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**NO. 304**

**INCIDENT PREVENTION AND MITIGATION IN  
THE ASIA PACIFIC LITTORALS:  
FRAMING, EXPANDING, AND ADDING TO CUES**

**GRAHAM ONG-WEBB, COLLIN KOH AND BERNARD MIRANDA**

**S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES  
SINGAPORE**

**15 AUGUST 2017**

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## Abstract

This paper explores the possibility of South China Sea claimants and regional countries playing an active role in developing measures to prevent untoward incidents involving government (including naval and maritime law enforcement) and non-government vessels while political negotiations take place with respect to the proposed Code of Conduct between ASEAN and China. It argues that such a comprehensive incident prevention and mitigation plan must be multidimensional and multilevel in its approach, cascading from the political, strategic, operational, to tactical levels. This study breaks down into three main sections. The first examines the framing of the existing Code for Unplanned Encounters at Sea (CUES) and its expansion as well as any new prevention and mitigation initiatives. The center of gravity and theory of success for CUES must be at operational and tactical levels, this paper highlights, while also proposing that CUES should be expanded to include sub-surface and aerial- based actions as other potential triggers for unplanned encounters and unintended escalations at sea. The end-state calls for a comprehensive CUES in light of the multidimensional nature of the SCS maritime landscape. The second section of this paper assesses the prospects for an expanded CUES, focusing on maritime law enforcement and irregular forces. It examines the viability of expanding this mechanism through what this paper terms as “Phased” and “Blanket” Approaches, which is dependent on the regional political climate. The third, final section raises two proposals at the strategic level, and six proposals pegged at the operational and tactical levels of planning and activity to build on and enhance the existing slate of such mechanisms as CUES to promote navigational safety and risk reduction in regional waters.

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Graham has published in the Journal of Strategic Studies, Journal of International Studies, Indo-Pacific Strategic Review, Jane’s Intelligence Review, and World Defence Systems. His commentaries on global and regional security issues have appeared in *The Straits Times*, *The Nation*, *The Jakarta Post*, *The World Today* (Chatham House, London), and *The Diplomat*.

In terms of private sector experience, Graham was previously a Senior Consultant at the Control Risks Group, and Managing Editor at the Jane's Information Group (now Jane's by IHS Markit). In terms of teaching and research experience, Graham has held positions at the Joint Services Command and Staff College (Royal Defence Academy, U.K.); the Centre for Science and Security Studies (King's College London); the Centre of Excellence for National Security, RSIS; the National University of Singapore; the Institute of Southeast Asian Studies – Yusof Ishak Institute; and SIM University.

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**Bernard Miranda** joined the Singapore Armed Forces in 1979 as a conscript and subsequently joined the Republic of Singapore Navy as a regular after a year. He holds a Master Degree in Education (Leadership, Policy and Change) from Monash University (Australia) and a Graduate Diploma in Human Resource Management from the Singapore Institute of Management. He served in the Singapore Armed Forces from 26 Dec 1979 to 22 Sep 2011. He retired from active service upon reaching the mandatory retirement age of 50 and was re-engaged as a Defence Executive Officer to become the first Director of the National Maritime Operations Group (NMOG) – Singapore Maritime Crisis Centre.

A Naval Officer by profession, he has specialised in Training and Curriculum Development (SAFTI and Naval Officers Advanced School), Communications (ISOAC, U.K.), Electronic Warfare (IEW, UK), Amphibious Warfare (ISOAP, USA) and Combined Forces Maritime Component Commander Flag Officers Course (CFMCC) (Hawaii, USA). He was invited by the US Naval War College to conduct lectures and exercises for the CFMCC for EUROPE

COMMAND in Naples Italy, CENTCOM Bahrain and twice at the PACIFIC COMMAND in Hawaii after his successful Command of Combined task Force 151 in the Gulf of Aden.

