

# Coast Guards and International Maritime Law Enforcement



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By

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## PREFACE

Coast guards are a multi-role player and provide a variety of services at sea. They are responsible for a wide array of missions, including search and rescue, maritime safety and security, national defense, border control, the protection of sea lanes, the preservation of the marine environment and law enforcement. The unique nature of coast guards as both a law enforcement body and a paramilitary force enables them to perform a blend of duties. Their missions and roles have expanded to include protecting the sovereignty of states in extended maritime jurisdictions since the adoption of the U.N. Convention on the Law of the Sea (UNCLOS). Under the circumstances, coast guards have become the front-line defenders of national interests in maritime disputes.

Despite coast guards' unparalleled responsibilities and services, however, their commitment and devotion don't seem to be as well recognized as they deserve. People are often confusing coast guards' duties and roles with those of navies. This is what prompted me to write a book about coast guards, based on the experience and knowledge I gained during my service in the Korea Coast Guard.

*Coast Guards and International Maritime Law Enforcement* focuses on two principal subjects: to explore the roles and services of various types of coast guards in the world as well as the organizational governance which has evolved to best suit their circumstances; and to examine coast guards' authority and limitations in law enforcement in relation to international law. For this purpose, this book sheds light on the responsibilities and services of national and international coast guards with different organizational governances. This book provides readers with an opportunity to better understand the nature of coast guards and their far-reaching responsibilities and services. In terms of law enforcement, *Coast Guards and International Maritime Law Enforcement* examines the provisions of international laws and the cases referred to international tribunals for dispute settlements. It also attempts to provide the criteria for international maritime law enforcement actions — in particular, the use of force.

Law enforcement to keep the sea safe and peaceful is the coast guards' overarching mandate. Coast guard officers are subject to municipal laws and regulations as well as international law when they are engaged in maritime law enforcement on foreigners and foreign vessels. International

law, including the UNCLOS, however, does not provides explicit procedures and criteria for maritime law enforcement, *inter alia*, the use of force. In practice, specific procedures rest with the legislation of states. Under these circumstances, law enforcement on foreign vessels often brings about international disputes over its justification, legitimacy, jurisdiction, and the extent of use of force. The use of force is of particular importance since it could result in a serious infringement of human rights, including loss of life, if not properly used.

Law enforcement directed at ships and the people onboard, often in harsh sea conditions, is challenging. By recognizing such difficulties in the execution of coast guards' duties, I hope that my book helps readers better understand their services and roles. I also hope that my book serves as a good reference for coast guard officers in carrying out their law enforcement duties.

Lastly, I would like to share my findings and research with coast guard people, researchers and those who cheers and stand with coast guards. I would like to thank Cambridge Scholars Publishing and those involved in publishing my book. I would also extend my gratitude to Laura Schreier for her wonderful copy editing. I acknowledge that portions of Chapter 7 are from the author's book *Global Maritime Safety & Security Issues and East Asia* (Brill, 2019) and thank Brill for allowing me to reprint it. I also acknowledge that portions of this book are based on the author's article 'The Expansion of and Changes to the National Coast Guards in East Asia' published in *Ocean Development and International Law*, 29(4).





# CHAPTER 1

## OVERVIEW OF COAST GUARDS

### I. Emergence of ‘Coast Guard’ as an Entity

The term ‘coast guard’ may be unfamiliar for many people. Just as police protect their life and property on land, the coast guard may be said to do so at sea — while additionally carrying out a role similar to that of naval forces.

A coast guard is a maritime enforcement agency of a particular country. It is a pivotal institution used to ensure maritime safety, security, and law and order at sea. For this purpose, a coast guard performs a wide range of duties and services, and thereby is described as an amalgam of diverse maritime services.

The origin of the coast guard as an idea can be traced back to the United Kingdom’s Preventative Waterguard, established in 1809 under the Treasury. Throughout the 17<sup>th</sup> and the 18<sup>th</sup> centuries, the U.K. had been plagued by smuggling from neighbor countries such as France, Belgium and Holland, which sought to evade its high taxes, primarily on liquors. Additionally, smugglers provided aid to Napoleon during the Napoleonic War. That spurred the British government to strengthen its preventive force and as a result, a Preventive Waterguard was established.<sup>1</sup> Its primary duty was to prevent smuggling, but it also took responsibility for assisting ships in distress.

However, there was redundancy of effort with regard to anti-smuggling forces, which included the Riding Offices, the Preventative Waterguard, Royal Navy ships, revenue cruisers, Admiralty cruisers and the Coast Blockade. In response, the U.K. in 1822 decided to integrate the preventative services under the Board of Customs and titled it the ‘Coast Guard.’ The Preventative Waterguard therefore is regarded as the immediate ancestor of Her Majesty’s Coast Guard today.<sup>2</sup>

As for the history of the United States Coast Guard (USCG), its

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<sup>1</sup> The U.K. Government National Archive, ‘Coastguard history,’ available at [https://webarchive.nationalarchives.gov.uk/+tf\\_/http://yourarchives.nationalarchives.gov.uk/index.php?title=Coastguard\\_History](https://webarchive.nationalarchives.gov.uk/+tf_/http://yourarchives.nationalarchives.gov.uk/index.php?title=Coastguard_History).

<sup>2</sup> *Ibid.*

origin dates back to when President Woodrow Wilson signed a bill merging the Life-Saving and the Revenue Cutter Service in 1915.<sup>3</sup> Just as with the U.K., the USCG began as a means of protecting the nation's revenue. It began with 10 cutters in the year 1790, then in 1863 became known as the Revenue Cutter Service. The Life-Saving Service was permanently established in 1878.

From the examples of the U.K. and the U.S., we learn that revenue-saving services were the original motivator for founding coast guards. With growth in maritime trade and a subsequent increase in shipwrecks throughout the 18<sup>th</sup> and 19<sup>th</sup> centuries, life-saving increasingly became critical and thus took higher priority in coast guards' duties. In the U.K., however, it was not until the passage of the Merchant Shipping Act of 1854 that the government took the first formal steps to assume direct responsibility for life-saving at sea.

