducting routine operations in international airspace above the South China Sea. The PLA aircraft's unsafe operation "caused the U.S. aircraft to take evasive maneuvers."<sup>iv</sup>

- In May 2023, a PLA J-16 fighter aircraft performed an aggressive maneuver during an intercept of a U.S. Air Force RC-135 aircraft. The PLA pilot flew directly in front of the nose of the RC-135, forcing the U.S. aircraft to fly through wake turbulence. The RC-135 was conducting safe and routine operations over the South China Sea in international airspace in accordance with international law.<sup>v</sup>

## 2. International Law and Due Regard

- International law divides airspace between national airspace (i.e., airspace over a State's land territory, internal waters, territorial seas, and archipelagic waters), which is subject to the sovereignty of a State, and international airspace, which is seaward of the territorial sea and not subject to the sovereignty of any State.<sup>vi</sup>
- International airspace includes airspace above the contiguous zone (CZ)<sup>vii</sup>, the exclusive economic zone (EEZ),<sup>viii</sup> and the high seas.<sup>ix</sup>
- In international airspace all States enjoy freedoms of navigation and overflight, and other internationally lawful uses related to these freedoms (such as surveillance operations).<sup>x</sup>
- The PRC is bound to these airspace regimes as a matter of customary international law and as a party to the U.N. Convention on the Law of the Sea (UNCLOS) and the Chicago Convention.<sup>xi</sup>
- The concerning air intercepts identified above occurred in international airspace against State aircraft that were exercising freedoms guaranteed by international law. Likewise, the intercepting PLA aircraft had no apparent legal basis to exercise jurisdiction or otherwise interfere with lawful flight operations in international airspace.
- This does not mean, however, that air intercepts in international airspace are prohibited. To the contrary, State aircraft may lawfully intercept other State aircraft for purposes such as identification, verification, or escort – provided the intercept occurs safely, professionally, and with “due regard” for those freedoms afforded to all States by international law.<sup>xii</sup>
- U.S. forces are trained to conduct air intercepts for lawful purposes, and to do so safely and professionally in accordance with international law, norms, and standards.<sup>xiii</sup>
- The requirement to fly with due regard for other nations' aircraft operating lawfully in international airspace is binding customary international law and codified in various treaty provisions.<sup>xiv</sup>
- In addition, the Chicago Convention requires States to comply with the requirements of “due regard” when intercepting civil aircraft.<sup>xv</sup>
- The U.S. Department of Defense and the PRC's Ministry of Defense have agreed to *Rules of Behavior for Safety of Air and Maritime Encounters* (the “ROB”) in which both sides commit to operating consistent with the Chicago Convention and its annexes when engaging in air-to-air encounters involving their State aircraft. The ROB also states that the two sides should implement in good faith the Code for Unplanned Encounters at Sea (CUES) as it applies to air-to-air encounters referenced in the ROB's air-encounters annex.
- Of note, both sides pledge in the ROB “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.”<sup>xvi</sup>
- U.S. forces adhere closely to ROB.

## 3. Safety and Professionalism

- Beyond the requirement to operate with due regard, there is no established international law regarding aerial encounters of State aircraft, but there are international norms and standards that preserve freedoms to use international airspace as well as ensure safety.<sup>xvii</sup>
- With a membership of 190 of the 193 U.N. member nations (including the PRC), the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations, was established in 1947 for this specific reason.
- ICAO codifies principles of international air navigation and establishes standards and recommended practices. When compatible with mission requirements, military aircraft that encounter each other should operate consistent with ICAO standards.<sup>xviii</sup>

- Among these standards, ICAO defines and outlines expected norms of conduct and procedures for executing air intercepts. Safe intercepts are typically characterized by controlled closure rates and stable station-keeping. Professionalism is characterized by proper airmanship and non-provoking maneuvers, without any overtly aggressive actions, words, or gestures.<sup>xix</sup>
- ICAO recommends that states develop intercept methods according to a “standard method” designed to “avoid any hazard for the intercepted aircraft.” This includes “the need to avoid flying in such proximity to the intercepted aircraft that a collision hazard may be created.”<sup>xx</sup>
- Moreover, in accordance with the ROB, intercepts between PLA and U.S. aircraft must maintain a safe separation, which “in a specific circumstance is applied to the situation at the time and should not be used as the basis for determining safe separation in other circumstance.”<sup>xxi</sup>
- This means that safety determinations are context-dependent and not necessarily tied to a specific distance between aircraft during an air intercept.
- While the concepts of safety and separation are closely related, they are not determinative of one another – i.e. even if a larger separation distance were maintained, an air intercept could still be unsafe (e.g. erratic maneuvering, unnecessarily high speed of approach, etc.).
- The reported trend of concerning PLA intercepts raise questions about the PLA’s adherence to accepted norms and standards of safety and professionalism.

