

## Chinese Aerial Patrols Over Senkaku Islands

*Vivek Kapur*

*Gp Capt Vivek Kapur is Research Fellow at the Institute for Defence Studies & Analyses (IDSA), New Delhi.*

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### *Summary*

Since World War II, there have been several incidents of civil and military aircraft straying or intentionally penetrating another country's sovereign airspace. These have led to several instances of aircraft being shot down. ICAO lays down clear procedures to deal with civil aircraft but the law regarding military aircraft is based more on the historical trends of perceived acceptance of actions. This latter situation leads to absence of clear universally accepted rules of engagement regarding state owned aircraft intruders. In a situation where the territory and sovereign airspace itself is in dispute, the situation becomes even murkier with greater chances of miscalculation and stepping into a live firing situation that has potential to escalate. In this context China's escalation of the Senkaku ownership dispute by commencing air patrols over the islands by OSA aircraft is irresponsible to say the least. This action has the potential to trigger a war between China and Japan. Such a conflict is not in anyone's interest. China would be well advised to refrain from taking such escalatory actions and to commence open minded negotiations for a reasonable and peaceful resolution of the dispute while eschewing military options.

## Introduction

On 13 December 2012 it was reported that China carried out its first air patrol over the Senkaku islands. This involved a government owned Y-12 of the Sea and Ocean Administration (SOA) – China’s equivalent of a Coast Guard. Japan scrambled eight F-15 fighters to vacate this ‘intrusion into their airspace’. While this incident ended without any further untoward developments, similar events in future have the potential to spiral out of control.

## International Law and Norms on Aerial Intrusions

### Civil Aircraft Intruding into Sovereign Airspace

The International Civil Aviation Organisation (ICAO) lays down very clear procedures for civil aircraft operated on scheduled or non-scheduled operations to enter another state’s sovereign airspace.

A state’s sovereign airspace extends vertically up from the land borders till the demarcation of air and outer space defined by the arbitrarily set Karman line at 62.137 miles (100 kilometres) above mean sea level (AMSL).<sup>1</sup> Over the seas the limits of sovereign airspace extend upwards till the Karman line from the 12 nautical mile (nm) territorial waters limit.

Civil aircraft are required to obtain prior permission of the state concerned with intimation of their purpose, route to be followed, flight parameters, load or passengers carried, etc. Such aircraft are to proceed only once cleared to do so. Further, in situations where such aircraft stray from their stated/permitted paths or approach prohibited areas, they may be intercepted by armed fighter aircraft of the state owning the sovereign airspace concerned. ICAO also lays down the procedure to be followed by the interceptors and associated ground or air based controlling Air Defence radar stations: contact the straying civil aircraft and inform it of its divergence from the agreed path and to get it to alter course appropriately. Alternately, the aircraft may be asked to land at a suitable airfield. Should contact through Radiotelephony (R/T) fail, the interceptors are to use clearly laid down manoeuvres and signals to instruct the straying civil aircraft.

These procedures are aimed at ensuring that passengers on board the straying civil aircraft are not harmed and that the interceptors do not require the use of their weapons. In fact, the ICAO handbook on the subject goes on to state clearly that firing at an unarmed civil aircraft is unacceptable. However, ICAO is silent on military aircraft and on aircraft belonging to para-military organisations, police forces and the government, all of which

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<sup>1</sup> “100km Altitude Boundary for Astronautics”, <http://www.fai.org/icare-records/100km-altitude-boundary-for-astronautics>, accessed on 14 December 2012.

are clubbed under the generic classification of “state aircraft”.<sup>2</sup> State aircraft are covered by what is generally seen to be the norm set by states involved in instances of intrusions into another state’s sovereign airspace by military or quasi-military aircraft.

