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## **Application of INCSEA Principles to the Taiwan Strait**

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SAND 2003-1963  
Unlimited Release  
June 2003

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to the Taiwan Strait*

*Commander Wen-Chung Chai*  
**Taiwan Navy**

Cooperative Monitoring Center Occasional Paper/30

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## ***Application of INCSEA Principles to the Taiwan Strait***

### **Abstract**

The waters surrounding Taiwan are important international waterways. In addition to merchant ships of every nation, the warships of the United States, Japan, Russia, and China may appear in these waters. No hostility is expected between Taiwan and the United States, Japan, or Russia; however, Taiwan and China have a tense relationship, and both sides face a potential for naval incidents. As Taiwan and China expand their naval capability, the International Maritime Organization Convention for the International Regulations for Preventing Collisions at Sea may not be sufficient to prevent naval incidents, any of which might develop into conflict or war. Therefore, China and Taiwan need to develop maritime confidence building measures (CBMs) that could reduce the chance of naval incidents and strengthen mutual trust and confidence.

Among the variety of maritime CBM concepts for military purposes, the most successful and effective measure has been the 1972 U.S.-Soviet Union Agreement on the Prevention of Incidents On and Over the High Seas (INCSEA). The success of the agreement demonstrates that CBMs represent a workable alternative to traditional arms controls. The purpose of this paper is to suggest a concrete approach to the constraint of naval activities between China and Taiwan to reduce accidents and misunderstandings. This paper outlines the categories and characteristics of incidents at sea. Next, the author identifies the successful factors of the U.S.-Soviet INCSEA and applies the INCSEA concept to the Taiwan Strait. Finally, the author develops a framework of options and a step-by-step approach for establishing an INCSEA between Taiwan and China.

## **Acronyms**

AOE	area of responsibility
ASW	anti-submarine warfare
CBM	confidence building measure
CUES	Code for Unalerted Encounters at Sea
CSCAP	Council for Security Cooperation in the Asia Pacific
DMAA	Dangerous Military Activities Agreement
EEZ	Exclusive Economic Zone
IGCC	Institute on Global Conflict and Cooperation
INCSEA	Incidents at Sea and also used to identify the Agreement on the Prevention of Incidents On and Over the High Seas between the US and Soviet Union
nm	nautical mile
PRC	People's Republic of China
ROE	rules of engagement
SAR	search and rescue
WPNS	Western Pacific Naval Symposium

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# ***Application of INCSEA Principles to the Taiwan Strait***

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## **Executive Summary**

In the broadest sense, the term “incident at sea”(or “INCSEA”) means an action on the high seas by a ship or plane that endangers, or is alleged to endanger, another vessel or aircraft. Incidents at sea have been classified into the following categories: dangerous maneuvers, close air surveillance (e.g., “buzzing”), simulated attacks, accidental firing during exercises, or other harassment. The dangers of naval incidents fall into three categories:

1. The physical danger to lives and vessels posed by a collision
2. The possibility that an incident, even if relatively minor in itself, will provoke a crisis or even war
3. The risk of direct and immediate combat and escalation as a result of misinterpretation or misperception of an incident by local commanders

As Taiwan and China expand their naval capability, the International Maritime Organization Convention for the International Regulations for Preventing Collisions at Sea may not be sufficient to prevent naval incidents, any of which might develop into conflict or war. Therefore, China and Taiwan need to develop maritime confidence building measures (CBMs) that could reduce the chance of naval incidents and strengthen mutual trust and confidence.

Among the variety of maritime CBM concepts for military purposes, one of the most successful and effective measures has been the 1972 U.S.-Soviet Union Agreement on the Prevention of Incidents On and Over the High Seas (INCSEA) and its many successors. The success of the agreement demonstrates that CBMs represent a workable alternative to traditional arms controls. The factors that contributed to the success of INCSEA include mutual interest in preserving naval assets; simplicity of approach without complex regulations; the professionalism of the drafters of the agreement, who were naval personnel, not diplomatic personnel; advance preparation of materials for review sessions; a lack of publicity; verifiability and accountability of the data; and a common culture and terminology.

Due to current differences on the “One China Policy,” both sides may not be able to discuss an INCSEA. However, Taiwan and China continue to expand their naval capability. If the two parties fail to manage and control naval vessel operations in the future, an unintended naval confrontation could develop into armed conflict. By reviewing naval history, we can find that a small, unintended accident at sea could unwittingly ignite and escalate hostility between participants. Although the U.S.-Soviet INCSEA does not completely match the requirements of the Taiwan Strait, the concept could be translated to naval operations in the littoral waters between Taiwan and China. Most generally, an INCSEA would provide articles for preventing incidents, opening up channels of communication between the two navies, and conducting an annual

review meeting, which would allow continuing mutual contact between naval professionals of the two sides. China and Taiwan might consider the following ideas:

- Defining and clarifying the extent of the jurisdiction in the Taiwan Strait, particularly in the Kinmen and Matsu waters
- Adopting a set of rules to govern air-to-air and air-to-sea encounters, including procedures for preventing aircraft collisions
- Making creative and explicit provisions for its application to the operation of ships in disputed waters, for example, disputed territorial waters and overlapping exclusive economic zones (EEZs), without prejudice to claims of either side
- Defining procedures governing prior notification of the intent to conduct naval exercises in the overlapping EEZs
- Discussing the applicability of the INCSEA to all government vessels
- Defining procedures to prevent the collision of submarines with other undersea craft and with surface vessels
- Deciding the minimum permissible distances for the approach of ships and aircraft in the sensitive areas
- Adopting transparency concerning rules of engagement (ROEs) in self-defense actions.