In July 2015, Bernard left the RSN and after a short sabbatical joined the S. Rajaratnam School of International Studies (RSIS) as an Adjunct Senior Fellow in the Maritime Security Programme. He also joined the Ministry of Trade and Industry as a Division Director in Oct 2015 and was made concurrent CIO in Aug 2016.

## Introduction

Unplanned encounters at sea can and do happen. While there is no established definition to this phenomenon, such incidents roughly entail non-deliberate confrontations at-sea involving maritime vessels and even maritime aircraft (most often naval-related) that, for various reasons, come into close proximity with each other. These confrontations, often occurring (but not necessarily confined) to disputed waters, holds risk of escalation into physical conflict between parties. Since the turn of the 21<sup>st</sup> Century, there have been several such encounters in the Asia Pacific littorals that ran the risk of escalating into conflict.

For example, in March 2009, a U.S. Navy oceanographic research ship, USNS *Impeccable*, was operating 70 miles south of Hainan Island when it was confronted by several Chinese government vessels as well as trawlers—some of which moved directly in front of the American ship, forcing it to stop.<sup>1</sup> In another example, on 22 December 2001, the Japan Coast Guard and an armed North Korean vessel had a confrontation in the East China Sea, near the island of Amami-Ōshima, which falls outside Japanese territorial waters but within its EEZ. While the encounter did end in the sinking of the North Korean vessel, it fortunately did not escalate into further conflict.<sup>2</sup> In yet another example, on May 2014, a high-profile standoff ensued between a Chinese oil rig, the *Haiyang Shiyou 981* Vietnamese vessels when it lingered for several weeks in disputed waters among Vietnamese vessels close to the controversial Paracel Islands. Larger Chinese vessels joined in the confrontation, ramming the smaller Vietnamese boats and even hosing them with powerful water cannons. China ultimately withdrew the rig.<sup>3</sup>

In recent years, the risk of an unplanned encounter at sea has heightened in light of the surge in tensions over the South China Sea (SCS) disputes, which is reflected by increased naval activity among claimant and stakeholder states that are in tandem with the intense shipping activity in these waters, serving as a major conduit for global maritime commerce.<sup>4</sup> Although the risk of an incident in the SCS can be triggered by vessels linked to any claimant or stakeholder state, is likely highest when involving the larger naval and maritime signatures of China and the United States (U.S.). China has

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<sup>1</sup> Gertz, Bill. "U.S. protests China's ship harassment," *The Washington Times*, March 11, 2009. <http://m.washingtontimes.com/news/2009/mar/11/us-protests-chinas-ship-harassment/>

<sup>2</sup> Brooke, James. "Japan Says North Korea Boat In Sea Battle Was a Spy Ship," *The New York Times*, October 5, 2002. <http://www.nytimes.com/2002/10/05/world/japan-says-north-korea-boat-in-sea-battle-was-a-spy-ship.html>

<sup>3</sup> Ives, Mike. "Vietnam Objects to Chinese Oil Rig in Disputed Waters," *The New York Times*, January 20, 2016. <https://www.nytimes.com/2016/01/21/world/asia/south-china-sea-vietnam-china.html>

<sup>4</sup> Disputes over the South China Sea (SCS) have been going on for decades. However, such disputes involving claimant states have been gathering steam over the last few years. The claimant states are the Peoples' Republic of China, Malaysia, the Philippines, Taiwan and Vietnam Brunei. The U.S. is not claimant to any islands or features in the SCS. However, it "maintains important interests in ensuring freedom of navigation and securing sea lines of communication". A significant part of this interest stems from the fact that the SCS is a major conduit for global maritime commerce. The U.S. likely sees itself as a stakeholder because an estimated US\$5 trillion worth of goods pass through the SCS each year, ferried by more than half the world's annual merchant fleet tonnage, and a third of all maritime traffic worldwide. For more information on the SCS dispute, see "Territorial Disputes in the South China Sea (updated 12 May 2017)," Global Conflict Tracker, *Council on Foreign Relations*, <http://www.cfr.org/global/global-conflict-tracker/p32137#!/conflict/territorial-disputes-in-the-south-china-sea>; and Glaser, Bonnie S. "Armed Clash in the South China Sea," Contingency Planning Memorandum No. 14, April 2012, *Council on Foreign Relations*, <http://www.cfr.org/asia-and-pacific/armed-clash-south-china-sea/p27883>.