There is no universally agreed-upon definition of the coast guard in international law. The general usage of the word 'coast guard' or 'coast guard agency' is used to indicate various types of maritime enforcement agency. As such, various maritime enforcement agencies, which are tasked primarily with offshore policing and conducting search and rescue operations, and which have the authority to enforce maritime laws and regulate maritime activities over civilians and foreigners, are described as a 'coast guard.' Maritime enforcement agencies, which are mostly named 'coast guard' in English, have their own service names in their respective languages. The names indicate the entities' organizational characteristics and the priority of their various missions. The description of a coast guard may become more distinctive when compared with the navy.

## **II. Relationship between the Coast Guard and the Navy**

### **1. Generic Distinction**

The coast guard appears similar to the navy, and people sometimes get confused about the differences. Both are uniformed, armed, and operate ships (although coast guard ships are described as the 'white hull,' as opposed to the 'grey hull' for naval ships).

However, their duties and missions are, to a large extent, distinctive, in addition to differences in their size, assets, organizational structure, and the status of personnel. While the navy is tasked primarily

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<sup>3</sup> United States Coast Guard, 'The Coast Guard through History,' available at website of USCG, <https://www.gocoastguard.com/about-the-coast-guard/learn-the-history>.

with fighting wars and deterring aggression in the name of national defense, the coast guard is responsible for law enforcement and safety and security in the seas under the national jurisdiction of a state. Traditionally, naval ships have played an essential role in the projection of a state's maritime power and have been regarded as an extension of national sovereignty. For this reason, their engagements in maritime disputes have significant implications in international politics. While a standoff of coast guard ships is generally viewed as an operational and law enforcement conflict, a confrontation between naval ships could be seen as a showdown between parties, and thereby have significant impacts on their relations.

In terms of the level of armament, the differences between the two branches are remarkable. Whereas naval ships are armed with heavy and high-technology weapons, coast guard ships are lightly armed for law enforcement and, to a lesser extent, self-defense. The coast guard and the navy are each subject to a different ethos and set of rules, under which the navy is governed by military doctrines while the coast guard falls under civilian discipline and law. In terms of law enforcement authority, coast guard officers are authorized to enforce national maritime laws on national citizens and foreigners, while military forces in many countries are prohibited from being involved in policing duties against national citizens for constitutional and political reasons.<sup>4</sup>

Before the emergence of the coast guard, the navy performed both war-fighting and constabulary missions. In Asia, in particular, coast guards were offshoots of the navy or were newly created out of a growing need for a separate maritime enforcement agency responsible for constabulary tasks. While coast guards come to the forefront in maritime disputes, the navies in peacetime expand their roles to coast guard-type missions, including the protection of sea lanes of communication, anti-piracy, protection of the marine environment and disaster relief. Thus, the roles and functions of the coast guard and the navy tend to be, to a certain extent, convergent to each other.

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<sup>4</sup> Sam Bateman, 'Coast Guards: New Forces for Regional Order and Security,' (2003) 65, *Asia Pacific Issues, Analysis from the East-West Center*, p. 3.

**Table 1 A Comparison of Characteristics of Coast Guards and Navies**

	<b>Coast Guard</b>	<b>Navy</b>
<b>Platform</b>	<ul style="list-style-type: none"> <li>•Thinner hull more vulnerable to high kinetic attacks</li> <li>•Lightly armed with deck-mounted machine guns</li> <li>•Less expensive to operate and maintain</li> </ul>	<ul style="list-style-type: none"> <li>•Thicker hull constructed to withstand high-kinetic attacks</li> <li>•Full array of armaments, radar and communication systems</li> <li>•More expensive to operate and maintain</li> </ul>
<b>Personnel</b>	<ul style="list-style-type: none"> <li>•Customs, border patrol, fisheries and counter-narcotics officers</li> <li>•Trained to enforce maritime laws and regulations</li> </ul>	<ul style="list-style-type: none"> <li>•Weapons officers, navigators and commanders</li> <li>•Trained to prosecute war</li> </ul>
<b>Use of force vs. rules-of-engagement doctrine</b>	<ul style="list-style-type: none"> <li>•Use-of-force doctrine; graduated actions designed to exert minimum force to compel compliance of civilian actors</li> </ul>	<ul style="list-style-type: none"> <li>•Rules-of-engagement doctrines; lethal, highly kinetic actions against combatants</li> </ul>
<b>Basis in law</b>	<ul style="list-style-type: none"> <li>•Enforce domestic and international laws and conventions</li> </ul>	<ul style="list-style-type: none"> <li>•Defend national sovereignty and citizens from external attack or aggression</li> </ul>

**Source:** Lyle J. Morris, 'Blunt Defenders of Sovereignty' (2017)70(2), *Naval War College Review*.

Despite their differences in roles and missions, the coast guard and the navy are complementary to each other, constituting the core maritime bodies of a state. The growing need for cooperation in coping with a wide range of maritime challenges, especially the threat of maritime terrorism, requires the two maritime bodies to build a close working relationship — sharing platforms, assets and doctrines. In Asian countries, in particular, coast guards are traditionally considered to be a subordinate body of the navy. The challenge, then, lies in building a cooperative relationship between the two bodies on the basis of mutual respect. Principally, the way

to balance the two maritime bodies may depend on factors such as national security priorities, political demands, resources, strategic culture, etc.

## 2. The Coast Guard and the Navy in the U.S.

The USCG is a branch of the nation's armed forces and is unique among U.S. military branches for having a maritime law enforcement mission and a federal regulatory mission as part of its mission set. As a military branch, the USCG is primarily subject to the military ethos, doctrines, policies and rules, and shares grades and ratings with naval grades and ratings. However, both are distinctive in many respects in order to best serve their purposes of service.

- **Department**

The coast guard falls under the Department of Homeland Security (DHS) while the navy is part of the Department of Defense. In the aftermath of the 9/11 terrorist attacks, the U.S. consolidated all the federal agencies responsible for border protection under the newly created Department of Homeland Security, pursuant to the Homeland Security Act of 2002. In accordance with the act, 22 agencies consisting of 210,000 personnel were placed under the DHS including the coast guard, which was previously under the Department of Transportation. The reorganization of government agencies was intended to optimize interoperability and information sharing, and to reduce redundancy in capabilities and operations to prevent and combat terrorist attacks.<sup>5</sup> The Coast Guard is the only military branch within the Department of Homeland Security.