The first instances of dealing with such intrusions after World War II began in August 1946 when two US Army unarmed C-47 (Dakota) aircraft were shot down by the Yugoslav Air Force over Yugoslav territory. In response to US protests, the Yugoslav government maintained that its Air Force had ordered and signalled the intruder to land at a suitable airfield but when it refused to comply it was destroyed. This incident was followed by a Yugoslav government decision to declare a new procedure of asking intruding unarmed aircraft, even state aircraft, to land at a suitable airfield; on the intruder failing to comply with these orders they would not fire at it but take up the matter through diplomatic channels.<sup>3</sup>

In 1952, a French airliner flying from Frankfurt to Berlin was buzzed, prior to being shot at with cannon, by two Soviet MiG-15 fighters. The Soviets maintained that the airliner had violated their airspace through straying outside the laid down air route and, on refusing to land, had been warned through firing of cannon shells across its path. The Soviets did not differentiate between civil and military aircraft violating their airspace and clarified that intruders into Soviet airspace would be warned and then asked to land at a suitable airfield failing which they would be fired upon.<sup>4</sup> Throughout the Cold War, incidents of Western military, and a few civil and para-military, aircraft on probing or reconnaissance missions being shot down by the Soviets over their territory continued to occur.<sup>5</sup>

On 23 July 1954 a British owned Cathay Pacific airliner flying from Bangkok to Hong Kong was shot down by the Chinese People’s Liberation Army Air Force (PLAAF). The airliner crashed into the sea resulting in several deaths. The co-pilot who survived the crash later claimed that they had been fired upon without warning. The Chinese apologised profusely and stated that they had mistaken the aircraft for a Nationalist Chinese bomber. This implied that they may have followed the Yugoslav policy adopted post the US Army C-47 incidents (described earlier), if they had recognised the aircraft to be a civil airliner. In 1955 an Israeli El Al airliner was shot down over Bulgaria by the Bulgarian Air Force. Apologies were later rendered by the Bulgarians with offers of compensation.<sup>6</sup>

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<sup>2</sup> “Manual concerning Interception of Civil Aircraft (Consolidation of Current ICAO Provisions and Special Recommendations) SECOND EDITION – 1990”, [http://portal.aerocivil.gov.co/portal/pls/portal/!PORTAL.wwpob\\_page.show?\\_docname=8025155.PDF](http://portal.aerocivil.gov.co/portal/pls/portal/!PORTAL.wwpob_page.show?_docname=8025155.PDF), accessed on 13 December 2012.

<sup>3</sup> Major John T. Phelps II, “Aerial Intrusions By Civil And Military Aircraft In Time Of Peace”, *Military Law Review*, Vol. 107 (1985), pp. 70-77.

<sup>4</sup> *Ibid.*, pp. 278-85

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, pp. 278-90.

The instances described above bring out that despite the ICAO's laid down procedures to deal without force of arms against civil aircraft intruding into sovereign airspace, in practice the actions taken in the real world have not always been as per the ICAO handbook on the issue. However, in most cases involving civil aircraft the state that carried out the attack has apologised and accepted it as an error on its part. A notable exception involves the shooting down of the Korean Air Lines Boeing 747, airborne as Flight 007, over the Eastern Soviet Union on 31 August 1983 by Soviet fighters. While the United States claimed that the Soviets fired upon the airliner without any warning, the Soviets claimed that the aircraft was well off course and approaching very sensitive military locations and moreover was not responding to R/T calls and signals including firing of warning shots of tracer cannon ammunition across its nose. This, they claimed, left them with no alternative but to destroy the aircraft (which they suspected to be on a spying mission) in accordance with their Air Defence orders.<sup>7</sup> A few unconfirmed reports appeared later in several aviation journals and websites putting forth circumstantial evidence that the USAF may have been consciously using civil aircraft straying into Soviet airspace, including the ill fated Flight 007, to gather intelligence on Soviet Air Defences through a USAF Electronic Intelligence (ELINT) aircraft, such as their RC-135s, shadowing the straying airliners. The straying airliner was expected to trigger Soviet Air Defence forces and their responses could then be measured and recorded by the RC-135.<sup>8</sup>

### **Military Aircraft Intruding Into Sovereign Airspace**

The historical narrative regarding military or state aircraft is quite different. On 1 May 1960, the Soviets shot down a high flying U-2 aircraft and imprisoned its pilot. Later, on 1 July 1960, a US RB-47 was shot down over the Soviet Union. Unlike the civil aircraft incidents, these military or state aircraft incidents did not see the same level of accusations by the aggrieved party, namely the United States. This indicated an acceptance of the right of the intruded upon power to apply military force against state aircraft intruders while also emphasising the Soviet Union's policy on intrusions.<sup>9</sup>

Examination of the incidents above brings out that unlike the ICAO laid down rules on dealing with civil aircraft, the norms or law on dealing with intruding state aircraft is based upon customary law derived from the history of aerial intrusions rather than by universally agreed upon procedures. The shooting down of the Pakistan Navy Altantique over India's Kutch region by a MiG-21 interceptor on 10 August 1999<sup>10</sup> and the EP-3 incident

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<sup>7</sup> Ibid., pp. 255-60.