been building military facilities on several features that are disputed by claimant states and has announced intentions of establishing an Air Detection and Identification Zone (ADIZ) that covers the features it has been occupying. The Asia Maritime Transparency Initiative (AMTI), which is part of Washington's Center for Strategic and International Studies, said the "Big Three" airbases on Fiery Cross, Subi and Mischief Reef were near completion and could deploy combat planes and other military hardware.<sup>5</sup> The People's Liberation Army Navy (PLAN) has grown in presence in the bid to safeguard these acquired features and the waters that fall within its claimed nine dashed line (see Diagram 1).

Additionally, China is reported to have expanded its maritime militia recruited from its fishing fleet, already known to be the largest in the world (around 200,000 vessels in total). According to some analyses, "the fishing vessels of the militia are equipped with advanced electronics, including communications systems and radar that supplement the PLAN force structure and enhance interoperability with other agencies, such as the China Coast Guard."<sup>6</sup> Given that the rules of engagement of the USN are likely to differ when dealing with a fishing vessel versus one that comes from the navy, it has been surmised that China is "trying to use these maritime militia forces to put it in a position that frustrates [the USN's and claimant states' navies] ability to respond."<sup>7</sup>

Concurrently, there has been an increased American naval presence in the SCS with the implementation of the freedom of navigation (FON) patrols, exercised by the USN's Seventh Fleet, whose area of responsibility (AOR) covers the SCS. To add to the risk, the FON patrols include an Aircraft Carrier Strike Group under the charge of this fleet. In addition, the USN's Third Fleet's AOR has been recently expanded to include the SCS. In 2017, the new American administration under President Donald Trump, whose foreign and security policy positions on the Asia Pacific remain unclear, generates further strategic uncertainty over the management of South China Sea tensions.

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<sup>5</sup> "Beijing's airbases in South China Sea 'ready for use'". *The Straits Times*, March 29, 2017.