The USCG operates under the DHS in peacetime, and can be transferred to the navy by the direction of the president at any time, or by the U.S. Congress during times of war. This has happened twice — in 1917 during World War I and in 1941 during World War II.

- **Mission**

The navy is a war-fighting force governed by Title 10 of the U.S. Code. Its mission statement makes it clear that “the mission of the Navy is to maintain, train and equip combat-ready naval forces capable of winning wars, deterring aggression and maintaining freedom of the seas.”<sup>6</sup> As a sea-borne

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<sup>5</sup> Douglas Daniels, ‘How to Allocate Responsibilities Between the Navy and the Coast Guard in Maritime Counterterrorism Operations,’ *University of Miami Law Review* (2007)61(467), p. 473.

<sup>6</sup> U.S. Navy Website, ‘Mission of the Navy,’ Navy Organization.

branch of the U.S. military, the navy's primary responsibilities include<sup>7</sup>: (i) the preparation of naval forces necessary for the effective prosecution of war; (ii) the integration of all naval aviation with the naval service; and (iii) the development of aircraft, weapons, tactics, techniques, organization and equipment of naval combat and service elements.

The USCG is responsible for a wide range of missions at sea, carrying out a unique dual role as both a law enforcement agency and an armed force. The mission of the coast guard is to ensure the nation's maritime safety, security and stewardship.<sup>8</sup> Under this mission, there are 11 statutory missions, which are further divided into missions of non-homeland security and homeland security.<sup>9</sup> The non-homeland security missions include: (i) marine safety; (ii) search and rescue; (iii) aids to navigation; (iv) living marine resources (fisheries law enforcement); (v) marine environmental protection; and (vi) ice operations. For the homeland security missions, the coast guard is responsible for: (i) ports, waterways and coastal security; (ii) drug interdiction; (iii) migrant interdiction; (iv) defense readiness; and (v) other law enforcement.

With the growing importance of countering terrorism in the wake of the 9/11 attacks, the missions of military readiness, coastal sea control, and port security and defense have been prioritized, leaving other missions to provide ships, people and money for those priorities as requested.<sup>10</sup>

Both the coast guard and the navy are responsible for countering maritime terrorism and either one is likely to be a lead agency during an incident, depending on the nature of the threat, i.e., whether it is a military attack or not. The coast guard is likely to be a lead agency for non-military cases in which the objective of the response is interdiction and arrest. The differences between the two agencies can be best summed up as 'homeland security' versus 'homeland defense.'

- **Law enforcement authority**

From a legal perspective, the most salient distinction between the coast guard and the navy is regarding law enforcement authority. Pursuant to the UN Convention on the Law of the Sea (UNCLOS), naval ships are recognized as having law enforcement authority with respect to<sup>11</sup>: (i) seizure

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<sup>7</sup> 10 U.S. Code § 5062.

<sup>8</sup> The U.S. Coast Guard website, 'Missions,' available at <https://www.work.uscg.mil/Missions/>.

<sup>9</sup> 6 U.S. Code § 468.

<sup>10</sup> Foundation for Coast Guard History, *The Coast Guard* (Universe Publishing, Seattle, 2016), p. 29.

<sup>11</sup> UNCLOS Arts. 107, 110, 111 & 224.

of a pirate ship; (ii) right of visit on account of piracy, slave trade, unauthorized broadcasting, and stateless ship; (iii) right of hot pursuit; and (iv) powers of enforcement against foreign vessels.

While the navy has no general statutory law enforcement authority — either domestic or international, except under those restricted circumstances — the coast guard continues to serve as a law enforcement agency with distinct statutory authority. Title 14 of the U.S. Code grants the coast guard the authority to enforce laws.<sup>12</sup> The prohibition of the military's involvement in law enforcement was codified in the *Posse Comitatus Act* (PCA) which provides: “whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years or both.” The act embodies the traditional American principle of separating civilian and military authority and prohibits the use of the military in civilian law enforcement.<sup>13</sup>

In addition to the PCA, Title 10 of the U.S. Code requires the Department of Defense to promulgate regulations prohibiting the military's involvement in civilian law enforcement, providing that “the Secretary of Defense shall prescribe... that any activity...does not permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest or other similarly activity...” Because there is no mention of the navy in the PCA, some argue that the navy is exempt from the general prohibition of the military from civilian law enforcement.<sup>14</sup> However, its direct involvement in law enforcement activities is prohibited under the Department of Defense policy, pursuant to the U.S. Code.<sup>15</sup>

The statutory exceptions to the prohibition principle allow the military to furnish training, facilities and equipment to state and federal law enforcement agencies.<sup>16</sup> In addition, the military may assign its personnel to operate equipment provided at the request of any federal law enforcement agency that has jurisdiction to enforce customs, narcotics, immigration and antiterrorism laws.<sup>17</sup>

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<sup>12</sup> 14 U.S. Code §§ 2, 89, 143.

<sup>13</sup> Bateman (n 4).

<sup>14</sup> Daniels (n 5), pp. 461-462.

<sup>15</sup> *Ibid.*

<sup>16</sup> 10 U.S.C.A. §§ 372-373 (West 2004), amended by Pub. L. No. 109-304, 120 Stat. 1485 (2006), cited in Daniels (n 5).

<sup>17</sup> 10 U.S.C.A. § 374 (West 2004), amended by Pub. L. No. 109-304, 120 Stat. 1485 (2006), cited in Daniels (n 5).

- **Areas of Operation**

As its name implies, the activities of the coast guard are shore-based, with its responsibility and operations linked to the U.S. coastline and inland waterways, ports and the exclusive economic zone. Occasionally, its operations and jurisdiction reach beyond these shore-based areas to abroad and the high seas, primarily to support naval operations. On the other hand, the navy operates across the seas and the oceans to fight wars across the world, having fleets and bases worldwide. Its military structure and equipment are organized to conduct operations and fight wars globally.

- **Size and Assets**

When comparing the size of the coast guard and the navy, the difference is remarkable. In terms of annual budget, the amount of enacted budget for the navy for fiscal year 2017 is up to \$136.6 billion as part of the overall \$818.2 billion defense budget. For the coast guard, the enacted budget for the same fiscal year is \$10.6 billion. In terms of personnel, the navy had 329,000 active service members and 100,000 reserve service members as of 2018. Meanwhile, the coast guard has 40,900 active duty service members and 7,000 reserve members.