<sup>8</sup> "Offering Aviation History & Adventure First-Hand! KAL Flight 007", [http://www.check-six.com/lib/Famous\\_Missing/KAL\\_Flight\\_007.htm](http://www.check-six.com/lib/Famous_Missing/KAL_Flight_007.htm), accessed on 14 December 2012.

<sup>9</sup> Note 3, pp. 285-90.

<sup>10</sup> "Atlantique Incident", [http://www.newworldencyclopedia.org/entry/Atlantique\\_Incident](http://www.newworldencyclopedia.org/entry/Atlantique_Incident), accessed on 14 December 2012.

off Hainan island when a PLAAF J-8II fighter collided with a US Navy EP-3 which was on a 'routine reconnaissance' mission off the coast of China, forcing the damaged EP-3 to land on Hainan island, conform to the norm of armed action against state owned intruders being acceptable. The J-8II was lost with the pilot being killed in the crash.<sup>11</sup>

The Indian Air Force's policy on interception of intruders is in accordance with relevant ICAO regulations and norms. Basically this means that intruding or straying civil aircraft (airliners and general aviation aircraft) and unarmed cargo aircraft even if in military colours are to be ordered to return to their cleared and authorised air routes and to be ordered to alter course to avoid restricted areas. Such aircraft are to be fired upon only if they are seen to be carrying out hostile activities such as dropping personnel or loads by parachute, or suspected beyond reasonable doubt to be carrying out an Electronic Support Measures (ESM) mission or are refusing to alter course and continuing to head towards very sensitive areas, etc. Military aircraft such as fighters or bombers that intrude or stray off their cleared transit air routes are to be treated as hostile and to be contacted and ordered to land at an Indian airfield failing which they may be engaged for destruction.

China's policy on intrusions remains unclear, though China has reportedly shot down several intruding aircraft in its airspace since as early as the late 1950s. On 7 October 1959, China reportedly shot down a Taiwanese reconnaissance aircraft over Beijing and in the following 10 years China's surface to air missiles (SAMs) were used to shoot down six US-made U-2 reconnaissance aircraft along with three US-made Unmanned Aerial Vehicles (UAVs) that had intruded into Chinese airspace.<sup>12</sup>

Japan, being a close US ally, could reasonably be expected to follow the same policies as the United States in the matter of dealing with intruders into its airspace. Japan scrambled its fighters 83 times to intercept incoming Chinese fighters in the later half of 2011. This was an appreciable increase over the previous years.<sup>13</sup> The increase in the number of scrambles indicates an increase in detection of unidentified aircraft tracks heading towards Japanese airspace from the general direction of China.

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<sup>11</sup> [http://www.newworldencyclopedia.org/entry/Atlantique\\_Incident](http://www.newworldencyclopedia.org/entry/Atlantique_Incident), [https://docs.google.com/viewer?a=v&q=cache:-IoDkzKU5q4J:www.fas.org/sgp/crs/row/RL30946.pdf+ep-3+incident+china&hl=en&gl=in&pid=bl&srcid=ADGEESgffFuJJUIYBApdZI\\_\\_CBcJmOMdPDy5tsdtlsXeP0WYSkeJgTuBXkccGaUgpmMdUNUK2AFF706nrPztUwRANRwIXtDO4NuTiGNZn1vOPXw5a5uCwv-HFSy8SRIBdI9IAAq22o&sig=AHIEtbRV\\_eu0bT60ArOqvYI7ntxbaYqJEMA](https://docs.google.com/viewer?a=v&q=cache:-IoDkzKU5q4J:www.fas.org/sgp/crs/row/RL30946.pdf+ep-3+incident+china&hl=en&gl=in&pid=bl&srcid=ADGEESgffFuJJUIYBApdZI__CBcJmOMdPDy5tsdtlsXeP0WYSkeJgTuBXkccGaUgpmMdUNUK2AFF706nrPztUwRANRwIXtDO4NuTiGNZn1vOPXw5a5uCwv-HFSy8SRIBdI9IAAq22o&sig=AHIEtbRV_eu0bT60ArOqvYI7ntxbaYqJEMA), accessed on 14 December 2012.