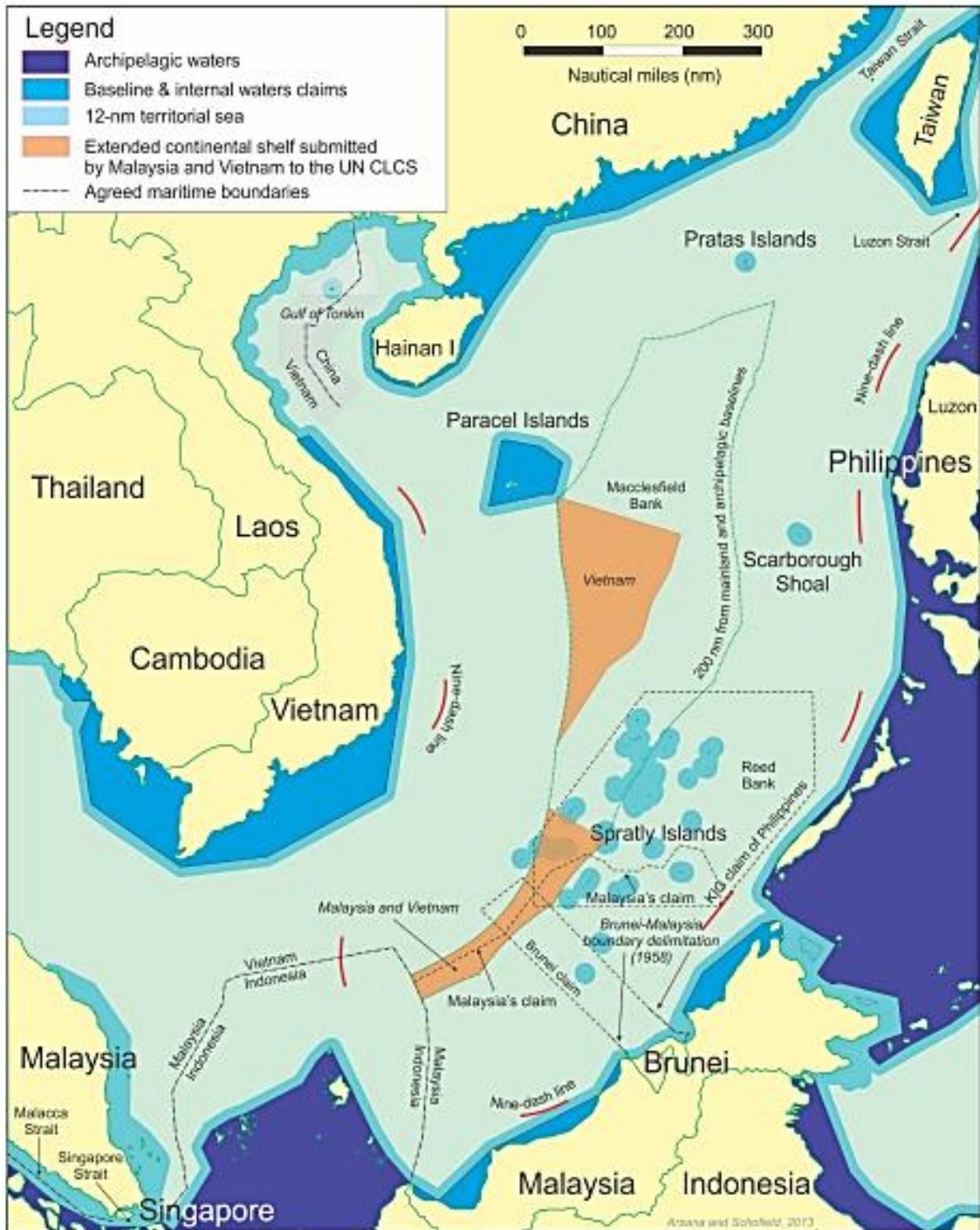
<http://www.straitstimes.com/asia/east-asia/beijings-airbases-in-south-china-sea-ready-for-use> .

<sup>6</sup> Furthermore, "Many boats are equipped with satellite navigation and can track and relay vessel positions, and gather and report maritime intelligence". Kraska, James. "China's Maritime Militia Upends Rules on Naval Warfare." *The Diplomat*, August 10 2015. <http://thediplomat.com/2015/08/chinas-maritime-militia-upends-rules-on-naval-warfare/>

<sup>7</sup> Gady, Franz-Stefan. "'Little Blue Men:' Doing China's Dirty Work in the South China Sea," *The Diplomat*, November 5 2015. <http://thediplomat.com/2015/11/little-blue-men-doing-chinas-dirty-work-in-the-south-china-sea/>



Diagram 1: Map Covering the South China Sea



*Archipelagic waters, baseline and international water claims, 12-nm territorial sea, extended continental shelf submitted by Malaysia and Vietnam to the UN CLCS and agreed maritime boundaries.<sup>8</sup>*

<sup>8</sup> Maritime Confidence Building Measures in the South China Sea Conference, InterContinental Hotel, Sydney, 11–13 August 2013, Special Report, September 2013, Australian Strategic Policy Institute, p. 3, <https://www.aspi.org.au/report/special-report-maritime-confidence-building-measures-south-china-sea-conference> [Accessed: May 2017].

