

THE HENRY L. STIMSON CENTER

**Maritime Confidence
Building in
Regions of Tension**

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Report No. 21 May 1996



Pragmatic steps toward ideal objectives



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About the Project

Confidence-building measures (CBMs) helped to reduce tensions and promote European security during the Cold War. The theory and practice of confidence building—such as giving prior notification of military exercises or establishing “hotlines”—are now being developed in other conflict-prone regions. The Stimson Center’s project has focused primarily on South Asia, the Middle East, and the Southern Cone of Latin America. New programming is being developed for China.

The project has five main elements:

- Washington meetings for foreign diplomats and military attachés, participants from executive and legislative branches, representatives of non-governmental organizations, and journalists to discuss how CBMs might help to solve regional security problems.
- CBM workshops within regions of interest, with local co-sponsorship, that reach key target audiences: military officers, government officials, journalists, and academics.
- Commissioned papers to stimulate thinking and problem-solving approaches within regions of interest. Commissioned work is underway in South Asia, China, the Middle East, and the Southern Cone.
- Publications for distribution to interested diplomats, government officials, military officers, journalists, and academics.
- A Visiting Fellows program for talented individuals from India, Pakistan, and China who are invited to Washington to conduct research and to become immersed in the theory and practice of CBMs.

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List of Abbreviations

ACRS	Arms Control and Regional Security (Working Group)
ADIZ	Air Defense Identification Zone
APEC	Asia–Pacific Economic Cooperation forum
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
ASW	Advanced Submarine Warfare
CBMs	Confidence-Building Measures
CFL	Cease-Fire Line
COLREGS	Convention on the International Regulations for Preventing Collisions at Sea (“rules of the road”)
CSCAP	Council for Security Cooperation in Asia–Pacific
CSCE	Conference on Security and Cooperation in Europe
DGMO	Director General of Military Operations
EEZ	Exclusive Economic Zone
GDR	German Democratic Republic
INCSEA	Incidents at Sea
LOC	Line of Control
MOU	Memorandum of Understanding
MPA	Maritime Patrol Aircraft
NATO	North Atlantic Treaty Organization
PECC	Pacific Economic Cooperation Council
PSC	Port State Control regime
RAN	Royal Australian Navy
RIMPAC	Rim of the Pacific
SAR	Search and Rescue
SLOC	Sea Lines/Lanes of Communication
TBMs	Trust-Building Measures
UNCLOS	United Nations Convention on the Law of the Sea
USN	United States’ Navy
WPNS	Western Pacific Naval Symposium

Preface

Navies of neighboring states as well as blue water navies are far more likely to cross paths than land armies or air forces. Navies take pride in their rights of free passage, although geographical constraints in some regions can narrow significantly the freedom of movement in territorial waters. Naval exercises provide opportunities for close observation, but at close quarters, one country's naval exercises can be viewed with alarm by another. Crowded sea trade routes and increased competition over maritime resources can provide additional sources of tension at sea. The utility of maritime confidence-building measures (CBMs) rests, in large part, on the need to maintain maritime safety and to avoid incidents at sea. The frequency and proximity of naval interaction provides a sound basis for maritime CBMs because navies in frequent contact are more likely to establish a basic level of cooperation and understanding, even in the absence of official arrangements.

Formal maritime CBMs can build on existing patterns of cooperation at sea. They can also help to manage tensions that may arise from operating at close quarters by institutionalizing channels of communication and codes of conduct. Existing maritime CBMs are mostly safety oriented, designed to prevent incidents at sea between naval forces; these measures provide for direct communication channels at sea, establish general operating rules and signaling guidelines, and call for annual reviews conducted by navy staffs to review compliance with agreed measures. Maritime confidence building can also include ship visits, personnel exchanges, prior notification of naval exercises, and joint exercises.

More broadly, maritime confidence building can extend to cooperative resource management, incorporating measures designed to monitor pollution and environmental changes and to manage fisheries. The United States and the Soviet Union (now Russia), for example, have signed two agreements in this field: the 1989 Bilateral Oil Spill Contingency Agreement, which contains a readiness plan to cope with oil spills; and the 1988 agreement on Mutual Fishing Relations, which allows equal catches in each other's waters. Some states in the Asia-Pacific region have taken similar steps. In the South Pacific, cooperation in maritime surveillance has helped to combat illegal fishing. A "track-two" forum in the region, the Council for Security Cooperation in the Asia-Pacific (CSCAP), focuses in large part on marine resource conservation and coastal-zone management.

This publication is a decision by the Stimson Center to examine functional confidence building across regions. We begin with essays exploring how the concept of maritime confidence building is being developed for the Asia-Pacific region, the Middle East, and South Asia, as well as how maritime CBMs have been utilized by the United States and the Soviet Union/Russia.

The Stimson Center has chosen the format of investigating regional CBMs in a particular functional area because, while we believe that each region must choose its *own* model, some security concerns can be found in many regions. Measures developed in one region to deal with

maritime safety, or, more generally, with border security or fears of surprise attack, can therefore be of interest to and suitably adapted for use in other regions where similar concerns exist. In some cases, the *process* of confidence building, if not its end product, may be usefully transferred.

The essays included here demonstrate precisely this point. In many respects, the impetus toward maritime confidence building or cooperation in the regions covered arose from similar concerns—the desire to provide for greater safety at sea and to reduce the risk of incidents or collisions derived from misunderstanding or miscommunication. In several instances, maritime CBMs were negotiated in similar fashions. In both the East–West context and the Middle East, incidents at sea (INCSEA) agreements were negotiated by professional naval staffs in a quiet, low-key manner. In the East–West case, this enabled parties to keep politics at a distance, helping to ensure effective implementation of maritime CBMs even when political tensions flared; in the Middle East, states are well positioned to benefit similarly. Where professional naval concerns have not been divorced from politics, as in South Asia, little progress has occurred.

The maritime confidence-building process can also work quite differently across regions, as illustrated in these essays. For example, the bilateral nature of the US–Soviet INCSEA Agreement was key to its success. A multilateral East–West agreement would not have been possible. Because provisions for annual consultative reviews in the agreement allowed the airing of perceived areas of misconduct, the Soviet Union was strongly opposed to a multilateral accord; it preferred a narrow and private audience with which it had equal status, the United States. Conversely, the framework for maritime confidence building in the Middle East and the Asia–Pacific region must necessarily be multilateral, befitting the nature of maritime relations in these regions. While multilateral agreements are certainly more challenging to negotiate and implement, they are nonetheless manageable, as evidenced by the agreement of states party to the Middle East peace process to an INCSEA text and a search and rescue framework agreement.

In applying INCSEA-like agreements to other regions, further adaptations of the US–Soviet experience have proven to be necessary. The US–Soviet INCSEA Agreement, and all bilateral INCSEA agreements to date, cover naval incidents and interactions on the high seas, or “beyond the territorial seas” of parties. This means that a signatory is not obligated to adhere to INCSEA guidelines when ships of another state enter its territorial waters. States in the Middle East, however, were faced with the prospect of applying INCSEA provisions to the Red Sea, where there are no high seas, only territorial waters. While the parties eventually agreed that a Middle East INCSEA agreement would not cover the Red Sea, they decided to develop special arrangements to address potential problems in this body of water, drawing on standard INCSEA provisions in doing so. One essay author predicts that an element purposely excluded from East–West agreements—rules or codes of conduct that apply to submerged submarines—may prove useful in the Asia-Pacific context, given the growing prevalence and capability of advanced submarine warfare in the region and resulting safety concerns.

The authors call readers’ attention to the different strategic circumstances found in each region and their impact on the confidence-building process. David Winkler’s essay examining the

East–West case notes how the superpowers’ practice of closely surveying and tracking each other’s navies led to a marked increase in incidents and collisions in an atmosphere dominated by Cold War tensions. Both sides soon realized that they would benefit from actions taken to reduce the likelihood of collisions, which in turn reduced the probability of direct superpower conflict.

Sam Bateman’s account of maritime issues in the Asia–Pacific describes how states have focused initially on joint marine resource management and monitoring, but have not yet moved beyond a “talking shop” stage on more tangible naval and communication CBMs, where the need is perhaps greatest. According to Bateman, the stunning economic growth of the Asia–Pacific region has impacted the strategic maritime environment in two ways. First, it has left states of the region with a new strategic vulnerability, given their increased reliance on sea trade and merchant shipping. Second, economic prosperity has provided fuel for a naval arms build-up. For many states of the region, particularly those in Northeast Asia, this route to security is still preferred over confidence building.

In the Middle East, maritime CBMs were pursued in the context of the broader Middle East peace process, as described in the essay by Peter Jones. It was hoped that efforts devoted to a relatively non-contentious military front, on largely humanitarian issues—the maritime field—would spur progress in other areas. Surprisingly, parties moved further ahead than predicted, and, in crafting the first multilateral INCSEA agreement for the Middle East, broke new ground. In South Asia, the maritime confidence-building process has been impeded by the poor state of political relations between India and Pakistan, as noted in the essay by K. R. Menon. At this stage, steps to resolve maritime boundary disputes are not forthcoming, nor does it seem likely that any will soon be taken to establish communication links or schedule joint exercises between the two navies. Menon does outline a number of useful avenues for maritime cooperation that the two states might undertake in improved circumstances.

Each region or sub-region, then, must necessarily adapt some of the basic concepts of maritime confidence building to suit its specific environment. The Stimson Center hopes that these essays will stimulate more thinking and negotiation on maritime confidence building.

I wish to take this opportunity to thank Michael Krepon, President of the Stimson Center, for his guidance in selecting the regional cases presented here and his comments and editorial suggestions on the earlier drafts of some of these essays. Thanks are also owed to Sony Devabhaktuni for his editing assistance and to Kathleen Walsh and Laurie Boulden for their help in the final stages of production.

Jill R. Junnola

US–Soviet Maritime Confidence-Building Measures

David F. Winkler

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics desiring to assure the safety of navigation of their ships of their respective armed forces on the high seas and guided by the principles and rules of international law have decided to conclude this agreement . . .

So read the opening paragraph of “An Agreement between the Government of the United States and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents on the High Seas and in the Air Space above them,” signed in Moscow on May 25th, 1972, by US Secretary of the Navy John Warner and Soviet Navy Commander-in-Chief Admiral Sergei Gorshkov.¹

Although the signing of the agreement was an insignificant event in the context of a historic visit by President Richard M. Nixon to Moscow featuring the signing of the first strategic arms limitation accords, the Incidents at Sea Agreement, commonly called INCSEA, has stood the test of time. It has weathered such events as the 1973 Arab–Israeli war, the Soviet invasion of Afghanistan, the shutdown of Korean Airlines Flight 007, and the hawkish attitude of the Reagan administration. The agreement successfully regulated the behaviors of the naval and aviation personnel on both sides when operating in close proximity and provided a venue for direct military-to-military contact through annual consultations. Now considered a pioneering confidence-building measure (CBM), the INCSEA accord has been adopted by other nations for use in harmonizing bilateral relations. Nations that also have accords with Russia include Canada, France, Germany, Great Britain, Greece, Italy, Japan, the Netherlands, Norway, and South Korea.² Germany and Poland have a bilateral accord. In December 1994, Arab nations along with Israel agreed to a text for a Middle East multilateral version of INCSEA.

INCSEA survived and proved to be a positive legacy of the Cold War. The story of its negotiation and implementation illustrates how naval officers holding strong, opposing ideological convictions were able to overcome these differences because they shared an important professional and cultural bond, based on a shared respect for those who go out to sea on ships. This bond among sailors helped make the Incidents at Sea Agreement a reality and its implementation such a success.

¹For further information on this agreement, please see Appendix A, contained in this publication, “Highlights of the US-Soviet INCSEA Agreement,” 23-27. As per a clause in the agreement, at every third annual review session the parties decide whether or not to extend the agreement for an additional three years. The complete text of the agreement appears in US Department of State, *United States Treaties and Other International Agreements*, vol. 23, pt.1, 1972 (Washington DC: US Government Printing Office, 1973), 1168-1180.

²Russia is currently negotiating agreements with Portugal and Turkey. Turkey and Greece are also working to conclude an agreement containing elements of INCSEA.

Little has been written on INCSEA outside of several short overviews for naval and international affairs journals.³ The lack of attention given this confidence-building process has not displeased the two navies. To protect the annual consultation process from being politically challenged from within their own governments, both navies deliberately followed a low-key approach and rarely discussed the ongoing bilateral process with the media. So protective was the United States Navy of this process that the Navy Staff issued an instruction classifying most aspects of US–Soviet INCSEA interactions.⁴

With the end of the Cold War and the transformation of the US–Russian relationship, both sides have been more forthcoming about their bilateral navy-to-navy partnership. Consequently, in the United States, hundreds of INCSEA-related documents from the State Department, Secretary of Defense, and Department of the Navy have been declassified and made available to the public. Using these new sources along with interviews of participants and earlier studies, the story of the circumstances surrounding the negotiation and implementation of the INCSEA agreement can be told in greater detail, and, more importantly, assessed as a model for confidence building.⁵

US–Soviet Relations on the High Seas

Former Chief of Naval Operations Admiral Elmo Zumwalt viewed US–Soviet naval interactions as “an extremely dangerous, but exhilarating, running game of chicken.”⁶ Unlike on land, there were no iron curtains on the high seas to separate the armed forces from each other. During the early years of the Cold War the American domination of the high seas went unchallenged except when American ships steamed in close proximity of the Soviet Union. In such situations, the smaller Soviet Navy responded aggressively.

Zumwalt wrote about one encounter in the Baltic Sea during the summer of 1962. Aware of previous incidents where Soviet warships crossed the paths of American warships, intending to embarrass the Americans into backing away, Zumwalt received permission from the Commander-in-Chief, *Atlantic*, to maintain his destroyer’s course even at the risk of collision

³See Anthony F. Wolf, “Agreement at Sea: The United States-USSR Agreement on Incidents at Sea,” *Korean Journal of International Studies*, vol. 9, no. 3 (1978). The author is grateful to Sean Lynn-Jones of the Center for Science and International Affairs of the John F. Kennedy School at Harvard University for sending a copy of this article annotated by Ambassador Herbert Okun. Lynn-Jones first wrote on INCSEA in “A Quiet Success for Arms Control: Preventing Incidents at Sea,” *International Security*, vol. 9, no. 4 (Spring 1985). Other articles include Captain First Rank V. Serkov, “Practice in Preventing Incidents at Sea,” *Morskoy Sbornik*, no. 5 (1981); Rear Admiral Robert P. Hilton, Sr., “The US-Soviet Incidents at Sea Treaty,” *Naval Forces*, vol. VI, no. 1 (1985); and Thomas B. Allen, “Incidents at Sea,” *US Naval Institute Proceedings*, vol. 116, no. 9 (September 1990).

⁴This instruction has recently been superseded.

⁵The author intends to cover the topic in even greater detail in his Ph.D. dissertation research at The American University in Washington, DC.

⁶Elmo Zumwalt Jr., *On Watch* (New York: Quadrangle Press, 1976), 391.

should he be challenged. Zumwalt then described a series of encounters with a smaller Soviet frigate, one of which caused him to send his crew to battle stations as the frigate came within fifty yards before backing down.⁷

The type of incident that Zumwalt experienced soon occurred in areas further away from the Soviet Union. Reacting to the American commissioning of its first ballistic missile submarine, the Soviets built and deployed a blue-water navy. Reflecting years later, Soviet Navy Commander-in-Chief Admiral Gorshkov wrote, "Could the Soviet Union agree to the age-old dominance on seas and oceans of the world by the Western maritime powers, especially in conditions which allow the extension of these areas as nuclear launch platforms? Of course not!"⁸

Under Gorshkov, the submarine remained the capital ship in the Soviet naval inventory to counter American submarine and surface forces. To complement Soviet submarine deployments and contribute to the hunt for American missile submarines, in the mid-1960s the Soviet surface fleet began venturing into the Mediterranean Sea and the Atlantic and Pacific oceans in greater numbers. Awaiting them were the ships of the Western navies. The Cold War finally had come to the high seas.

With deployment, the aggressive tactics that the Soviets had employed in their home waters were now transported to the open oceans of the world. Not all incidents were reported, but beginning in 1965, the United States began to track and classify the different forms of harassment that violated the recognized principles established under international law (or COLREGS, commonly referred to as the international rules of the road) and codified in the 1958 Geneva Convention on the High Seas.⁹

Types of Harassment

The first and most frequent Soviet violation tracked was of the rule requiring captains to "Take positive early action as in the exercise of good seamanship, not to endanger or embarrass the other." Between 1965 and 1971, the United States recorded forty-six incidents of this type. Of these incidents, five resulted in collisions and sixteen resulted in official US protests.¹⁰

The next area monitored was endangerment of American ships restricted in their ability to maneuver due to aviation operations, underway refueling operations, or cable laying. During

⁷Ibid., 392-393.

⁸Sergei Gorshkov, *The Seapower of the State* (Annapolis, MD: Naval Institute Press, 1979), 178.

⁹The two sides currently abide by rules formalized in the Convention on the International Regulations for Preventing Collisions at Sea, 1972, that became effective on July 15, 1977. "COLREGS 72" is published in the United States by the Coast Guard in *Navigation Rules: International—Inland* (US Coast Guard Commandant Instruction M16672.2B, 1990).

¹⁰From 1972 point papers provided to author by the Naval Historical Center, Washington, DC.

these naval operations, the Soviets imperiled the safety of American sailors and aviators by ignoring signals hoisted by American ships indicating their restricted ability to maneuver. Nineteen incidents of this type were reported from 1965 through 1971. Other navies also experienced this harassment. In November 1970, a Soviet destroyer crossed the path of the British aircraft carrier HMS *Ark Royal*, resulting in a collision that killed two Soviet sailors.¹¹

The United States also tracked Soviet aircraft harassment of American flight operations, recording five incidents of this type. One incident in the North Sea in the vicinity of the aircraft carrier USS *Essex* resulted in the crash of a Soviet aircraft. Other areas of concern included the Soviets' use of search lights to illuminate ships' bridges and helicopter cockpits at night; the use of international signals for deceptive purposes; instances of ships provocatively training their guns or missiles; and episodes of aircraft flyovers with open bomb bay doors.¹²

Why Harassment?

The aggressive and unpredictable actions of the Soviet fleet contributed to the Kremlin's foreign policy objectives. By challenging Western dominance on the high seas, the Soviets hoped to impress the leaders of the non-aligned nations of the viability of socialism. Tactics of task force shadowing and aggressive harassment were accompanied by diplomatic offenses aimed to remove Western naval presence from regions where the Soviets hoped to make diplomatic inroads such as the eastern Mediterranean Sea.¹³

As demonstrated in the Zumwalt episode, the Kremlin was extremely sensitive in areas close to its homeland such as the Baltic Sea, Black Sea, and the Sea of Japan. In these areas, the clear goal of Soviet harassment was to show extreme displeasure with the Western presence in Soviet home waters.¹⁴

This essay's focus on Soviet-provoked incidents and possible objectives of Soviet harassment tactics does not exonerate the role of Western navies in contributing to the Cold War at sea. Admiral Zumwalt noted that although official statements always blamed the Russians, "it took two to play the game."¹⁵ For example, Rear Admiral Robert P. Hilton, Sr., described a series of incidents where two of his destroyers tracked a Soviet Foxtrot submarine for an eleven-day period despite evasive actions by the submarine and the attempts of seven different Soviet

¹¹Ibid.

¹²Ibid.

¹³Eric Morris, *The Russian Navy* (Liverpool: Elliot and Yeoman Ltd., 1977), 35-36.

¹⁴Sean Lynn-Jones, "The Incidents at Sea Agreement," in *US-Soviet Security Cooperation*, eds. Alexander Dallin, Philip J. Farley, and Alexander L. George (New York: Oxford University Press, 1988), 485.

¹⁵Zumwalt, *On Watch*, 391.

surface combatants to constrain US destroyer movements through shouldering and blocking maneuvers.¹⁶

Addressing this issue from the Soviet perspective, Admiral Gorshkov explained that under the guise of ensuring freedom of the seas, the United States conducted illegal shadowing of cargo ships with warplanes with “intent to intimidate.” He wrote that American harassment tactics included obstructing the passage of Soviet ships on the high seas and engaging in threatening use of weapons. In Gorshkov’s writings and in numerous Soviet protests, “buzzings” by low-flying American jet aircraft were particularly objectionable.¹⁷ One retired American naval aviator admitted that during this era, carrier pilots often snapped radio antenna wires strung between Soviet ship masts using their aircraft tailhooks.¹⁸

Unlike the Soviets, the United States Navy did not need to resort to harassment as a means to impress third parties of the viability of American seapower. Yet American naval forces also acted aggressively on occasions to prevent Soviet observation of sensitive operations or to prevent Soviet penetration into a battle group formation. With a preponderance of American air superiority, it should also be of no surprise that overzealous jet pilots took opportunities to remind their potential foe who had control of the skies.¹⁹

Negotiations

The American public became aware of ongoing tensions in US–Soviet naval interactions after a pair of incidents occurred in the Sea of Japan on May 10–11, 1967. The USS *Walker*, operating as part of a submarine-hunting task force, collided with a Soviet destroyer on the 10th, resulting in an immediate American protest to the Soviet Embassy in Washington. The next day another Soviet destroyer crashed into the *Walker* and another protest was presented. The incidents became a heated topic of debate within the House of Representatives as Minority Leader Gerald R. Ford proposed that the United States review its options to include authorizing the Navy to fire when challenged in this manner by the Soviets.²⁰

President Lyndon B. Johnson “deeply regretted” the incidents and considered them a matter of concern. However, the solution proposed by the minority leader had dangerous implications that could inadvertently lead to war on the high seas. Seeking to avoid an escalating confrontation, the administration chose another approach. On April 16, 1968, the United States

¹⁶Robert P. Hilton, Sr., “The US-Soviet Incidents at Sea Treaty,” *Naval Forces*, vol. VI, no.1 (1985): 31.

¹⁷Gorshkov, *Seapower of the State*, 51.

¹⁸Captain John A. Fears, USN, discussion with author in August 1990.

¹⁹Lynn-Jones, “The Incidents at Sea Agreement,” 486.

²⁰John W. Finney, “A Soviet Warship Bumps US Vessel 2nd Time in 2 Days,” *New York Times*, May 12, 1967, A1.

proposed to the Soviet Union that “Safety on the Sea” discussions be held to look into curtailing incidents.²¹ Two days after the November 1970 collision involving the HMS *Ark Royal* and a Soviet destroyer, the Kremlin finally responded by proposing that talks be held in 1971.²²

That the Soviets agreed to the American offer to talk after spurning the offer for years did not, in itself, guarantee a successful outcome for negotiations. It should be recalled that in 1971 Americans continued to fight and die in a divisive war in Southeast Asia where the Soviet Union provided support and weapons for the North Vietnamese. Many questioned the wisdom of dealing with the Soviet Navy in that any agreement could be seen as bestowing legitimacy on the Soviet Union. Skeptics were concerned that the Kremlin was pursuing some advantage that would not be apparent in the negotiations or the agreement’s signing, but would be obvious thereafter.²³

Still, Washington accepted Moscow’s response. A member of the American negotiating team, Rear Admiral Ronald J. Kurth, USN (Ret.), summed up the American side’s outlook by stating:

Yes, all of those fears were evident, but the question one asks is: How many lives and what size ship is that fear worth? Because we were getting close to losing life and destroying valuable property, it seemed to those of us who had some experience with the Soviets, that the price to pay for rationalizing our relationship with the Soviets was not going to be excessive.²⁴

In simple terms, avoiding confrontation with the Soviet Navy on and over the high seas served in America’s best interests. In accepting the long-standing American offer to hold talks, the Kremlin realized that its interests would also best be served through curtailment of harassing activities. Both sides, then, came to appreciate that confidence building at sea could reduce the risk of war without infringing upon either side’s national security.

Before the negotiations on INCSEA could begin, US negotiating positions had to be clearly defined. To establish them, National Security Advisor Henry Kissinger convened an inter-agency review with representatives of the Office of the Secretary of Defense, the Secretary of the Navy, the Joint Chiefs of Staff, the Central Intelligence Agency, and the State Department in February 1971. During this review process, chaired by State Department Soviet expert Herbert Okun, information concerning all previous US–Soviet incidents and resulting protests was compiled and

²¹William T. Shinn, “Department of State Memorandum of a Conversation held on August 27, 1970, in the office of Herbert S. Okun between Okun, Shinn, and Igor D. Bubnov.” State FOIA.

²²Exactly why the Soviets chose to negotiate at this time is speculative. There are several theories. The author hopes to find the answer to this question in his ongoing research on US-Soviet maritime relations during the Cold War.