Given the long history of tension between Taiwan and China, the negotiation of an INCSEA is unlikely in the short term. Therefore, it might be most useful if Track II processes or a third party could help build naval contacts to establish mutual confidence. In the early stages, implementation methods could include exchanges between retired naval officers; active duty naval officer participation in Track II security dialogues and assignment to third party institutions; observation of U.S.-led naval exercises (under U.S. agreement); developing maritime cooperation in the areas of anti-smuggling, anti-piracy, protection of trade routes, maritime research, and oceanographic and meteorological data collection; and working together on search and rescue (SAR) efforts.

Taiwan and China are in a tense situation with a high potential for naval accidents in the Taiwan Strait. An INCSEA would not resolve any of the political differences that are the basic causes of cross-Strait rivalry and could not prevent the deliberate initiation of war. However, an INCSEA could reduce the possibility of unintentional conflict arising from mutual suspicion or error. Moreover, by creating a dialogue between naval professionals, an INCSEA might stimulate dialogue on other military CBMs.

In the short term, Taiwan and China seem unlikely to negotiate an INCSEA. Several “peaceful use of military forces” approaches could be initiated that would strengthen naval cooperation in civilian sectors such as anti-smuggling, anti-piracy, search and rescue, and the protection of the sea lines of communication. These initial approaches could expand the frequency of naval contacts. The resulting strengthened mutual trust and confidence between naval officers might pave the way for an eventual INCSEA between Taiwan and China.

# *Application of INCSEA Principles to the Taiwan Strait*

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## 1. Categories and Characteristics of Incidents at Sea

### 1.1. *Categories of Incidents at Sea*

In the broadest sense, “incident at sea” means an action on the high seas by a ship or plane that endangers, or is alleged to endanger, another vessel or aircraft. Incidents at sea can be divided into the following categories:<sup>1</sup>

- **Dangerous maneuvers.** Naval units in proximity can engage in a variety of maneuvers that force other vessels to take evasive action to avoid imminent collisions. Many incidents of this sort have occurred during carrier operations or refueling at sea.
- **Close air surveillance (“buzzing”).** One side’s aircraft passes closely to opposing vessels for reconnaissance or harassment purposes.
- **Simulated attacks.** Naval vessels have simulated attacks by aiming guns, missile launchers, torpedo tubes, fire-control radars, other weapons, and sensor systems at each other’s ships and planes.
- **Accidental firing during exercises.** Naval exercises involving the use of live ammunition obviously can endanger warships or merchant vessels that stray into the area. The absence of prior notification of exercises and the interest of both countries in observing the other’s maneuvers as closely as possible increase the probability of such incidents.
- **Other harassment.** Vessels of each side can harass one another at sea in a variety of ways, e.g., illuminating the bridge of an opposing vessel with powerful searchlights, firing flares, and using laser devices.

In the Cold War decade of the 1960s, as the Soviet Union developed a blue-water navy, a series of dangerous incidents between United States and Soviet ships and aircraft occurred at sea. For example, Soviet warships collided with the American destroyer U.S.S. Walker in the Sea of Japan when it maneuvered to prevent interference with carrier operations in 1967.<sup>2</sup> Another serious situation occurred in 1968, when a Soviet maritime patrol bomber made a low pass over the carrier U.S.S. Essex in the North Sea and then, while turning to make another run, flew too

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<sup>1</sup> Sean M. Lynn-Jones, “A Quiet Success for Arms Control: Preventing Incidents at Sea,” pp. 361-363.

<sup>2</sup> David Griffiths, “Catalyst for Confidence: 25 Years of INCSEA,” *Maritime Affairs*, available at [http://www.naval.ca/article/griffiths/incsea\\_bydavidgriffiths.html](http://www.naval.ca/article/griffiths/incsea_bydavidgriffiths.html).

low and crashed into the ocean, killing all the crew.<sup>3</sup> In order to prevent navy-to-navy confrontation from escalating to conflict and war, the United States and the Soviet Union negotiated and signed the Agreement on the Prevention of Incidents at Sea (INCSEA) in 1972.

## **1.2. Characteristics of Incidents at Sea**

Why did hundreds of incidents at sea occur between the United States and the former Soviet Union? Although there is a less intense rivalry between the United States and China, how could they have had two serious confrontations in 1994 and 2001, respectively?<sup>4</sup> Do incidents at sea stem from intentional policy or are they independent of the two sides' naval headquarters? Through understanding the characteristics of incidents at sea, the author identifies the causes and motivations as well as the methods available for the prevention of such incidents. In general, the characteristics for the incidents can be summarized as follows:

**Incidents at sea are variations of gunboat diplomacy.** These actions constitute limited applications of naval force to achieve some political objectives. In effect, harassment or dangerous maneuvering at sea gives one navy an "action language" for signaling hostile naval and political leaders.<sup>5</sup> These actions demonstrate that ships and naval aviation exist; opposing leaders should consider these capabilities in the event of conflict or war. Under these circumstances, the incidents at sea grew partly out of perceived military need, but often were politically motivated in the tradition of "gunboat diplomacy."<sup>6</sup>

**Incidents at sea often possess "outburst" characteristics, increasing tensions and raising the risk of war.** Naval history has record of many incidents at sea that have increased tensions and developed into sea wars. The best examples include the War of Jenkins' Ear between Great Britain and Spain (1739-1741),<sup>7</sup> the Dogger Bank affair between Great Britain

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<sup>3</sup> Charles A. Meconis, "U.S.-China Confidence-Building More Important Than Detargeting," *Global Beat Issue Brief*, available at <http://www.nyu.edu/globalbat/pubs/ib39.html>.