<sup>12</sup> "Peoples Liberation Army Air Force", <http://www.globalsecurity.org/military/world/china/plaaf-intro.htm>, accessed on 14 December 2012.

<sup>13</sup> "Japan Intercepting Record Numbers of Chinese Planes", <http://defensetech.org/2011/10/17/japan-intercepting-record-numbers-of-chinese-planes/>, accessed on 14 December 2012.

## Current Situation in East China Sea and Dangers

It was reported on 13 December 2012 that China had commenced air patrols by State Oceanic Administration (SOA) owned and operated aircraft over the disputed Senkaku islands. This is in addition to the earlier patrols by its SOA ships. The air patrol on 13 December 2012 was reportedly by a Chinese Y-12 twin turboprop aircraft.<sup>14</sup> In response to this perceived air violation by a Chinese state aircraft, Japan scrambled as many as eight F-15 fighters. In this incident the Japanese side reportedly asked the Y-12 to vacate 'Japanese airspace' only to be told in turn that it was they who were violating 'Chinese airspace' and that they should turn back.<sup>15</sup>

It has been noted above how even in absence of dispute over territories there have been several incidents of both civil and military aircraft involved in intrusions and armed responses. The current situation in the East China Sea is complicated by the territorial dispute in which both sides can claim violation of their sovereign airspace and take action as found permissible by historical consensus and norms. This could lead to armed action by one side against the other. The fact that state owned aircraft, China's equivalent of a coast guard on one side and the Japanese Air Self Defence Force (JASDF) on the other, are involved makes this situation a tinderbox. The historical record and derived norms show need for no restraints in acting against intruding state aircraft of a hostile power.

## Implications and Recommendations

The Chinese action of escalating the confrontation in the Senkaku islands area is thus fraught with danger and highly irresponsible. The Chinese could be seen to be employing a carefully orchestrated escalation of tensions in the hope of making the Japanese side blink first and back off. Should this Chinese gamble fail, a real shooting war could erupt in the East China Sea. Such a conflict is not in the interest of any country. Recession afflicted Japan and "peacefully developing" China require peace in the region for further development and economic progress. Other nations of the word require peace for their trade related activities through the waters off East Asia. China would be well advised to refrain from ratcheting up tensions further in the East China Sea through escalation of its military activities.

The way the situation plays out in the Senkaku islands region will make for interesting watching in the days ahead. If China chooses to escalate the situation further, it may commence to escort its SOA operated Y-12 with PLAAF J-11B or J-10 fighters in order to

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<sup>14</sup> "Surveillance plane's patrol over Diaoyu normal: FM", <http://www.globaltimes.cn/content/750151.shtml>, accessed on 14 Dec 2012.

<sup>15</sup> "Japan accuses China of airspace intrusion over islands", <http://www.bbc.co.uk/news/world-asia-20707760>, accessed on 14 Dec 2012.



counter JASDF interceptors. Such a decision could set the stage for a live shooting incident in the area, especially given the nationalism on display in both China and Japan on the issue of ownership of the Senkaku islands. If China is to live up to its “peaceful development” slogan, then it would withdraw its ship and air patrols from the area and commence negotiations with Japan in good faith, setting aside all nationalistic rhetoric, to find a face saving solution acceptable to both sides as regards ownership of these islands and the exploitation of resources in their vicinity. Failure to do so would make it clear that China is an emerging imperialist power with ever growing territorial ambitions in its neighbourhood.

## Conclusion

Since World War II, there have been several incidents of civil and military aircraft straying or intentionally penetrating another country’s sovereign airspace. These have led to several instances of aircraft being shot down. ICAO lays down clear procedures to deal with civil aircraft but the law regarding military aircraft is based more on the historical trends of perceived acceptance of actions. This latter situation leads to absence of clear universally accepted rules of engagement regarding state owned aircraft intruders. In a situation where the territory and sovereign airspace itself is in dispute, the situation becomes even murkier with greater chances of miscalculation and stepping into a live firing situation that has potential to escalate. In this context China’s escalation of the Senkaku ownership dispute by commencing air patrols over the islands by OSA aircraft is irresponsible to say the least. This action has the potential to trigger a war between China and Japan. Such a conflict is not in anyone’s interest. China would be well advised to refrain from taking such escalatory actions and to commence open minded negotiations for a reasonable and peaceful resolution of the dispute while eschewing military options.

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