²³Author interview with Rear Admiral Ronald J. Kurth, USN (Ret.), on January 18, 1991.

²⁴Ibid.

analyzed. The US objective was to restrain dangerous maneuvers, yet not constrain US or allied naval missions.²⁵

For example, submariners feared that the Soviets sought to establish rules for submarine operations. Submariners argued that the difficulty of locating, tracking, and positively identifying a submarine would make any provision on restricting submarine activity difficult to enforce, thus weakening any agreement. The inter-agency group agreed: rules for submerged submarines were non-negotiable. Naval Intelligence sought to prevent the establishment of fixed approach distances since rules that restricted how close opposing ships could come to each other could hinder photo-collection opportunities.²⁶

The inter-agency review decided that the preferred US position on fixed distances would be a “general wording” formulation, with a fall-back position of limiting fixed distances to 500 feet for ship-to-ship encounters, and to 2,000 feet vertically and two miles horizontally in aircraft approaches to carrier landing patterns.²⁷

The inter-agency review team also recommended that the United States focus on clarifying and expanding the internationally recognized COLREGS for application to circumstances unique to naval operations on the high seas. In keeping the terms of the agreement simple, the American side hoped to improve prospects for successful treaty implementation.²⁸

With White House approval of the proposed negotiating positions, the United States formally accepted the Soviet offer to negotiate. Talks were scheduled to be held in Moscow during October 1971. Under Secretary of the Navy John Warner, State Department Soviet specialist Herbert Okun, and Vice Admiral Harry Harty led a delegation that consisted mostly of naval officers. Warmly greeting the American team was a Soviet delegation headed by the Deputy Commander of the Soviet Navy, Admiral V. A. Kasatonov, Admiral V.A. Alexeyev of the Naval Staff, and Chief Navigator Rear Admiral A. N. Motrokhov.

Rear Admiral Kurth, who made the trip as a junior member of the American delegation, observed:

²⁵“Hillenbrand ‘Action Memorandum’ of February 26,” and “Invitation letter from Grover W. Penberthy drafted February 26, 1971.” State, FOIA; Ambassador Herbert S. Okun, interview with author on February 25, 1992.

²⁶Captain Robert D. Rawlins, USN (Ret.), letter to author dated March 13, 1992. In a letter to the author dated March 10, 1992, Captain Robert D. Congdon, USN (Ret.), pointed out that American ships made frequent calls on foreign ports allowing Soviet agents ample opportunities to conduct photographic intelligence. Because Soviet warships rarely visited western ports, the US had little choice but to conduct photo-reconnaissance on the high seas.

²⁷Deputy Chief of Naval Operations (OP-616) Position Paper dated January 8, 1972. Provided to author by the Naval Historical Center, Washington, DC.

²⁸Lynn-Jones, “The Incidents at Sea Agreement,” 487; and Kurth interview, January 18, 1991.

The result was an agreement being negotiated by professional people who respected each other. Even though they were on the opposite sides of the Cold War, the shared experiences of men who go to sea tended to create, in that difficult period between our two countries, a medium which added something to the attempt to reach an agreement and it was negotiated between the professionals who were going to be responsible for implementing the agreement at sea.²⁹

The shared experience was reflected during a difficult negotiating session between naval aviators Captain Edward Day and Major-General N. I. Vishensky. One participant observed that because of differing negotiating objectives, the two men seemed to be talking past each other. Day decided to use a different approach. To emphasize the danger of aircraft acrobatics, Day explained he once had the solemn duty to return the recovered body of a Soviet aviator to a Soviet destroyer after the aviator's plane crashed near the aircraft carrier USS *Essex*. Vishensky countered that he knew about this incident because he happened to be that young aviator's father.³⁰ With a bond established on the most personal level, obstacles no longer seemed so difficult to overcome.

Ambassador Herbert Okun reflected that the nearly all-navy composition of the delegation provided a cohesiveness that assured success at the negotiating table. Recalling his experiences on other negotiating teams where delegates came from various government agencies, Okun noted a tendency for inter-agency battles to continue at the negotiating table in front of the other party. In contrast, the incidents at sea delegation worked together to present a united front.³¹

Solid preparation and teamwork were not the only factors working in favor of the visiting Americans. The announcement at the start of the negotiations of President Nixon's decision to come to Moscow in May 1972 gave both sides a sense of urgency. At the time Okun felt positive of the outcome because, as he noted, "Presidents want to sign agreements at summits." Much to the American team's delight, their proposed agenda was readily accepted by their Soviet counterparts. The Soviet team also agreed not to discuss geographical constraints on submarine activities. With the exception of Soviet desires for fixed distances (for example, they wanted airplane-to-ship approach distances of no less than 1,500 meters), the two groups reached agreement on most issues. A memorandum of understanding was compiled for the next phase of the talks.³²

²⁹Kurth interview, January 18, 1991.

³⁰Captain William C. Lynch, USN, JAGC (Ret.), interview with author on May 18, 1992.

³¹Okun interview, February 25, 1992.

³²Okun interview, February 25, 1992; and Deputy Chief of Naval Operations (Op-616) Position Paper, January 8, 1972.

After the first round of talks, a second inter-agency review was convened in Washington to discuss the American position on fixed distance. Despite objections of representatives from the Office of the Secretary of Defense and the State Department, naval representatives recommended that the fall-back fixed distance positions be dropped and the “general wording” formulation be the only US position. Besides representing the views of various fleet and unified commanders who were concerned about restrictions on intelligence collection activities, Rear Admiral James H. Doyle, a veteran participant in formulating American positions regarding the Law of the Sea, expressed concerns that a fixed-distance regime could establish unfortunate precedents for ongoing Law of the Sea negotiations. With the adoption of the Navy recommendation, the American negotiating team was given no leeway for the upcoming second round of talks. Through the US Naval Attaché in Moscow, the American side proposed finalizing the October Memorandum of Understanding as a formal accord. The Soviet team declined. Herbert Okun reflected that the attempt at a quick close failed “. . . because they wanted to visit Washington. It was that simple.”³³

The talks reconvened in early May 1972 during a unique period in American–Soviet diplomacy. As predicted, the distance formula was the principal issue and the American delegation had no room to negotiate. Other events also threatened to hinder progress on an accord. On the evening of May 8, President Nixon announced his decision to escalate bombing in Southeast Asia and conduct a mine laying campaign in North Vietnamese waters. Unfortunately, the announcement coincided with a dinner party Warner was hosting at his Georgetown home for senior Soviet delegation members. After watching the Nixon speech all eyes focused on Admiral Kasatonov. After some contemplation he remarked, “This is a very serious matter. Let us leave it to the politicians to settle this one.” Moscow’s limited reaction to the mining ensured that the planned Nixon visit to the Soviet capital would still take place as scheduled at the end of the month and made conditions most favorable for finalizing the agreement to prevent incidents at sea. Ambassador Okun later stated, “We were highball to highball, and they were first to clink.” The Soviet team had agreed to discuss the issue of fixed distances at a later date.³⁴

Implementation and Beyond

There was general satisfaction by both parties over the implementation and execution of the agreement during its first decade. Writing in 1981, Soviet Captain First Rank V. Serkov asserted that with the agreement, “. . . the safety of sea navigation and overflight has noticeably

³³Vice Admiral James H. Doyle, USN, (Ret.) letters to author dated July 8 and July 20, 1992; “AMEMBASSY Moscow message to SECSTATE WASHDC 071528Z Mar 72,” and “State Department telegram 058586, April 5, 1972.” State, FOIA; and Okun interview, February 25, 1992.

³⁴Zumwalt, *On Watch*, 393-394; Lynn-Jones, “The Incidents at Sea Agreement,” 487; Okun interview, February 25, 1992, and December 4, 1991, interview with interpreter Cyril Muromcew. The two sides met in November 1972 to discuss the fixed-distance issue. No agreement was ever reached.

improved and the rule of norms and principles of international law has grown greater in dealings between the two navies on the high seas.” He also noted that the number of serious incidents between ships and aircraft of the two countries had been curtailed.³⁵

Two years later at a press briefing, Secretary of the Navy John F. Lehman, Jr., offered a similar assessment. “It’s worked very well,” he said of the agreement, noting that when certain types of Soviet harassment began to appear as a pattern of operations, the issue would be brought up at the next annual meeting of the two sides “and those practices stopped.” Lehman added, “Similarly, they’ve expressed some concerns about the way we join up on them, when we run intercepts on their bombers that come out to run against our exercises and we’ve discussed them and changed procedures to accord with them.”³⁶ In addition to acknowledging that both sides had generally abided by the accord, Lehman’s remark also underscored the value of the annual review as an institutionalized consultative mechanism. By meeting annually to discuss violations, both sides demonstrate a commitment to improve compliance.

The agreement’s first test occurred during the October 1973 Arab-Israeli war. The injection of Soviet seapower into the eastern Mediterranean, combined with a timid American naval response, effectively denied the United States sea control in the region. Despite the intensity of the crisis and sheer volume of vessels deployed by the two superpowers (the Soviet number reached ninety-six), incidents between the sides were rare. There were some reports of Soviet warships training guns on US vessels, but as these instances usually occurred at 8:00 A.M., they may have been “routine checks.” Similarly, close maneuvers by some Soviet vessels were regarded as clumsy attempts at reconnaissance.

Overall, the Soviet ships did observe the agreement and avoided harassing their American counterparts. Admiral Worth Bagley, then Commander-in-Chief, US Naval Forces Europe, stated that the “Soviets weren’t overly aggressive. It looked as though they were taking care not to cause an incident.”³⁷

Had Soviet and American naval practices resembled those prior to 1972, numerous harassment incidents and an escalation of the Middle East crisis could have resulted. The Soviet Navy’s new appreciation of the dangers of such incidents was reflected by Captain Serkov, who wrote:

We cannot fail to take into account the changes, sometimes in the direction of increased difficulty and aggravation, in the military-political situation in certain areas of the world ocean. This creates the necessity of strengthening vigilance and of the display of restraint by the commanders of navy ships and aircraft when

³⁵Serkov, “Practice in Preventing Incidents at Sea,” *Morskoy Sbornik*, no. 5 (1981): 78-79.

³⁶Thomas D. Allen, “Incidents at Sea,” *Proceedings of the US Naval Institute* (September 1990), 42.

³⁷Lynn-Jones, “The Incidents at Sea Agreement,” 497.

operating near the ships and aircraft of the USA, as well as the need for undeviating observance of the provisions of the said agreement.³⁸

The agreement also managed to withstand the political challenge posed by Soviet actions in Afghanistan. Rear Admiral Kurth recalled that the United States demonstrated its indignation with the Soviets by breaking government-to-government contacts on several levels. For example, US-Soviet military interface ceased in embassies and in attaché relations. However, naval leaders resisted cancellation of INCSEA, fearing a disruption of behavioral norms on and over the high seas that had become entrenched over the previous seven years. Naval leaders were able to successfully argue that these behavioral norms actually contributed to national security. INCSEA remained intact.³⁹

A greater challenge to the accord occurred in the aftermath of the September 1, 1983, Soviet shootdown of a Korean Air Lines Boeing 747 jumbo jet as the aircraft was leaving Soviet air space west of Sakhalin Island. When vessels from the Japanese Maritime Safety Agency arrived at the presumed crash site, they reported two Soviet ships and five aircraft already searching. US vessels soon arrived. Soviet forces focused their search within their territorial waters and judiciously defended these waters from foreign intrusion. They also intruded on American salvage operations, making low passes with aircraft, forcing ship course changes by aggressive maneuvers, and running parallel to salvage ships to drown out American underwater listening device reception.⁴⁰

Rear Admiral Kurth recalled that the Soviet Navy initially abided by the agreement and acted with caution. To account for the Soviets' sudden change to aggressive behavior, Kurth speculated that orders may have been given by the Kremlin, which had perhaps been influenced by the KGB.⁴¹

Using the method prescribed in the agreement, the United States protested the harassment. Admiral Sylvester R. Foley, Jr., Commander-in-Chief, US Pacific Fleet, remembered that during the search, the Soviets “. . . gave us trouble and hassled us and we said, ‘if the Incidents at Sea Agreement means anything, cut it out’ and they did.”⁴²

Despite further incidents at sea in the fall of 1983 and the spring of 1984, along with the “evil empire” speech by President Reagan and the suspension of nuclear arms reduction talks,

³⁸Serkov, “Practice in Preventing Incidents at Sea,” 80.

³⁹Kurth interview, January 18, 1991.

⁴⁰R. W. Johnson, *Shootdown: Flight 007 and the American Connection* (New York: Viking Press, 1986), 192-194.

⁴¹Kurth interview, January 18, 1991.

⁴²Lynn-Jones, “The Incidents at Sea Agreement,” 498.

neither side moved to cancel the May 1984 review. "Very frank discussions were held over alleged Soviet violations of salvage operations for KAL 007," wrote Rear Admiral Hilton. He cited a conversation with a veteran diplomat who told him how "... utterly amazed he was at the frankness, professionalism and objectivity of the exchanges during the sessions," in contrast to "the normal diplomatic intercourse between the two countries."⁴³

Rear Admiral Kurth recalled, "It was a difficult annual review, but the Soviets took, in my judgement, extraordinary steps to make sure this agreement was not destroyed because of the experience we had in the Sea of Japan."⁴⁴ Secretary of the Navy Lehman hinted that the Soviets were not always the guilty party during the recent incidents. Citing an incident in March 1984 between the USS *Harold E. Holt* and the Soviet aircraft carrier *Minsk* in which the latter fired eight flares at the *Holt*, Lehman said, "I don't see anything sinister in the incident with the *Minsk*. Let's say there are two plausible sides to that story. The *Minsk* skipper may not have been all on the wrong side."⁴⁵

In the end, the 1984 annual review proved to be one of the more successful reviews in recent memory. Still, the agreement faced one more political challenge. On March 24, 1985, Soviet soldiers shot and killed Major Arthur D. Nicholson Jr., a US Army officer assigned to observe Warsaw Pact maneuvers in East Germany. Vice Admiral Henry C. Mustin recalled that Secretary of Defense Casper Weinberger had very strong personal reactions to the murder of Major Nicholson and stated that until the Soviets provided reparations for the murder, and acknowledgment and apology for the shooting of KAL 007, the American INCSEA delegation was not to have any contact with the Soviets other than that required to get on with the talks.⁴⁶ Hearing rumors that Weinberger wanted to "cancel the whole thing," Mustin occasionally visited the secretary's office to dissuade Weinberger's staff from recommending such action.

Issued without prior consultation with the secretary of state or national security advisor, the Weinberger directive adversely affected the upcoming annual review to be held that May in Washington. Informed that their visit to America was to be curtailed, the Soviet side informed the State Department that their delegation would not come. Rear Admiral Kurth recalled that the Soviet decision not to come "... dealt with the Soviet Navy's feeling that the structure of the review was going to be discourteous in terms of what had been done in the past and that they didn't care to experience that discourtesy."⁴⁷ Eventually the 1985 review was quietly held in

⁴³Hilton, "The US-Soviet Incidents at Sea Treaty," 37.

⁴⁴Kurth interview, January 18, 1991.

⁴⁵Lynn-Jones, "The Incidents at Sea Agreement," 498-499.

⁴⁶Allen, "Incidents at Sea," 41.

⁴⁷Kurth interview, January 18, 1991.

Washington in November. The 1986 review was held as scheduled, and since then an INCSEA review has been held every year except 1994.⁴⁸

Rear Admiral Kurth, serving as defense attaché to Moscow during this era, observed that in the late 1980s, after the era of glasnost and perestroika had begun in the Soviet Union, the navy-to-navy relationship moved from professional interface to near collegiality with greater speed than any other Soviet–American governmental relationship.⁴⁹ Indeed, with Soviet–American rapprochement, there has been a steady decline in the reported violations of the agreement. In contrast to the 1983 time frame where there were some forty reported incidents, there was only one incident reported between the annual reviews held in 1986 and 1987, and no incidents have occurred since the fall of the Soviet Union.⁵⁰

Building on Success

Senator John Warner credits the quiet success of the INCSEA agreement for establishing a climate of trust between the United States and the Soviet Union that contributed to the creation of Nuclear Risk Reduction Centers in 1987 and the Agreement on Prevention of Dangerous Military Activities in 1989.⁵¹ The positive influence of the Incidents at Sea Agreement can clearly be shown in the negotiating and implementation process of the latter agreement. After a meeting between Secretary of Defense Frank C. Carlucci and Soviet Defense Minister Dmitri Yazov in Bern, Switzerland, in March 1988, negotiating teams were assembled by both sides to look into further ways to reduce military incidents that could lead to confrontation. At the conclusion of nine months of negotiations, the Agreement on Prevention of Dangerous Military Activities was signed in Moscow on June 12, 1989, by the US Chairman of the Joint Chiefs of Staff, Admiral William J. Crowe, and the Chief of the Soviet General Staff, Mikail A. Moiseyev.⁵²

The agreement, which took effect on January 1, 1990, addresses four specific areas: the handling of accidental emergency crossings of national boundaries by military forces; the hazardous use of range-finding lasers during military tests and maneuvers; the interference with each other's command and control networks during peaceful operations; and the delineation of specific zones of tension such as the Persian Gulf where military maneuvers could add fuel to a crisis situation. As in the Incidents at Sea Agreement, this accord was negotiated by military professionals. In addition, a common radio frequency for direct contact between the forces of

⁴⁸The Russians cancelled the 1994 annual consultations due to funding constraints. Consultations were resumed in 1995.

⁴⁹Kurth interview, January 18, 1991.

⁵⁰Jamgotch Nish, *US-Soviet Cooperation* (New York: Praeger, 1989), 168.

⁵¹Allen, "Incidents at Sea," 42.

⁵²Lawrence J. Goodrich, "Avoiding Accidental Confrontation," *The Christian Science Monitor*, June 13, 1989, 8.

the two countries was established, as well as a commission to study risks in standard military practice. These communication mechanisms are similar to those contributing to the success of the Incidents at Sea Agreement.⁵³

With warming relations in 1992, the United States and the Soviet Union began using the occasion of the annual review to hold navy-to-navy staff talks. Coinciding with the INCSEA review, these talks provide a formal venue to discuss issues that previously could only be addressed “on the margins” of INCSEA reviews. Mutual training opportunities, port visits, manning policies, submarine operations, and downsizing force structures represent a few of the many issues discussed by leaders of the two sides. Through this dialogue, the United States and the Russian Federation are working to convert mutual trust established through the INCSEA regime into mutual friendship.⁵⁴

Other Bilateral Agreements

Because of interest expressed in the agreement by some of America’s allies, in May 1972 Secretary Warner broached the subject of making the accord multilateral with Admiral Kasatonov. Kasatonov was receptive to the idea, but pointed out that if INCSEA were to be expanded by adding NATO countries, then all of the Warsaw Pact countries should be allowed to sign on. This reasonable sounding counterproposal presented problems for the American side, for this allowed the German Democratic Republic to be a participant in the process. The United States did not care to provide diplomatic recognition to the GDR. Warner dropped the proposal.⁵⁵

Prior to the 1973 review and protocol signing, US NATO Ambassador Donald Rumsfeld attempted to reopen the question of a multilateral INCSEA. He noted that the East German problem could be handled adequately if, under an agreement accession clause, Moscow and Washington would act as depository powers, holding open copies of the agreement for signatures by third countries. With the GDR signing in Moscow, the United States would be spared recognizing the East German government.⁵⁶ The Nixon administration viewed this initiative with little enthusiasm.

Many years later an annual review participant, Commander Howard Sidman, USN, observed:

⁵³Serkov, “From Confrontation to Cooperation,” *Morskoy Sbornik* (October 1990). See also Harry H. Almond, Jr., “Dangerous Military Activities,” *Proceedings of the US Naval Institute* (December 1989), 97-99.

⁵⁴For a report on navy-to-navy contacts see Lieutenant Commander Melissa Harrington, USN, “Comment and Discussion,” *Proceedings of the US Naval Institute* (June 1993), 28.

⁵⁵“SECSTATE WASHDC message to USMISSION NATO 231500Z May 72.” State, FOIA.

⁵⁶“USMISSION NATO message to SECSTATE WASHDC 301105Z Apr 73.” State, FOIA.

The success of this agreement has been bilateral. Trying to do this agreement during this same time period of time as a multilateral agreement would have made it just another piece of paper—a footnote in history. It wouldn't have worked. One reason is that the Soviets would never have been able to stand up and say "one of our C.O.s messed up," which has happened. The Soviet Union doesn't mind confiding with an equal that there was a mistake, but admitting that in front of the Danes or, God forbid, the Germans would have made this agreement a non-player.⁵⁷

No accession clause was added. The Incidents at Sea Agreement would remain bilateral and unique to US-USSR relations until 1986.

Incidents had occurred over the years between the ships and aircraft of America's NATO allies and the Soviet Union and her Warsaw Pact allies. Perhaps it was the collision between the HMS *Ark Royal* and a Soviet destroyer in November 1970 that inspired the Kremlin to accept the long-standing US offer to conduct bilateral negotiations. From time to time, the Soviet media had complained of "buzzings" from the maritime aircraft of a variety of NATO nations.

However, harassment on and over the high seas could not have been the prime motivator for the series of "copycat" INCSEA agreements signed by the Soviet Union starting in July 1986. For the most part, Soviet naval behavior toward NATO allies reflected its improved relations with the United States. Rear Admiral Kurth, the defense attaché in Moscow during this period, noted that it had been difficult to discern the motivation behind the sudden Soviet urge to sign additional INCSEA agreements. Kurth theorized that additional bilateral ties with Western navies provided leverage for the Soviet Navy in internal battles within the Ministry of Defense or that the Soviet Navy simply desired overseas experience for some of its officers. Commander Sidman later observed that signing an agreement gave Soviet President Mikhail Gorbachev an accomplishment to claim as he travelled to summit meetings throughout Western Europe.⁵⁸

Not all of the ten bilateral INCSEA agreements that the Soviet Union had entered into by the end of 1991 were initiated by the Kremlin. For example, the West German government initiated discussions that concluded with an agreement signed with the Soviet Union on October 25, 1988. In discussing the German initiative to negotiate INCSEA agreements with the Soviet Union in 1988 and later with Poland in 1990, German Navy Captain Dieter Leonhard explained:

The value of these treaties rests primarily in the political sphere since they serve the further development and normalization of the bilateral relationships and reduction of tensions, thus having a confidence-building effect.⁵⁹

⁵⁷Commander Howard Sidman, USN, interview with author on December 2, 1991.

⁵⁸Kurth interview, 18 January 1991; Sidman interview, December 2, 1991.

⁵⁹Letter from Naval Attaché Captain Dieter Leonhard, German Navy, to author dated March 19, 1992.

Some Western European states may have been motivated to negotiate INCSEA accords with the Soviet Union for reasons of prestige, since at-sea harassments had long since faded as a problem. Once Great Britain inked the first copycat agreement with the Soviet Union in conjunction with a Gorbachev visit in July 1986, followed by the Soviet-German signing, an agreement with France could not be far behind. One nation that spurned a 1986 Soviet offer for a bilateral accord was Sweden, which preferred a multilateral arrangement.

In 1983, at Sweden's initiative, the United Nations General Assembly adopted a resolution calling for the Secretary General to assemble a panel of experts to conduct a comprehensive study on the global naval arms race. Both the United States and the Soviet Union declined to participate in this effort. In 1985 the panel presented a completed study to the General Assembly. One suggestion singled out for special consideration called for converting the bilateral US-USSR INCSEA Agreement to a multilateral format. This recommendation was received coldly by the United States for reasons previously cited by Commander Sidman.

The 1986 session of the United Nations Disarmament Commission reviewed the panel's recommendation and proposed that a multilateral agreement coexist with the US-USSR agreement and not supersede it. Sweden even distributed several working papers with sample multilateral INCSEA agreement proposals. These proposals were reviewed over the remainder of the decade with little enthusiasm from the superpowers.⁶⁰

On June 15, 1990, the Soviet delegation to the Conference on Security and Cooperation in Europe (CSCE) tabled a proposal for a multilateral INCSEA accord involving CSCE participants. Again, this Soviet proposal received an unenthusiastic response from the NATO participants who preferred to maintain their bilateral relationships.⁶¹

The idea of a regional INCSEA accord has found more favor in the Middle East. On May 12, 1992, Vice Admiral Leighton W. Smith, USN, gave a lecture about the successful aspects of the US-USSR agreement at a Washington session of the Middle East peace talks. Impressed with the presentation, delegation members began to explore if the parties could adapt mechanisms from the INCSEA agreement to their region.⁶² Canada, which has a bilateral INCSEA relationship with Russia, assumed the role of facilitator to explore maritime confidence-building possibilities

⁶⁰Jan Prawitz, "A multilateral regime for prevention of incidents at sea," in *Security at Sea, Naval Forces and Arms Control*, ed. Richard Fieldhouse (New York: Oxford University Press, 1990), 220-224; Letter from Captain C. Hagg, RSwN, to author dated January 8, 1990.