<sup>4</sup> In the first example, a People's Republic of China (PRC) nuclear submarine and the carrier U.S.S. Kitty Hawk carrier battle group confronted each other on October 27 to 29, 1994, in the Yellow Sea. A U.S. anti-submarine aircraft from the Kitty Hawk detected the Chinese nuclear submarine off Shandong. Then the U.S. aircraft dropped sonobuoys and continued to track it. In response, the PRC dispatched jet fighters that intercepted the U.S. Navy antisubmarine warfare aircraft. No shots were fired, but there was no communication between the two sides. The naval confrontation ended when the submarine returned to base at Qingdao. The second example was a PRC F-8 fighter "buzzing" a U.S. Navy EP-3 surveillance aircraft off Haiwan Island on April 1, 2001. The Chinese jet collided with the U.S. aircraft, which made an emergency landing at Haiwan Island. The damaged Chinese jet plunged into the sea and the pilot was lost at sea. For detailed information, see Michael D. Wallace and Charles A. Meconis, *New Powers, Old Patterns: Dangers of the Naval Buildup in the Asia Pacific Region* (Canada: The University of British Columbia, 1995), p. 4, and Gerry J. Gilmore, "Chinese Jet Struck Navy EP-3 Aircraft, Rumsfeld Says," [http://www.defenselink.mil/news/Apr2001/n04132001\\_200104135.html](http://www.defenselink.mil/news/Apr2001/n04132001_200104135.html).

<sup>5</sup> Charles C. Petersen, "Showing the Flag," in Bradford Dismukes and James M. McConnell, eds., *Soviet Naval Diplomacy* (New York: Pergamon Press, 1979), p. 105.

<sup>6</sup> Cathleen S. Fisher, "Controlling High-Risk U.S. and Soviet Naval Operations," quoted in Barry M. Blechman et al., *Naval Arms Control: A Strategic Assessment* (New York: St. Martin's Press, 1991), p. 80.

<sup>7</sup> This struggle between England and Spain was based on commercial rivalry and it was caused by British attempts to get around the trade provisions of the Peace of Utrecht in 1714 that had ended the War of the Spanish Succession. British merchants were unhappy with the limitations placed on trade with Spain's American colonies

and Russia during the Russo-Japanese War (1904),<sup>8</sup> the Gulf of Tonkin incident between the United States and North Vietnam (1964),<sup>9</sup> and the U.S.S. Pueblo incident between the United States and North Korea (1968).<sup>10</sup> The above-mentioned incidents at sea, which could have triggered major armed conflict, all occurred unexpectedly.

Incidents at sea derived from using harassment or dangerous activities for military purposes. In addition to political purposes, a more prevalent motive appears to be the desire to collect intelligence on the other side's military readiness, capabilities, and performance. Games of "cat-and-mouse" between both sides' anti-submarine assets and submarine forces are played in order to test the other's submarine performances and anti-submarine capabilities.<sup>11</sup> Without restrictions, these sometimes result in collisions, which may damage equipment or injure crew, and furthermore carry the risk of escalation.

Incidents at sea are highly related to the special naval culture. Provocative naval activities may serve as a powerful argument in the justification of large navies to domestic publics and

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and resorted to smuggling. In 1731, Captain Robert Jenkins, a British smuggler, allegedly lost his ear when it was cut off during a fracas after his ship had been stopped and boarded by a Spanish vessel. In 1738, the incident became an issue when Jenkins exhibited his severed ear to the English House of Commons and the uproar was exploited by proponents of war with Spain. The British Prime Minister, Robert Walpole, then reluctantly declared war on October 23, 1739. See Alfred Thayer Mahan, *The Influence of Sea Power upon 1660-1783* (Boston: Little, Brown, and Company, 1980), pp. 232-253; <http://www.simonides.org/links/wars/wars-1700/1739-jenkins/jenkins.html>; and <http://www2.wikipedia.com/wiki/War+of+Jenkins+Ear>.

<sup>8</sup> This is a classic case of a naval incident that brought the countries involved to the brink of war. In 1904, the Russian Baltic Fleet began the long voyage toward the Tsushima Straits. A jittery Russian captain, confused by fog during the night, bombarded British trawlers, sinking one, damaging five, and leaving two fishermen dead and six wounded. This incident incensed the British public. King Edward VII, Admiral John Fisher, and others urged a military response. In addition, the British fleet was poised to intercept the Russians as they steamed southward. Eventually, the Russians complied with the British demand that those responsible for the incident be put ashore to face a tribunal. They also pledged to avoid any repetition of such errors in judgment. See Richard Ned Lebow, "Accidents and Crises: The Dogger Bank Affair," *Naval War College Review*, Vol. 31, No. 1, Summer 1978, pp. 66-75, quoted in Sean M. Lynn-Jones, "A Quiet Success for Arms Control: Preventing Incidents at Sea," pp. 368-369.

<sup>9</sup> On August 2, 1964, the U.S.S. Maddox, a destroyer, was attacked by three North Vietnamese PT boats in international waters. The high-speed vessels launched at least four torpedoes and fired their 14.5-mm deck guns at the ship. For the next two days, the U.S. destroyer Turner Joy was also struck by North Vietnamese vessels. In response to these two allegedly unprovoked attacks, the U.S. Congress passed the Tonkin Gulf Resolution. In order to prevent further aggression, Congress authorized President Johnson to take necessary measures to repel any armed attack against the forces of the United States. Thus, these incidents at sea served as the principal Constitutional authorization for the subsequent vast escalation of the U.S. military involvement in the Vietnam War. See "Gulf of Tonkin Resolution," in the *Encyclopedia Britannica*, available at <http://www.britannica>; and <http://home.pacbell.net/lchevato/tonkin.htm>.

<sup>10</sup> The U.S.S. Pueblo was on an intelligence mission off the coast of North Korea. On January 23, 1968, it was attacked by North Korean naval vessels and MiG jets, killing one crewmember and wounding several others. The eighty-two surviving crewmembers were captured and held prisoner for 11 months. When this incident occurred, the American public was incensed and requested President Johnson to use military operations to rescue the hostages. Because of its deep involvement in the Vietnam War, the U.S. Government adopted negotiation measures to resolve this incident. See Paul B. Ryan, *First Line of Defense: The U.S. Navy Since 1945* (Stanford, California: Hoover Institution Press, 1981), pp. 43-44; and <http://www.usspueblo.org/>.