To best serve their missions, the navy and the coast guard are equipped with ships and aircraft suited for their operations. The navy has 287 deployable combat ships heavily armed with missiles and state-of-the-art technologies and weapons, including 10 deployable aircraft carriers and 71 submarines and more than 3,700 aircraft (as of 2019). The coast guard has 243 cutters, which are 65 feet or larger in length, mostly for patrol and icebreaking, and 201 aircraft, of which the majority is helicopters.

### **III. Types of Coast Guards**

#### **1. Introduction**

Unlike the navy, the types of services that may fall under the purview of coast guard agencies across the world are very diverse. They vary with the unique circumstances of a state's historical background, judicial system, military structure, law enforcement system, security situation, priority of maritime affairs, etc. Given these elements, countries have either developed their own coast guard systems, which are regarded as suitable for their national circumstances, or they have opted not to have a separate coast guard.

In this context, coast guards across the world are country-specific, to the extent that the duties, functions and authorities are asymmetrical, depending on the priority of their mandates. There are a number of different



types of coast guards across the world, which differ with respect to organizational characteristics, authority, mission, armament and relationships with military and law enforcement agencies. However, it is not easy to draw a clear distinction between a variety of coast guards because many of their typical missions and roles are similar, and their organizational traits are dual or multiple as well. Given these circumstances, coast guards can be classified as several different types, based on their most salient organizational features.

## 2. Types

- **Military Force**

This type of coast guard is typically a branch of a nation's military services and is subject to a military ethos and principles. The personnel are combatants or soldiers who are commissioned and mandated by military rules and are assisted by career civilians who provide services in technical fields. The coast guards of this type are either offshoots of the navy or created as a military branch from their inception. The coast guard can be either part of the navy, or a military branch that is separate from the navy. The military-force coast guards are not necessarily within the same department or governmental organization as the navy.

In these situations, the organization of the coast guard parallels that of the navy, with coast guard ranks and ratings generally identical to those of the navy. The military-force type coast guard is mandated to fulfill the combined duties of law enforcement and other typical coast guard missions in peacetime as well as military operations under the command of the navy in wartime.

In terms of the level of armament, however, the military-force type coast guard carries lighter arms than the navy, and is only armed to render it capable of self-defense and carrying out a mission of assistance to the navy. This is because the coast guard is principally not a war-fighting force, but a complementary force to the navy to assist in wartime. While military-force type coast guards undertake typical coast guard missions, they primarily serve as a defense force.

The U.S. coast guard is regarded as the prototype of a military-force type coast guard. The USCG is one of the nation's five military services, along with the nation's navy, army, air force and marine corps. In times of peace, as illustrated earlier, the USCG operates as part of the Department of Homeland Security, carrying out the enforcement of all federal laws at sea, protection of the marine environment, the safeguarding of coastline and ports, and lifesaving missions. In times of war, or at the

direction of the president, however, the USCG is subject to control of the navy.<sup>18</sup>

Despite being a military force, the USCG's duties are very comprehensive and far reaching, even extending into civilian affairs — in other words, being responsible for almost all the tasks of maritime safety and security. For example, the captain of the port, who is designated by the commandant of the USCG, is a USCG officer who is usually the commander of a sector. This person is responsible for port safety and security and marine environmental protection regulations, including regulations for the protection and security of vessels, harbors and waterfront facilities; anchorages; security zones; safety zones; regulated navigation areas; deepwater ports; water pollution; and ports and waterways safety.<sup>19</sup>

In Europe, Italian and Russian coast guards fall under a military-force type coast guard. In Italy, the *Guardia Costiera* is part of the Italian navy under control of the Ministry of Infrastructure and Transport. The origin of the Italian coast guard can be traced back to the establishment of the Harbor Masters Corps in 1865 — an organization that was itself created by merging the Port General Staff Corps, a military body with jurisdiction over ports, with the Merchant Marine Consuls, a civilian corps tasked with the administrative duties of maritime affairs.

In the aftermath of the First World War, the corps became a military branch in 1923 by merging with the Royal Navy. In 1989, the branches of the Harbor Masters Corps performing technical and operations tasks were newly created as the 'Coast Guard.' The service members of the coast guard consist of military personnel. Its duties and roles appear to be broader than those of other military-force type coast guards, given that it is responsible for recruiting military personnel, maritime police, the management of seafarers, the administrative arrangements of ships, the role of Port Authority, and the protection of underwater archaeological sites, in addition to typical coast guard services.<sup>20</sup>

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<sup>18</sup> See 14 U.S. Code §3 (Department in which the Coast Guard Operates): (a)IN GENERAL: The Coast Guard shall be a service in the Department of Homeland Security, except when operating as a service in the Navy.

(b)TRANSFERS: Upon the declaration of war if Congress so directs in the declaration or when the President directs, the Coast Guard shall operate as a service in the Navy, and shall so continue until the President, by Executive order, transfers the Coast Guard back to the Department of Homeland Security. While operating as a service in the Navy, the Coast Guard shall be subject to the orders of the Secretary of the Navy, who may order changes in Coast Guard operations to render them uniform, to the extent such Secretary deems advisable, with Navy operations.

<sup>19</sup> 33 CFR. Code § 6.01-3.

<sup>20</sup> Italian Coast Guard website, 'Our Missions,' available at

The Russian Coast Guard, which operates under the control of the Border Service of the Federal Security Service (FSB), is another military-force type. The coast guard, previously known as the Maritime Units of the KGB Border Troops, was founded in 2005 as part of the Border Guard Service under the FSB. The FSB is a federal security agency, responsible for national security and the protection and defense of the state's border, and it is a military service under Russian federal law as one of the armed forces as well. The coast guard protects maritime borders, ensures safe navigation in territorial waters, assists vessels and aircraft in distress, forecasts weather, protects fisheries, and conducts counter-smuggling and piracy activities, of which the protection of maritime borders is given a higher priority.

