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Expanded CUES: A Worthwhile Idea but Challenging Exercise?

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The Code for Unplanned Encounters at Sea (CUES), promulgated with 21 signatory navies at the Western Pacific Naval Symposium in 2014 to mitigate the risks of accidental or inadvertent clashes in times of encounters between naval forces at sea, should expand to include more Asia-Pacific coastguards, as proposed by Singapore earlier this year. Expansion could promote peace and stability in the South China Sea, which has witnessed resurgent tensions involving maritime law enforcement (MLE) or "white hull" forces. Thus far, despite overt support by various regional countries, including the United States (in fact, the U.S. Navy also proposed expanding CUES back in August 2015 to include the China Coast Guard, as part of their bilateral confidence-building mechanisms at sea), there has been little movement.

Observers have identified several factors that would hinder the promulgation of this expanded mechanism. Some coastguards in the region are still attempting to centralize maritime law enforcement powers from the various agencies, thus making it harder for their governments to commit to such a code. China, Indonesia, and Malaysia count as examples. Another problem concerns sovereignty, given that such a mechanism might mean subjecting these forces typically regulated by domestic laws to international rules created with other countries.

But often overlooked are problems that have long plagued naval arms control negotiations. In particular, many types of naval armaments are dual-functional, which allows them to fulfill both offensive and defensive roles. The type and quantity, as well as the manner of deployment, of naval armaments also complicate such negotiations. An expanded CUES also has one additional layer of complexity compared to historical naval arms control attempts, where negotiating parties would tussle over whether platforms such as submarines are destabilizing and should thus be encompassed by such mechanisms. This concerns the definition of what in fact constitutes "coastguards"– an increasingly not-so-straightforward answer given the range of law enforcement and other forces operating in the region, especially from China.

The situation in the South China Sea has evolved drastically ever since an expanded CUES was proposed. Irregular forces – popularly epitomized by China's maritime militia or "little blue men", as Andrew Erickson and Conor Kennedy had aptly labelled them – have emerged to the forefront of action. In view of this, it becomes necessary to consider two possible approaches that can be adopted in negotiating an expanded CUES.

The first may be called a "Phased Approach" focusing first on coastguards, which could be defined as agencies that, like regular militaries, possess distinctively marked personnel and assets. The Heads of Asian Coast Guard Agencies Meeting (HACGAM) may serve as a useful basis for this rather straightforward exercise. Assuming this takes off, coastguards will, like their "grey hull" naval counterparts, gradually decrease their aggressive actions. There are grounds to believe that this approach would have a relatively higher chance of

Swee Lean Collin Koh, Research Fellow at the Institute of Defence and Strategic Studies in Singapore, explains that "The increasing activities of irregular maritime forces in the South China Sea... mean that an expanded CUES, though possible, will face an arduous and challenging road ahead."

success than the alternative described below, given that in the worsening climate of the maritime disputes, regional governments may seek quick victories and demonstrate their willingness to play a constructive role. For the wider international community, having an expanded CUES based on this "Phased Approach" serves as a way of alleviating tensions through reducing the uncertainties during any coastguard encounters. If successful, the initial phase of expanding CUES to encompass distinctively-identified coastguards may then lead to the follow-on phase to look at irregular maritime forces.

The second, what may be called a "Blanket Approach", simply adopts a broader definition of MLE forces. But parties at the negotiating table will have to agree on what those forces are. Unlike the "Phased Approach", this option is less straightforward and prone to higher risks of failure typical of many negotiated arms control measures. This is because a "Blanket Approach" essentially conflates all types of MLE forces, which in this particular case would include irregulars such as maritime militia. The Philippine Government, for example, supports the idea of incorporating irregular forces in the expanded CUES, to which some other parties (presumably China and Vietnam), may not necessarily agree.

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For both approaches, there is a common denominator that does not bode well for the prospects of an expanded CUES. Ultimately, parties involved in either the "Phased Approach" or "Blanket Approach" may find it difficult to agree on the role of irregular forces that perform MLE functions. Precisely because such forces are so elusive and ambiguous that they render a wide range of tactical, operational, and strategic flexibility for their governments, it is hard to incorporate them in such mechanisms as far as implementation, verification, and compliance by parties are concerned.

If accomplished, the elation following the successful expansion of CUES to encompass distinctively-recognized coastguards will then give way to subsequent frustrations which are no different from those of the proposed Code of Conduct (COC) for the South China Sea, which has also been stymied by stasis. Both CUES and COC are regarded as operational naval arms control measures, which unlike structural measures seek to limit the way maritime forces are being deployed, rather than their quality or quantity. Still, identifying the forces in question will be the precondition for meaningful discussions, eventual conclusion of such a mechanism, and for future verification and compliance purposes. It is therefore necessary for parties at the negotiating table, be it at the follow-on discussions after the first step of the "Phased Approach" has been implemented, or right at the outset of "Blanket Approach" talks, to agree that irregular MLE forces do exist. This constitutes the fundamental pre-requisite for an expanded CUES to be efficacious, not just in name but in implementation. If not, the discussions may simply fall through or parties will be compelled to seek the lowest common denominator, rendering this mechanism more as a shining political symbol yet operationally meaningless.

Going down the path of the lowest common denominator of how MLE forces are defined will obfuscate the real crux of those realities playing out in the South China Sea and in the foreseeable future. China, being the foremost protagonist in South China Sea disputes when it comes to the use of irregular MLE forces in asserting its sovereignty and jurisdictional claims, will almost certainly not admit to the existence of these "little blue men", and will never be willing to give up a useful tool that gives Beijing so much tactical, operational, and strategic flexibility. The same goes for Vietnam which also operates its own version of the maritime militia, albeit at a smaller scale than what the Chinese muster.

Despite Singapore having first proposed expanding CUES to include coastguards, a senior Singaporean official at the recent Shangri-La Dialogue seemed less than optimistic about that possibility. On top of that, the increasing activities of irregular maritime forces in the South China Sea observed recently mean that an expanded CUES, though still theoretically possible, will face an arduous and challenging road ahead.

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