⁶¹Robert P. Hilton, Sr., *A Workable Approach to Naval Arms Control: Development of Confidence-Building Measures at Sea* (Alexandria, VA: Institute for Defense Analyses, November, 1990), 29.

⁶²The author has been a supporting participant in this process.

for the multilateral Arms Control and Regional Security Working Group.⁶³ After two years of negotiations, in December 1994, the parties agreed to the language of a Middle East Incidents at Sea understanding.⁶⁴ Due to diplomatic recognition problems between some Arab states and Israel, Canada agreed to serve as a depository for an understanding based on the US–USSR agreement. The depository concept echoes Donald Rumsfeld’s idea two decades earlier to expand the US–USSR agreement into a multilateral format.

Objectively comparing the Cold War and the Middle East situations, an observer might question the applicability of INCSEA to the Arab–Israeli problem. Unlike the US–Soviet situation in the 1960s and early 1970s, confrontation on the high seas has contributed relatively little to Arab–Israeli tensions; thus, the risks associated with naval confidence building, at least outside the Persian Gulf region, are not that great. It is for precisely this reason that negotiating an INCSEA accord has proved attractive to states of the Middle East. Significantly, progress in INCSEA negotiations can provide a foundation for states to undertake more substantial confidence-building measures in fields outside the maritime environment. The communications mechanisms established under INCSEA, which include an annual review regime, can serve as useful models for quietly building bilateral and multilateral relationships among the military hierarchies.

Reasons for Success

The attractiveness of a multilateral INCSEA accord should not be surprising, considering the reasons for INCSEA’s success during the Cold War. As Sean Lynn-Jones notes, INCSEA “. . . does not have to prevent all incidents in order to be judged a success.” During most of the first two decades of the accord there were alleged violations by both sides discussed at the annual consultations. Lynn-Jones adds that, in comparison, “The Hotline, the Accident Measures Agreement or the Agreement on the Prevention of Nuclear War would all be judged harshly if they failed on even one occasion.”⁶⁵

Bearing in mind this definition of success, the reasons for the INCSEA accord’s positive track record can be summarized as follows:

1. **Both Sides’ Best Interests:** As Rear Admiral Hilton reasoned, “Neither country wants to have its valuable ships damaged by inadvertent or imprudent actions of its naval officers. Neither nation wants an incident to escalate into a governmental confrontation.”⁶⁶ The Soviet

⁶³Peter Jones, “Maritime Confidence-Building Measures in the Middle East.” Paper presented at the conference, “From Cooperative Security to Multinational Peacekeeping: The Role of Medium Power Navies in the New Century,” University of British Columbia, Vancouver, February 23-25, 1995.

⁶⁴For information on the current status of the Middle East INCSEA understanding, please see Peter Jones’ essay in this publication, “Maritime Confidence Building in the Middle East.”

⁶⁵Lynn-Jones, “The Incidents at Sea Agreement,” 499.

⁶⁶Hilton, “The US-Soviet Incidents at Sea Treaty,” 37.

Navy had a particular reason to be concerned as the rapid build-up of their fleet had forced them to promote junior officers to command positions. With contacts on and over the high seas promising to increase as the Soviet Navy continued to expand, the risks of maintaining the status quo only increased the odds that the actions of an inexperienced officer on either side could lead to an escalation of tensions or possible exchange of fire. Both sides found the prospects of inadvertent warfare very undesirable. With the implementation of the agreement, behavioral norms were established on and over the high seas that provided reassurance for ship commanders. Naval operations are complex and nerve-racking in times of peace. Tension is only multiplied in times of crisis. The naval buildup during the 1973 Arab–Israeli war illustrated why both superpowers benefitted from adhering to the behavioral norms established by the accord.⁶⁷

2. **Simplicity:** Rear Admiral Kurth argued that the US side has been very reluctant to significantly alter the terms of the agreement for fear that complicating INCSEA could cause it to fail.⁶⁸ As earlier noted, US naval intelligence opposed a fixed-distance regime for fear of granting the Soviet Navy an edge in ability to conduct photo-reconnaissance.⁶⁹ Over the long-term, the American insistence of a simple general wording formula calling for commanders to abide by COLREGS and use prudent judgement probably served each side's best interest. As a result of this provision, the annual consultation process focused on only serious transgressions and did not become bogged down in minor disputes. Reflecting some twenty years later, Rear Admiral Kurth observed that a fixed formula pertaining to all of the various circumstances between the ships and airplanes of both countries under various weather and sea conditions would have been absolutely unworkable. Hours of arguments were avoided on whether ship A inadvertently entered the come-no-closer zone of ship B.

In addition, because this agreement was primarily a navy-to-navy accord, it lent itself to simplicity in execution. Each nation had the institutional means to disseminate the rules of compliance.

3. **Professionalism:** As noted by Rear Admiral Hilton, one veteran diplomat expressed amazement at the level of frankness that each side brought to the discussions. If an aircraft or ship violated the agreement, the offending side acknowledged responsibility and the two sides would move on to the next problem. The discussions remained free of polemics.

Yet considering that delegations were composed of former ship operators and aviators, this frankness should not be surprising. Both sides could easily place themselves in the other's shoes. Rooted in a shared environment, professional naval officers are often able to communicate

⁶⁷Letter to author from Captain Robert Congdon, USN (Ret.).

⁶⁸Kurth interview, January 18, 1991.

⁶⁹While the Americans may have been suspicious about Soviet motivations for insistence on fixed-distances, in hindsight, the Soviet desire to establish come-no-closer zones around its ships attempted to address a very legitimate concern over the relative inexperience of Soviet naval commanders.

better with officers from other navies than with officers from sister services. And of course, when discussing professionalism, the conduct of those on both sides actually serving on the high seas also must be considered—for their competent implementation really made the agreement work.⁷⁰

4. Preparation: While common professional naval backgrounds contribute to productive annual reviews, preparation was also key. If an incident occurred, the reported violation was passed through the other nation's naval attaché well in advance of the annual review, allowing the accused transgressor the opportunity to investigate. Often fault was acknowledged even before the review session.

Annual reviews alternated each year between Moscow and Washington. Six to eight weeks prior to the review, the host nation submitted a proposed agenda and delegation list through the other nation's naval attaché. Shortly thereafter, the guest nation proposed any additions or changes to the agenda and provided the visiting delegation list. As a consequence of this process, both sides entered the annual review with the benefit of a set agenda and confidence in knowing there should be no unexpected surprises.

5. Atmospherics: During the October 1971 talks, the Soviet side set two precedents that later contributed to productive annual review sessions. At the first Moscow talks, the Soviet side took care of all expenses associated with the negotiations except for travel to and from the Soviet Union. This "host-pays-all" regime, which continues today, eases the burden of the visiting delegation and facilitates good will. The second precedent involves the proposed touring or entertainment schedule. This was not transmitted by the host in advance but was agreed upon when the visiting delegation head made a courtesy call on the host delegation head shortly after arrival. By working together on an touring/entertainment itinerary, the two delegation heads have an opportunity to get a sense of each other's likes and dislikes. In addition, the ability to agree on such an itinerary establishes a spirit of cooperation that carries on when tougher issues are later tabled.

In addition to providing a mechanism to kick off the review on a positive note, the touring/entertainment regime has fostered a better understanding of each other's culture and country. Soviet delegations have traveled to San Diego, San Francisco, New Orleans, Newport, and New York. American delegations have visited St. Petersburg, Volgograd, and Sochi. Reflecting on the role of the social regimen, Rear Admiral Kurth thought that travel made as important a contribution as anything done at the negotiating table. He observed that the Soviets came to the United States with an understanding of its foreign policy and public positions but had no real knowledge of the openness of the American people. Kurth believed that, "... when they encountered that openness . . . it greatly reassured them about dealing with the United States in general and with our delegation specifically."⁷¹

⁷⁰Hilton, "The US-Soviet Incidents at Sea Treaty," 37.

⁷¹Author interview with Rear Admiral Ronald J. Kurth, USN (Ret.), on September 5, 1991.

6. Lack of Publicity/Visibility: The INCSEA agreement did not require Senate ratification. Thus, INCSEA avoided politicization at the start, a hurdle that has been fatal to other accords. Also, the INCSEA agreement received little press attention at its signing due to concurrent events related to the Nixon summit trip to Moscow. The effort to maintain this low profile has been consistent and there has been little publicity associated with annual reviews. Although the actions of the secretary of defense did postpone the 1985 annual review, the agreement survived far greater Cold War crises because of strong support within both naval leadership establishments. “It was low key and the agenda was very narrow,” stated Vice Admiral Mustin when explaining why the agreement survived possible termination by higher authorities.⁷²

The Middle East peace process has clearly benefitted from pursuing a similar strategy. The first meetings, held in September 1993 at the remote location of Sydney, Nova Scotia, Canada, hardly attracted local media attention. With meetings held away from the media spotlight, relationships between the naval officers from all sides began to build. This quiet, low-key approach could make INCSEA accords attractive to other politically volatile regions, as well as the Middle East.

7. Verification/Accountability: The establishment of direct navy-to-navy communications mechanisms and the provision of annual consultations provides means for holding the other party accountable. Unlike arms treaties that can be obfuscated by either side, a violation of this agreement occurs only in the presence of the other party. Photographs, videotapes, charts, and decklogs are produced at the annual reviews to demonstrate which party was at fault. When fault is identified, the offending side usually willingly acknowledges its responsibility and takes action to correct the problem. Knowing that they will be held accountable can have a clear deterrent effect on potential transgressors.⁷³

Conclusion

The INCSEA accords have been a proven “confidence builder” for over twenty years. Although the INCSEA agreement did not end all US–Soviet incidents at sea, the accord effectively addressed a serious problem of growing harassment at sea that plagued both sides in the late 1960s and early 1970s. INCSEA also helped lay the groundwork for establishing closer military-to-military ties after the fall of the Berlin Wall. As mentioned above, the successful track record of INCSEA was key to the creation in 1989 of the US–Soviet Agreement on Prevention of Dangerous Military Activities, which addressed areas of concern outside the realm of INCSEA and established common channels of communication between all branches of the US and Soviet armed forces.

⁷²Allen, “Incidents at Sea,” 41.

⁷³Hilton, “The US-Soviet Incidents at Sea Treaty,” 37; Lynn-Jones, “The Incidents at Sea Agreement,” 500.

The Incidents at Sea Agreement's greatest legacy may still be yet to come, should other conflict-prone regions follow the lead of the Middle East countries in using INCSEA as confidence-building measure. With this potential legacy, those individuals involved in the INCSEA negotiation and implementation process can take great pride in what they accomplished.

Appendix A: Highlights of the US–Soviet INCSEA Agreement

Provided below are highlights of the May 25th, 1972, “An Agreement between the Government of the United States and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents on the High Seas and the Air Space above them.”

ARTICLE I

For the purposes of this agreement, the following definitions shall apply:

1. “Warship” means:

A. A warship belonging to the naval forces of the parties bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the Government and whose name appears in the navy list, and manned by a crew who are under regular naval discipline.

B. Naval auxiliaries of the parties, which include all naval ships authorized to fly the naval auxiliary flag where such flag has been established by either party.

2. “Aircraft” means all military manned heavier-than-air craft, excluding spacecraft.

3. “Formation” means an ordered arrangement of two or more ships proceeding together and normally maneuvering together.

Comment: This article is fairly self-explanatory. A protocol, signed on May 22nd, 1973, extended the agreement to cover non-military shipping. The agreement still excludes civilian commercial aviation. Bilateral incident at sea agreements between Russia and other nations do protect commercial aviation from harassment and such a provision will be incorporated into a new protocol to the 1972 US-USSR accord in 1996.

ARTICLE II

The parties shall take measures to instruct the commanding officers of their respective ships to observe strictly the letter and the spirit of the international regulations for preventing collisions at sea, hereinafter referred to as the rules of the road. The parties recognize that their freedom to conduct operations on the high seas is based on the principles established under recognized international law and codified in the 1958 Geneva Convention on the High Seas.

Comment: This article holds the parties responsible for insuring that their captains comply with the rules of the road. A copy of the rules are maintained on the bridges of all U.S. Navy ships while

underway and all surface warfare officers are periodically tested on their rule knowledge. Presently both sides abide the 1972 International Regulations for Warning of Collision of Vessels at Sea, COLREGs-72).

ARTICLE III

1. In all cases ships operating in proximity to each other, except when required to maintain course and speed, shall remain well clear to avoid risk of collision.
2. Ships meeting or operating in the vicinity of a formation of the other party shall, while conforming to the rules of the road, avoid maneuvering in a manner which would hinder the evolutions of formation.
3. Formations shall not conduct maneuvers through areas of heavy traffic where internationally recognized traffic separation schemes are in effect.
4. Ships engaged in surveillance of other ships shall stay at a distance which avoids the risk of collision and also shall avoid executing maneuvers embarrassing or endangering the ships under surveillance. Except when required to maintain course and speed under the rules of the road, a surveillant shall take positive early action so as, in the exercise of good seamanship, not to embarrass or endanger ships under surveillance.
5. When ships of both parties maneuver in sight of one another, such signals (flag, sound and light) as are prescribed by the rules of the road, the international code of signals, or other mutually agreed signals, shall be adhered to for signaling operations and intentions.
6. Ships of the parties shall not simulate attacks by aiming guns, missile launchers, torpedo tubes, and other weapons in the direction of a passing ship of the other party, not launch any object in the direction of passing ships of the other party, and not use searchlights or other powerful illuminating devices to illuminate the navigation bridges of passing ships of the other party.
7. When conducting exercises with submerged submarines, exercising ships shall show the appropriate signals prescribed by the international code of signals to warn ships of submarines in the area.
8. Ships of one party when approaching ships of the other party conducting operations as set forth in rule 4c of the rules of the road, and particularly ships engaged in launching or landing aircraft as well as ships engaged in underway replenishment shall take appropriate measures not to hinder maneuvers of such ships and will remain well clear.

Comment: This article forbids certain actions not specified in COLREGs-72, such as training weapon systems toward the other country's vessels. During times of tension, such actions could be provocative or misunderstood, unintentionally leading to crisis escalation and even war. During the Cold War, American naval officers were aware that Soviet naval doctrine emphasized a coordinated first strike.

Coordinated first strikes had been the hallmark of such Soviet fleet exercises as Okean 70 and 75. In times of tension, a Soviet ship appearing to prepare a weapons launch could be preempted by an American strike. The tragic shootdown of an Iranian airliner by the USS Vincennes demonstrated just how such a scenario could occur.

Paragraph 8 met one of the American delegation's negotiating objectives. The United States, due to the nature of its force composition and deployment, conducted far more restrictive maneuvers involving aviation-capable ships and replenishment ships than the Soviets. This paragraph clearly benefitted the Americans.

ARTICLE IV

Commanders of aircraft of the parties shall use the greatest caution and prudence in approaching aircraft and ships of the other party operating on and over the high seas, in particular, ships engaged in launching or landing aircraft, and in the interest of mutual safety shall not permit: simulated attacks by the simulated use of various weapons against aircraft and ships, or performance of various aerobatics over ships or dropping various objects near them in such a manner as to be hazardous to ships or to constitute a hazard to navigation.

Comment: Analyst Sean Lynn-Jones has written that, "This last provision apparently reflects Soviet concerns over the practice of dropping sonar buoys from aircraft, but the ambiguous wording probably allows the United States to continue to act as it did before the agreement."¹

ARTICLE V

1. Ships of the parties operating in sight of one another shall raise proper signals concerning their intent to launch or land aircraft.
2. Aircraft of the parties flying over the high seas in darkness or under instrument conditions shall, whenever feasible, display navigation lights.

Comment: Flight operations often require constant maneuvering to ensure proper wind velocity over deck. Forewarned, a surveillant ship can take proper actions to avoid "in extremis" situations.

¹Lynn-Jones, "The Incidents at Sea Agreement," in *US-Soviet Security Cooperation*, eds. Alexander Dallin, Philip J. Farley, and Alexander L. George (New York: Oxford University Press, 1988), 489.

ARTICLE VI

Both parties shall:

1. Provide through the established system of radio broadcasts of information and warning to mariners, not less than three to five days in advance as a rule, notification of actions on the high seas which represent a danger to navigation or to aircraft in flight.
2. Make increased use of informative signals contained in the international code of signals to signify the intentions of their respective ships when maneuvering in proximity to one another. At night or in conditions of reduced visibility, or under conditions of lighting and such distances when signals flags are not distinct, flashing light should be used to inform ships of maneuvers which may hinder the movements of others or involve risk of collision.
3. Utilize on a trial basis signals additional to those in the international code of signals, submitting such signals to the Inter-Governmental Maritime Consultative Organization for its consideration and for the information of other states.

Comment: The trial visual signals were adopted in 1976 and used regularly. New signals have been added to fill identified needs. These visual signals cover specific military situations not covered by the international code of signals. In 1987, the two parties included bridge-to-bridge radio communications utilizing channel 16 and ship-to-air communications using the international guard frequency 243.0 MHZ to pass the special signals verbally.

ARTICLE VII

The parties shall exchange appropriate information concerning instances of collisions, incidents which result in damage, or other incidents at sea between the ships and aircraft of the parties. The United States Navy shall provide such information through the Soviet naval attaché in Washington and the Soviet Navy shall provide such information through the United States naval attaché in Moscow.

Comment: By quietly communicating problems through naval attachés, both sides reduce the opportunity for another governmental entity to exploit an incident to benefit a political agenda. When an incident has been raised, the offending side will conduct an investigation to see if the complaint was valid. The complaint is then discussed at the annual review session.

ARTICLE VIII

This agreement shall enter into force on the date of its signature and shall remain in force for a period of three years. It will thereafter be renewed without further action by the parties for successive periods of three years each. This agreement may be terminated by either party upon six months' written notice to the other party.

Comment: The agreement faced a threat of termination by the United States in the wake of the invasion of Afghanistan. The Navy prevailed on the civilian leadership that maintenance of the accord served in the nation's best interest.

ARTICLE IX

The parties shall meet within one year after the signing of this agreement to review the implementation of its terms. Similar consultations shall be held thereafter annually, or more frequently as the parties may decide.

Comment: Eight to eleven people represent the United States at annual May-June meetings held in alternating sites. The Deputy Chief of Naval Operations for Plans, Policy, and Operations usually heads the delegation and is joined by a staff member and representatives from the Office of the Secretary of Defense, the Department of State, and the Air Force. The Air Force presence is desired because USAF aircraft fly over the high seas. The composition of the Soviet delegation has been similar.

ARTICLE X

The parties shall designate members to form a committee which will consider specific measures in conformity with this agreement. The committee will, as a particular part of its work, consider the practical workability of concrete fixed distances to be observed in encounters between ships, aircraft, and ships and aircraft. The committee will meet within six months of the date of signature of this agreement and submit its recommendations for decision by the parties during the consultations prescribed in Article IX.

Comment: As discussed earlier, the U.S. delegation had no leeway in negotiating a fixed-distance formula during the second round of talks. This article was included as a means to break the negotiation stalemate. After an agreement was in place, the Soviets may have felt that the Americans would show more flexibility on this issue. The agreement has been in effect for over two decades. There still is no distance formula.

Asia–Pacific Maritime Confidence Building

Commodore Sam Bateman, RAN (Ret.)

The Asia–Pacific region is distinctively maritime in nature. The sea, and issues having to do with the sea, form an important part of international relations in the region both among regional countries themselves, and between these countries and the rest of the world. As one writer has observed, “Almost all nations of the region would consider themselves maritime states, with rich traditions based upon the sea.”¹

In view of the significance of maritime issues in the region, this essay discusses the region’s rich potential for maritime confidence building, examining how confidence-building measures (CBMs) may be used as a means to enhance the traditional concept of military security, as well as to advance the more modern concept of comprehensive security. Potential CBMs that may enhance military security include regional naval cooperation and various maritime CBMs, such as prior notification of maritime exercises, and avoidance of incidents at sea (INCSEA) agreements. CBMs that may advance comprehensive security in the region include those in the area of regional maritime cooperation, such as shipping safety, the control of marine pollution, cooperative marine scientific research, and resource management regimes.²

While there has been a lot of talk about maritime confidence building, maritime CBMs are in fact not widely or actively implemented in an operational sense in the Asia–Pacific region at present. One exception is the South Pacific, where a high level of cooperation in maritime surveillance and enforcement operations has helped to combat illegal fishing.³ Some progress has also been made toward both maritime and naval cooperation in Southeast Asia, where states have engaged in cooperative marine scientific research, anti-piracy operations, marine environmental protection programs, and bilateral and even multilateral exercises, including the very successful KAKADU series of fleet concentration periods hosted by Australia.⁴

¹Dick Sherwood, “The Navy and National Security: The Peacetime Dimension,” Canberra Papers on Strategy and Defence, no.109 (Canberra: Strategic and Defence Studies Centre, Australian National University, 1994), 36.

²There is thus a distinction made in this paper between *naval cooperation*, which encompasses *all* military activities associated with the sea (recognizing that in some regional countries, maritime aircraft are operated by the air force); and *maritime cooperation*, which is a broader concept in line with the theory of comprehensive security and encompassing the full range of activities and interests in the sea (e.g., shipping, marine resources and environmental protection).

³See Commander Dick Sherwood, RAN, “Strengthening Maritime Security in the South Pacific.” Paper presented to the Eighth Asia Pacific Roundtable, Kuala Lumpur, June 6-8, 1994. Reprinted in *Issues in Maritime Strategy*, ed. G.A. Cox (Canberra: RAN Maritime Studies Program, 1994), 97-111.

⁴The KAKADU Fleet Concentration Periods (FCP) are named after the Kakadu National Park in the Northern Territory of Australia. Two periods have been conducted so far—the first in May 1993 and the second in March–April 1995. The second exercise was a significant advance on the first with 22 ships, two submarines and over 35 aircraft from Australia, Indonesia, Malaysia, Thailand, New Zealand and Singapore participating. See Antony Underwood, “KAKADU II: A Photo Essay,” *The Navy*, The Magazine of the Navy League of Australia, vol. 57, no. 3

Conversely, little progress is evident with any form of maritime confidence building in Northeast Asia, with the notable exception of the INCSEA agreements between Russia and South Korea, and also between Russia and Japan.⁵ Strategic unrest in Northeast Asia, including long-standing bilateral tensions between Korea and Japan, Japan and Russia, and Japan and China, and the pressures of economic rivalry have inhibited the confidence-building process. As a result, operational naval cooperation is virtually unknown in the sub-region.⁶ When attempts are made, results can be mixed.⁷ In terms of broader maritime cooperation, Northeast Asia is almost unique for its *lack* of regional institutions, despite its great interest in ocean affairs.⁸

In broad terms, the region's potential for maritime confidence building remains, for the most part, untapped. While in recent years there have been many conferences, seminars, and other forums throughout the region at which maritime confidence building has been discussed (so many gatherings, in fact, that the topic has also become known as maritime *conference* building), the fundamental need now is to move from discussion to implementation, so that the real benefits of maritime CBMs may be reaped.

Maritime Security in a Climate of Economic Growth

Maritime security is of increasing concern in the region. Most Asia-Pacific countries are dependent on the sea for access to foodstuffs and energy. Security at sea is equally critical to trade and long-term economic prosperity. The vast majority of trade in the region is carried by sea through focal areas,⁹ semi-enclosed seas¹⁰ and confined shipping channels, providing conditions that complicate maritime safety, further jeopardize the overall security of nations highly dependent on sea trade, and pose risks to the marine environment.

(July-September 1995): 7-9.

⁵Eric Grove, "Maritime Confidence and Security Building Measures." Paper presented to the First Meeting of the CSCAP Maritime Cooperation Working Group, Kuala Lumpur, June 2-3, 1995, 2.

⁶Hyun-Ki Kim, "The Possibility of Naval Cooperation between Korea and Japan," in *Sea Power and Korea in the 21st Century*, ed. Choon Kun Lee (Seoul: The Sejong Institute, 1994), 184.

⁷In 1994, South Korean warships made their first port call to a Japanese port. According to some reports, the visit was not a success, and little warmth was evident in the relations between the local population and the visiting crews.