<sup>11</sup> Cathleen S. Fisher, "Controlling High-Risk U.S. and Soviet Naval Operations," quoted in Barry M. Blechman et al., *Naval Arms Control: A Strategic Assessment* (New York: St. Martin's Press, 1991), p. 69.

political leaders. For a navy, operational contact between it and its potential adversary is viewed as a special and valued “dividend” which the navy, alone among the services, has enjoyed.<sup>12</sup> In addition, because the navy has a singular tradition of autonomy, the naval commander, particularly a submarine captain, is apt to consider himself an independent operator, who may take provocative actions without prior authorization. Such incidents lend some support to the view that incidents are caused by “peppery ship captains,” rather than risk-prone political leaders.<sup>13</sup>

Through the previous analysis, we can divide the dangers of naval incidents into three categories: (1) the physical danger to lives and vessels posed by a collision; (2) the possibility that an incident, even if relatively minor in itself, will provoke a crisis or even war; and (3) the risk of direct and immediate combat and escalation as a result of misinterpretation or misperception of an incident by local commanders.<sup>14</sup> For the first category, the 1972 International Regulations for Preventing Collisions at Sea should have sufficed.<sup>15</sup> For the second and third categories, we must define acts to be avoided so as not to invite misunderstanding. Therefore, an incidents at sea agreement may identify the following set of potential objectives: (1) reducing opportunities for gun-boat diplomacy or the political exploitation of naval power; (2) reducing the likelihood of naval incidents; (3) reducing the danger of inadvertent escalation of naval incidents in peacetime or during crises; and (4) reducing the danger of surprise attack.<sup>16</sup>

## **2. Factors Contributing to the Success of the U.S.-Soviet INCSEA**

With the increasing frequency and severity of U.S.-Soviet naval incidents, the U.S. proposed “Safety on the Sea” to the Soviet Union. Two years later, the Soviets responded by proposing that negotiations be opened in the spring of 1971. Having formulated its position, the United States accepted the Soviet Union’s offer to negotiate in June 1971 and discussions began in Moscow in October of that year. The U.S.-Soviet Union Agreement on the Prevention of Incidents On and Over the High Seas was formally signed on May 25, 1972, during a Moscow summit meeting.

Even though the INCSEA did not eliminate all naval incidents, it is generally regarded as a success. In the late 1960s, the number of serious incidents exceeded 100 per year, but Secretary of the Navy John Lehman, Jr., reported that there were only about 40 potentially dangerous incidents between June 1982 and June 1983. Lehman attributed this substantial reduction in

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<sup>12</sup> *New York Times*, October 3, 1982, quoted in Cathleen S. Fisher, “Controlling High-Risk U.S. and Soviet Naval Operations,” quoted in Barry M. Blechman et al., *Naval Arms Control: A Strategic Assessment* (New York: St. Martin’s Press, 1991), p. 69.

<sup>13</sup> Elmo R. Zumwalt, Jr., *On Watch* (New York: New York Times Book Co., 1976), p. 394.

<sup>14</sup> Sean M. Lynn-Jones, “A Quiet Success for Arms Control: Preventing Incidents at Sea,” p. 367.

<sup>15</sup> Carsten A. Lütken, “Confidence and Security Building—a Naval Perspective,” quoted in Sverre Lodgaard, ed., *Naval Arms Control* (London, U.K.: Sage Publications, 1990), p. 139.

<sup>16</sup> Johan Jørgen Holst, “Northern Europe and the High North,” quoted in Sverre Lodgaard, ed., *Naval Arms Control* (London, U.K.: Sage Publications, 1990), pp. 53-54; Sverre Lodgaard and John P. Holdren, “Naval Arms Control,” quoted in Sverre Lodgaard, ed., *Naval Arms Control* (London, U.K.: Sage Publications), 1990, p. 16; and Carsten A. Lütken, “Confidence and Security Building – A Naval Perspective,” quoted in Sverre Lodgaard, ed., *Naval Arms Control* (London, U.K.: Sage Publications, 1990), p. 139.

collisions and near-collisions to the INCSEA.<sup>17</sup> During the past nearly 30 years, the INCSEA passed two severe tests: the Yom Kippur War in 1973 and the crisis resulting from the Soviets shooting down Korean Airline Flight 007 in 1983. In addition, the INCSEA also successfully survived other periods of the diplomatic tension between the U.S. and the Soviet Union. Moreover, the INCSEA concept provided a model for Dangerous Military Activities Agreements (DMAA), which address sea, land, and air forces, and areas other than the high seas. As Canadian scholar David N. Griffiths noted: "INCSEA has become one of the most enduring and resilient of all confidence building measures (CBMs)."<sup>18</sup>

Why has the INCSEA continued for more than 30 years? What reasons made the agreement successful? What are the differences between INCSEA and other CBMs? The INCSEA concept succeeded because of a variety of factors, as described by David Winkler and Mark J. Valencia.<sup>19</sup> These factors can be summarized as follows:

### **2.1. Mutual Interest**

Compared to armies and air forces, navies have fewer platforms, making each naval combatant vessel a valuable military asset for a nation. Under these circumstances, neither country wants its ships to be damaged or sunk by collision. Moreover, no country wants a naval incident to escalate to a conflict or crisis.

### **2.2. Simplicity**

The INCSEA did not introduce complex regulations. This agreement simply reinforced and complemented the principles and rules of international law. For navy personnel, simplicity meant that it was easier to codify, condense into operational instructions, and execute.