This type of coast guard was common in Asia before coast guards became civilian agencies that are no longer part of the navy. The Indian Coast Guard (ICG) falls within the realm of military force. The ICG was created in 1978 as an independent armed service of the Indian Union, becoming the fourth armed force under the Ministry of Defense. It was created to be an anti-smuggling and law enforcement service apart from the navy. The duties and functions are defined in the Coast Guard Act enacted in 1978.

North Korea's Coastal Security Force, under the control of the Coastal Security Bureau, is a military force. The Coastal Security Bureau of the North Korean People's Army is responsible for patrolling the coastlines to prevent entries and exits, maintaining harbor and port security, and policing and protecting the nation's waterways and fishing areas.<sup>21</sup> Other than these examples, the coast guards of Brazil, Croatia, Mexico, Norway, Taiwan and Turkey are either part of the navy or a branch of armed forces.

- **Paramilitary Force**

Unlike military-force type coast guards, paramilitary force coast guards are a civilian service. Although they are not part of the military, they can be said to be a military force in nature because they are an armed force operating with a military ethos in many respects. They are armed for their own self-defense and to enforce laws against illegal acts at sea.

For this purpose, coast guard officers are allowed to carry light firearms, and vessels are equipped with weapons such as deck-mounted auto-cannons (ranging in caliber from 20 to 76 mm) and machine guns, depending on the size of the vessel. The coast guard officers under this type

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<http://www.guardiacostiera.gov.it/en/activities>.

<sup>21</sup> Robert L Worden (eds), *North Korea: A Country Study* (2009), Library of U.S. Congress.

are principally civilians whose responsibilities and authority are subject to relevant domestic laws. They perform multiple roles: as a police officer when engaged in enforcing criminal laws, and as an agent of a particular administrative office when enforcing the laws and rules under its jurisdiction at sea. The authority of coast guard officers in this regard is strictly constrained to the fulfillment of the responsibilities defined by those laws and rules. The vast majority of coast guards can be defined as paramilitary.

The primary example may be the Japan Coast Guard (JCG). The JCG was founded in 1948 as a civilian law enforcement entity, called the Maritime Safety Agency, which was the outer bureau of the Ministry of Transportation. The JCG is currently under the Ministry of Land, Infrastructure and Transportation. In accordance with the provision of the JCG law, the JCG is not permitted to be trained or organized or function as an armed force.<sup>22</sup>

The provision exists because the Soviet Union representative of the Allied Council strongly opposed the establishment of the JCG and proposed the provision. Allegedly, the Soviet Union's opposition was due to bitter experiences with the Japanese Navy's response to the Soviet Union's enforcement on Japanese fishing activities in the Sea of Okhotsk.<sup>23</sup> In relationship to the navy, all or part of the JCG falls under the command of the Minister of Defense through the commandant of the JCG when a Defense Action Order is issued. When a Maritime Security Order is issued, the navy is authorized to conduct the mission of the JCG, in accordance with the Japan Coast Guard Law.<sup>24</sup> With regard to criminal investigations, JCG officers, in accordance with the direction of the commandant of the JCG, undertake the duties of judicial officials.<sup>25</sup> While JCG officers are engaged in enforcing law and order, they are deemed officials of the agency responsible for undertaking those duties.<sup>26</sup>

The Philippine Coast Guard (PCG) may fall within this category

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<sup>22</sup> JCG Law, art. 25: "Nothing contained in this Law shall be construed to permit the Japan

Coast Guard or its personnel to be trained or organized as a military establishment or to function as such."

<sup>23</sup>Fumio Ota, 'The Relationship between the Japan Coast Guard and the Maritime Self Defense Force' in 'Navies, Coast Guards, the Maritime Community and International Stability' (eds by Ian Bowers & Collin Koh), *RSIS Policy Brief*, S. Rajaratnam School of International Studies, Nanyang Technological University, March, 2017, p. 31.

<sup>24</sup> *Ibid.*, p. 33.

<sup>25</sup> JCG Law, art. 31.

<sup>26</sup> *Ibid.*, art. 15.

as well. The PCG is an armed and uniformed service tasked primarily with enforcing laws, ensuring maritime safety and security and protecting the marine environment — missions that are similar to typical coast guards. The PCG was first created in 1967 as part of the Philippine Navy, and was commanded by a flag officer. The functions of the PCG were later transferred away from the navy. Eventually the civilian nature of the PCG led to the creation of a separate coast guard agency apart from the navy in 1998, and the PCG was transferred to the Department of Transportation.

The Indonesian Coast Guard (ICG) may also be classified as a paramilitary force. Its origins go back to the Maritime Security Coordinating Board (MSCB), formed in 1972 by a joint decree of several government agencies, including the Ministry of Defense and Security, the Armed Forces, the Ministry of Communications, the Ministry of Finance and the Ministry of Justice. The increasing need for a designated maritime law enforcement agency led to the transformation of the MSCB into the Maritime Security Agency (*Bakamla* or coast guard) in 2004. Not limited to the coordination of multiple agencies, the newly reborn Indonesian Coast Guard expanded its role, ranging from early detection of unlawful acts to enforcing the law using its own cutters.<sup>27</sup>

The Indonesian Navy also has a law enforcement role at sea, which results in a splintering of the national maritime law enforcement system. Drawing a proper demarcation of roles and functions between the two agencies remains a challenge to the maritime management of Indonesia.<sup>28</sup>

In China, a separate coast guard was established in 2013 by merging four of its five maritime enforcement agencies, often referred to as the Five Dragons,<sup>29</sup> into a unified agency.

In English, the unified coast guard is called the ‘China Coast Guard,’ of which the Chinese name is the ‘China Maritime Police’. As signified from its own service name in Chinese, the China Coast Guard is by nature a police force. However, it can be classified as a paramilitary service, given that its paramilitary features are more apparent.

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<sup>27</sup> Muhamad Arif, ‘Inward-Looking Navy and Expanding Bakamla: The Indonesian Case of Navy-Coast Guard Nexus,’ in ‘Navies, Coast Guards, the Maritime Community and International Stability’ (eds by Ian Bowers & Collin Koh), *RSIS Policy Brief*, S. Rajaratnam School of International Studies, Nanyang Technological University, March, 2017, p. 48.

<sup>28</sup>*Ibid.*

<sup>29</sup> The Five Dragons include the Maritime Safety Administration under the Ministry of Transport, in addition to the four merged agencies.