⁸Mark J. Valencia, "Maritime Regime Building in Northeast Asia: The Example of the Environment." Paper presented at the 28th Annual Conference of the Law of the Sea Institute, Honolulu, Hawaii, July 11-14, 1994, 1.

⁹A "focal area" is a strategic term referring to an area of higher shipping density in the approaches to a strait or channel, also known as a "choke-point" (e.g., the Western approaches to the Strait of Malacca off the Northern end of Sumatra) or off a cape, point or peninsula where shipping is required to "turn the corner" (e.g., Point Bai Bung, the Southern extremity of Vietnam). A mid-ocean focal area is also possible where well-used shipping routes cross.

¹⁰A "semi-enclosed sea" means a gulf, basin or sea surrounded by two or more countries and connected to another sea or ocean by a strait (or straits) or other geographically defined outlets. Examples of semi-enclosed seas in the Asia-Pacific region include the Gulf of Thailand, the South China Sea, and the Yellow Sea.

Economically, East Asia is the most dynamic part of the world at present. Strategically, it is one of the most important. The World Bank has predicted that by the year 2020 seven of the world's largest economies (in purchasing power parity terms) will be located in Asia (i.e., Japan, China, India, Indonesia, South Korea, Thailand and Taiwan), two will be in Europe (Germany and France), and that the Chinese economy will be about forty percent larger than that of the United States.¹¹ As one analyst has noted "the geostrategic implications of the general trend are profound."¹² Of relevance to this essay, regional economic growth has been largely driven by seaborne trade, which in turn has become a major strategic vulnerability for most regional countries.

While economic change in the region was well established prior to the end of the Cold War, new strategic concerns have developed only in recent years, altering the overall dynamics of the region. The demise of the Soviet Union as a significant regional naval power, the drawdown of US forces, increasing tensions in the South China Sea, and the continued growth of regional navies have made the maritime strategic scene particularly volatile. The pace of change in the region may even have increased in the 1990s with a worrisome trend continuing toward the acquisition of more offensive systems such as maritime strike and other power-projection capabilities.¹³

The expansion of naval forces in the Asia-Pacific region has been particularly rapid in Northeast Asia.¹⁴ Increasingly, Japan is seeking more self-identity in security matters, and in the longer term it will rely less on the security umbrella of the United States.¹⁵ With its heavy dependence on imports of energy and other strategic commodities, Japan must think about the protection of shipping beyond the limit of one thousand nautical miles¹⁶—the currently expressed extent of Japan's interest in capabilities for the protection of sea lines of communication

¹¹World Bank, *Global Economic Prospects and the Developing Countries* (Washington, DC: World Bank, 1994), as quoted in Ross Babbage, "Maritime Security in the Asia-Pacific Region—an Australian View." Paper presented to the Regional Maritime Cooperation—Shipping and Seaborne Trade Workshop, Centre for Maritime Policy, University of Wollongong, New South Wales, September 14-15, 1995, Figure 6.

¹²Babbage, "Maritime Security in the Asia-Pacific Region," 2.

¹³Panitan Wattanayagoorn and Desmond Ball, "A Regional Arms Race?" *The Journal of Strategic Studies*, vol. 18, no. 5 (September 1995): 160.

¹⁴For a description of these developments and the implications for regional security, see relevant papers in *Maritime Power in the China Seas*, ed. Dick Sherwood (Canberra: Australian Defence Studies Centre, Australian Defence Force Academy, 1994).

¹⁵Yukio Satoh, "Regional Security Trends in the Asia Pacific: the role of Japan," *The Pacific Review*, vol. 8, no. 2 (1995): 277.

¹⁶Given the demise of the Soviet threat, the question that nobody is prepared to answer is: "who will protect Japanese SLOCs beyond the 1,000 mile limit?" Japan's concern is that provision of this protection may increasingly be beyond the capabilities of the United States Navy. See Vice Admiral Naotoshi Sekonjo JMSDF (Ret.), "Japan's Naval (MSDF) Strategy: Issues and Prospects." Paper prepared for The Fourth International Seapower Conference, Seoul, August 2-4, 1995, 23.

(SLOCs).¹⁷ With the benefit of rapid economic growth, South Korea and Taiwan are also markedly expanding their naval capabilities for both sea-denial purposes and SLOC protection.

Countries of the Association of Southeast Asian Nations (ASEAN) are increasingly concerned about maritime threats and are developing maritime forces (ships, aircraft, and to a lesser extent, submarines) with a potentially powerful capability to detect and destroy an adversary's forces in their maritime approaches. Furthermore, the platforms and weapons they are acquiring are capable of operations over wider areas and longer ranges than previous generations of systems.

The Malaysian strategic analyst, J. N. Mak, has argued recently that while the ASEAN naval arms build-up will not have a destabilizing effect on the wider Asia-Pacific regional order or balance, it could be destabilizing for the internal balance within ASEAN.¹⁸ He believes that the build-up is not significant in the external balance equation of the region because there is no internal military cohesion within ASEAN, and its total military forces are still relatively small compared to force levels in China, Japan or India.¹⁹ But this lack of military cohesion presents a problem for the internal balance within ASEAN. Mak points to a non-cooperative and potentially competitive element in the major arms programs in ASEAN, observing that, "With no common political aims and common defense objectives, the old intra-ASEAN rivalries are beginning to re-surface."²⁰ He concludes that, "There is a real need for confidence-building institutions and dialogue to promote intra-ASEAN transparency."²¹

With these force structure developments taking place in an environment where potential causes of conflict exist, particularly in the South China Sea, the risk of misunderstanding between or among maritime forces is great, especially as the ships, submarines, and aircraft of so many different nations operate in overlapping areas. The risk is heightened by the semi-confined nature of East Asian seas, the proximity of land bases, and by the presence of submarines and long-range missile systems that require well-developed procedures and effective command and control systems if errors and miscalculations are to be avoided. All of this suggests the desirability of pursuing maritime confidence building in the Asia-Pacific region.

¹⁷On the issue of terminology, I prefer sea *lines* of communication (SLOCs) rather than the alternative, sea *lanes* of communication, because sea lanes have a distinctive meaning in the law of the sea, particularly with archipelagic sea lanes and routing systems. While it is acceptable to speak of the security of SLOCs, it must also be remembered that, in operational terms, ships are defended, not lines in the ocean.

¹⁸J.N. Mak, "The ASEAN naval build-up: implications for the regional order," *The Pacific Review*, vol. 8, no. 2 (1995): 303-326.

¹⁹*Ibid.*, 305.

²⁰*Ibid.*, 319. Also, J.N. Mak and B.A. Hamzah conclude "that there is little real prospect for meaningful or significant defense cooperation in the short term for ASEAN." See Mak and Hamzah, "The External Maritime Dimension of ASEAN Security," *The Journal of Strategic Studies*, vol. 18, no. 5 (September 1995): 125.

²¹Mak, "The ASEAN naval build-up," 321.

Regional Security Cooperation: Track One and Track Two Initiatives

The overall security outlook in the Asia–Pacific region has been positively impacted by the process of economic and security cooperation.²² This has involved the emergence of new “first track,” or official, regional initiatives, notably the Asia–Pacific Economic Cooperation (APEC) forum and the ASEAN Regional Forum (ARF), as well as more informal, “second track” forums, such as the Pacific Economic Cooperation Council (PECC) and the Council for Security Cooperation in Asia–Pacific (CSCAP).

The emerging security framework in the Asia–Pacific region has been termed a “convergent security” strategy, which is defined as “a managed transition from a regional security system based predominantly upon bilateral arrangements to a system based increasingly upon more indigenous multilateral arrangements.”²³ Bilateral security relationships with the United States thrived during the Cold War years but have become increasingly less relevant in recent years, due in large part to the increased reluctance of the American electorate “to support the associated costs of those commitments.”²⁴

Track One Initiatives

The ASEAN Regional Forum (ARF). This upsurge of interest in multilateralism in the Asia–Pacific region in recent years is manifest in the decision made during the ASEAN Post-Ministerial Conference in 1993 to sponsor an 18-member ARF to discuss Asia–Pacific regional security issues. The inaugural meeting of the ARF was held in Bangkok in 1994; its second meeting took place in Brunei in August 1995.²⁵ Confidence and security building has been high on the forum’s agenda, but so far the emphasis has been “on generalized, non-confrontational ‘trust-building,’ not concrete problem solving or a specific program of action.”²⁶ According to one analyst, while a “support group” on CBMs has been established within

²²A collection of essays on the prospects for promoting regional cooperation on economic and security issues in the Asia-Pacific region is available in Andrew Mack and John Ravenhill, eds., *Pacific Cooperation: Building Economic and Security Regimes in the Asia-Pacific Region* (St. Leonards: Allen & Unwin, 1994).

²³William T. Tow, “Contending Security Approaches in the Asia-Pacific Region,” *Security Studies*, vol. 3, no. 1 (Autumn 1993): 75.

²⁴*Ibid.*, 76.

²⁵The participants in the ARF are Australia, Brunei, Cambodia (joined in 1995), Canada, China, European Union, Indonesia, Japan, Laos, Malaysia, New Zealand, Papua New Guinea, Philippines, Russia, Singapore, South Korea, Thailand, United States and Vietnam.

²⁶James L. Lacy, “Stonework or Sandcastle? Asia’s Regional Security Forum,” IDA Paper P-3110 (Alexandria, VA: Institute for Defense Analyses, July 1995), S-1.

ARF, "measures that might serve to actually constrain military forces and operations are not under serious consideration."²⁷

At the Brunei meeting of the ARF, parties specifically identified the following CBMs of a maritime flavor:

- creating maritime information data bases;
- developing cooperative approaches to sea lines of communication, beginning with exchanges of information and training in such areas as search and rescue,²⁸ piracy and drug control; and
- establishing zones of cooperation in areas such as the South China Sea.²⁹

The ARF has many supporters and a few critics. The United States and Japan have been particularly frustrated by the current slow pace and lack of focus. To some extent, this must be appreciated as a manifestation of the "Asian way," which embodies a slow and tangential approach.³⁰ One critic of the ARF has suggested ways in which the forum may move beyond just being a "talking shop." These are, firstly, to develop multilateral cooperation in external law enforcement and order maintenance, especially in the maritime environment, and secondly, to take forward steps in dispute management through the sponsorship of technical/legal research, arbitration, mediation, and negotiation.³¹ The latter approach is primarily applicable in maritime areas, particularly the South China Sea.

These criticisms of ARF reflect the problem that is also manifest with CBMs. While it is easy to identify and talk about confidence- and security-building measures, it is much harder to translate them into a plan of action. Or, as one writer has suggested:

. . . confidence-building measures (CBMs) are most easily negotiated when they are least necessary, or when they are least important; CBMs that matter are not easily initiated.³²

²⁷Ibid., 26.

²⁸As an initiative from ARF, a regional meeting on search and rescue is to be held in Honolulu in 1996 co-hosted by the Asia-Pacific Center for Security Studies and the US State Department. Briefing by Project Director at the First Annual Conference of the Asia-Pacific Center for Security Studies, Honolulu, September 4-6, 1995.

²⁹Chairman's Statement of the Second ASEAN Regional Forum (ARF), August 1, 1995, Bandar Seri Begawan, Annex B.

³⁰Ibid., 29.

³¹Lacy, "Stonework or Sandcastle?" 41-42.

³²Russ Swinnerton, "Confidence-building measures at sea: the challenges ahead in Southeast Asia," *The Pacific Review*, vol. 8, no. 2 (1995): 328.

Track-Two Initiatives

What is variously known as “Second Track Diplomacy” or “Track-Two Dialogue” involves discussion of security issues by academics, “think tank” analysts, and officials who take part under the polite fiction that they acting “in their private capacity.”³³ This process runs parallel to, and frequently influences, the official channels through which ministers and officials communicate. Track-two activities have been identified as important in establishing habits of dialogue among states, and as critical in promoting more inclusive participation in cooperative security.³⁴ In particular, track-two events can help states develop policies to address their rapidly changing and diverse region, promote the idea of regional cooperation, and play a key role in the development of personal relationships.³⁵

The Council for Security Cooperation in Asia–Pacific. CSCAP is the main contemporary example of institutionalized track-two dialogue involving Asia–Pacific nations. This forum is designed to focus the research activities of non-governmental agencies working on security issues in the Asia–Pacific region and to provide linkage between these activities and official processes geared toward regional security cooperation.³⁶

Of relevance to this essay, CSCAP has established a working group to look specifically at maritime security cooperation in the Asia–Pacific region. This group has adopted a broad view of security and is taking on a range of security (small ‘s’) issues, such as marine safety, resource conservation, coastal-zone management and unlawful activities at sea (e.g., drug smuggling, illegal population movements, piracy), as well as more conventional maritime security issues. The establishment of this group by CSCAP confirms the view that maritime activities are potentially excellent vehicles for developing the habit of cooperation and the concept of common security in the region.

The first meeting of the CSCAP Maritime Cooperation Working Group was held in Kuala Lumpur in June 1995.³⁷ Papers presented during this meeting provided a comprehensive review of the main maritime security concerns in the region and established a basis from which to develop

³³Andrew Mack and Pauline Kerr, “The Evolving Security Discourse in the Asia-Pacific,” *The Washington Quarterly*, vol. 18, no. 1 (Winter 1995): 128.

³⁴David Dewitt, “Common, Comprehensive, and Cooperative Security,” *The Pacific Review*, vol. 7, no. 1 (1994): 8.

³⁵Pauline Kerr, “The Security Dialogue in Asia-Pacific,” *The Pacific Review*, vol. 6, no. 4 (1994): 399-400.

³⁶For more information on the establishment of CSCAP see Desmond Ball, “The Council for Security Cooperation in the Asia Pacific (CSCAP),” *The Indonesian Quarterly*, vol. XXI, no. 4 (Fourth Quarter, 1993): 495-505.

³⁷A report on this meeting is included in “Secretariat for CSCAP,” *CSCAP Newsletter*, no.3 (August 1995): 6-7.

specific proposals for the next meeting of the group (April 1996) in Kuala Lumpur. Proposals identified at the 1995 meeting included:

- developing a more innovative approach to naval cooperation based on a regional view of security rather than an attempted consensus forged from views of individual nations;
- forming cooperative management regimes for living and non-living resources in order to move beyond the problem of conflicting jurisdictions;
- establishing a system of marine information exchange and data bases;
- designing cooperative schemes involving education and training for marine affairs; and
- drawing up INCSEA agreements that would reflect regional circumstances, rather than mirror existing agreements with Russia.

Regional Dialogues on Maritime CBMs. The Asia-Pacific Dialogues on Maritime Confidence- and Security-Building Measures, organized by the US Institute of Global Security Studies based in Seattle, provides another forum for the discussion of maritime issues of common concern to regional countries. Successive dialogues have been held in recent years in Seattle (1992), Bandung, Indonesia (1993), and Bangkok (1994). These track-two exercises involve officials, academics, and other private individuals from most countries in the Asia-Pacific region. The fourth dialogue in Bangkok developed a list of recommended CBMs for the maritime environment, including engaging in non-contentious multilateral naval exercises where themes such as search and rescue and mine-countermeasures are explored, holding an INCSEA conference, and moving toward cooperative surveillance and patrol of joint offshore-development areas.³⁸

Interestingly, the process of “track-two diplomacy” in the Asia-Pacific region appears to be better developed in the more theoretically sensitive areas of foreign policy and defense than it is in other, possibly less sensitive areas at sea, such as the protection of the marine environment, marine safety, conservation of fish stocks, resource exploration and exploitation, as well as other transnational oceans management issues. These issues still tend to be handled by officials from specialist areas of government and are not necessarily placed in a broader strategic and political context. This means that the full value of CBMs in contributing to a sense of regional community is not necessarily achieved from the dialogue and cooperation that takes place.

³⁸Captain Russ Swinnerton, RAN, “Military Transparency: Preoccupied with the Too-Hard Basket? A Survey of Transparency, Trust- and Confidence-Building Measures in the Asia-Pacific.” Unpublished paper, 1995.

Managing a Complex Maritime Environment

A recent Australian statement on practical proposals for security cooperation in the Asia-Pacific region identified maritime cooperation as an important trust-building measure (TBM).³⁹ This joint statement by then Australian Foreign Minister, Gareth Evans, and the leading Australian strategic analyst, Paul Dibb, preferred the concept of “trust-building measures” rather than confidence-building measures “to convey the idea of a less formal approach, built upon a base of personal political contacts and relationships.”⁴⁰ With regard to maritime cooperation, the statement read that:

Developing a cooperative approach to the maritime area is clearly a strategically important issue, not least because of the crucial nature of the sea lanes passing through South East Asian waters and the South China Sea.⁴¹

The importance of maritime cooperation in the Asia-Pacific region flows from the complexity of the regional maritime environment and the propensity for illegal activities and disputes at sea. The objectives of maritime cooperation may be seen as twofold:

- firstly, to contribute to regional stability by easing tensions and reducing the risks of conflict; and
- secondly, to help promote a stable maritime regime whereby the flow of seaborne trade is free and uninterrupted, and nations are able to pursue their maritime interests and manage their marine resources in an ecologically sustainable manner in accordance with agreed principles of international law.

A stable maritime regime requires comprehensive dialogue and cooperation among regional nations.⁴² The Asia-Pacific region is far from meeting these requirements at present. Disputed claims to sovereignty in the region abound, along with unresolved maritime boundaries, potentially restrictive interpretations of freedom of navigation, widespread illegal fishing, illegal population movement, drug smuggling, and frequent occurrences of piracy in several areas.⁴³

³⁹Gareth Evans and Paul Dibb, *Australian Paper on Practical Proposals for Security Cooperation in the Asia Pacific Region* (Canberra: Department of Foreign Affairs and Trade and Strategic and Defense Studies Centre, 1994), 10.

⁴⁰*Ibid.*, 4.

⁴¹*Ibid.*, 10.

⁴²For a discussion of specific issues of concern see Sam Bateman, “Maritime Cooperation and Dialogue,” in *Maritime Power in the China Seas*, 145-148.

⁴³Piracy appears to have increased during 1995 with a greater number of attacks in 1995 than in 1994 in Indonesian waters and in the China/Hong Kong/Macau area. International Maritime Bureau (IMB), *Piracy Update* (January 1–September 30, 1995) (Kuala Lumpur: IMB Regional Piracy Centre, October 31, 1995), 5.

Morgan and Valencia, the joint editors of the major maritime atlas of East Asia, have observed with regard to the seas of Northeast Asia that:

Where fishing and hydrocarbon exploration and dense marine traffic occur in the same confined waters, there is a propensity for use and user conflict.⁴⁴

The situation is further aggravated in Northeast Asia by military tensions at sea, especially between North and South Korea, and between Russia and Japan over the southern Kuriles. Other tensions center on the declaration of maritime security zones and incompatible uses of the sea, particularly waste disposal and land-based pollution. Furthermore, existing Exclusive Economic Zones (EEZs) and developments in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) have not helped to ameliorate tensions arising from improper use of the sea. Some EEZs have proven to be “more divisive than integrating,” while some countries have not yet established EEZs “for economic and realistic (fishing), practical (delimitation), scientific (resource management), political and strategic (navigation) reasons.”⁴⁵

This apparent maritime “disorder” is largely a consequence of the geographical nature of the East Asia region. North American strategic analysts Wallace and Meconis have noted that:

. . . the geography of the region, combined with the impact of the UN Law of the Sea, means that a large portion of the ocean environment consists of territorial waters (and conflicting claims of territorial waters), resource-rich exclusive economic zones with *their* conflicting claims, and vital straits which constitute a rare exception to the rule that there are no such things as “sea lanes.”⁴⁶

Along the eastern coastline of Asia, there is a continuous chain of enclosed or semi-enclosed seas between the mainland and the off-lying archipelagoes and islands, stretching from Sakhalin and the Kamchatka Peninsula through the Japanese archipelago and the Philippines to the Indonesian archipelago and northern Australia. As well, several groups of islands within these seas, namely the Tok-do (or Takeshima), Senkaku, Paracel, and Spratly Islands, are the subject of sovereignty disputes. The geography of this region has great strategic significance and its intricacy underpins the fundamental importance of regional maritime cooperation. Achieving straight-line maritime boundaries and clear sovereign jurisdiction over maritime areas in such a

⁴⁴Joseph Morgan and Mark J. Valencia, “Integrations,” in *Atlas for Marine Policy in East Asian Seas*, eds. Morgan and Valencia (Berkeley, CA: University of California Press, 1992), 142.

⁴⁵Jin-Hyun Paik, “The Fisheries Regime in Northeast Asia,” in *Ocean Affairs in North-East Asia and Prospects for Korea-China Maritime Cooperation*, eds. Dalchoong Kim, Jiao Yongke, Jin Hyun Paik, and Chen Degong (Seoul: Institute of East-West Studies, Yonsei University, 1994), 86.

⁴⁶Michael D. Wallace and Charles A. Meconis, “New Powers, Old Patterns: Dangers of the Naval Buildup in the Asia Pacific Region,” Working Paper no. 9 (Vancouver: Institute of International Relations, University of British Columbia, March 1995), 20.

region is an extraordinarily difficult task, and management of these seas will require a high degree of regional cooperation, which unfortunately is not evident at present.

These regional seas are also relatively complex in oceanographic and hydrographic terms, with their plentiful marine life, uneven bottom topography, and sometimes fast currents and tidal streams. Comprehensive knowledge of regional seas is essential for resource development, navigational safety, and marine environmental management, as well as for naval operations such as submarine operations, anti-submarine warfare, and mine countermeasures. Cooperation in regional marine scientific research is important because ecosystems and oceanographic features vary so much from one area to another, and are not part of the sole jurisdiction of one country or another. A contemporary example of cooperative marine scientific research is the Current Metering Experiment being conducted as part of the ASEAN–Australia Regional Ocean Dynamics Project and involving Australia, Indonesia, Malaysia, and Singapore. This project is gathering information on the flow of water and transfer of heat between the Pacific and Indian Oceans and may hold the key to climate patterns in Southeast Asia and the Western Pacific.⁴⁷

Coordination, cooperation, and consultation are fundamental to the management of regional seas and coastal zones. The preamble to the 1982 UN Convention on the Law of the Sea establishes the importance of coordinated policies by recognizing “that the problems of ocean space are closely interrelated and need to be considered as a whole.”⁴⁸ Chapter 17 of Agenda 21, agreed at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992,⁴⁹ builds on the regime for managing the oceans and seas of the world established by the UNCLOS. It requires that coastal states commit themselves to “integrated management and sustainable development of coastal areas and the marine environment under national jurisdiction” and calls for integrated policy and decision-making processes and institutions.⁵⁰

Regional Structures

Regional cooperation on matters of the sea is the concern of several articles in UNCLOS. Article 276, for example, calls for the establishment of regional marine scientific and technological research centers, and Article 277 describes the functions of such centers. Similarly, Chapter 17 of Agenda 21 stresses the importance of regional and subregional cooperation, noting with regard to marine scientific research that:

⁴⁷Swinnerton, “Confidence-building measures at sea,” 336-337.

⁴⁸United Nations, *Convention on the Law of the Sea* (New York: United Nations, 1983), 1.

⁴⁹UN Conference on Environment and Development, “Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of their Living Resources,” Chapter 17 in *Agenda 21*, UN Conference on Environment and Development, Rio de Janeiro, June 3-14, 1992.

⁵⁰For a fuller discussion of the issues that inhibit multinational naval cooperation in the Western Pacific see Sam Bateman, “Build a WestPac Naval Alliance,” *US Naval Institute Proceedings* (January 1993): 77-82.

States should use existing subregional and regional mechanisms, where applicable, to develop knowledge of the marine environment, exchange information, organize systematic observations and assessments, and make the most effective use of scientists, facilities and equipment.⁵¹

The 1982 UNCLOS exhorts states bordering an enclosed or semi-enclosed sea to cooperate with each other. Theoretically this process of cooperation is institutionalized in the Regional Seas Program of the United Nations Environment Program. This program was originally established in 1974 as a global program for the protection of the marine environment and the management of marine and coastal resources. In theory it provides a framework for regional consultation on the comprehensive and integrated management of marine and coastal areas, including the development of action plans to handle the problems of the marine environment, but in practice it has only had marginal success so far.

Although thirteen Regional Seas Programs have now been established worldwide, including four in the Asia-Pacific region, outcomes have been largely in the field of training and education. The full benefits of the program in terms of meaningful cooperation have not yet been realized. These are dependent on the political commitment of participating countries and the availability of an effective delivery mechanism to manage the action plan. To some extent this has been achieved in the South Pacific with the South Pacific Regional Environment Program. An East Asian Seas Action Plan has also been adopted,⁵² but other programs in the Asia-Pacific (i.e., the North-West Pacific and South Asian Seas) have not yet reached agreement on action plans.