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<sup>17</sup> "Superpowers Maneuvering for Supremacy on High Seas," *The Washington Post*, April 4, 1984, p. A18; and "Soviet Sub Bumps into U.S. Carrier," *The Washington Post*, March 22, 1984, p. A28, quoted in Sean M. Lynn-Jones, "A Quiet Success for Arms Control: Preventing Incidents at Sea," p. 381.

<sup>18</sup> David N. Griffiths, *Maritime Aspects of Arms Control and Security Improvement in the Middle East*, Policy Paper No. 56 (California: Institute on Global Conflict and Cooperation of the University of California, 2000), p. 8.

<sup>19</sup> David Winkler states that the success factors of the INCSEA include mutual interest, simplicity, professionalism, preparation, hospitality, discretion, verifiability and accountability. Mark J. Valencia believes the reasons for the INCSEA's positive track record can be summarized as both sides' best interests, simplicity, professionalism, preparation, atmospherics, lack of publicity/visibility, and verification/accountability. See David F. Winkler, "US-Soviet Maritime Confidence-Building Measures," in Jill R. Junnola, ed., *Maritime Confidence Building in Regions of Tension* (Washington, D.C.: The Henry L. Stimson Center, 1996), quoted in David N. Griffiths, *Maritime Aspects of Arms Control and Security Improvement in the Middle East*, pp. 9-10; and Mark J. Valencia, "Maritime Confidence and Security Building Measures in Asia: Obstacles and Opportunities," in Taiwan CBMs Workshop, October 15-18, 2001, at the Cooperative Monitoring Center, Sandia National Laboratories, unpublished, pp. 17-19.

### **2.3. Professionalism**

The contents of the INCSEA were negotiated by sailors and naval aviators, not by diplomats. In addition, all delegates to annual consultations are sailors or naval aviators; therefore, discussion tends to be professional and nonpolitical. During the negotiations, the Soviets were apparently pleased that incidents could be discussed between “brothers at sea.”<sup>20</sup> An INCSEA may help minimize political interference and permit the navies to handle such incidents.

### **2.4. Preparation**

Whenever an incident occurred, the reported violation was passed to the other nation’s naval attaché well in advance of the annual review, allowing the accused transgressor the opportunity to investigate. Also, both sides entered the annual review with the benefit of a set agenda and confidence that there should be no surprises.

### **2.5. Lack of Publicity and Visibility**

The execution of this agreement may have been facilitated by the lack of publicity or visibility. Because the INCSEA is not a treaty, it was not subjected to public debate in the U.S. Senate. Thus, this agreement avoided domestic politicization at the start, a hurdle that has been fatal to some other accords. Meetings of both sides were conducted privately, outside the glare of publicity. The consultation contained no posturing or excessive rhetoric, simply because there was no audience for such rhetoric.<sup>21</sup>

### **2.6. Verifiability and Accountability**

During the negotiation period, the United States and the Soviet Union did not discuss verification measures. However, incidents at sea by their very nature are very visible. In addition, photographs, videotapes, sea charts, navigation logs, and machinery records can be used to demonstrate which party was at fault at the annual consultation meeting. When fault is identified, the offending side usually acknowledges its responsibility willingly and takes action to correct the problem. These approaches may help deter reoccurrence of the situation and rein in potential transgressors.

### **2.7. Common Culture and Terminology**

Common culture and terminology is a factor often neglected by the public and political leaders. Worldwide, navies share a relatively universal tradition of behavior, customs, and ceremonies. Similarly, some operational terminology has been used among worldwide navies for a long time. This unique cultural environment provides a mutual respect that is conducive to consultations, even among antagonistic navies. The effectiveness of the INCSEA has lasted even after the

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<sup>20</sup> Sean M. Lynn-Jones, “A Quiet Success for Arms Control: Preventing Incidents at Sea,” p. 380.

<sup>21</sup> Steven Miller, “CBMs in the Maritime Arena,” in Shai Feldman, ed., *Confidence Building and Verification: Prospects in the Middle East* (Jerusalem, Israel: Tel Aviv University, Jaffee Center for Strategic Studies, 1994), p. 74.

Soviet Union collapsed. Although the INCSEA is a relic of the Cold War, its concept continues to be a valuable guide for establishing military CBMs at sea. Russia has 11 bilateral INCSEAs in addition to that with the United States. In addition, the United States and China, and Germany and Poland also have INCSEAs. Despite the changes in context from the U.S.-Soviet Union situation, the main features and framework remained identical. Therefore, the INCSEA is not only a proven CBM, but also a precursor of military-to-military consultation. As President Nixon stated, the INCSEA was "aimed at significantly reducing the chances of dangerous incidents between our ships and aircraft at sea" and had a "direct bearing on the search for peace and security in the world."<sup>22</sup>

### 3. Applying the INCSEA Concept to the Taiwan Strait

As previously noted, Taiwan and China have a high probability of naval confrontation in the Taiwan Strait. Thus, this paper focuses on how to apply the INCSEA concept to the Taiwan Strait. Even though the existing INCSEAs have been successfully applied between various nations, the existing INCSEAs are not necessarily good models for the Taiwan Strait. The political, military, and geographical conditions of each region will vary enormously. Simply proposing an idea that has worked in another context and expecting it to be effective in a new area would be a mistake. In the following, the implications of applying the INCSEA concept to the Taiwan Strait are discussed.