The merged four agencies include: (i) the China Marine Surveillance under the Oceanic Administration; (ii) the China Fisheries Management Bureau under the Ministry of Agriculture; (iii) the Maritime Anti-Smuggling Force under China's Central Administration of Customs; and (iv) the Border Defense Coast Guard under the Ministry of Public Security.

Before the merger, the duties of offshore law enforcement and sovereignty protection in the exclusive economic zone were performed separately by the Border Defense Coast Guard and the China Marine Surveillance. The Border Defense Coast Guard (the old China Coast Guard) was comprised of the maritime units of the Border Defense Forces, a branch of the People's Armed Police, and was responsible for law enforcement, fighting crime, and search and rescue in territorial waters and contiguous zones. The Border Defense Coast Guard is a paramilitary police force, which is armed and operates like military and has police powers.<sup>30</sup>

#### ● **Police Force**

In terms of organizational characteristics, the coast guards under this category are either a branch of national police or a separate maritime police. The police-type coast guards operate primarily as a maritime policing and law enforcement agency while undertaking typical coast guard missions. They are distinctive in that they are granted more comprehensive judicial authorities than other types of coast guard.

The status of a coast guard officer is as a marine police officer who is authorized to exercise judicial power identical to police officers on land, except that their authority is principally constrained to the sea and sea crimes. The ranking of coast guard officers is identical to the land police, and generally the officers are subject to the same laws as in terms of their status and authority. Under certain circumstances, they are transferrable to each other. The primary examples of police coast guards are the Korea Coast Guard (KCG) and the Singapore Police Coast Guard (SPCG).

The KCG, or 'Korea Maritime Policy Agency' in Korean, is very unique compared to other coast guards with regard to its organizational characteristics, authority, and relationships with other law enforcement and maritime enforcement agencies. The KCG was founded in 1953 as a unit of the national police, with the principal aim of protecting fishery resources off the Korean Peninsula from Japanese exploitation. Under the unstable security situation during the Cold War, the overarching mission of the KCG from the 1950s through the 1980s was countering North Korean spy ships.

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<sup>30</sup> Ryan D. Martinson, 'The Militarization of China's Coast Guard,' *The Diplomat*, 21 November 2014.

The KCG separated from the National Police Agency (NPA) in 1996 and was placed under the Ministry of Oceans and Fisheries. The National Maritime Police Agency was renamed in English in 2006 as the Korea Coast Guard, while the Korean name remains unchanged. The renaming was intended to better convey the organization's roles and functions beyond policing and offshore law enforcement, as well as to align with the global trend of greater roles for coast guards. In terms of organizational characteristics, the KCG is a national police agency, responsible for maritime safety, security and law enforcement. Reflecting the nature of the KCG as a police agency, the head is called 'commissioner,' whose rank is equivalent to the commissioner of the National Police Agency.

The KCG is not necessarily staffed by police officers — the department of marine pollution response is operated by career civilians, for example. Although the KCG differs in organizational hierarchy from the NPA, which falls under the Ministry of the Interior, the KCG and the NPA share much of the same laws and rules related to the status of officers and the authorization of policing and law enforcement. As a police agency, the investigation of sea crimes is an integral part of its wide range of tasks and missions. Notably, its judicial jurisdiction is not necessarily restricted to the sea and can be expanded to the land if deemed necessary.

The Singapore Police Coast Guard (SPCG) is an operational division of the Singapore Police Force (SPF). Previously it was a marine police division of the SPF and underwent a major organizational restructuring, which upgraded the Marine Police to the Police Coast Guard in 1993,<sup>31</sup> and its functions were transferred from the navy. The SPCG is a police unit within the SPF, tasked with typical coast guard missions. As such, the officers of the SPCG have the same law enforcement power as the land police force. A higher priority of the SPCG is on preventing illegal immigration, handling foreign government vessel intrusion and guarding the Horsburgh Lighthouse<sup>32</sup> in the Singapore Straits.<sup>33</sup>

The Port and Marine Police of Cyprus and the Marine Region of Hong Kong Police Force also fall within the police-force type coast guard.

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<sup>31</sup> See website of the Singapore Police Force, 'Police Coast Guard,' available at <https://www.police.gov.sg/about-us/organisational-structure/specialist-and-line-units/police-coast-guard#content>.

<sup>32</sup> The Horsburgh Lighthouse is situated on the Pedra Branca Island, located in the eastern entrance to the Straits of Singapore. The sovereignty of Pedra Branca was disputed between Malaysia and Singapore. In May 2008, the International Court of Justice ruled that Singapore has the sovereignty over the island.

<sup>33</sup> *Ibid.*

- **Civil Service**

For the coast guards that fall within the realm of civil service, generally only personnel serving on the operational side are uniformed service members. Other than those, these organizations are primarily staffed and administered by civilians. Coast guard personnel on the operational side are entrusted to enforce maritime laws, but their judicial authority, in comparison with other types of coast guards, tend to be very limited or even nonexistent.

The Canadian Coast Guard (CCG) is a representative of this type. The CCG is a civilian service under the Department of Fisheries and Oceans, tasked with non-law-enforcement marine affairs such as search and rescue, navigation aid, icebreaking, marine pollution response and maritime security.<sup>34</sup> The CCG is not entrusted with law enforcement responsibility. Rather, the CCG serves in an operational role in the delivery of maritime law enforcement and security services provided by the federal agencies concerned.<sup>35</sup> Federal maritime laws are enforced by peace officers serving with various federal, provincial or even municipal law enforcement agencies. The enforcement of laws in Canada's territorial waters is the responsibility of the federal police force, the Royal Canadian Mounted Police.<sup>36</sup>

The Malaysian Maritime Enforcement Agency (MMEA), also known as the Malaysian Coast Guard, is part of the Malaysian Civil Service and is under the Prime Minister's Department. In a sense, it may be categorized as a paramilitary force, given that it is an armed service. In a broader sense, however, it can be regarded as a civil service agency in terms of organizational hierarchy.

The MMEA was formed in 2004 as a result of a study conducted by the Malaysian government which recognized the need to restructure its maritime enforcement. The study concluded that maritime enforcement and search and rescue conducted by eight different government agencies were not efficient because the system brought about overlapping functions, overlapping jurisdiction, and an inefficient use of resources.<sup>37</sup> Based on the study, the Malaysian government decided to establish a new maritime enforcement body, the MMEA.