If the “tragedy of the commons”—whereby, in pursuing individual goals in an activity of common interest, all participants lose—is to be avoided, the development of the resource potential of regional seas must be undertaken jointly by the regional countries.⁵³ The possible existence of rich reserves of hydrocarbons is often quoted as justification for the disputed claims to the Spratly Islands and has provided the catalyst for the several joint-development agreements in the region covering marine areas where maritime boundaries have not been agreed.⁵⁴ The management of the living resources of the East Asian seas even has extra-regional dimensions.

⁵¹Agenda 21, Paragraph 17.115.

⁵²Regional Coordinating Unit for East Asian Seas (EAS/RCU), *Briefing Notes on the East Asian Seas Action Plan*, Bangkok, January 1996.

⁵³Andrew Mack, “Security Regimes for the Oceans: The Tragedy of the Commons, the Security Dilemma and Common Security,” in *Freedom for the Seas in the 21st Century: Ocean Governance and Environmental Harmony*, eds. Jon M Van Dyke, Durwood Zaelke, and Grant Hewison (Washington, DC: Island Press, 1993), 409.

⁵⁴These include the Timor Gap Treaty between Australia and Indonesia, the joint development area agreed between Malaysia and Thailand in the Gulf of Thailand, and a Japan-Korea Joint Development Zone in the East China Sea.

Tuna stocks, for example, migrate between the South China Sea and the South Pacific.⁵⁵ The southern bluefin tuna also spawns south of Java before migrating to southern Australian and New Zealand waters, and to the South Atlantic. Thus, ineffective marine management and poor environmental practices in one region can potentially have a negative impact on another.

Prospects for Maritime Confidence Building

Just as security itself may be defined narrowly in military terms, or more comprehensively to incorporate political, economic, social, and environmental security, maritime confidence building may also be defined in the following ways:

- narrowly, as measures in the defense/military field that reduce the risks of tensions and conflict, and of misunderstandings or miscalculations involving military activities at sea; or
- broadly, to include ocean-management regimes and cooperative arrangements for navigation, safety, search and rescue, resources, marine environmental protection, and so on.

Maritime CBMs can take many forms. Table 1 (following page) provides a list of possible maritime CBMs, listing separately those in the naval field, those in the broader area of maritime cooperation, and those that lie somewhere in between.

Maritime CBMs can be applied multilaterally or bilaterally, as well as at a global or regional level. They can be relatively simple, such as naval ship visits and personnel exchanges, or relatively complex, such as regimes for cooperative surveillance, resource management, or information exchange. They can have a political focus, such as making the good intentions of a country more apparent (“transparent”) and agreeing not to conduct specific types of maritime operations in a particular area or not to acquire certain technologies of maritime warfare. Maritime CBMs can also have an operational focus, such as those measures that provide for the exchange of maritime surveillance information, prior notification of particular naval activities (e.g., exercises or transits of straits), or agreements to prevent incidents between naval forces.

⁵⁵This common interest of ASEAN and the Pacific Island nations is managed through the Western Pacific Fisheries Consultative Committee (WPFCC) established in 1989 under the auspices of the Pacific Economic Cooperation Council (PECC).

TABLE 1
A SCHEMA OF MARITIME CONFIDENCE-BUILDING

Naval Cooperation	Joint	Maritime Cooperation
<ul style="list-style-type: none"> • Exercises • Ship visits and personnel exchange • Navy to navy talks • Peacekeeping • SLOC protection • Standing forces • MCM • Sovereignty protection • Doctrine development • INCSEA agreements • Transparency 	<ul style="list-style-type: none"> • Surveillance • Law and Order • Marine scientific research • Search and rescue • Disaster relief • Data bases • Information exchange • Education and training • Law of the sea • Marine safety • Marine technology 	<ul style="list-style-type: none"> • Shipping and ports • Joint development zones • Regional seas programs • Resource management (living & non-living) • Port state control • Coastal zone management • Environment protection • Ecologically sustainable development • Marine tourism/recreation • Aquaculture

Naval transparency measures are largely subsumed within the wide variety of military transparency measures. These include the prior notification of exercises, military-to-military contacts, doctrine/defense planning seminars, greater openness regarding planning and procurement, and the preparation of defense policy papers (“white papers”).

There are various ways of categorizing maritime CBMs and numerous lists of possible measures have been produced in recent years. American analysts Pederson and Weeks⁵⁶ have used a typology that places CBMs into one of three categories:

- ***declaratory measures***, statements of intent, including broad commitments such as non-attack or no-first-use agreements;
- ***transparency measures***, including information, communication, notification, and observation/inspection measures; and
- ***constraint measures***, including risk reduction regimes and exclusion/separation zones, as well as more traditional constraints on personnel, equipment, and operational activities.

This typology may be extended to maritime CBMs, but it may be set on too high a level and be “too military” to encompass some of the more modest “getting to know you” type of maritime CBMs that are supported in the Asia–Pacific region, as well as the non-military measures.

Current examples of maritime confidence building in the Asia–Pacific region include cooperation with good effect by Indonesia, Malaysia, and Singapore on actions to combat piracy in the Malacca and Singapore Straits.⁵⁷ Yet another is the way in which the workshops convened by Indonesia to resolve the dispute over the Spratly Islands in the South China Sea have initiated steps toward cooperative marine scientific research and geological surveys, temporarily setting aside the fundamental problems of sovereignty and maritime boundaries. These workshops and associated activities have proceeded on the assumption that resolution of territorial and jurisdictional disputes in the region is not possible without first addressing cooperation on other levels such as navigation and the environment.⁵⁸

⁵⁶Susan Pederson and Stanley Weeks, “A Survey of Confidence Building Measures,” *Asia Pacific Confidence and Security Building Measures*, ed. Ralph Cossa, CSIS Significant Issues Series, vol. XVII, no.3, 1995.

⁵⁷Robert C. Beckman, Carl Grundy-War, and Vivian L. Forbes, “Acts of Piracy in the Malacca and Singapore Straits,” *Maritime Briefing*, International Boundaries Unit, University of Durham, vol. 1, no. 4 (1994): 15-16.

⁵⁸William G. Stormont, “Report: managing potential conflicts in the South China Sea,” *Marine Policy*, October 1994.

Naval Cooperation

Naval cooperation is both a potential maritime CBM in its own right, and an important subset of broader maritime cooperation.⁵⁹ The scope of naval cooperation ranges from low key, confidence-building activities (e.g., ship visits, fleet reviews,⁶⁰ personnel exchanges, navy-to-navy talks, and multilateral naval conferences), to more ambitious activities (such as information/intelligence exchanges, joint doctrine development, Standard Operating Procedures for exercises and peacetime operations, bilateral and multilateral exercises, INCSEA agreements, naval peacekeeping, and cooperation on tasks such as marine scientific research and anti-piracy), and to the top end of combined operations (e.g., cooperative maritime surveillance, standing regional naval forces, cooperative SLOC protection, and mine countermeasures).

The biennial RIMPAC (Rim of the Pacific) exercises conducted by the US Navy (USN) off Hawaii are the major multilateral naval exercises presently conducted in the Asia-Pacific region. These exercises involve the navies of Australia, Canada, Japan, and, more recently, South Korea. The main objective of these exercises is to help maintain interoperability with the USN rather than to coordinate naval forces of the region with one another. In fact, some constraints are placed on whether units of individual navies will operate with units of other navies. For example, South Korean ships will not operate in the same group as Japanese vessels.

Multilateral naval exercises in East Asian waters are largely limited at present to the annual maritime exercises conducted under the auspices of the Five Power Defense Arrangements, usually in the South China Sea. Some bilateral activity occurs among ASEAN member states and between the USN and the Royal Australian Navy (RAN) on the one hand, and with some Asian navies on the other, but this is usually little more than basic passage exercising without any tactical scenario. The KAKADU series of exercises have been designated "Fleet Concentration Periods" and do not involve any over-arching political scenario. They involve a series of specific training activities (e.g., weapon firings, convoy exercises, advanced submarine warfare (ASW)

⁵⁹Possible naval cooperative measures have been listed and discussed in a great number of published sources, including for example, Commodore Sam Bateman, RAN, "Prospects for Dialogue and Cooperation Between Asia/Pacific Navies," Working Paper no. 127 (Canberra: Peace Research Centre, Australian National University, February 1993); Russ Swinnerton, "Confidence-building measures at sea: the challenges ahead in Southeast Asia," *The Pacific Review*, vol. 8, no. 2 (1995): 328; Captain Russ Swinnerton, RAN, and Desmond Ball, "A Regional Regime for Maritime Surveillance, Safety and Information Exchange," *Maritime Studies* 78 (September/October 1994): 1-17; and Charles A. Meconis and Commander Stanley B. Weeks, USN (Ret.), *Cooperative Maritime Security in the Asia-Pacific Region: A Strategic and Arms Control Assessment* (Seattle, WA: Institute for Global Security Studies, July 1995).

⁶⁰Malaysia, for example, conducted a fleet review in Penang in 1990 with 63 warships from 18 different countries participating. See R. Sachi, "The RMN's International Royal Fleet Review," *Asian Defense Journal* (May 1990): 18-21.

training, replenishment at sea drills) without any higher-order strategic or operational concept. There is no designation of Orange and Blue forces.⁶¹

The major forum specifically for naval dialogue is provided by the Western Pacific Naval Symposium (WPNS). The first WPNS meeting was held in Sydney in 1988; this has been followed by meetings at two-year intervals—in Bangkok in 1990, Honolulu in 1992, and Penang in 1994. The WPNS brings together leaders from the navies of the Western Pacific to discuss issues of common concern, including law of the sea and SLOC security. Its membership comprises the navies of the ASEAN countries, as well as Japan, Papua New Guinea, China, the Republic of Korea, Australia, New Zealand, and the United States. The Penang meeting agreed to extend full membership status to France (on receipt of an appropriate application) in view of French territory in the South Pacific, but observer status only to Canada and Chile—two countries that had expressed interest in joining the WPNS.⁶²

The main thrust of the WPNS has not been multilateral naval operations, which would be too sensitive for member states to undertake, but the harmonization of existing procedures.⁶³ A tangible outcome from the WPNS meetings has been a series of subordinate workshops that have led to the development of a Maritime Information Exchange Directory, a WPNS *Tactical Signals Handbook*, a WPNS *Replenishment at Sea Handbook*, and planning for the conduct of a Command Post Exercise to help the development of common doctrine and publications.⁶⁴

Some indications emerged from the 1994 Penang meeting of the WPNS that the forum could be “running out of steam.” It is limited by its “first-track” nature and the inherent conservative nature of naval forces which, together, result in a tendency to see all issues from a “micro” national perspective only, and an understandable reluctance to do much more than talk without the appropriate clearances. In particular, “There were no proponents of a regional view,”⁶⁵ which would have helped extend the process of naval cooperation both geographically and functionally, particularly in Northeast Asia where, as has been noted, maritime cooperation is still relatively underdeveloped. The prospects for extending the current scope of naval cooperation probably would be enhanced by establishing links between the WPNS and the other

⁶¹These are traditional colors assumed by opposing forces in naval exercises and war games.

⁶²*4th Western Pacific Naval Symposium, Summary of Proceedings*, compiled and edited by CDR Mat Taib Bin Yassin, LCDR Azhari Bin Abd Razak, LCDR Zulkifli Bin Abu Bakar, and LT Syed Hilmi Bin Syed Abdullah, all of the Royal Malaysian Navy, Kuala Lumpur, 1995.

⁶³For a fuller discussion of the issues that inhibit multinational naval cooperation in the Western Pacific see Sam Bateman, “Build a WestPac Naval Alliance,” *US Naval Institute Proceedings* (January 1993): 77-82.

⁶⁴For a fuller discussion of the activities of the WPNS see Sherwood, *The Navy and National Security*, 61-64.

⁶⁵Report by Captain Russ Swinnerton RAN on the Fourth WPNS to CSCAP Australia, *AUS-CSCAP Newsletter*, no. 1 (August 1995): 8.

forums in which matters of naval and maritime cooperation are discussed, including “second-track” activities.

Avoidance of Incidents at Sea

The 1972 agreement between the United States and the former Soviet Union to prevent incidents on and over the high seas is an excellent example of a practical maritime CBM that has stood the test of lengthy and demanding operational experience.⁶⁶ Bilateral incidents at sea agreements were also negotiated between the former Soviet Union and several other Western European navies. More recently, Russia has signed INCSEA agreements with Japan and South Korea.⁶⁷

However, the existing INCSEA agreements are not necessarily a good model for the Asia-Pacific region. Firstly, they relate to the activities of navies that routinely conducted close surveillance of each other’s exercises and operations, and this is not the case with regional navies. Secondly, the agreements are limited to high seas activities, whereas the waters desirably covered by any regional incidents at sea agreement are largely not high seas. Thirdly, much of the success of the current agreements can be attributed to the fact that they are all bilateral. Not only would the negotiation of multilateral agreements be more difficult, but the investigation of particular incidents that may or may not have contravened the agreement would also be more complicated if third parties had to be consulted.

Furthermore, submerged submarine operations are excluded from the current incidents at sea agreements involving the former Soviet Navy but, in view of the increasing number of submarines in East Asia waters operated by different navies, the safety of submerged submarine operations is of increasing concern. The regional ASW capability is also increasing with the consequent probability that “intruder” submarines may be detected. This may create a potentially serious situation if there is tension between or among countries, or if the detection is made in a sensitive area. It may be necessary to consider the establishment of a regional submarine Movement Advisory Authority (or water-space management regime⁶⁸) along the lines of the

⁶⁶See Sean M. Lynn-Jones, “Applying and Extending the USA-USSR Incidents at Sea Agreement,” and Jan Prawitz, “A Multilateral Regime for Prevention of Incidents at Sea,” in *Security at Sea: Naval Forces and Arms Control*, ed. Richard Fieldhouse (Oxford: Oxford University Press, 1990). See also, R.P. Hilton, “A Workable Approach to Naval Arms Control: Development of Confidence-building Measures at Sea,” IDA Paper p-251 (Alexandria, VA: Institute for Defense Analyses, November 1990), and Stanley B. Weeks, “Measures to Prevent Major Incidents at Sea,” in *Maritime Security: The Building of Confidence*, ed. Jozet Goldblat (New York: United Nations, 1992), 55-68.

⁶⁷The Agreement between the Government of the Republic of Korea and the Government of the Russian Federation concerning the Prevention of Incidents at Sea beyond the Territorial Sea was signed in Moscow on June 2, 1994.

⁶⁸Graeme Dunk, “Do we need a Southeast Asian Water Space Management Regime?” *Asian Defence Journal* (May 1995): 12-13.

procedures currently followed by NATO and other Western navies, but this will be difficult in view of the essentially covert nature of submarine operations.

Maritime Surveillance and Information Exchange

The Australian paper tabled at the first meeting of the ARF in Bangkok in July 1994 identified the following practical proposals for security cooperation in the Asia-Pacific region:⁶⁹

- a Maritime Information Database as a Category 1 Trust-Building Measure (TBM) (that is, one that warrants early consideration because it appears relatively achievable);⁷⁰ and
- Maritime Cooperation (in activities such as maritime safety, search-and-rescue, marine pollution control and maritime surveillance) as a Category 2 measure (that is, one that could be considered and that would benefit from the improved security dialogue and trust flowing from Category 1 activity).⁷¹

Multinational hydrographic and oceanographic programs might be worth pursuing at a later phase of this program. Hydrographic and oceanographic resources in the region are limited and a multinational program that concentrates on key maritime areas where information is currently lacking would be an endeavor for the common good.⁷²

Comprehensive knowledge of what is occurring at sea in nearby waters is an essential element of both national security and effective management of marine areas. This is required in waters under some degree of national sovereignty (i.e., internal waters, the twelve-mile territorial sea, the EEZ, and archipelagic waters for archipelagic states—such as Indonesia and the Philippines), as well as in the approaches to those waters. Thus, a country should not limit surveillance to its specific area of maritime sovereignty and neglect developments in adjacent waters. Background information on the full area of maritime interest is essential in order to establish a baseline against which activities out of the ordinary can be assessed, and to optimize the employment of surveillance assets (such as ships, aircraft, and land-based radars).

However, few coastal states possess sufficient capability to meet all maritime surveillance and information demands. Hence there is scope for regional cooperation, particularly in areas where neighboring countries have common interests, information is freely available, and countries

⁶⁹Evans and Dibb, Australian Paper.

⁷⁰A maritime information data base “. . . would enable regional countries to collect and collate data about maritime traffic, environmental issues, piracy and smuggling. Data relating to regional environmental security might, for example, include information on the management of the shipping and storage/disposal of toxic materials.” Ibid., 8.

⁷¹Ibid., 10-11.

⁷²Ibid., 8.

can cooperate without feeling they are compromising their national security or giving away vital national information.

In fact, the concept of cooperative surveillance and information exchange as a CBM has a fairly long history in the region. The Institute of Strategic and International Studies in Kuala Lumpur floated the concept of a Regional Maritime Surveillance and Safety Regime for Southeast Asian waters in 1990. But a paper in 1991 found several difficulties with its implementation, including the lack of any clear commonality of interest among possible member countries, differences in organizational arrangements for undertaking surveillance in these countries, and regional sensitivities to particular issues, including fishing and disputed maritime claims.⁷³

Australian writers Swinnerton and Ball revisited the issue in a paper in 1994,⁷⁴ identifying maritime interests of common concern to regional countries and then proposing a maritime surveillance, safety, and information regime to cover low-level maritime security issues, specifically in East Asian waters. This regime would accomplish the following:

- help safeguard peaceful merchant shipping, of critical importance to the region;
- assist in creating a stable maritime regime to permit exploitation of the marine resources of the region;
- contribute to the preservation of the marine environment; and
- develop a framework of cooperation that could provide the basis for dealing with higher-order contingencies that might arise in the future.

A number of maritime information exchange initiatives have also been initiated by the WPNS. The principal one has been the compilation of a Maritime Information Exchange Directory, which provides advice on communications lines to be used for the voluntary reporting of time-critical information on maritime activities by naval ships and aircraft when transiting a fellow WPNS member's EEZ or territorial sea, or other waters of mutual interest such as search and rescue areas. Activities covered include marine pollution, search and rescue, humanitarian activities, and suspicious actions that may indicate illegal activity including drug smuggling, piracy, and fisheries infringements.

⁷³Desmond Ball and Sam Bateman, "An Australian Perspective on Maritime CSBMs in the Asia-Pacific Region," in *A Peaceful Ocean? Maritime Security in the Pacific in the Post-Cold War Era*, ed. Andrew Mack (St. Leonards: Allen & Unwin, 1993), 158-185.

⁷⁴Captain Russ Swinnerton, RAN, and Desmond Ball, "A Regional Regime for Maritime Surveillance, Safety and Information Exchanges," *Maritime Studies*, 78 (September/October 1994): 1-15.

Looking to the future, the role and importance of maritime surveillance and information data bases is likely to expand particularly in relation to pollution, illegal activities at sea, waste discharge, and failure to observe environmental safety requirements.⁷⁵ This will be associated with an increased need for ocean monitoring and research, including data and sample collection to track the state of the marine environment.

Law of the Sea⁷⁶

A stable maritime regime in the Asia-Pacific region requires adherence to the legal principles of the UNCLOS, as well as to other relevant international maritime treaties. There are still, however, many “gray areas” in the law of the sea that require negotiation between interested parties. Two such areas include aspects of the navigational regimes established by UNCLOS and provisions relating to the EEZ regime, a relatively new and untested part of international law.

These exceptions noted, many provisions of UNCLOS can be characterized as CBMs. For example, the innocent passage regime, as set out in Section 3 of the Convention, places specific restrictions on warships exercising the right of innocent passage, including a requirement that submarines transit on the surface. In UNCLOS are prescribed procedures for the settlement of maritime disputes by peaceful means. By clarifying the principles for delimiting maritime boundaries between adjacent states and establishing an EEZ regime, the risk of conflict arising from disputes over claims to offshore areas is reduced. International acceptance of the regimes of innocent passage, straits transit passage, and archipelagic sea lanes passage should mean that there is less risk of misunderstandings arising when warships of one state transit the sovereign waters of another.

A useful regional CBM would be to stimulate dialogue toward a common regional understanding of aspects of the law of the sea where uncertainty exists. The precedent for this activity would be the agreement between the United States and the former Soviet Union on a common interpretation of the regime of innocent passage.⁷⁷ This provided, *inter alia*, that neither prior notification nor authorization was required for the passage of warships, regardless of cargo, armament, or means of propulsion.

⁷⁵Richard Kenchington, “Protection and Sustainable Use of Marine Environments and Resources,” *Maritime Studies*, 72 (September-October 1993): 4-5.

⁷⁶For a fuller discussion of this topic, see Sam Bateman, “Maritime Confidence and Security Building Measures in the Asian Pacific Region,” in *The Law of the Sea in the Asian Pacific Region*, eds. James Crawford and Donald R. Rothwell (Dordrecht: Martinus Nijhoff, 1995), 223-234. See also, Christopher Pinto, “Maritime Security and the 1982 United Nations Convention on the Law of the Sea,” in *Maritime Security: The Building of Confidence*, ed. Jozet Goldblat (New York: United Nations, 1992), 9-53.

⁷⁷Uniform Interpretation (by the United States and the Soviet Union) of International Law Governing Innocent Passage, Agreement signed September 22, 1989. 28ILM1444.

Seaborne Trade and Sea Lines of Communication

Seaborne trade, the protection of shipping, and the security of SLOCs are common interests of most Asia-Pacific countries, potentially inspiring greater naval cooperation among them. In many ways, international maritime commerce is a classic multilateral maritime security concern. Its protection always involves at least two countries (i.e., the exporter and the importer), and perhaps a third (i.e., the Flag State of the ship carrying the cargo). Historically, as seen with convoy operations in two world wars, the development of NATO maritime doctrine, and arrangements for the naval control and protection of shipping, seaborne trade has provided the fundamental rationale for multinational naval cooperation. It also provides the most basic demonstration of how a nation's maritime security interests extend beyond its own waters, hence the interest of Japan in the security of SLOCs in Southeast Asian waters.

The importance of seaborne trade in the Asia-Pacific region is explained both by economic and geostrategic factors. Firstly, the "archipelagic" nature of the region and the lack of any significant land transport infrastructure in East Asia, other than in China, mean that all intra-regional trade is carried by sea, except for the very high-value cargoes carried by air. Secondly, economic growth in East Asia is increasingly fueled by trade and investment between regional economies rather than between Asia-Pacific economies and North American or European ones.⁷⁸ Thirdly, regional nations generally lack self-sufficiency and are variously dependent on imports by sea of energy, foodstuffs, raw materials, and particular manufactured goods.

Possible threats to regional SLOCs have been identified as arising from maritime territorial disputes (particularly over the Senkaku Islands, the southern Kuriles, and the Spratly Islands), piracy, oil spillage and marine pollution, and the coastal state factor.⁷⁹ The latter factor relates to the fact that East Asian SLOCs generally pass through coastal or archipelagic waters, and are thus vulnerable to coastal state interference as a consequence of the national security concerns of the coastal state, domestic instability, or local conflict.

As the security of SLOCs is such an important common interest of regional nations, it is an issue that could be both a major basis of maritime cooperation in the region, and an important source of regional CBMs. As one leading Korean academic noted, "SLOCs must be regarded not

⁷⁸For example, between 1989 and 1993, trade among ASEAN countries grew from 16.2 percent to 18.5 percent of total ASEAN trade, and growth was also evident in ASEAN trade with Japan (from 23.7 percent of ASEAN trade in 1989 to 24.6 percent in 1993). *The APEC Region Trade and Investment*, Table 2.2 (Canberra: Department of Foreign Affairs and Trade, November 1994), 27.

⁷⁹Seo-Hang Lee, "Security of SLOCs in the Western Pacific." Paper presented to the Workshop on Regional Maritime Cooperation— Shipping and Seaborne Trade: Common Interests of Australia and the Republic of Korea, University of Wollongong, September 14-15, 1995.

just as Sea Lines of Communication to be defended in times of hostilities, but sea lines linking all the economies of the Asia–Pacific region.”⁸⁰

During the 1980s a series of conferences were held around the region on the security of SLOCs.⁸¹ These conferences were hosted, in most cases, by a non-governmental organization (NGO) in the host nation. The fundamental rationale of these conferences appears to have been addressing the problem of re-supply of Northeast Asia in the event of confrontation between the superpowers. Key players in the initial round of conferences were the United States, Japan, Taiwan, and South Korea. The ASEAN countries, Australia, and New Zealand subsequently became involved.

