

Australian naval ops in Yellow Sea are aimed at China, not North Korea

14 May—What exactly was a Royal Australian Navy helicopter doing in “international waters” just off the coast of China ten days ago, when a People’s Liberation Army fighter jet dropped flares to warn it away from sovereign Chinese airspace?



Australia’s helicopter was 8,535 km from Canberra in the Yellow Sea when it was warned off by China.

That is the question the Albanese government, the Liberal Party opposition, Canberra’s defence and security establishment, and their sundry media propagandists all hope the public will be too swept up in confected patriotic outrage to ask. They claim the RAN was there as part of an international mission to enforce sanctions the United Nations Security Council (UNSC) has imposed upon North Korea (officially the Democratic People’s Republic of Korea, DPRK) since 2006 to curtail its nuclear weapons and associated ballistic missile programs; and they pretend—but carefully avoid stating outright—that that mission enjoys a UNSC mandate. In reality it was instigated in 2019 by the USA as a quasilegal pretext for elements of the US Seventh Fleet and its auxiliaries to traipse about in China’s Exclusive Economic Zone (EEZ), whence to gather intelligence on Chinese coastal defences and ship movements. In so doing, they have explicitly violated the terms for implementation of the UN sanctions they claim to be enforcing; and also certainly the spirit, and arguably the letter, of international maritime law as prescribed by the 1982 UN Convention on the Law of the Sea (UNCLOS) —which the United States, by the admission of one of its own senior experts on military law, has never ratified precisely because doing so would restrict its ability to spy upon and/or project military force against countries disinclined to accept American strategic hegemony, of which Australia remains an eager “sub-imperial” enforcer.

According to a 6 May Defence Department press release, the Australian government had “expressed its concerns to the Chinese Government following an unsafe and unprofessional interaction with a People’s Liberation Army - Air Force (PLA-AF) fighter aircraft” two days earlier. “On 4 May 2024, [RAN air warfare destroyer] HMAS *Hobart* was in international waters in the Yellow Sea undertaking routine activities as part of Operation Argos, Australia’s contribution to the international effort to enforce United Nations Security Council sanctions against North Korea”, the release stated. “During these activities, a Royal Australian Navy MH-60R helicopter launched from HMAS *Hobart* was intercepted by a PLA-AF fighter aircraft ... [which] released flares across the flight path of the Australian Defence Force (ADF) helicopter.” This was an “unsafe manoeuvre which posed a risk to the aircraft and personnel”, Defence claimed, albeit it acknowledged that nothing was damaged nor anybody injured in the incident.

No UN mandate

First, the supposed danger to the helicopter and its crew seems to have been greatly exaggerated. Defence Minister Richard Marles told Nine News on 6 May that the PLA-AF aircraft had “dropped flares about 300 metres in front of ... [and] about 60 metres above it, requiring the helicopter to take evasive action”. Even at its maximum speed of 267 km/h, the pilot would have had over three seconds in which to change course—plenty of reaction time even for the average person, let alone the exceptionally sharp and highly trained reflexes typical of a combat pilot.

But leaving that aside: if, as the release asserted, “the safety and wellbeing of our ADF personnel continues to be our utmost priority”, what were they doing there in the first place? As veteran investigative journalist Brian Toohey [observed](#) 14 May in the online journal *Pearls and Irritations*, “The Navy says the helicopter was helping enforce UN sanctions on North Korea. But it has not explained how it does this. The helicopter’s main capability is to deploy sonars [called ‘sonobuoys’] above and below the sea surface. Australia also operates P-8A long-range maritime surveillance planes from bases in Japan which can detect the transfer of illegal cargo at sea. There is no suggestion the helicopter in the Yellow Sea has a comparable capability.” What Toohey misses, however (as, so far as this author is aware, does every other report on the incident in either mainstream or alternative media), is that Australia has no business gallivanting about the world enforcing UN sanctions on North Korea in the first place—not on the high seas (so-called “international waters”) except in relation to

Australian-flagged vessels, and not at all inside China's (or any other nation's) EEZ, where the incident is acknowledged to have occurred.

In the above-cited Defence release and elsewhere, the government refers to Operation Argos (named for Argos Panoptes, the unsleeping, all-seeing, hundred-eyed giant of Greek myth) as *the* rather than *an* "international effort to enforce ... sanctions on North Korea", to imply that it is the only one and must therefore have been mandated by the UN. Neither is true. As ADF Chief of Joint Operations Lt.-Gen. Greg Bilton [stated](#) in September last year, Argos is in fact "a multinational effort, alongside Canada, France, Germany, Japan, New Zealand, Republic of Korea, the United Kingdom and the United States", which "contributes to maintaining the *rules-based order* in the Indo-Pacific region" (emphasis added). As reported 15 December 2020 by American military-focused publication Stars and Stripes, it was designed and is overseen not by the UN but by the US Seventh Fleet, from its base in Yokosuka, Japan. "US Indo-Pacific Command established the enforcement coordination cell within 7th Fleet in April 2019 in response to repeated sanctions violations, US Navy Lt. Joe Keiley, a spokesman for the fleet, said in an email", *Stars and Stripes* reported. "'The violations were observed in the East China Sea, Yellow Sea, and Sea of Japan', he said."