First, all existing INCSEAs are intended to deal with ships of blue-water navies meeting on the high seas, beyond territorial waters. However, potential naval confrontations of Taiwan and China often appear in the Exclusive Economic Zone (EEZ), territorial waters, and even inner waters. For example, approximately once a week, a Taiwanese transport ship delivers support materials to troops on Kinmen Island, which is inside the inner waters of Mainland China. A Taiwanese frigate or destroyer escorts the transport, stopping 3 to 5 nautical miles (nm) off the mainland port of Xiamen. Mainland China bases coastal protection gunboats at Xiamen and Mainland naval frigates and destroyers transit this area. Operating within close range on a weekly basis affords frequent opportunities for an accident or misjudgment within China's inner waters. Therefore, an INCSEA for Taiwan and China not only concerns blue-water naval operations, but also involves issues of jurisdiction and sovereignty within territorial waters. Under these circumstances, an INCSEA is hardly viewed as a "service-to-service" consultation or "staff talks," because it inevitably involves complex political factors.

Second, accidents at sea can be expected not from the size of the fleets in question, but rather from their size proportional to the maritime space in which they operate.<sup>23</sup> Because the maritime geography of the Taiwan Strait is a semi-closed sea, it has a higher probability of accidents than open seas. In addition, Taiwanese and Chinese naval vessels are often involved in anti-smuggling operations. For instance, in May 2001 the *Tsaifu No. 1* was apprehended

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<sup>22</sup> Richard M. Nixon, "The Moscow Summit: New Opportunities in U.S.-Soviet Relations," *Department of State Bulletin*, June 26, 1972, p. 856, quoted in Sean M. Lynn-Jones, "A Quiet Success for Arms Control: Preventing Incidents at Sea," p. 379.

<sup>23</sup> Paul Bracken, "Naval Cooperation in Northeast Asia," *The Korean Journal of Defense Analysis*, Vol. IX, No. 1, Summer 1997, p. 205.

northeast of Taiwan, allegedly selling diesel fuel to Chinese fishing boats. Armed Chinese Coast Guard personnel were preparing to tow the offending vessel to the Mainland when Taiwanese vessels (two Coast Guard and one naval frigate) arrived to intervene. In order to prevent law enforcement activities from resulting in military confrontation, an INCSEA between Taiwan and China should be as broadly applicable as possible, including vessels of the Coast Guard, Fisheries Patrol, and Customs.

Third, none of the existing INCSEAs deal with submerged submarine operations. In fact, because of the difficulty of communication between surface vessels and submarines, accidents at sea involving submarines are always more serious than collisions of surface vessels. Recently, China introduced some state-of-the-art "Kilo" class submarines from Russia; Taiwan is also attempting to acquire new diesel-electric submarines from the United States.<sup>24</sup> In a few years, there may be many submarines in the Taiwan Strait. In addition, anti-submarine warfare (ASW) capability is also increasing with the consequent probability that "intruder" submarines may be detected.<sup>25</sup> Under these circumstances, it may be necessary to discuss the safety and accidents of submerged submarines.

Fourth, domestic politicization may become an obstacle of INCSEA negotiation between Taiwan and China. As noted previously, little publicity and low visibility were important factors during U.S.-Soviet Union INCSEA negotiation and execution. The U.S. Navy apparently believes that lack of publicity has contributed to the success of the agreement and has done little to call public attention to it. Considering the long-standing hostility between Taiwan and China, an INCSEA negotiation would be viewed as a milestone in cross-Strait relations. In Taiwan, lawmakers, politicians, the press, and scholars would all express their opinions. Conversely, the authoritarian government of China does not permit bilateral negotiation beyond party or central control. Therefore, political rhetoric and unreasonable demands may interfere with the purely operational negotiation between the two sides' navies.

Fifth, the U.S.-Soviet INCSEA preferred to stress good judgment and general principles, rather than specification of many exact details. Oversimplification of articles of this agreement may become a potential source of misjudgment and misunderstanding between the navies of Taiwan and China. For a long time, the navies of Taiwan and China have been isolated from worldwide naval affairs. Under these circumstances, both navies lack experience in dealing with international law and communication with foreign vessels. Therefore, an INCSEA across the Taiwan Strait may need to adopt more detailed articles than the U.S.-Soviet INCSEA model. Moreover, a "distance formula," which contains fixed permissible distances for the approach of ships and aircraft, may be necessary for sensitive areas, such as the waters surrounding Kinmen and Matsu Islands.

Due to current differences on the "One China Policy," both sides may not be able to discuss an INCSEA. However, Taiwan and China continue to expand their naval capability. If the two parties fail to manage and control naval vessel operations in the future, an unintended naval

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<sup>24</sup> In April 2001, the Bush administration agreed to sell eight submarines to the Taiwan Navy.

<sup>25</sup> Commodore Sam Bateman, "Asia-Pacific Maritime Confidence Building," in Jill R. Junnola, ed., *Maritime Confidence Building in Regions of Tension* (Washington, D.C.: The Henry L. Stimson Center, 1996), p. 46.

confrontation could develop into armed conflict. By reviewing naval history, we can find that a small, unintended accident at sea could unwittingly ignite and escalate hostility between participants. Although the U.S.-Soviet INCSEA does not completely match the requirements of the Taiwan Strait, the concept could be translated to green-water navy operations in the littoral waters between Taiwan and China. Most generally, an INCSEA would provide articles for preventing incidents, opening up channels of communication between the two navies, and conducting an annual review meeting, which would allow continuing mutual contact between naval professionals of the two sides.<sup>26</sup>

## 4. Framework and Procedures for Establishing an INCSEA Across the Taiwan Strait

The major purposes of an INCSEA between Taiwan and China would be to avoid collisions at sea and in the air, to minimize the chance of incidents resulting from dangerous maneuvers, and to develop more predictable standard operating procedures at sea. Bilateral military CBMs in naval operations could reduce hostility across the Taiwan Strait.

### 4.1. Framework

In theory, there are two frameworks, multilateral and bilateral, which could be used to establish an INCSEA regime between Taiwan and China. The following sections discuss the feasibility of these two concepts for application across the Taiwan Strait.