At the SLOC conference held in Bali in 1993, emphasis shifted from concern with the oceanic protection of shipping—a concern typical of the Cold War years—to a greater focus on focal areas, straits transit issues, and problems of the safety of merchant shipping. This shift was largely driven by ASEAN participants who have grown increasingly sensitive about the transit of foreign vessels through their archipelagic and territorial waters. The SLOC conference in Kuala Lumpur in August 1994 hosted by the government-sponsored Malaysian Institute for Maritime Affairs had a similar emphasis on marine safety and traffic management issues. The last SLOC conference, in Taipei in January 1996, largely reflected a return to broader strategic issues.

Cooperative aspects of the management of shipping and ports and related issues are also covered by the Transportation Working group of APEC. The sixth meeting of this group, held in Bali in September 1994, included a one-day seminar on port management and electronic data interchange with sessions on port ownership, facilitation of cargo and cargo handling, port pricing policy and blue water management (i.e., vessel traffic systems, pilotage and towage, port design, training simulators, etc).

The Port State Control (PSC) regime is an important area of regional maritime cooperation. This involves inspection of foreign vessels visiting a country’s ports to ensure compliance with international maritime safety and marine pollution conventions.⁸² An Asia–Pacific Memorandum of Understanding (MOU) on PSC has been signed by seventeen countries (Australia, Canada, China, Fiji, Indonesia, Japan, Republic of Korea, Malaysia, New

⁸⁰Professor Dalchoong Kim, “Maritime Policy and Security and Ocean Diplomacy in a New World Order: Major Tasks for the 21st Century.” Keynote speech to conference on Marine Policy, Maritime Security and Ocean Diplomacy in the Asia-Pacific, Seoul, Korea, September 7-8, 1994, 8.

⁸¹Hon Shin Kanemaru, “Foreword,” in *Safety by Sea*, eds. Malcolm J. Kennedy and Michael J. O’Connor (Lanham, MD: University Press of America, 1990), ix.

⁸²For a comprehensive description of the port state regime, see George C. Kasoulides, *Port State Control and Jurisdiction: Evolution of the Port State Regime* (Dordrecht: Martinus Nijhoff Publishers, 1993). For a recent description of developments with Port State Control, please see Fernando Plaza, “Port State Control: towards global standardisation,” *IMO News*, no.1 (1994): 13-20.

Zealand, Papua New Guinea, Philippines, Russian Federation, Singapore, Thailand, Vanuatu, and Vietnam, with Hong Kong as an Associate Member). This MOU provides for regional cooperation on ship inspections with a regional data base and agreement on target inspection rates for foreign ships visiting the ports of participating countries. With an effective system of PSC now covering East Asian waters, unsafe or sub-standard ships will find it very difficult to trade in the region.

Conclusion

It seems certain that in the short-term maritime competition will increase in the Asia-Pacific region as naval acquisitions and capabilities expand and as conflicting uses of the marine environment emerge.⁸³ But there is also increased potential for cooperation in maritime affairs, and this will be assisted by the good progress that is being made in regional security and economic cooperation.

This essay has taken a broad view of maritime confidence-building to recognize the commonality of interest among regional countries in such things as the safety of navigation, resource management regimes, and protection of the marine environment. A key question with this approach is the extent to which the habit of cooperation and dialogue in these non-defense areas will contribute to mutual confidence in military activities, thus helping to promote a more stable regional security environment.⁸⁴

Two points are relevant to the answer to this question. Firstly, the dividing line between civilian and military activities and responsibilities is less acute in the maritime environment than it is on land. Navies are invariably more flexible than the other arms of the military service, and in many countries of the Asia-Pacific region, navies are already involved in activities, such as maritime law enforcement, search and rescue, and marine safety, which are civil responsibilities in other countries. It should also be noted that in the view of some leading Asian strategic thinkers, "military CSBMs are not necessarily the greatest priority."⁸⁵

Secondly, there is the matter of cultural differences in regional countries. As Desmond Ball, the prominent Australian strategic author, has noted in his review of strategic culture in the Asia-Pacific region:

⁸³Sam Bateman, "Maritime Confidence- and Security-Building Measures in the Asia Pacific Area," in *Peace and Security in the Asia Pacific Region*, ed. Kevin Clements (Tokyo: United Nations University Press, 1993), 287.

⁸⁴Shannon Selin, "Asia Pacific Arms Buildups, Part Two: Prospects for Control," Working Paper no. 7 (Vancouver: Institute of International Relations, The University of British Columbia, November 1994), 30.

⁸⁵*Confidence and Security Building Measures in the Asia-Pacific*, Report of CSCAP Working Group, October 11-13, 1994, compiled by Centre for Strategic Studies, Victoria University of Wellington, New Zealand, 4.

No . . . sharp or formal differentiation between military establishments and their respective civil polities and societies exists in most countries in East and Southeast Asia.⁸⁶

This comment points to a more fundamental point in implementing maritime confidence building in the Asia–Pacific region. Economic growth has instilled considerable confidence in East Asian countries. These countries are unlikely to be much influenced by any eulogizing about the experience of confidence- and security-building in Europe, particularly in the light of recent experiences in the former Yugoslavia, or by the rhetoric of arms control and comments critical of an alleged arms race in Asia. Rather, maritime confidence building has to take note of the particular characteristics and sensitivities of the region.

In regard to the Asia–Pacific, accordingly, there should be a preference for measures that address the specific security problems of the region, taking into account its unique geostrategic character; that are relevant to the stage of political accommodation prevailing among regional states; that are consistent with regional strategic culture; and that build on the existing historical and institutional experience of the region.⁸⁷

Recommendations for Maritime CBMs in the Asia-Pacific

Though preliminary discussions are an important first step, at some stage a more concrete program of action must be developed. Specific maritime confidence-building measures recommended for consideration are:

- **Naval Cooperation.** The good progress already made by the WPNS should be recognized and encouraged politically. This may help overcome some of the conservatism that is apparent in the forum at present and introduce a more innovative approach to naval cooperation based on a region-wide view of security rather than separate national views. Non-contentious multilateral naval exercises could be considered (with themes such as search and rescue, naval control of shipping, mine countermeasures, etc.).
- **INCSEA Agreements.** A new regional approach may be possible, for example, in negotiating an agreement *not* to undertake particular activities at sea (e.g., not to interfere with another navy's operations or to conduct surveillance operations of other forces) as an alternative to the current bilateral INCSEA agreements with Russia, which are effectively about how to avoid incidents when actually undertaking particular activities.

⁸⁶Desmond Ball, "Strategic Culture in the Asia-Pacific Region (With Some Implications for Regional Security Cooperation)," Working Paper no. 270 (Canberra: Strategic and Defense Studies Centre, Australian National University, April, 1993).

⁸⁷Pederson and Weeks, 24.

- **Maritime Information Data Base.** A data base should be set up to coordinate and distribute open source maritime information. The Strategic Maritime Information System⁸⁸ being developed by the Australian Defence Science and Technology Organisation is a possible model but there may be others, including the WPNS Maritime Information Exchange Directory. First steps could include the compilation of a list of the types of information that would be useful, the possible sources of data, and agreement on the geographical area (or areas) to which the information exchange regime would apply.
- **Cooperative Marine Scientific Research.** This would be a useful CBM to facilitate the management of regional seas, to enhance the safety of navigation and to support the ecologically sustainable development of marine resources. Regional capacity is lacking in some respects and there may be scope to involve extra-regional countries. This may even be possible in sensitive geographical areas.
- **Law of the Sea.** Some dialogue would be helpful towards a common regional understanding of aspects of the law of the sea where uncertainty exists, including possibly a common interpretation of the innocent passage regime and resolution of differences with the EEZ regime.
- **Marine Education and Training.** Multi-disciplinary programs in education and training could help bridge the gap in oceans management between different countries and different sectors of activity. Inputs would be appropriate from oceanography, geography, environmental science, defense, economics, social studies, law, and public policy. Intensive workshops and short courses may be more convenient and appropriate than long-term programs.
- **Linkages.** While there are many forums in which regional maritime cooperation is being developed at present, good communications are important to ensure that maximum political benefit is obtained. “Track-Two” diplomacy is also an important part of the maritime confidence-building process and should be recognized in all fields of maritime cooperation.

Confidence-building measures have been termed “pragmatic steps toward ideal objectives.”⁸⁹ The ideal objective for maritime confidence building in the Asia-Pacific region is

⁸⁸This is a database of open-source maritime information covering Southeast Asian and Australian waters, including map depictions, maritime boundaries, reports of incidents at sea, port details, major routes and shipping movements, and data on some 32,000 merchant ships over 1,000 gross registered tonnage which operate in the region.

⁸⁹Michael Krepon, “The Decade for Confidence-Building Measures” in *A Handbook of Confidence-Building Measures for Regional Security*, 2nd Edition, ed. Michael Krepon (Washington, DC: The Henry, L. Stimson Center, 1995), 9.

to create a regional security environment wherein countries do not find it necessary to continue to build-up naval forces at the current pace.

The current strategic situation in the Asia–Pacific region has been characterized as “very complex and highly dynamic.”⁹⁰ Greater certainty and more stability in this situation will be achieved through dialogue and cooperation among regional nations at all levels and in different forums (i.e., bilateral, multi-lateral, and sub-regional). Because of the importance of maritime issues in the region, the maritime environment is a rich source of cooperative activities and confidence-building initiatives, such as those described in this essay. Implementation of these measures now would help to introduce more certainty and stability to the regional security outlook.

⁹⁰Wattanayagoorn and Ball, “A Regional Arms Race?” 162.

Maritime Confidence-Building Measures in the Middle East

Peter Jones

Though largely unknown outside of the few officials who have taken part in the process, an intensive discussion of maritime confidence-building measures (CBMs) has been taking place in the Middle East. The political context of this discussion arises from the so-called Madrid Formula of the Middle East peace process. The Madrid Formula was established during the ground-breaking Madrid Middle East Peace Conference in October 1991. A two-track peace process was created under the overall sponsorship of the United States and Russia.¹

The first track is devoted to a series of bilateral negotiations between Israel and its neighbors. The second track consists of a series of multilateral working groups on various regional issues which transcend the Arab–Israeli dispute specifically. Five such groups were established to address the following: arms control and regional security; the environment; refugees; regional economic development; and water. It was recognized from the beginning that the bilateral track was the more politically challenging, and that progress in the multilaterals would ultimately depend on progress in the bilaterals.

In many respects, the critical difference between the bilaterals and the multilaterals is that the bilaterals exist as the framework for talks to resolve the existing Arab–Israeli dispute. The multilaterals, on the other hand, have a more forward-looking mandate. The purpose of the multilaterals is to explore the changes necessary to create and sustain a peaceful Middle East after decades of confrontation. The bilaterals, then, exist to make peace today; the multilaterals exist to design the Middle East of tomorrow. The multilateral groups include most of the Middle East participants in the peace process² as well as several states outside the region that have demonstrated a willingness to become involved in the search for a settlement to the Middle East dispute and to contribute to the process.

¹For more on the Middle East peace process and its two tracks, see Joel Peters, *Building Bridges: The Arab-Israeli Multilateral Talks* (London: Royal Institute of International Affairs, 1994). See also Peter Jones, “The Middle East in 1995: the peace process continues” in the *SIPRI Yearbook, 1996* (London: Oxford University Press, forthcoming).

²From West to East (roughly): Mauritania, Morocco, Algeria, Tunisia, Egypt, Israel, The Palestinians, Jordan, Saudi Arabia, Yemen, Oman, The United Arab Emirates, Qatar, Bahrain, and Kuwait. Syria and Lebanon are part of the bilateral track of the Middle East peace process but do not participate in its multilateral track pending a resolution of their bilateral negotiations with Israel. Libya, Iraq, and Iran do not participate in the Middle East peace process.

The Arms Control and Regional Security Working Group and Maritime Confidence Building

After initial meetings of an exploratory nature in both Moscow and Washington, the Middle East participants in the Arms Control and Regional Security (ACRS) Working Group were asked to decide on specific topics on which they would be willing to engage in discussions. Eventually, a series of topics was agreed, one of which was maritime CBMs.

Because of differences over which issues should be pursued with the greatest vigor (many Arab states, led by Egypt, wanted to talk about the nuclear issue right away, while Israel took the view that states of the region should concentrate on CBMs in the first instance) it was also decided to split the ACRS into two “baskets,” each reporting to the plenary. Issues related to the nuclear question and to longer term views of the shape of Middle East security were placed in what is known as the “conceptual” basket, while issues relating to maritime CBMs and other more immediately achievable measures were placed in the “operational” basket. It was also agreed that the individual topics to be considered within the operational basket should each have an extra-regional “mentor” who would organize the work and push it along.³

Maritime CBMs were seen as a potentially productive topic for the operational basket because, of all the spheres of military rivalry in the Middle East, the maritime sphere is generally regarded as the least contentious. Though naval forces are firmly caught up in the various military disputes which affect the region, there are relatively few Middle East disputes of a purely maritime or naval character. It was therefore reasoned that it might be easier for concrete steps to be taken in the maritime sphere at the beginning of the ACRS process. At the third ACRS plenary in Washington, parties agreed that an examination of maritime CBMs could begin.

Canada was asked to serve as mentor of the ACRS examination of the applicability of maritime CBMs in the Middle East for a number of reasons. First, Canada is a firm supporter of the peace process and a consistent contributor to peacekeeping forces in the region. Second, Canada enjoys good relations with all in the region. Finally, Canada possesses both a highly professional and respected Navy and Coast Guard with the requisite expertise to contribute substantively and has been involved in CBM negotiations in other regional contexts, such as Europe.

In framing their approach to the beginning of discussion, the Canadians were cognizant of several factors. First, though the maritime sphere is the least militarily contentious in the Middle East, serious maritime incidents have occurred in the region. An analysis of incidents

³For a general discussion of the work of the ACRS as a whole see Michael Yaffe, “An Overview of the Middle East Peace Process,” in *Arms Control, Confidence-building and Security Cooperation in the Mediterranean, North Africa and the Middle East*, ed. Fred Tanner (Malta: University of Malta, 1995); and Jones, “The Middle East in 1995.” Finally, the working methods of the ACRS are described in *The Arms Control Reporter*, 1994, 453.B.171.

between 1972 and 1989, for which information is publicly available, reveals a pattern of three types of incidents: those involving purely regional navies; those involving regional navies and the navies of extra-regional powers; and those involving regional navies and terrorist organizations.⁴ By eliminating all incidents involving such activities as the US Navy's regular challenges to Libya's self-proclaimed maritime boundaries and the "tanker war" in the Gulf, a pattern of incidents involving the regional navies between 1972 and 1989 emerges.

There were three incidents between the regional navies during this period. Two of these took place between Egypt and Israel in 1972 and 1973 in a disputed area of the Gulf of Suez. One involved the capture of an Egyptian fishing vessel by the Israelis on August 22, 1972. The second involved an exchange of gunfire between Israeli and Egyptian naval vessels in the Gulf on August 13, 1973. The final incident took place between Iran and Kuwait when an Iranian gunboat seized a Kuwaiti cargo ship in the Gulf of Oman on November 26, 1985.

There were eleven incidents between ships of a regional navy and those of an extra-regional power (again, not counting the US-Libyan incidents). Most of these were cases of regional navies firing on extra-regional ships which the former felt were getting too close, or were trespassing in disputed areas in which the regional country wished to assert its rights. Some of these incidents, however, were simply mistakes for which an apology was made. Finally, there were ten recorded cases of regional navies, primarily Israel's, firing on or capturing vessels suspected of aiding terrorists.

Though this represents a catalogue of the publicly recorded incidents between 1972 and 1989, many others have occurred over the years. This is especially true with respect to the Israeli, Syrian, and Egyptian navies. Many of these were due to "honest" mistakes in navigation resulting in ships of one side encroaching on the self-declared security zones of another. But there have also been incidents where especially aggressive surveillance by one side has led to friction and possible violence.⁵

In seeking to develop maritime CBMs for the Middle East region the participants in ACRS were thus confronted by a maritime "problem" which was not easy to define in practical terms. Measures developed specifically to deal with one type of incident may not have been of great utility in preventing others. For example, relatively straightforward CBMs designed to prevent unintended incidents are based on an assumption of generally benign intent. These are incidents

⁴The following is based on data extrapolated from William J. Durch, "Things That Go Bump in the Bight: Assessing Maritime Incidents, 1972-1989," in *Naval Arms Control: A Strategic Assessment*, (New York: St. Martin's Press, in association with the Henry L. Stimson Center, 1991). Durch catalogued and analyzed all publicly known incidents during this period. His particular interest was in incidents involving the navies of the two superpowers. I am using his data for this description of Middle East patterns, but the analysis is my own.

⁵Background interviews with Israeli and Egyptian naval officers.

caused by honest mistakes, or by misunderstandings between captains as to what one ship is doing while in proximity to another.

The Gulf “tanker war” and the US Navy’s desire to challenge Libya’s maritime boundary claims, on the other hand, are examples of intentional escalations of maritime tensions for specific political purposes. It is doubtful that voluntarily adopted CBMs could deal with these situations, as the actions they would seek to prevent arise from political differences over much wider issues.

Another factor that had to be considered in designing a framework for discussion of maritime CBMs in the Middle East is that the region is vast and the maritime concerns of its inhabitants are not uniform. States in the eastern Mediterranean and Red Sea (i.e., Israel and its maritime neighbors) and in the western Mediterranean have a generally stable maritime relationship. Maritime boundaries, though not totally agreed, are accepted as working realities. The threat of inter-state conflict is low in the immediate term, and the navies have had considerable experience in developing tacit, day-to-day procedures to avoid trouble.

In the Persian Gulf, however, the situation is much more complex. State-to-state tensions of a maritime character are real and immediate. Maritime boundaries are disputed and potentially volatile, such as those around several islands in the Gulf which are claimed by various states.⁶ Conflict has erupted in the area twice in the past two decades, and both times maritime forces of regional states and extra-regional powers were heavily involved. One of the key maritime powers of the sub-region, Iran, is not involved in the peace process. Under these circumstances, it seemed difficult to imagine the talks within ACRS leading to measures which would have a real impact on the specific maritime concerns of this sub-region in the near term. Moreover, as the current emphasis of the peace process is on the Arab–Israeli dispute, it seemed unlikely that the states of the Persian Gulf sub-region would agree politically to the discussion of measures specifically relevant to their area.

Finally, the political context of ACRS placed emphasis on the development of dialogue as a political goal in itself. Simply getting the participants to sit together and talk was seen as a valid goal, regardless of what might come out of the meetings. For this reason, it was believed that topics had to be selected in such a way as to facilitate expert discussion toward non-controversial goals.

Bearing these points in mind, and after consultations with regional states and the peace process co-sponsors, Canada proposed that initial considerations should center on two specific maritime CBMs: enhanced regional cooperation in maritime Search and Rescue (SAR); and the elaboration of a regional Prevention of Incidents at Sea (INCSEA) Agreement. These two were selected because they represent areas where work could go forward toward practical and

⁶Conflicting claims to the islands of Abu Musa and the Tunbs are a source of tension between Iran and the United Arab Emirates, for example, as are the Hawar Islands between Bahrain and Qatar.

politically useful agreements on relatively uncontentious issues. Search and Rescue is first and foremost a humanitarian activity and no state could object to steps designed to enhance the ability of the region to respond to humanitarian tragedies. With respect to INCSEA, no state wants to see an unplanned incident escalate into a tense situation. Another benefit of these two subjects is that both require naval officers to work cooperatively toward the establishment and realization of agreed operational goals which will themselves require ongoing cooperation and discussion.

The Sydney Workshop: Exploring the Concepts

With agreement to make SAR and INCSEA the focus of consideration, the task turned to identifying ways of getting the regional parties together to explore these issues. After consulting with the co-sponsors, Canada proposed that a workshop be held on the two issues. This workshop would take place on neutral ground, at the Canadian Coast Guard College in Sydney, Nova Scotia, in September 1993, and would not seek to explore either SAR or INCSEA in relation to the Middle East, but rather to explore the basic concepts of maritime confidence building.

Accordingly, Canada, in cooperation with the two co-sponsors, developed a program for the Sydney workshop which emphasized practical, hands-on examination of both the SAR and INCSEA concepts. The participants were broken into small, mixed nationality groups and each group was given specific tasks in terms of SAR and INCSEA. These tasks concentrated on solving generic problems which were intended to familiarize the regional participants with basic maritime cooperative concepts. The process of familiarization was seen as important because, though all have SAR capabilities, cooperation in this field is not yet a common feature in the region. INCSEA, meanwhile, was entirely new to the navies of the region.

The INCSEA scenarios were intended to demonstrate that early communication of intentions between ships is the best means of avoiding misunderstandings, and that the ready availability of a group of specially tailored signals can be a factor in preventing a benign misunderstanding from becoming a potential source of conflict. Discussions at Sydney among the participants also demonstrated the importance of timely, ongoing and thorough consultations in designing the signals and ensuring their proper use.

The SAR discussions focused on the effectiveness of pooling resources to deal with humanitarian emergencies and identified the technical requirements of such pooling. At the lower end of the scale of complexity, these technical requirements included communications capabilities that would cut across regional and political boundaries. Moving higher on the scale, participants identified the need to familiarize each other with their SAR procedures, training and equipment, and ultimately to standardize these on a regional or sub-regional basis. The SAR discussions also looked at existing arrangements for international SAR cooperation and examined their potential applicability to the Middle East.

At the end of the Sydney workshop all participants agreed that neither SAR nor INCSEA presented any insurmountable obstacles of a technical nature. On SAR, they agreed that a good beginning would be for the regional states to exchange information on their SAR communications frequencies and their command and control provisions. This would enable them to contact each other rapidly in cases of emergency and to have some idea of the capabilities that others could contribute quickly to a SAR response. On INCSEA, the essential simplicity of the existing arrangements was endorsed, as was their emphasis on professional navy-to-navy contacts.

Accordingly, the regional participants asked Canada to prepare two things for the next workshop. First, they wanted Canada to prepare a questionnaire on regional SAR practices, the responses to which would form the basis of an initial exchange and discussion of information on basic SAR capabilities and practices in the region. Second, they asked Canada to prepare a draft multilateral INCSEA text for the Middle East. This text would serve as the basis for an examination of what such an agreement might look like in the Middle East. Interestingly, this would be the first multilateral INCSEA ever produced, as all previous agreements had been bilateral.⁷

The Antalya Meeting: Drafting an INCSEA Text

Canada worked on these requests in the hope that a formal discussion of these two papers would be held in the late autumn of 1993. For various reasons, some technical, some political, it was not until March 1994 that the first meeting to discuss operational basket proposals could be held in Antalya, Turkey. In the meantime, the results of the Sydney workshop were endorsed by the ACRS plenary held in Moscow in November 1993.

Discussion of SAR at Antalya was uneven because few of the regional participants actually returned their SAR questionnaires. This meant that the detailed exchange of information upon which much of the meeting had been predicated could not take place. Nevertheless, the regional participants continued their exploration of the desirability and mechanics of enhanced regional cooperation in SAR. They agreed that a regional communications network being set up initially by the Dutch as another ACRS activity should be used for SAR coordination.⁸ Encouragingly, a few regional states even offered to host an eventual regional Rescue Coordination Center.

The INCSEA discussions made considerable progress. Canada's draft INCSEA text was accepted as a basic framework for the discussions. In many respects, the draft followed the

⁷Sweden had proposed in 1989 that the US-USSR INCSEA Agreement be "multilateralized" as a UN Document open for signature by all. Stockholm put forward a list of elements of such a possible multilateral agreement but not a text. The idea was never pursued. See "A Multilateral Agreement for the Prevention of Incidents at Sea," Working Paper submitted by Sweden UN Disarmament Commission, A/CN.10/121, May 10, 1989.

⁸See the January 31, 1994, entry in *The Arms Control Reporter*, 1994, 453:B:172, for further information on the Dutch work on the regional communications network.

existing Canada–Russia INCSEA text. This was especially true with respect to the obligations to be undertaken by parties concerning the avoidance of harassment.⁹ The draft differed in that its consultative mechanisms had to reflect the need to encompass a multilateral framework.

This is a critical change in that a substantial part of the value of any INCSEA agreement is the requirement to consult on safety on a regular basis at the navy-to-navy level. That obligation is the foundation of the face-to-face contact between naval professionals which an INCSEA agreement seeks to promote. In a multilateral agreement, these reviews would have to include both a regular multilateral meeting at which all parties could discuss the operation of the agreement, and a regular set of interlocking bilaterals at which individual parties could sit down to discuss matters of mutual concern.