Even that report, however, acknowledged that "The [UN Security] Council has authorised [UN] member states to seize, inspect, freeze and impound any vessel *in their territorial waters*" (emphasis added) that is suspected to be violating sanctions. The UNSC website [elaborates](#) that "All Member States are required to prevent the direct or indirect supply, sale, or transfer to the DPRK, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories", of arms, nuclear materials, and other goods and services proscribed by UNSC resolution 1718 (2006) and several subsidiary resolutions passed since. Actual inspection and interdiction, however, is authorised only for cargo "that is within or transiting their territories". They may intervene elsewhere, individually or collectively, only as authorised by the UNSC subcommittee created by res. 1718 (and therefore generally called the "1718 Committee") for the purpose of overseeing implementation of the sanctions, which "comprises [representatives of] all 15 members of the Security Council and makes its decisions by consensus"—a consensus which, given China is one of the five permanent members (alongside France, Russia, the UK and the USA) of the UNSC, plainly has never been reached in regard to Operation Argos.

'Rules' for thee, but not for me

Thus we return to the question of what the RAN was really up to in the Yellow Sea, butting up against China's territorial waters and more than 8,000 km from Australia's own. China for its part stated 7 May, via [Foreign Ministry spokesman Lin Jian](#), that "What truly happened was, an Australian military aircraft deliberately flew within close range of China's airspace in a provocative move that endangered China's maritime and air security in the name of enforcing the UN Security Council's resolutions." In response, "The Chinese military took necessary measures at the scene to warn and alert the Australian side", he said. "The way the situation was handled was consistent with our laws and regulations, professional and safe." According to an 8 May [report](#) by Chinese state-owned international broadcaster CGTN, Defence Ministry spokesman Zhang Xiaogang added that the helicopter had been dispatched three times to "conduct close-in reconnaissance" of a PLA Navy exercise occurring inside Chinese waters. "The Chinese troops vocally warned the Australian helicopter and then conducted operations to expel it, which Zhang said fully complied with international law and practice", CGTN reported.

The true purpose of Argos and other operations like it had already been revealed in an [exposé](#) co-authored by *Crikey* politics editor Bernard Keane and former ADF signals intelligence officer turned historian Prof. Clinton Fernandes in June 2022, in relation to a similar incident in the South China Sea. "[There] is no doubt that EEZs around the world are international waters" under the terms of UNCLOS, they noted. The treaty prescribes a "territorial" limit, inside which a country exerts full sovereignty (including over airspace), of 12 nautical miles (22.2 km) from its coast, including of islands; and an EEZ, wherein a country has sole claim to resources and control over the exploitation thereof, of 200 nm (370 km). Overlapping claims are settled bi- or multilaterally among rival claimants, and there are carve-outs for historical territorial claims (such as China's to parts of the South China Sea) that pre-date the modern system of international law. China, like most countries, has ratified the treaty, established its own EEZ and recognises the EEZs of others, Keane and Fernandes reported. "But the United States has not ratified the convention—the only major maritime power to not do so. However, it says it will act in accordance with its provisions. And it established its EEZ within 200 nautical miles of its coast and also recognises the EEZ of other states." With, that is, one important caveat; namely that "it also says it has the right to conduct military and intelligence-collection activities within any country's EEZ. China disagrees. It says it respects freedom of navigation ... but does not respect the right of foreign governments to conduct military and intelligence-collection activities within its EEZ.

"More to the point", they added, "the three major regional maritime powers friendly to Australia—India, Indonesia and the Philippines—agree with China. For example, in April last year [2021], the [US 7th Fleet](#) carried out a freedom-of-navigation operation in the [EEZ of Quad partner India](#). India objected, saying the convention 'does not authorise other states to carry out in the EEZ and on the continental shelf, military exercises or manoeuvres, in particular those involving the use of weapons or explosives, without the consent of the coastal state.'" This is not an arbitrary position: UNCLOS does permit the "innocent passage" of military vessels through other countries' EEZs (and even transit

through their territorial seas, under strict conditions and where no alternative route is available); but that does not include military exercises, let alone intelligence-gathering (a.k.a. spying). China and the others mentioned above are among 20 nations seeking to amend UNCLOS explicitly to exclude such operations.

The position of the USA and its hangers-on, by contrast, is that everything not explicitly forbidden is allowed—at least for them. “This approach has consequences”, Keane and Fernandes wrote. “[China has begun to conduct intelligence-gathering](#) and presence operations in other countries’ EEZs, including Australia’s, justifying its behaviour by saying that it would not do so if Australia adopted its own position on the sovereignty of EEZs. Australia can have no complaint if China adopts the very behaviour we’re engaging in.” But of course, complain it does.

“So what benefit do we get from upholding the US approach to EEZs, especially given the potential to upset key regional powers we want on our side? An expert from the US Naval War College who [testified before Congress in 2009](#)”—namely retired Navy Judge Advocate Prof. [Peter A. Dutton](#) PhD, JD, MA (no relation to Australia’s opposition leader)—“said if it accepted the position of China, India, the Philippines and Indonesia on EEZs, the US would be forced to conduct military operations from more than 200 miles offshore.

“That would significantly reduce the range of US sensors and missiles, making intelligence-gathering much harder and making it much more difficult to deploy US marines and their equipment in amphibious assaults. America’s ability to project naval and air power would face limitations not only in the South China Sea but also in other EEZs such as the Persian Gulf. Its ability to use the world’s oceans as a medium of manoeuvre and global power projection would be threatened.” The Australian public, they wrote, “deserve to be told what the objective is: to uphold America’s desire to project power in every EEZ in the world, not just the South China Sea. Otherwise they will continue to be misled if or when a clash occurs.” Under Albanese as Scott Morrison before him, however, deceit and hypocrisy seem still to be the Australian government’s entire stock in trade.

By Richard Bardon, Australian Alert Service, 15 May 2024