## GRAPHICS



U.S. forces are trained in accordance with international law to conduct intercepts safely and professionally. All flight operations by U.S. forces are executed with due regard for the rights and freedoms enjoyed by all nations in international airspace. The above image depicts a routine and lawful air intercept conducted by U.S. F-22s and Canadian CF-18 fighters of two Russian TU-95 Bear bombers that operated in the Alaskan and Canadian Air Defense Identification Zones in August 2019.

*Image Credit: NORAD via Twitter*



In May, 2023, a PLA J-16 fighter aircraft performed an aggressive maneuver during an intercept of a U.S. Air Force RC-135 aircraft. The above still shot (video linked below) shows the PLA pilot cutting directly in front of the nose of the RC-135, forcing the U.S. aircraft to fly through wake turbulence. The RC-135 was conducting safe and routine operations over the South China Sea in international airspace in accordance with international law. [USINDOPACOM Statement on Unprofessional Intercept of U.S. Aircraft over South China Sea > U.S. Indo-Pacific Command > 2015](#)

## PROPOSED COUNTER-LAWFARE APPROACH

*\*\*This section provides proposed language for incorporation into communication strategies\*\**

- Recent reports demonstrate a trend of concerning air intercepts by the People's Liberation Army (PLA) against U.S. and allied aircraft operating lawfully in international airspace.
- International law requires that air intercepts be executed safely and with due regard for all nations' rights and freedoms in international airspace.
- PLA aircraft have reportedly executed exceptionally close approaches; engaged in reckless maneuvers; and breached widely accepted aviation norms and standards. In contrast, U.S. forces routinely conduct flight operations safely and in accordance with international law.
- U.S. forces conduct air intercepts for lawful purposes, and do so safely and professionally in accordance with international law, norms, and standards
- The PLA's reported pattern of behavior disregards international law and creates significant risks of mishap, collision, or loss of life.
- An unintended incident resulting from a dangerous air intercept could spark an international crisis.
- To ensure the safety of pilots on both sides and prevent an international crisis, it is critical that the PLA participate in bilateral dialogue with U.S. forces consistent with the Military Maritime Consultative Agreement.
- This reported trend is a symptom of a broader campaign by the People's Republic of China (PRC) to exert its excessive maritime claims in the South and East China Seas.
- The PLA's reported behavior is inconsistent with a Memorandum of Understanding between the U.S. Department of Defense and the PRC's Ministry of Defense regarding *Rules of Behavior for Safety of Air and Maritime Encounters*.
- No member of the international community should be intimidated or coerced into giving up rights and freedoms guaranteed by international law.
- If left unchecked, the PRC's reported behavior could develop into a norm that erodes the force of international law; compromises the rules-based international order; legitimizes excessive claims; emboldens further non-compliance with international law and international safety norms; destabilizes the security environment across the Indo-Pacific; and foments risk of miscalculation.
- Upholding international law and the rules-based international order is an enduring interest for the international community and one that is vital to peace, security, and prosperity.
- USINDOPACOM supports and defends a free and open Indo-Pacific. USINDOPACOM seeks to preserve peace and stability, uphold freedom of the seas in accordance with international law, and oppose any attempt to use coercion or force to settle disputes. USINDOPACOM shares these deep and abiding interests with allied and partnered forces who champion a free and open Indo-Pacific supported by the rules-based international order.