#### 4.1.1. Multilateral

In 1989, Sweden submitted the Swedish Multilateral United Nations Proposal to the United Nations. In the Asia-Pacific region, the Council for Security Cooperation in the Asia Pacific (CSCAP) Maritime Cooperation Working Group and the Western Pacific Naval Symposium (WPNS) have used this framework to develop a new regional INCSEA. Proposals of the 1995 Maritime Cooperation Working Group meeting recommended INCSEAs that would reflect regional circumstances, rather than mirror existing agreements with Russia.<sup>27</sup> However, CSCAP has not developed a draft regional INCSEA. The idea of a regional INCSEA has also been the subject of considerable discussion in the WPNS and has evolved into a Code for Unalerted Encounters at Sea (CUES).<sup>28</sup>

For Asia-Pacific countries, a regional INCSEA may be possible as an alternative to bilateral INCSEAs. East Asia has semi-confined waters, with overlapping EEZs and disputed islets and islands. The naval and air assets in the region require well-developed procedures and effective communications to avoid misjudgment or misunderstanding. Reflecting this maritime

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<sup>26</sup> Charles A. Meconis, "U.S.-China Confidence-Building More Important Than Detargeting," *Global Beat Issue Brief*, available at <http://www.nyu.edu/globalbat/pubs/ib39.html>.

<sup>27</sup> Commodore Sam Bateman, "Asia-Pacific Maritime Confidence Building," p. 36.

<sup>28</sup> Report of the 8<sup>th</sup> WPNS Symposium Workshop, June 30–July 3, 1999, quoted in David N. Griffiths, *Maritime Aspects of Arms Control and Security Improvement in the Middle East*, Policy Paper No. 56, p. 11.

geography, a regional INCSEA might focus on prohibiting particular activities at sea in disputed waters, contrary to the U.S.-Soviet INCSEA model. In a multilateral framework, East Asia partners, including Taiwan and China, can strengthen naval cooperation and facilitate INCSEA negotiations.

#### **4.1.2. Bilateral**

Existing INCSEAs are bilateral for various political and diplomatic reasons. A multilateral approach was suggested in 1972 by then-Secretary of the U.S. Navy Warner to Soviet Union Admiral Kasatanov. Kasatanov considered this idea, but pointed out that if the INCSEA were to be expanded by adding North Atlantic Treaty Organization countries, then all of the Warsaw Pact countries should be allowed to sign on. Because the United States did not wish to provide diplomatic recognition to the German Democratic Republic (East Germany), Warner dropped the proposal.<sup>29</sup> Thus, all existing INCSEAs are bilateral agreements between Russia and another country, with the exception of two agreements between Germany and Poland and the United States and China.<sup>30</sup>

In practice, in a bilateral framework it is easier to engage in INCSEA negotiation. In multilateral negotiations, participants have a variety of opinions on particular issues. Under these circumstances, they must spend a very long time to achieve consensus on controversial points. Conversely, a bilateral negotiation could more easily achieve explicit and concrete measures to improve the transparency of naval activities. For Taiwan and China, a bilateral framework is feasible for several reasons. First, China seems to prefer to adopt a bilateral framework in negotiations. Second, between Taiwan and China, many complex and complicated issues would appear during the INCSEA negotiation process. Third, relations between Taiwan and China have more tension than those of other regional countries. Therefore, a bilateral framework is more suitable than a multilateral framework for Taiwan and China.

Taiwan and China might consider the following in an INCSEA:<sup>31</sup>

- Defining and clarifying the extent of the jurisdiction in the Taiwan Strait, particularly in the Kinmen and Matsu waters
- Adopting a set of rules to govern air-to-air and air-to-sea encounters, including procedures for preventing aircraft collisions
- Making creative and explicit provisions for its application to the operation of ships in disputed waters, for example, disputed territorial waters and overlapping EEZs, without prejudice to claims of either side

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<sup>29</sup> Mark J. Valencia, "Maritime Confidence and Security Building Measures in Asia: Obstacles and Opportunities," pp. 16-17.

<sup>30</sup> Peter L. Jones, "Maritime CBMs in the Asia-Pacific: The Application of the INCSEA Concept in the Region," *The Korean Journal of Defense Analysis*, Vol. VIII, No. 1, Summer 1996, p. 11.

<sup>31</sup> Some concepts are derived from Ji Guoxing, "Rough Waters in the South China Sea: Navigational Issues and Confidence-Building Measures," *Asia Pacific Issues*, No. 53, August 2001, p. 7.

- Adopting procedures governing prior notification of the intent to conduct naval exercises in the overlapping EEZs
- Discussing the applicability of the INCSEA to all government vessels
- Defining procedures to prevent the collision of submarines with other undersea craft and with surface vessels
- Deciding the minimum permissible distances for the approach of ships and aircraft in the sensitive areas
- Adopting transparency concerning rules of engagement (ROEs) in self-defense actions

#### **4.2. Procedures**

Given the long history of hostility between Taiwan and China, negotiation of an INCSEA is unlikely in the short term. Therefore, it might be most useful if Track II processes or a third party could help build naval contacts to establish mutual confidence. In the early stages, implementation methods could favor informal contact between officers, as follows:

- **Retired naval officers exchanges**

Retired naval officers could attend seminars or conferences on naval issues, for example, the Zheng He Conference,<sup>32</sup> and help establish naval dialogue between Taiwan and China.

- **Active duty naval officers in Track II security dialogue**

Taiwan and China could send naval officers to the Maritime Cooperation Working Group of the CSCAP. Naval personnel could use this unofficial approach to discuss regional naval cooperation and INCSEA issues.

- **Active duty naval officers to third party's institutions**

Many institutions around the world are focused on maritime issues, such as the East-West Center (Hawaii), Dalhousie University (Canada), Center for Naval Analysis (Washington, D.C.), and the Institute on Global Conflict and Cooperation (IGCC) of the University of California. Naval personnel could attend programs at these institutions to exchange opinions.