The question of annual reviews was also bound up with the membership question, which raised questions over the formal recognition of some states in the region by others. Because of this problem, a lengthy discussion was held over what form an eventual INCSEA agreement might take. It was pointed out that a form of document which was not legally binding would be just as effective operationally. Others responded that such a fix might lack certain political benefits sought by some in terms of normalizing relations between states in the Middle East.

Finally with respect to the provisional title of the draft document, some pointed out that the current title sounded too provocative in light of the desire to highlight the cooperative nature of the proposed undertaking. Therefore, it was suggested that the title be cast more in terms of “facilitating the safety of navigation” in the region.

In operational terms, a number of other questions arose. For example, language was introduced by some which sought to constrain the use of certain technological devices when ships were in proximity to each other, beyond those constraints which exist in present INCSEA agreements. In the US–Russia INCSEA Agreement, and all of the subsequent agreements, the specific references to what may not be used and under what circumstances are quite limited. One may not, for example, shine one’s searchlight onto the bridge of another ship at night, the philosophy being that one should not take actions directly against another ship. Beyond that, one should not, as a rule, take actions likely to endanger another ship, or cause it to feel as though it may be endangered. But the actual definition of what such actions might be is left to the commanders on the scene.

At Antalya some delegations introduced the notion that the Middle East INCSEA agreement should be far more operationally constraining than standard bilateral agreements and should prohibit ships from using certain types of technologies when in the proximity of others,

⁹Interestingly, the use of the term “harassment” by the Canadians caused some difficulty at first. It was not until an Arab participant explained that the literal translation of the term into Arabic is rather more offensive than it is in English that the confusion was resolved. Another term was selected. This is but one example of the many cultural and linguistic subtleties faced in the discussions.

even when those technologies were not specifically directed at the other ship. In other words, proponents of this view argued that general surveillance technologies, which were not necessarily aimed at the other ship but were simply operating as a matter of course, should be switched off when a ship of another navy came into range.

Others objected to these proposals. In some cases, they argued, the non-use of certain devices may be impossible to verify. On a more fundamental level, they continued, the very idea appears to change the purpose of an INCSEA agreement, making it into a much more operationally constraining regime than pre-existing regimes. The principle behind existing INCSEA agreements is that participants will naturally refrain from activities that might endanger their partners based on the desire of the participants to have the agreement succeed. It is not seen as necessary to define these activities precisely. Any problems that do arise are then dealt with by the review process. Attempts to define every possible case where problems might happen, and establish firm provisions to prevent them, are viewed as both inconsistent with the spirit of the exercise and impossibly complex. It might also lead to a potentially divisive negotiation over what should and should not be restricted. Moreover, certain possibilities would inevitably be omitted in any such discussion and come back to haunt the parties later.

Obviously, this point of view is based on the premise that a certain level of trust exists among the participants. This approach assumes that the navies of the participating states will recognize their mutual interest in avoiding incidents, even though they may have certain operational difficulties. INCSEA is also based on the premise that surveillance will continue; the purpose of an INCSEA agreement is to allow this activity to be conducted safely.

Another operational difference which arose concerned the question of what are known as exclusion zones around ships engaged in maneuvers. When the original INCSEA Agreement was negotiated, the then USSR sought to apply restrictions as to how close US Navy ships could get to Soviet ships.¹⁰ Accordingly, they proposed that definite distances, known as range limitations, be incorporated into the INCSEA agreement.

In the initial INCSEA negotiations with the USSR, the United States disagreed vehemently with this approach, arguing that the normal exercise of good seamanship would dictate the distance one ship should maintain from another for safety's sake. The US Navy did not want any restrictions placed on its freedom to get as close to Soviet ships for surveillance purposes as circumstances would permit. They preferred that judgements about safe distances be left to the individual captains concerned, recognizing that responsibility for any mistakes would also rest with them. After intense discussion the USSR accepted the US position as part of a final trade-

¹⁰For more on these negotiations see: Stanley Weeks, "Measures to Prevent Major Incidents at Sea," in *Maritime Security: The Building of Confidence*, ed. J. Goldblat (New York: United Nations, 1992); R.P. Hilton, "A Confidence-Building Measure at Work: The 1972 United States-USSR Incidents at Sea Agreement," *Disarmament Topical Papers 4: Naval Confidence-Building Measures* (New York: United Nations, 1990); and S.M. Lynn-Jones, "A Quiet Success for Arms Control: Preventing Incidents at Sea," *International Security*, vol. 9, no. 4 (Spring 1985).

off to achieve an agreement in 1972. At the same time, the Russians reserved the right to raise the question again and did so in succeeding years.

At Antalya, some Middle East naval experts also sought range limitations. This approach was strongly resisted by others, including by the US Navy observers to the talks. In particular, the US Navy was concerned that a regional INCSEA agreement that included specific distance requirements could set an unfortunate precedent for future regional agreements of this type. Thus, the interests of an extra-regional, but nevertheless heavily involved, player had an impact upon the regional discussion.

Yet another interesting question which arose concerned the eventual applicability of a Middle East INCSEA agreement. All existing INCSEA agreements clearly apply "Beyond the Territorial Seas" of the parties. That phrase is, in fact, in their titles. This means that in any case of incursion by ships of one party into the territorial waters of another, the navy of the transgressed against party will not be bound by INCSEA provisions in making its response. It may choose to exercise these provisions, but it is not obligated to do so.

Because of the geographical complexities of the Middle East, it was recognized that this provision could cause problems in certain specific areas. In the Red Sea, for example, there is no international water. The Red Sea is so narrow that the territorial waters of the states around it are directly adjacent. This being the case, actions taken by one navy in its own territorial waters, but within eyesight of another navy in adjacent territorial waters, could be considered provocative to the ships of the other navy.

At the same time, however, the speed with which threats can develop in the region is such that most navies are unwilling to accept restrictions on their actions within their territorial waters. If a naval ship discovers a small, unidentified vessel speeding through its waters under suspicious circumstances a threat to the coastline can develop in a matter of seconds, and the defending ship does not want to be encumbered with the need to send INCSEA signals and wait for a reply before responding.

This problem never arose in the negotiations over the original INCSEA agreements. In those cases, the participants were all "Blue Water" navies with Blue Water problems. The Middle East is different and points the way to difficulties that might be expected in applying such an agreement to other regional contexts where the intended participants are primarily coastal defence navies.

The regional participants left Antalya promising to engage in further study and discussion of this question. Suggestions ranged from leaving it to the parties to exercise informally the provisions of the agreement in territorial waters where circumstances warrant, to establishing special provisions for use within territorial waters.

Finally, some states raised concerns that proposals requiring surface ships operating with submerged submarines to display certain signals might jeopardize the secrecy of submarine

operations. This argument was a constant factor in the original US–USSR INCSEA negotiations. The United States was vehemently opposed to any restrictions on submarine operations. After discussion, however, it was decided that this provision is essentially a safety one and is aimed not at submarines, but at surface ships that might be operating with them.

These were the main issues of consideration at the conclusion of the Antalya meeting. It is important to note that these points of disagreement comprised a minority of the original Canadian draft text. Over seventy percent of that draft was tentatively accepted as a valid framework for an eventual agreement by the regional participants after in-depth discussion and some modifications.

A Demonstration and a Symposium

To sustain the momentum, Canada was asked to prepare two events over the summer of 1994 in support of the Middle East SAR and INCSEA discussions. The first was a practical demonstration of both SAR and INCSEA concepts involving Canadian and American warships. The second was a workshop for senior naval officers from the Middle East. Canada proposed these two activities to the ACRS Plenary in Doha, Qatar, in April 1994, where they were approved. The Plenary also asked Canada to continue to facilitate discussions on the INCSEA text and on SAR.¹¹

The SAR–INCSEA demonstration took place off the coast of Venice, Italy, on July 15, 1994.¹² A Canadian frigate (HMCS *Halifax*) and a US ammunition re-supply ship (USS *Santa Barbara*) were tasked to simulate a contact between two ships covered under an INCSEA agreement, and then to conduct a response to a simulated SAR distress call. Added realism was achieved as a result of the Italian Navy's agreement to provide a Maritime Patrol Aircraft for the demonstration.

The intention of the INCSEA portion of the demonstration was to show how improper, or even non-use of proper INCSEA signals, could result in a misunderstanding with potentially serious consequences, and then to demonstrate how the proper use of the signals could extricate those ships from the danger. The intention of the SAR portion of the demonstration was to show how reliance on standard SAR procedures and communications principles (including those contained in the INCSEA agreement) could enable two ships of different navies to respond effectively to a SAR distress call. Both segments of the demonstration achieved their technical aims. Moreover, the regional participants left with several good ideas as to how they might stimulate the process.

¹¹The Doha Plenary was reportedly a difficult meeting in that some regional delegations sought to slow the pace of work in the ACRS, fearing that the multilaterals were getting too far ahead of the bilateral process. For more on the Doha Plenary see the May 2, 1994 entry in *The Arms Control Reporter*, 1994, 453.B.176.

¹²See G. Kemp and J. Pressman, "The Middle East: Continuation of the Peace Process" in *SIPRI Yearbook, 1995: Armaments, Disarmament and International Security* (Oxford: Oxford University Press, 1995), 191-192.

Finally, participants began, on the margins of the demonstration, to discuss the possibility of performing a demonstration of SAR and INCSEA in the region using regional assets.

The Senior Officer's Symposium was held in Halifax, from August 29 to September 1, 1994. Ten regional delegations attended the meeting. The first day was a "professional" day, during which the delegates toured the Canadian Navy's Halifax base and the ship HMCS *Fredericton*. They then put to sea on board the Canadian Coast Guard ship *Simon Fraser* for a SAR demonstration and discussion. The delegates then spent two days discussing maritime security in the Middle East generally, as well as ways to stimulate the maritime confidence-building discussions within the ACRS talks.

A first for this meeting was that each delegation agreed to speak on its perception of maritime security in the region. As might be expected, views differed. Interestingly, however, they did not so much differ along Arab-Israeli lines as along geographic lines. The Gulf states had very different perceptions of maritime security questions than the Mahgreb states, for example. On professional questions, there were few differences. Indeed, there was a large measure of agreement, and the naval services were able to exchange experiences and views.

With respect to the next steps in the maritime confidence-building discussions, it was recognized that the delegates were not in Halifax to engage in a negotiation on the INCSEA text or on SAR concepts, nor were all regional delegations present or participating. That being said, a general discussion was held at which several important understandings were achieved. On INCSEA, tentative understandings were reached on the questions of constraining the operation of certain technical devices in an INCSEA agreement, on establishing exclusion zones for operations, and on the inclusion of submarine operations in the agreement.

It was tentatively agreed that it would be inappropriate to include measures in an INCSEA agreement which were designed to constrain the use of devices, so long as those devices were not being operated in a way that compromised the safety of other ships operating in the area. On exclusion zones, it was tentatively agreed that they should not be established, the normal practice of good seamanship being regarded as sufficient to ensure that such zones would be unnecessary. Finally, on submarines, it was agreed that measures to constrain their operations should not be included, though measures should be included which would make it possible for surface ships to indicate when they are operating with submarines in the area.

Though these understandings were tentative, they formed the basis for discussions of the text at the next operational basket session that autumn. Of course, once the discussions resumed in a negotiation setting several delegates wanted to explore the detailed implications of these understandings, and they were subjected to intensive scrutiny. Also, some delegates who had not attended to Halifax Symposium, or who had not spoken up there, did not feel bound by these understandings. Nevertheless, these understandings formed the basis of the eventual agreement on these issues.

On SAR, the Halifax Symposium was no less successful. Following Antalya, it was decided by the regional participants at Halifax to try to achieve a more general statement of SAR principles for the region. It was believed that a more detailed discussion of SAR operations in the region would be possible, once an understanding of the SAR needs of the region had been reached on this general level. Canada was therefore asked to draft a general "framework" on maritime SAR cooperation in the region in time for the next operational basket session. Before they left Halifax, the regional delegates spent an hour discussing what such a framework might look like, and what sorts of ideas should be included. It was agreed that the framework should begin with general statements of the humanitarian nature of SAR, and move on to specific ideas for enhancing future cooperation in the area.

On another level, the Symposium marked the beginning of a broader process of maritime confidence building than the INCSEA or SAR discussions had signified. By meeting together for a more general exchange of views on their perceptions of maritime security in the Middle East, the senior officers of the regional navies had opened up their nascent dialogue to much wider fields of future discussion. They had also infused the ongoing process with a much greater degree of support and legitimacy than it had previously enjoyed.

The Dead Sea Meeting: Reaching General Agreements

The second operational basket meeting took place on the Jordanian shore of the Dead Sea in November of 1994. In view of the large amount of work to be concluded, it was decided to split the SAR and INCSEA discussions into sub-groups. On INCSEA, three days of intensive negotiations produced a text that was agreed to by the participants in all its operational aspects. On SAR, the Canadian-proposed framework and revised questionnaire were also agreed, after intensive scrutiny.

The INCSEA discussions took the Antalya text and the Halifax understandings as their basis. Canada had drafted some additional language to reflect the understandings achieved at Halifax, and this was tabled to give the discussions a focus. Immediately, however, some delegations made clear that the achievement of a final text was not a foregone conclusion.

In particular, it proved somewhat difficult to find appropriate ways of translating the basic understandings of Halifax into acceptable text once discussions began over the details of that text. It must also be said that certain delegations took the view that the price of agreement on INCSEA might well be agreement in other areas of the peace process. Finally, some of the individual delegates seemed interested in pushing others to find out just what the limits of their instructions were.

All of this made for an occasionally difficult set of discussions. At times it seemed the delegates were within striking distance of an agreement, only to have what appeared to be a new concern introduced which effectively undid previous achievements. At others, what seemed

intractable differences were solved quite quickly, once it became clear that one side or the other was not prepared to give way. Different linguistic nuances also sometimes confused the situation.

In the end, the INCSEA text that was achieved was complete in all respects except for the title and the final article. The title of the document would indicate exactly what type of agreement had been achieved (a treaty, a memo of understanding, a set of non-binding guidelines, etc.). A title therefore denotes the level of political recognition the parties are prepared to confer on each other. Given that not all of the players in the peace process formally recognize each other yet, the participants at the Dead Sea meeting felt that this would be too political a subject for the meeting. The final article dealt with such issues as the entry into force provisions, the accession provisions for new parties and the duration and withdrawal aspects of the agreement. Obviously, these were intensely political issues as well.

In operational terms, the INCSEA text agreed at the Dead Sea was similar to existing INCSEA agreements in many respects, but it also contained important modifications. Some of these were designed to make the Middle East INCSEA text a truly multilateral document. The annual review procedures, for example, called for an annual repetition of the Senior Officer's Symposium, at which individual delegations would hold bilateral INCSEA consultations on the margins. Importantly, however, these annual symposia would also be an opportunity for the regional navies to engage in discussions on other matters of mutual professional interest.

On the question of whether the Middle East INCSEA agreement would apply within territorial waters, it was agreed that this would be impractical. At the same time, the unique requirements of the region were recognized. Thus, reference was made to the need for those regional states that have adjacent bodies of water to make special arrangements to cover potential problems in those areas, drawing on the larger INCSEA arrangement in doing so.

Other modifications to the existing INCSEA model were primarily designed as compromises to overcome important differences in various national positions. For example, it was eventually agreed that specific admonitions not to use certain types of technologies in a particularly hazardous manner need not be spelled out in detail. However, a rather tortuous formulation of words was required to make the point that the provisions of the text related to general admonitions not to use such technologies in a potentially harmful way were related to these specific concerns. To the casual observer picking up the text for the first time, these phrases may seem curious, but they were the result of intensive negotiation.

On the SAR side, the negotiation was no less involved. Whereas the INCSEA discussions began from the basis of the Antalya text, the SAR discussions were just beginning in terms of a specific text. Though there had been general guidelines for the Canadians in drafting the SAR framework, based on the Halifax discussions, this was the first time the regional delegations were seeing actual words on paper. Moreover, those in Halifax had been naval officers only. At the Dead Sea, many diplomats were also involved and they were far more careful about agreeing to phrases that may have seemed obvious to sailors.

Discussions were therefore somewhat laborious at times. They began with an attempt to come up with a rather general statement regarding the essentially humanitarian nature of SAR. As might be expected in this most political part of the world, however, an attempt to find language which stated that SAR transcends politics became a very political exercise. Eventually, chapeau paragraphs along these lines were agreed.

Nine paragraphs follow, each outlining a basic point related to SAR cooperation. Some of these reinforce general statements regarding the desirability of such cooperation. Others, however, make specific recommendations as to how such cooperation should be brought about. Regional countries agreed on the utility of sharing information on their communications practices in order to speed inter-operability in moments of crises, for example. Another paragraph recognizes the necessity for regional countries to adopt standardized practices for training and operations and points to the effective international standard established by the International Maritime Organization as the model.

The framework thus contains a mixture of general intent and specific goals relating to the establishment of enhanced SAR cooperation in the Middle East. It is not, however, self-implementing. Further meetings will be necessary to begin to explore the practical details relating to harmonizing SAR practices in the region.

The Tunis Plenary: Broadening Maritime Cooperation

The Tunis plenary of the ACRS talks took place in mid-December of 1994, shortly after the Dead Sea meeting. The INCSEA text and the SAR framework and questionnaire were adopted in the same form as they left the Dead Sea. In addition, the language of the final statement of the Tunis plenary called upon Canada to continue as mentor on maritime CBMs within the peace process.

On SAR, Canada was called upon to begin the detailed work required to bring the framework to life. On INCSEA, Canada was asked to serve as a *de facto* interim Depositary of the Agreement until such time as the final article was completed. This meant that any regional parties that decide to place their ships under the operational requirements of the text will inform Canada of their having done so. Canada, in turn, will inform all others and serve as a communications channel for similar messages relating to the agreement. Canada will also organize the annual consultations and Senior Officer's Symposia until such time as the regional parties themselves can do so without an intermediary.

In addition to these objectives, the regional delegations agreed to a proposal for a maritime activity in the region, using regional naval assets, to test the provisions of the INCSEA text and to identify areas for further work in the SAR field. It was agreed that the activity would take place off the Tunisian coast, and that an initial planning meeting would take place in Tunis in January 1995 to establish scenarios for the activity. Canada was asked to make the necessary

arrangements for both, in conjunction with the Tunisian Navy. The planning session was held as scheduled and a set of scenarios agreed. Unfortunately, however, lack of satisfaction on the part of some participants over the progress on the wider agenda, and an unfortunate reference to the activity in the Israeli press, caused many Arab participants to take the view that the activity should be postponed. At the time of writing, a new date for it had not been established.

Finally, the regional delegations agreed in Tunis that they wanted to broaden their nascent maritime dialogue to other areas. It was agreed, for example, that naval experts in such fields as maritime medicine, maritime meteorology, and naval diving could meet to exchange views and discuss matters of mutual professional interest. These subjects were chosen because they are, in themselves, relatively technical and non-controversial, but allow for useful and worthwhile professional dialogue.

Beyond the technical utility of such discussions, what these meetings will accomplish politically is to begin to establish a network of professional naval contacts in the region across a wide range of topics. The intent of this process is to create an atmosphere in which regular dialogue between the navies of the region will no longer require the presence of an outside facilitator, but will rather be regarded as a natural process.

Though the Tunis plenary was able to act on the maritime agenda, the meeting as a whole was not without difficulty. In particular, the disappointment of some delegations with the fact that the conceptual basket had not made as much progress on the nuclear issue as the operational basket had made on various CBM proposals caused those delegations to try to hold off on the adoption of items within the operational basket. While the maritime package introduced by Canada was largely unaffected, the episode brought out the essential relationship between the many facets of the Middle East peace process. The delegations thus left Tunis with a renewed sense of the potential fragility of the process as a whole.¹³

The Second Antalya Meeting: Refining the Texts

The third ACRS operational basket session was held in Antalya in April 1995. The meeting came at a difficult time for the ACRS process. Many Arab states were dissatisfied with the lack of progress on the wider peace process agenda. Also, Egypt and Israel were embroiled in a dispute

¹³See *The Arms Control Reporter*, 1994, 453.B.186-87, for more on the Tunis Plenary.

over Egypt's call for Israel to sign the Nuclear Non-proliferation Treaty.¹⁴ Expectations were thus low with respect to the scope for substantive work at Antalya.

Surprisingly, however, progress was made on both the SAR and INCSEA agendas. On SAR, the regional delegates began to review the framework document with a view to its implementation. They agreed that the implementation of each of the nine paragraphs would need to be discussed intensively, and began that process. They also agreed that it was necessary for regional SAR experts to meet more frequently and to have a mechanism for exchanging views and information. Several potential methods of achieving these aims were discussed.

On INCSEA, the general understanding that Canada would act as *de facto* Depositary was confirmed and language was developed on the point. Regional navies wishing to implement the document are asked to indicate to Canada that they intend to do so, after which Canada will inform all other regional navies participating in the process. For the notifying navy, the provisions of the document will come into effect a certain number of days thereafter with respect to all other navies which have similarly enacted it. The process for suspending one's participation is the reverse. In addition, the Antalya meeting developed a working title for the document which was designed to avoid the potential problems associated with calling it a treaty. Instead, the Antalya meeting suggested that the document be known as a set of "Guidelines."

Canada will now put these results to the next ACRS plenary meeting for approval and adoption. This meeting was to have been held in June 1995. Unfortunately, difficulties within the broader Middle East peace process, and between Israel and Egypt over the nuclear issue, forced the Plenary to be postponed. As of the time of writing, it has not been re-scheduled.

The last event which has taken place in the process was a planning meeting for the next Senior Officer's Symposium, which took place in Canada in the summer of 1995. Delegates to the planning meeting established an agreed agenda for the next Symposium and heard a series of expert lectures and demonstrations on SAR. Unfortunately, the general slow-down of ACRS-related work means that the actual Symposium has not been held, nor has a date been set for it as of this writing.

Conclusion

The process of developing maritime CBMs in the Middle East has been remarkably successful, especially when one considers the political and historical background to the talks. It

¹⁴Egypt was pursuing a strategy of forcing Israel's nuclear status onto the agenda of the upcoming NPT Review and Extension Conference. This theme suffused all of the work of the ACRS for the latter half of 1994 and much of 1995. On the sometimes acrimonious difference on the NPT between Egypt and Israel and its impact on the Peace Process see: J. Lancaster, "Egypt and Israel Fail to Budge From Arms Pact Impasse," *International Herald Tribune*, 24 February 1995. For background and interviews see *The Arms Control Reporter*, 1994, 453.B.185 and *The Arms Control Reporter*, 1995, 453.B. 189-190, 194.

is true that maritime CBMs were chosen specifically because they represent the area of least military tension in the region, but this fact was useful only in getting the discussions going. Moreover, the sometimes difficult backdrop of the larger peace process has not intruded on the substantive aspect of the maritime discussion to the degree one might have expected.

Upon reflection, it would seem that a number of reasons account for this success. Perhaps most importantly, a deliberate attempt was made by the Canadian mentor to separate the substantive discussions over SAR and INCSEA from the issues confronting the wider peace process. Regional parties were constantly encouraged to send maritime experts or naval officers to the meetings, and the subjects for discussion were held to operational matters to the extent possible. Wider political questions, such as the name of the eventual document and the recognition of various participants by other participants, were avoided if possible. Where this was not possible, simple solutions that protected everyone's larger political agendas were found, pending further progress on the bilateral track of the peace process.

The effect of this strategy was to concentrate everyone's attention on what are relatively simple technical issues of cooperation at sea, rather than the wider issues of the peace process. Though this did not prevent the wider issues intruding onto the maritime agenda, it kept these intrusions to a minimum and always provided the Canadians with an "out" if the discussion became too heated: "We are just here to discuss INCSEA and SAR, not to solve the problems of the Middle East."

Second, for all their problems over the wider issues, the regional participants genuinely wanted the maritime talks to continue, so long as their broader concerns were protected. After decades of confrontation, the regional participants recognized that their interests would be best served by a lessening of the tensions endemic to the region. Though they are grappling with the enormously difficult question of how this might be done against a backdrop of great differences and suspicions, modest initiatives designed to alleviate tension in the region were welcome.

In the meantime, the process has moved to the point that the officers involved are coming to regard it as quite normal that they should sit down together and discuss matters of mutual interest. In the course of such discussions, they are discovering that they have a great deal in common, both professionally and personally. In the end, irrespective of any agreements which may ever be signed, this is perhaps the greatest measure of confidence building.

Maritime Confidence Building in South Asia

Rear Admiral K. R. Menon, (Ret.)