- <sup>i</sup> U.S. Joint Doctrine (JP 1-02) defines “air interception as to effect visual or electronic contact by a friendly aircraft with another aircraft. Normally, the air intercept is conducted in the following five phases: a. climb phase — Airborne to cruising altitude. b. maneuver phase — Receipt of initial vector to target until beginning transition to attack speed and altitude. c. transition phase — Increase or decrease of speed and altitude required for the attack. d. attack phase — Turn to attack heading, acquire target, complete attack, and turn to breakaway heading. e. recovery phase — Breakaway to landing.”
- <sup>ii</sup> Stephenson & Boynton, “Canada alarmed as Chinese fighter pilots ‘buzz’ Canadian planes over international waters” Global News, Canada, June 2022, <https://globalnews.ca/news/8885980/canada-china-pilots-buzz-planes-asia/>.
- <sup>iii</sup> Lendon, “Chinese fighter jet ‘chaffs’ Australian plane near South China Sea, Canberra alleges” CNN, World, June 2022, <https://www.cnn.com/2022/06/05/australia/australia-china-plane-intercept-intl-hnk-ml/index.html>.
- <sup>iv</sup> Ali, “Chinese jet came within 10 feet of U.S. military aircraft, U.S. says” Reuters, World, December 2022, <https://www.reuters.com/world/chinese-jet-came-within-20-feet-us-military-aircraft-us-military-2022-12-29/>.
- <sup>v</sup> U.S. Indo-Pacific Command, “USINDOPACOM Statement on Unprofessional Intercept of U.S. Aircraft over South China Sea” U.S. Indo-Pacific Command, May 2023, <https://www.pacom.mil/Media/News/News-Article-View/Article/3410337/usindopacom-statement-on-unprofessional-intercept-of-us-aircraft-over-south-chi/>.
- <sup>vi</sup> Department of Defense Law of War Manual, Section 14.2.1 Lateral Boundaries of Airspace, December 2016, <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190> [hereinafter DoD Law of War Manual].
- <sup>vii</sup> In a zone contiguous to the territorial sea, the coastal State may take necessary measures to prevent and punish infringement of its customs, fiscal, immigration, or sanitary laws and regulations committed within its territory or territorial sea. The contiguous zone may not extend beyond twenty-four nautical miles from the baselines from which the breadth of the territorial sea is measured. *See* United Nations Convention on the Law of the Sea, Article 8 Internal Waters, December 1982 [hereinafter UNCLOS].
- <sup>viii</sup> *Id.* at Articles 55–57.
- <sup>ix</sup> *Id.* at Article 87.
- <sup>x</sup> Pedrozo, “The Legal Framework Applicable to Intrusive Intelligence, Surveillance, and Reconnaissance Operations in the Air and Maritime Domains” *International Law Studies*, Volume 99, Page 849, <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=3030&context=ils>.
- <sup>xi</sup> UNCLOS, Articles 39, 56, 58, and 87.
- <sup>xii</sup> *See* “Rules of Behavior for Safety of Air to Air Encounter” Agreement Between the Department of Defense of the United States of America and the Ministry of National Defense of the People’s Republic of China on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety, Section 4, September 2015 [hereinafter Annex 3]; DoD Law of War Manual, page 924.
- <sup>xiii</sup> *See* Garamone, “Defense Leaders See Increase in Risky Chinese Intercepts” U.S. Department of Defense, June 2023, <https://www.defense.gov/News/News-Stories/Article/Article/3421766/defense-leaders-see-increase-in-risky-chinese-intercepts/>.
- <sup>xiv</sup> *See* Chicago Convention on International Civil Aviation (ICAO), Article 3(d) (as applies to civilian aircraft), July 2005. *See also* UNCLOS, Article 87 (regarding the freedom of overflight on the high seas), Article 58 (regarding overflight in the exclusive economic zone of a State), Article 39 (regarding aircraft in transit passage), and Article 54 (archipelagic sea lanes passage).
- <sup>xv</sup> *See* ICAO, Rules of the Air, Annex 2, para. 3.8, July 2005. *See also* Annex 3, Section 1.
- <sup>xvi</sup> *See* Annex 3, Section 1.
- <sup>xvii</sup> Lt. Gen. Russell J. Handy, Reinforcing International Norms is Key for Ensuring Safety and Security, February 2016, <https://ipdefenseforum.com/2016/02/air-intercept-safety/>.
- <sup>xviii</sup> *Id.*
- <sup>xix</sup> *Id.*
- <sup>xx</sup> ICAO, Rules of the Air, Annex 2, Attachment A, July 2005.
- <sup>xxi</sup> Annex 3, Section 4.