The MMEA was merely an additional civilian agency of the

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<sup>34</sup> See the Canadian Coast Guard website, 'Canadian Coast Guard,' available at <http://www.ccg-gcc.gc.ca/eng/CCG/Home>.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> See website of the Malaysian Maritime Enforcement Agency, 'MMEA's Background,' available at <https://www.mmea.gov.my/eng/index.php/en/mengenai-kami/latar-belakang>.



Prime Minister's Department until 2011, when the Malaysian government granted it the status of a sole maritime enforcement agency. This was because some of the government agencies involved were reluctant to transfer maritime enforcement tasks, and continued to deal with maritime enforcement in their own ways.<sup>38</sup>

It is notable that the MMEA shares the task of maritime enforcement with the Royal Malaysian Police. The MMEA shares maritime enforcement with the Marine Operation Force of the Royal Malaysian Police, (formerly known as the Marine Police), and the Police is tasked with policing ports and rivers.<sup>39</sup> This organization is believed to be a result of negotiations between the newly born maritime enforcement agency and the Marine Police — the Marine Police force was strongly opposed to the establishment of the MMEA and refused to be incorporated into it.

The Sri Lanka Coast Guard, tasked with coast guard duties within the state's territorial waters, is a civilian agency under the Ministry of Defense. The Sri Lanka Coast Guard was initially established in 1999 but was disbanded in 2002 for political reasons, and its assets and personnel were transferred to the Coast Conservation Department. In 2009, it was reinstated by the Coast Guard Act.

The civilian Swedish Coast Guard (*Kustbevakningen*) traces its origin as far back as 1638, when Swedish Customs employed two horseback riders to watch the coast and prevent smuggling and shipwrecks. After World War II, coastal surveillance tasks, once part of customs, were replaced by the management of maritime traffic, search and rescue and the control of passes and sealing of radio transmitters.<sup>40</sup>

The Swedish Coast Guard as it exists today was established in 1971 to respond to oil spills, and it was entrusted with police power at sea as well as major inland lakes in 1982. In 1988, the Coast Guard was transferred to the Ministry of Defense while maintaining its standing as a civilian agency. Since 2015, the Swedish Coast Guard has been placed under the Department of Justice and takes a leading role in police tasks, border control, maritime rescue and environmental control among maritime agencies.

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<sup>38</sup> See Dzirhan Mahadzir, 'The Malaysian Case Study,' in 'Navies, Coast Guards, the Maritime Community and International Stability' (eds by Ian Bowers & Collin Koh), *RSIS Policy Brief*, S. Rajaratnam School of International Studies, Nanyang Technological University, March, 2017, p. 40.

<sup>39</sup> *Ibid.*

<sup>40</sup> The Swedish Coast Guard website, 'Retrospect,' available at <https://www.kustbevakningen.se/en/about-us/historic/>.

- **Volunteer Organization**

Under this category, maritime rescue services are provided by volunteers. The volunteer coast guard organization, which is not a law enforcement agency, provides search and rescue services to persons or vessels in distress at sea, in collaboration with other agencies such as the police, the navy and air force. The coast guard is usually part of a maritime enforcement agency responsible for mobilizing adequate resources and coordinating rescue operations.

Her Majesty's Coastguard (HMCG) of the United Kingdom may be a prototype of coast guards in this regard. The HMCG is a section of the Maritime and Coastguard Agency (MCA), which is a government agency responsible for implementing maritime safety and security policies.<sup>41</sup> The MCA is responsible for the initiation and coordination of resources and coordination of maritime search and rescue operations. The search and rescue service is delivered by Coastguard Rescue Officers of the HMCG who are volunteers trained to carry out rescue operations.<sup>42</sup> Volunteer coast guard organizations have been a long tradition in the British Commonwealth of Nations, including in Australia and New Zealand. These types of coast guards are not found in Asia.

- **Non-Separate Coast Guard: Coast Guard Functions**

Some countries do not have a separate coast guard service and instead the functions of a coast guard are undertaken by several government agencies. This type of coast guard function is relatively common in leading European countries such as France, Germany and Spain.

In Spain, *Salvamento Marítimo* (Maritime Safety and Rescue Society), also known as SASEMAR, is a government agency responsible for search and rescue at sea, maritime traffic control, and the protection of the marine environment. The agency, founded in 1992, runs 20 rescue coordination centers along the coast, employs a staff of 1,600 and operates a fleet of 18 large vessels, 55 boats, 11 helicopters and three aircraft<sup>43</sup> (as of 2019). It is a lead agency in coordinating search and rescue operations among relevant government agencies.

Border protection functions are carried out by the *Servicio Marítimo de la Guardia Civil* (Maritime Civil Guard), responsible for

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<sup>41</sup> See website of the Maritime and Coastguard Agency, available at <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency>.

<sup>42</sup> *Ibid.*

<sup>43</sup> The *Salvamento Marítimo* website, available at <http://www.salvamentomaritimo.es/conocenos/nuestros-medios/87-unidades-maritimas-y-aereas>.

coastal patrol, marine border protection, search and rescue. Maritime customs functions are the responsibility of the *Servicio de Vigilancia Aduanera* (Customs Surveillance Service).

Notably, the autonomous community of Galicia has its own separate coast guard service. The *Servizo de Gardacostas de Galicia* (Galician Coast Guard Service), established by the merger of two different services, *Servizo de Vixilancia Pesqueira* (Galician Fisheries Surveillance Service) and the *Servizo de Busca e Salvamento* (Galician Search and Rescue Service), is responsible for coastal and fisheries surveillance, maritime search and rescue and the protection of the sea environment. The Galician Coast Guard Service, which works under the Ministry of Oceans, operates 19 boats and three helicopters (as of 2019).

France has no separate coast guard service and instead its coast guard functions are carried out by several relevant organizations of the French government. Directly under the authority of the prime minister, the state's activities at sea are driven by General Secretariat of the Sea, established in 1995, which leads France's maritime policies. At the local level, the state's maritime activities are articulated by the local *Pre'fets maritimes* and the government's delegates for the state's activities at sea. The role of General Secretariat of the Sea is to ensure coherence with government decisions concerning coast guard functions among 15 ministerial departments and agencies.