There has been conflict in South Asia since the birth of India and Pakistan in August 1947. The genesis of this conflict can be divided into two parts: the incomplete delineation of the boundaries between the two nations, including maritime boundaries, and a philosophical divide on the necessity and workability of the “two-nation theory.” While Pakistan asserts the need for Muslims to live separately, India is prepared to defend its multi-ethnic, multi-religious society. The first of these conflicts is amenable to a technical solution, while the second can only resolve itself culturally, socially, and perhaps economically. Since the latter is unlikely to disappear in a short time, it would be a good idea for both countries to consider confidence-building measures (CBMs) as a means to lower the intensity of conflict over the maritime boundary issue.

The geographical conditions of the region are ripe for maritime tensions. India and Pakistan’s maritime boundary has not been defined, and the main naval bases of the two countries, Karachi and Bombay, are only 400 miles apart. Since the coast turns at right angles north of Saurashtra, proceeding “seawards” from Bombay or Karachi would cause two ships to pass close to each other at a distance of about 320 miles from their home ports. Because large-scale exercises require some sea room for the opposing forces to disappear before establishing contact, these exercises are likely to create tremors in the other command headquarters. The maritime region in dispute is also rich in fish and prawns, potentially leading to conflicts or misunderstandings over proprietary access to these resources.

Confidence-building measures were pursued in 1991 and 1992 but met with limited success. Since then, Pakistan has taken the position that discussions on smaller issues are not possible unless talks begin on Kashmir. Politicians in both India and Pakistan have used the Kashmir issue as a test of patriotism. As a result, any steps they take to move toward dialogue or a political solution are met with staunch public disapproval.

Military Talks

The limited success of negotiations in 1991 and 1992 was not due to wise statesmanship in Islamabad and New Delhi, but instead resulted from considerable US pressure to try this “new route” toward reaching an understanding. Given this, preparation on the part of civilian bureaucracies for a scheduled April 1991 meeting between the two armed forces was lacking. Examining background material and the few preliminary interactions that took place, it became clear that most of the civilian bureaucracy was unfamiliar with confidence-building measures and had little knowledge of the history or use of CBMs in other scenarios. It was therefore left to the armed forces and a few of the more forward-thinking members of the diplomatic corps to push ahead in order to make the meeting a relative success.

There was a brief thaw in April when the senior defense planners on the two sides met, exchanged views, and were able to put a face on their counterparts. The Indian military delegation was led by Lt. Gen. Nambiar and the Pak delegation by Lt. Gen. Shamin Alam Khan.¹ The visits to the capitals of the other country did much to demystify the “enemy” and the personal contacts were very warm. By July 1991, agreement on a number of points, including on some maritime CBMs, had been reached (see Appendix A). This agreement, however, remains unratified.

The military talks coincided with talks being conducted at the foreign secretary-level between the two countries. The two foreign secretaries met on April 8, 1991. The ease that had characterized the military talks contributed greatly to the cordiality of this meeting. The following decisions were taken by the foreign secretaries, suggesting that agreement on military CBMs can potentially spur progress in building peace in other areas:²

- the talks on Siachen would be resumed;
- the Wular barrage problem last discussed in 1986 would be brought up in July;
- the Sir Creek would be discussed in August;
- the Indo-Pak committee to check drug smuggling would be reconvened; and
- the next round of talks at the foreign secretary level would be held in Islamabad in September 1991.

In the fast deteriorating political situation in late 1991, it was a wonder that any of these points were pursued. Nonetheless, the Sir Creek talks did materialize as planned and are discussed in greater detail later in this essay. The Siachen talks failed to get off the ground, as both sides had laid down preconditions which were not met. The Wular barrage talks did take place in 1991, and some progress was made during the course of the meeting of the Indo-Pak committee on drug smuggling.

Another round of military talks was held in the fall of 1991. The three services of the Indian armed forces prepared for this meeting with their Pakistani counterparts with the following goals in mind:

- **Army:** Limiting the use of heavy weapons in incidents that arose in the LOC and attempting to defuse the hot spots on the LOC, particularly near Kermi.
- **Navy:** Establishing communication links between units at sea and measures to prevent mutual interference.
- **Air Force:** Preventing cross border violations and maintaining the sanctity of Air Defense Identification Zones (ADIZs) over land.

¹*The Times of India*, April 7, 1991, 1.

²*The Times of India*, April 8, 1991, 1.

Though the actual meeting was immediately preceded by a particularly violent attempt by the Pakistani side to cross the cease-fire line, delegations quickly broke into separate groups and great understanding and affinity appeared between the service counterparts.³ The agreements reached at this meeting were rather technical and service-oriented in nature. However, they were never published, nor did they become formal statements signed by the foreign secretaries as in the earlier case. Publicizing the agreements, it was felt, would mean little to the non-professional, as they had no strategic significance and therefore little political importance. While the exact nature of the agreements cannot be disclosed, when points were raised, they were so obviously mutually beneficial that the other side grasped them immediately. The Indian delegation achieved agreement on all the points they took with them to Islamabad.

The officers of the armed forces next met in the autumn of 1992. The political situation had become considerably worse, due to tensions in both Siachen and Kashmir. The delegation that came from Pakistan was ready to discuss Sir Creek and possibly the maritime boundary issue. There was no representation from the army and air force, and all mention of the words “confidence building” had been dropped. This was to be a straightforward attempt to resolve outstanding maritime disputes. Preparations for this meeting began in August with the understanding that Sir Creek and the maritime boundary would be the only subjects discussed. This meeting was intended to be a prelude to the foreign secretaries’ meeting at the end of October but in fact did not take place until November 5–6, after the foreign secretaries had already met.

This November meeting on maritime issues took place in Hyderabad House in New Delhi, in the midst of an increasingly difficult political situation created by the BJP’s threats to demolish the Babri Masjid mosque. The first attack on Babri Masjid had taken place on October 30, breaching the outer boundary wall.⁴ Despite all the tension, however, some groups were still attempting to foster Indo-Pak friendship. The Pakistan delegation was led by Mr. Khalid Salim, Additional Secretary,⁵ and the Indian side was represented by Mr. Naresh Dayal, Additional Secretary.⁶ The preparations on the Sir Creek issue were made by the office of the Surveyor General of India, which had mapped out the Indian stand that the boundary along the creek should follow the middle of the navigable channel. The navy researched UN documents detailing the possibilities of defining a maritime boundary with an indeterminate starting point.

³The author was a member of the Indian delegation to these talks.

⁴*The Times of India*, October 30, 1992, 1

⁵Other members of the Pakistani delegation included: Maj. Gen. Nazir Hussain, Surveyor General; Capt.(PN) Khalid, Chief Hydrographer; Maj. Mehndi Jamal, Surveyor of Pakistan; Mr. Ghulam Rasool, Legal Adviser to the Ministry of Foreign Affairs; and Mr. Asif Durrani, Third Secretary, Pakistan High Commission.

⁶Other members of the Indian delegation included: Mr. B. Kumar, Pakistan desk; Mr. Basu, MOD; RADM K. R. Menon; P P Nandi, Assistant Chief of Naval Staff (Operations) and Chief Hydrographer; Maj. Gen. Jhaldiyal, Surveyor General of India; Mr. R.K. Singh, MOD; Mr. Ajit Kumar, Deputy Secretary (MEA); and Dr. Rama Rao, Legal Adviser to the MEA.

Despite the best efforts of all the delegates, a compromise could not be reached on the Sir Creek issue. Neither side would budge from previous stands, and attempts at reaching a boundary agreement from seawards were not even made. A joint communiqué was issued by the external affairs divisions of the two countries to state that despite frank talks, no progress could be made, but that talks would continue.

The Maritime Boundary Issue

India has defined its maritime boundary with Indonesia, the Maldives, Myanmar, Sri Lanka, and Thailand.⁷ Two maritime boundaries remain to be defined, namely, those with Pakistan and Bangladesh. Neither of the two latter countries has defined maritime boundaries with any other country. While the problem with Bangladesh derives from a concave coast and is geographically difficult to resolve, the Pakistan dispute is based on a technicality.

It is generally believed that to define a maritime boundary, one must have a starting point on land. The end of the land boundary between India and Pakistan, however, is in dispute at the Sir Creek. This land boundary consists of a clear east-west line and is demarcated by boundary pillars. Although not mentioned in the agreement, these have since been located and there is now no dispute on that line. Once the line enters the Sir Creek, however, there are two problems: first, the "thick green line" used in the original map runs along the eastern bank "as it existed," but the creek has since shifted in a number of places and in fact no longer runs along that same line; second, the green line finishes at a point where the coast formerly existed. Due to siltation, the coast has moved a bit seaward and the termination of the "green line" is therefore landwards of the tide line.

The solution to defining the position of the line is to accept the middle of the navigable position of the creek. The end point of the land boundary will then be the mid-point of the creek mouth. The maritime boundary can commence seaward of this point. If the end point of the land boundary is where the green line ends (as desired by Pakistan), the start point of the land boundary will be about a mile and a half south of the middle of the creek mouth. Since the maritime boundary runs 200 miles, the gain or loss to either country could be about 250 square miles of ocean and ocean floor. The maritime boundary issue is therefore considerably more significant than the Sir Creek issue which involves only about six to seven square miles of unusable swamp land. The inordinate amount of time and effort spent on the Sir Creek issue could have been more usefully devoted to settling the maritime boundary, the greater portion of which can be settled without defining the end of the land boundary, as will be shown.

The seas off the Sir Creek are fairly rich in fish and prawns. Fishermen from both countries have traditionally followed shoals wherever they may be. Mindful of the significance of exclusive

⁷Most of the maritime boundary agreements between other countries were completed very early between 1974 and 1976. The last agreement with Sri Lanka, which involved complex fishing rights was signed in 1985.

economic zones (EEZs) and the potential loss of marine resources to another aggressive fishing nation, the Indian Coast Guard and the Maritime Security Agency of Pakistan have begun patrolling the general area off the Sir Creek. The problem that arises is determining precisely which line they should patrol. In the last four years a number of fishermen from both countries who had strayed across the imaginary and fictitious boundary have been apprehended. Fortunately, they were mutually released at regular intervals. The patrolling vessels themselves have also intruded into the other's national EEZ, and the situation is fraught with dangerous possibilities.

While the rules of navigation under the United Nations Convention on the Law of the Sea (UNCLOS III⁸) grant a state warship the freedom to navigate through another country's EEZ, stopping in that EEZ and generally operating there is not permitted without prior notice or permission. Patrolling on the wrong side then becomes an intrusion, which at sea is a phenomena unlike that on land or in the air. It was almost a decade ago that an Indian oil drilling platform drilling east of Sir Creek was confronted by a Pakistani naval helicopter that attempted to land. Since then there have been many instances where misunderstandings have occurred in the zone of doubt.

What is being attempted, then, is the resolution of the India–Pakistan maritime boundary independent of the Sir Creek problem. This cannot be perceived as being against the interests of either country as it will remove one of the sore spots at sea, all of which have been caused by uncertainty on where the maritime boundary lies. Attempts at demarcating the maritime boundary between the two countries could proceed in two ways, both of which are described below.

The first method by which to draw the maritime boundary is to choose headlands far away from the termination of the land boundary and draw equidistant arcs starting with the first cut beyond 200 nautical miles from the coast. In this case the furthest two relevant headlands are Okhla and Karachi. Arcs are chosen so that the resulting distances do not produce too acute an angle for accurate chartwork. Proceeding inwards, the boundary takes a turn at a several points. This is normal and reflects the variations of the coasts of the two countries to which the maritime boundary must be sensitive. Moving inwards, it will not be possible to proceed any further than ten to twelve miles from the coast because the line must terminate at the end point of the land boundary. Closer than ten miles, the drawing of arcs is likely to prove impossible, and therefore the last ten miles will remain underdemarcated.

The second method consists of drawing perpendiculars from all the baselines. A baseline is obtained by drawing a straight line joining adjacent headlands so that the coast is converted into a number of straight lines. Perpendiculars are then drawn from the baselines of each country so that they intercept. This method is possible so long as the coast is not convex. The maritime boundary produced by this method will be largely similar to the first method, but will require that

⁸ Article 74 of Part V, EEX, UNCLOS, the Final Act.

the hydrographer proceeds outwards from the starting point. Demarcating 190 of the 200 nautical miles of a boundary will be an unusual step but will require a willingness of both parties to go forward. At present, it would appear that both parties are held back for other reasons.

Potential Naval Confidence Building Measures

Communications

One factor preventing the escalation of border incidents across the cease-fire line in Kashmir has been the hot line between the Directors General of Military Operations (DGMOs) at army headquarters. When the situation between the two countries worsens, there is an urgent need to start talking and keep talking. At sea, incidents are not going to be confined to any geographical area and any attempt to communicate must occur at the correct level. This level is not naval headquarters or the area command headquarters, but the ship or aircraft directly involved in the build up of the incident. The greatest number of "meetings" occur between maritime patrol aircraft (MPA) of one country and the ships of the other. This is normal. It would be advisable for the two sides to have an open channel of communication to avoid misunderstandings. For instance, an MPA may unwittingly stray across the landing circuit of a carrier and create an accident at worst, but certainly anxiety and hostility. Similarly the ships being kept under surveillance could be involved in a missile exercise which would endanger the aircraft. Patrol aircraft are unlikely to waste the opportunity of an encounter with ships of the other side and may use their sonobuoys to increase their sonic databases. The dropping of sonobuoys in the vicinity of ships is often a cause of misunderstanding, although there is no law against such an activity at sea. An undertaking by both sides to man the international airport approach frequency will ensure that when an incident arises, immediate communication can be established between aircraft and ships.

Ships of the two nations also often meet each other with one side not clear of the constraints affecting the other. Although an agreement exists today on the minimum distance beyond which ships should not close, it would be advisable to have a designated communication channel available for a quick conversation between officers of the watch. Though both sides may be silent out of pride and ego, knowing that the situation can be brought under control through a manned communication channel can nonetheless help to create confidence on both sides.

Submarine Operations

It is difficult to specify CBMs for maritime submarine operations, yet this is one area where CBMs are perhaps most needed. In modern peacetime naval operations, the submarine offers possibilities for reconnaissance and surveillance, which become counterproductive if its presence is compromised. States are unlikely to forgo the advantages of submarine operations and it helps both parties to know that a bad maneuver by a submarine captain will not precipitate escalation. UNCLOS III states that submarines must proceed on the surface when traveling through territorial

waters. Beyond this stipulation there is no special provision that applies solely to submarines. Submarines of the two countries could potentially meet and measures to disengage peacefully would be a useful CBM. Unidentified sonar contacts are always a source of tension and anxiety, particularly in advanced exercises where ships are already exercising with their own submarines under limited safety rules. On such occasions, the responsibility for safety undoubtedly lies with the submarine captains.

Nevertheless, the surface force or submarine involved in prosecuting an unidentified contact must have a procedure to signal the other that he could be in danger. On receiving this signal, the other submarine must act according to a set of procedures (steering predetermined courses at predetermined depths) to disengage. Follow on communications can take place at the diplomatic level. Submarine-to-submarine encounters which occurred during the Cold War have shown that each side often has to rely on sketchy sonic data to assess the situation on the other side. For instance, the opening of the forward torpedo doors, which is a prelude to firing torpedoes and makes a particular sound, might be confused with some other sound. In these situations, submarine commanders have very little time to decide what course of action to take.

Special Rules of the Road

The need for all vessels at sea to follow the international rules of the road is part of the International Maritime Convention as well as UNCLOS III. In addition to these rules, there are others that apply only to warships, with which most naval officers are familiar. These rules are adhered to internationally on a navy-to-navy basis, but largely in joint or combined exercises when the entire force is under one tactical command. It would be a substantial CBM for the two navies to agree formally to abide by these special “rules of the road.” They include priority given to the following:

- a large formation over a single vessel, the latter of which is advised not to pass through no matter what the relative right of way is;
- a carrier engaged in air operations that is constrained to flying into the wind;
- ships carrying out replenishment that are unable to alter course in a hurry; and
- minesweepers engaged in exercises with minesweeping gear streamed.

Air Defense Identification Zones over the Sea

Most nations have declared Air Defense Identification Zones (ADIZs) around major cities which they feel are exposed to hostile attack during war. The United States, for example, has two ADIZs off the East coast. One is a contiguous ADIZ and runs roughly 30 miles off the coast.⁹ The second is a coterminous ADIZ which in some places lies 180 miles off the coast. In the sub-

⁹See ADIZs in the combined operations map series (J7, K8, and F5) of the US-Soviet Agreement on Dangerous Military Activities.

continent, there are three ADIZs that influence air movement over the Arabian sea—the Pakistan South ADIZ, the India West ADIZ, and the Bombay ADIZ. The largest of these is the Bombay ADIZ, which contains the major offshore oil fields that lay almost 80-90 miles off the West coast. The methods by which the ADIZ rules are applied vary from country to country. It must be understood that any attempt to restrict flying over the sea would be in contravention of UNCLOS III and the centuries old concept of *Mare Nostrum*. According to UNCLOS, territorial airspace terminates where the territorial sea finishes. Beyond this the airspace is as free as the sea below.

In the sub-continent, where each navy requires that a certain amount of maritime patrolling be done, it is inevitable that this requirement would sooner or later clash with the concept of the ADIZ. But here again, it is a question of how each country will interpret an unidentified aircraft in the ADIZ. Since this is a grey area fraught with possible accusations on the infringement of airspace, it would be prudent to lay down some ground rules on airspace in the sub-continent.

Prevention of Acts likely to cause Incidents at Sea

This is an area well covered in the agreement signed between the Soviet and the US Navies signed in 1972, to prevent collision and other incidents at sea.¹⁰ Many of them are applicable in the Arabian sea and a short list of such items could be made prior to a conference on maritime CBMs between the two countries.

Environment Security

As we approach the end of the twentieth century, the concept of a contiguous ocean, integral in its susceptibility to pollution, has gained wide acceptance. This was perhaps not so a quarter century earlier when UNCLOS was agreed. Since then, Principle 21 of the Stockholm Declaration has stated that it is the responsibility of a state to ensure that damage caused to the ocean environment within its own national jurisdiction does not affect the marine environment of a neighboring state. The principle by its long existence and usage is now accepted as international law. The Rio Declaration supports this principle, stating that if precautionary measures could have been taken and were not, it would not constitute an excuse for a state accused of marine pollution. There is of course nothing like a clearly enunciated international law, and the nearest one comes to such a law is the 1982 UN Convention on the Law of the Sea, the proceedings of which are yet to be accepted by the international community.

¹⁰For more information on this agreement, please see the essay by David Winkler in this publication, "US-Soviet Maritime Confidence-Building Measures," and the appendix that follows his essay: "Highlights of the US-Soviet Incidents at Sea Agreement."

Marine Pollution

Anyone who has been distressed by the sight of the condition of the once pristine beach south of Bombay would have a counterpart in Pakistan who would be equally disturbed by the once beautiful beaches off Clifton. These are merely symptoms of the manner in which marine pollution in the Arabian sea has rapidly accelerated. The state of the beaches reflects the pollution in the seas, which in turn reflects the extent to which the land has polluted the sea. Land-based marine pollution is a complex problem because of the number of sources of pollution and their far reaching influences. Admittedly not all of these have an international impact, but there is good reason to be apprehensive about this for a number of reasons.

The great drainage systems in the North Arabian sea are the Indus and the Narmada. Both are enormous river systems with a number of polluting entries that are yet to be surveyed. If the state of the Ganga and Jamuna rivers are examples to go by, the river systems of the sub-continent are some of the most polluted in the world. The latter two rivers are now being cleaned up by a separate commission but no clean-up organizations exist for the Indus or the Narmada. The coastal current system, which flows north in the south west monsoon and south for the rest of the year ensures that the pollutants off the coast of one country are carried to the other. Similarly the tremendous outflow and inflow at the mouth of the Gulf of Kutch results in thirty-foot tidal ranges that produce currents of up to six knots. These currents move water to and from the Makran coast regularly, mixing the Indian and Pakistan pollutants.

Both countries have insufficient capital for universal sewage treatment plants. In any case, the number of people on the coast using lavatories that could lead to sewage treatment plants is probably less than twenty-five percent of the coastal population. Enormous amounts of human pollution arising from intestinal bacillus flow unchecked into the Arabian sea. Added to this is contamination from uncontrolled effluents flowing into the river from nitrogenic and phosphogenic fertilizer compounds. Both countries have an active nuclear power program and nuclear power plants that discharge effluents into the sea at Karachi and Tarapore.

The situation on the sub-continent is such that both politicians and the people have far too many other pressing problems to focus their attentions on international marine pollution. However, collecting and exchanging data in the region could be a good start. Neither country can afford a fragmented approach to an area so ecologically important.

Actors in future CBMs between the two countries should certainly be the Indian Coast Guard and the Pakistani Maritime Security Agency. In most issues concerning environmental security, these organizations will have the responsibility for executing any agreement reached by political delegations. If navies meet, coast guards meet even more frequently, and these two organizations should begin to talk to each other as early as possible while the canvas is still blank.

Oil Spills

While there have been no major oil spills in the Arabian sea, a number of minor ones have kept the Indian Coast Guard and Indian state governments active. Oil spills do not respect maritime boundaries, and one of the largest oil off-loading terminals in India is only 120 miles from the maritime boundary. At present, the only service possessing any oil spill cleaning facility is the Indian Coast Guard, which could be tasked with the region as a whole instead of only the Indian EEZ. A good example of marine cooperation in this respect is the Bilateral Oil Spill Contingency Agreement signed between the United States and the Soviet Union for the Bering and Aleutian seas in 1989. Within the context of this agreement, the US Coast Guard and the Soviet Ministry of Marine transportation have concluded a readiness plan for an emergency oil spill cleanup; this could form a good framework for a similar Indo-Pak agreement.

Marine Life

Fish and marine life know no boundaries. Fishermen know this better than anyone, and their attempts to follow fish stocks often land them in trouble with law enforcement agencies of neighboring states. Trouble between Indian and Pakistani fishermen results from the migratory nature of prawns off the Kutch coast. The short term solution of keeping the national fishing fleets within the respective EEZs only results in over-fishing in one of the EEZs. Where fish stocks straddle maritime boundaries it has always been found expedient to come to an agreement on fishing limits. Tensions stemming from current transgressions by fishermen of one nation into the EEZ of another could be tempered if they were legitimized and the catch monitored so that reciprocal fishing rights are granted in return. Such agreements exist both in the North Pacific and in the North Atlantic. A good example is the US-USSR agreement on Mutual Fishing Relations signed in May 1988. This agreement allows equal catches in each other's waters and has provisions that protect marine mammals. It is enforceable by fishing protection officers who can board vessels to inspect catches.

Hydrography

The Indian Navy possesses probably the fourth largest hydrographic service in the world. Hydrographic services are loaned to other countries on payment and the chief hydrographer in Dehra Dun provides arguably the cheapest hydrographic service in the world. The Indian Navy is also the coordinator for a specific navigational area, Navarea VIII, and the Pakistan Navy has a small responsibility in another, Navarea IX.¹¹ The Pakistan Navy has a small hydrographic service but is not capable of issuing world class navigation charts. The Indian hydrographic

¹¹By international agreement the world has been divided into a number of navigational areas, or "Navareas." Within each one there are one or more designated agencies that hydrographically survey the area, publish charts, and issue "Notices to Mariners." This last function keeps mariners updated on the establishment, removal, or discovery of navigational aids and hazards.

service has resurveyed the entire peninsula and has the capacity to train surveyors and undertake hydrographic surveys in the neighborhood. It would make eminent sense for the Pakistan Navy to use the hydrographic facilities of the Indian Navy to train its hydrographers, and to sub-contract to the Indian Navy those surveys which are unclassified and have no bearing on national security. This would enhance the standard of navigation charts available to the whole area. Pakistan's own hydrographic service could continue to survey those areas not considered suitable for sub-contracting to other parties. The level of participation in mutual assistance here is a matter of detail, but an agreement between the two navies on cooperation in hydrography makes much sense.

Conclusion

A promising start was made in 1991 on conflict resolution and confidence building in South Asia. The initial momentum has been lost completely and this area remains virtually unexplored. In many ways this may be a blessing as other areas where negotiations have gone on for a number of years have produced bad bureaucratic memories. These memories become the baggage of a new delegation which in many ways is handicapped even before it begins its work. In the limited encounters that have been held on sea-based activities, the experience has been good. If there is a lesson at all to be learned from these kind of negotiations, it is that people at the lower technical levels will find it easier to come to an agreement. Unfortunately, they lack the political clout to do so. Perhaps an important first-step CBM would be to open up the lines of communication within bureaucracies, so that progress may be made at the appropriate state-to-state level.

Contributors

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