- **Observation of U.S.-led naval exercises (under U.S. agreement)**

Military exercises are a good platform for facilitating naval contacts and exchanges. In the short term, both sides could probably not invite counterparts to observe their own military exercises. However, the United States has granted China observer status

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<sup>32</sup> Zheng He (1371-1435) was China's most famous navigator. From 1405 to 1433, he traveled more than 50,000 km and visited over 30 countries. He sailed from China to many places throughout the South Pacific, Indian Ocean, Persian Gulf, and East Africa in the 15<sup>th</sup> century. These voyages are approximately 80 years before Columbus sailed to America.

in the “Rim of the Pacific” and “Cobra Gold” exercises. If the United States also accepted Taiwan as an observer, naval personnel of both sides could use this channel to strengthen mutual trust and confidence.

With these measures, both sides could encourage exchanges and build confidence in each other. With improved relations between Taiwan and China, both navies could develop concrete steps to prepare the foundation for an INCSEA discussion. In this stage, both sides could implement cooperation in peacetime naval operations as follows:

- **Develop maritime cooperation**

Maritime cooperation can include anti-smuggling, anti-piracy, protection of trade routes, maritime research, and oceanographic and meteorological data collection. Naval assets of both sides are involved in these peaceful activities and could cooperate for mutual benefit. Anti-smuggling itself offers a special opportunity, because smugglers use the mid-strait dividing line to trans-ship contraband goods.<sup>33</sup> Anti-smuggling cooperation could close down the mid-line gap and provide a basis for professional cooperation through maritime law enforcement.

- **Search and Rescue (SAR)**

The Taiwan Strait is an important trade route and fishing area. Maritime calamities have occurred in rough seas in fall and winter. For SAR activities, air and naval assets of both sides would be involved. First goals might be to agree on areas of responsibility (AOEs) and communication channels. In addition, SAR rescue teams could hold exercises and train together. Involving naval assets in SAR exercises may facilitate naval cooperation and provide the foundation for an actual INCSEA negotiation.

If Taiwan and China demonstrate the political will to negotiate military CBMs, naval personnel could prepare for an INCSEA negotiation. Initial steps might include a workshop conducted by international law scholars, naval commanding officers, and naval policy department officers who understand the U.S.-Soviet process and who can help identify the characteristics that are most relevant to the Strait. Useful examples can also be drawn from the U.S.-China Agreement, the Greece-Turkey Guidelines, and others. Development of a draft code of conduct could include standard signals, emergency procedures, and the avoidance of the appearance of preparation for an attack. With a clear agreement in hand, both navies could be more successful in their respective peacetime duties and far less likely to precipitate an unintended clash.

After Taiwan and China have signed an INCSEA, both sides could further expand naval CBMs into the following categories:<sup>34</sup>

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<sup>33</sup> Both navies avoid patrolling the mid-line in order to avoid incidents. Smugglers exploit this gap.

<sup>34</sup> Some concepts are derived from James L. George, *The U.S. Navy in the 1990s: Alternatives for Action* (Annapolis, Maryland: Naval Institute Press, 1992), pp. 198-200; and Cathleen S. Fisher, “Controlling High-Risk

- advance notification of sailings and exercises;
- exchange of planning information regarding budgets, building plans and strategy, and naval production “impact” statements;
- officer exchanges;
- exercise limits, both by number and size of vessels and by location;
- precluding amphibious exercises within an agreed distance from Taiwan and China shores;
- voluntary observation of naval exercises;
- periodic updates of the actual numerical strength, structure, numbering, and location of all naval forces; and
- port visits and joint naval exercises.

## 5. Conclusion

The INCSEA concept establishes a consultation mechanism including annual meetings, workshop groups, and special meetings, which can strengthen military maritime safety and prevent incidents at sea. It is noteworthy that this interaction is conducted on a naval professional level and focuses on concrete procedures to avoid collisions or misunderstandings arising from operation in proximity to one another.<sup>35</sup> Therefore, an INCSEA increases the predictability of naval operations, and controls the potential for escalation of incidents.

Taiwan and China are in a tense situation with a high potential for naval accidents in the Taiwan Strait. An INCSEA would not resolve any of the political differences that are the basic causes of cross-Strait rivalry and could not prevent the deliberate initiation of war. However, an INCSEA could reduce the possibility of unintentional conflict arising from mutual suspicion or error. Moreover, by creating a dialogue between naval professionals, an INCSEA might stimulate dialogue on other military CBMs.

In the short term, Taiwan and China seem unlikely to negotiate an INCSEA. Several “peaceful use of military forces” approaches could be initiated that would strengthen naval cooperation in civilian sectors such as anti-smuggling, anti-piracy, search and rescue, and the protection of the sea lines of communication. These initial approaches could expand the frequency of

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U.S. and Soviet Naval Operations,” quoted in Barry M. Blechman et al., *Naval Arms Control: A Strategic Assessment* (New York: St. Martin’s Press, 1991), p. 81.

<sup>35</sup> Steven Miller, “CBMs in the Maritime Arena,” in Shai Feldman, ed., *Confidence Building and Verification: Prospects in the Middle East* (Jerusalem, Israel: Tel Aviv University, Jaffee Center for Strategic Studies, 1994), p. 73; Michael Pugh, “The Potential for Maritime Confidence-building and Peace-support Co-operation,” in John B. Hattendorf, ed., *Naval Policy and Strategy in the Mediterranean: Past, Present and Future* (London, U.K.: Frank Cass & Co. Ltd., 2000), p. 407.

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naval contacts. The resulting strengthened mutual trust and confidence between naval officers would pave the way for an eventual INCSEA between Taiwan and China.

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