In 2009, the French government adopted a national strategy for the seas and oceans and created the Coast Guard Function as part of its concrete measures. Its creation, aimed at reinforcing interdepartmental cooperation and inter-administration among the relevant government organizations, allows for the merging of assets, thereby improving efficiency.<sup>44</sup> The organizations participating in coast guard functions include: the French Navy; the Customs General Direction; the National Border Police; the *Gendarmerie nationale*; the DCivi Safety Direction (Ministry of Interior); and the Maritime Affairs Direction.

The participating organizations are part of the new Directorate Committee for the Coast Guard Function, which is assembled by the order of the General Secretariat for the Sea or at the request of any of the individual organizations to discuss maritime domain issues. The General Secretariat has established the Operational Center for Coast Guard Function under his or her authority and dedicated it to maritime situational awareness.

In Germany, several different authorities are responsible for the execution of coast guard functions. The responsible authorities include: the

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<sup>44</sup> Canadian Coast Guard, 'North Atlantic Coast Guard Forum-France,' available at <http://www.ccg-gcc.gc.ca/e0011264>.

Maritime Search and Rescue Service; Waterways and Shipping Offices; Federal Waterways and Shipping Administration; Federal Customs Service; Federal Agency for Agriculture and Food; Federal Police; German Navy; Disaster Command; and Coastal Water Police. Germany has an association of these agencies, known as the *Küstenwache* (the German Federal Coast Guard), which is not a single entity. The personnel serving with the *Küstenwache* include both police officers and civilians from the Waterways and Shipping Office and other agencies. The *Küstenwache* personnel do not have combatant status as it is not a military unit. The police officers serving with the *Küstenwache* have the usual police powers, adjusted to the maritime nature of their job.

Germany has established a network of the different authorities with a joint operational center to coordinate operations at sea. The Maritime Safety and Security Center (MSSC), composed of the above-mentioned organizations and agencies, plays such a role. Notably, the German Navy is incorporated into the work of the Central Command for Maritime Emergencies, conducting the task of oil spill surveillance and transport operations. Table 2 outlines the types of coast guard across the world.

**Table 2 Typology of Coast Guards**

Typology	Military Force	Paramilitary Force	Police Force	Civil Service	Volunteer Force	Non-Separate Coast Guard: Coast Guard Functions
Country	<ul style="list-style-type: none"> <li>• U.S.</li> <li>• Italy</li> <li>• Russia</li> <li>• India</li> <li>• North Korea</li> <li>• Brazil</li> <li>• Croatia</li> <li>• Mexico</li> <li>• Norway</li> <li>• Taiwan</li> <li>• Turkey</li> </ul>	<ul style="list-style-type: none"> <li>• Japan</li> <li>• China</li> <li>• Philippines</li> <li>• Indonesia</li> </ul>	<ul style="list-style-type: none"> <li>• Korea</li> <li>• Singapore</li> <li>• Vietnam</li> <li>• Cyprus</li> <li>• Hong Kong</li> </ul>	<ul style="list-style-type: none"> <li>• Canada</li> <li>• Malaysia</li> <li>• Sri Lanka</li> <li>• Sweden</li> </ul>	<ul style="list-style-type: none"> <li>• U.K.</li> <li>• Australia</li> <li>• New Zealand</li> </ul>	<ul style="list-style-type: none"> <li>• Spain</li> <li>• France</li> <li>• Germany</li> </ul>

<p><b>Feature</b></p>	<ul style="list-style-type: none"> <li>• Defense force military and law enforcement agency</li> <li>• Subject to military rules and ethos</li> <li>• Undertake typical coast guard missions in peacetime and assist the navy in wartime</li> <li>• Composed of soldiers assisted by civilian careers</li> </ul>	<ul style="list-style-type: none"> <li>• Civilian service</li> <li>• Armed for self-defense and law enforcement</li> <li>• Undertake constabulary duties and typical coast guard missions</li> <li>• Most common type in Asia</li> </ul>	<ul style="list-style-type: none"> <li>• Comprehensive judicial authority</li> <li>• Composed of police officers</li> <li>• Focus on law enforcement</li> <li>• Maritime enforcement authority is limited</li> </ul>	<ul style="list-style-type: none"> <li>• Staffed with and administered by civilians</li> <li>• Operational side personnel are armed and uniformed</li> <li>• Judicial powers are very limited</li> </ul>	<ul style="list-style-type: none"> <li>• Rescue services are provided by civilian volunteers</li> <li>• Other missions are carried out by maritime enforcement agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Common in leading European countries</li> <li>• A single coast guard entity is non-existent</li> <li>• Coast guard functions are carried out by several different government organizations</li> <li>• An association of relevant authorities is formed to coordinate operation of relevant authorities</li> </ul>
<p><b>Name of Service</b></p>	<ul style="list-style-type: none"> <li>• Coast Guard (U.S., India, Italy)</li> <li>• Border Guard Service (Russia)</li> <li>• Coastal Security Force (North Korea)</li> </ul>	<ul style="list-style-type: none"> <li>• Maritime Safety Agency (Japan)</li> <li>• Zhongguo Haijing(中國海警)(China)</li> <li>• Coast Guard (Philippines)</li> <li>• Maritime Security Agency (Indonesia)</li> </ul>	<ul style="list-style-type: none"> <li>• National Maritime Police Agency (Korea)</li> <li>• Police Coast Guard (Singapore)</li> <li>• Maritime Police (Vietnam)</li> <li>• Port and Marine Police (Cyprus)</li> </ul>	<ul style="list-style-type: none"> <li>• Coast Guard (Canada)</li> <li>• Maritime Enforcement Agency (Malaysia)</li> <li>• Kusibevakningen (Sweden)</li> </ul>	<ul style="list-style-type: none"> <li>• Her Majesty's Coast Guard (U.K.)</li> </ul>	<ul style="list-style-type: none"> <li>• Maritime Safety and Rescue Society, Maritime Civil Guard, Customs Surveillance Service (Spain)</li> <li>• Coast Guard Function (France)</li> <li>• Küstenwache (German Federal Coast Guard)(Germany)</li> </ul>