Some reprieve may be found in signing of the Conduct for Unplanned Encounters at Sea (CUES), by 21 Pacific nations from the Western Pacific Naval Symposium (WPNS), including the U.S. and China, in April 2014, that has potential mitigating effects on unintended confrontations in the SCS.<sup>9</sup> Also, the ten-member Association of Southeast Asian Nations (ASEAN) and China, by way of a joint statement, adopted to apply CUES specifically in the SCS, at the ASEAN-China Commemorative Summit in September 2016. However, the implementation and operation of CUES remains tenuous and not least because it is non-legally binding. Chiefly, CUES does not cover the vessels of non-naval maritime law enforcement agencies (MLEAs) often armed with significant firepower, such as China's coast guard, which is the largest in the world. It also does not cover irregular forces such as maritime militia. Next, while CUES is currently applicable to naval aircraft, its focus is mainly on encounters at sea, and not the air. Also, sub-surface elements such as submarines are excluded. These missing elements are a cause for concern, as the gaps risk being reinforced when current endeavours at formulating a Code of Conduct (CoC) in the South China Sea also fail to be cognisant of such aspects.

In light of these gaps and other challenges, this paper argues that a comprehensive prevention and mitigation plan for maritime and naval activity in the Asia Pacific littorals must be multidimensional and multilevel in its approach. Specifically, this means that any current and new initiatives must cascade from the political, strategic, operational, to tactical levels.<sup>10</sup> This paper contains three thrusts towards these endeavours. The first thrust is about framing CUES; expanded versions of it; and any new initiatives, using a set of first principles: treating CUES as a method of risk reduction; locating its centre of gravity and theory of success at operational and tactical levels; and staying open to the future inclusion of sub-surface and aerial-based actions, as other potential triggers for unplanned encounters due to the multidimensional nature of the maritime landscape in the SCS. The second thrust assesses the prospects for a viable implementation of an expanded CUES—with discussion on MLEAs as an important starting point—through what this paper terms 'Phased' and 'Blanket' Approaches, depending on how positive or negative the regional climate is. The third thrust adds to CUES by raising two proposals at the strategic level, and six proposals pegged at the operational and tactical levels of planning and activity.

### **Framing CUES: Staying the Course on First Principles**

To briefly recap its history, CUES was signed by 21 Pacific nations from the Western Pacific Naval Symposium (WPNS), including the United States (U.S.) and China in April 2014. The WPNS-led CUES is not entirely new in itself, as it merely formalised more or less what had already been

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<sup>9</sup> Shortly after its implementation, CUES was put into practice by some of the regional navies, for example, between the U.S. Navy and Japan Maritime Self-Defense Force, and between the Chinese and Indonesian navies—all in June of the same year. Troutman, Jeff. "Blue Ridge Performs CUES Training with Japanese Vessel Kunisaki." Department of Defense, United States of America, June 3, 2014; Rahmat, Ridzwan. "Chinese, Indonesian vessels hold first drill under new naval code of conduct." *Jane's Navy International*. June 10, 2014.

<sup>10</sup> Indeed, action must occur at the nexus or overlap between these levels, particularly the political-strategic and operational-tactical levels.

commonly practiced by several navies for some time.<sup>11</sup> Because it is non-legally binding, CUES is a “gentlemen’s agreement” between the 21 signatory navies pledging to implement it. This is what lends CUES, on surface, the quality of a politically symbolic document, which is natural since the signing of this document these navies would not have been possible if their parent countries lacked the political goodwill to support the initiative in the first place.

However, the discussion of CUES, especially with regard to its application in the SCS, has tended to be significantly high-profile in terms of the diplomatic and public attention it has received. This is due to a few reasons. One reason is the general intensity of the on-going maritime disputes in these waters, particularly in the form diplomatic and legal tussles between claimant and stakeholder states over the last 36 months since the document was signed. Another related reason is the significant amount of diplomatic and media attention that CUES receives in the regional and international media, as compared to the similar past initiatives.

One example is the 1972 U.S.-Soviet Incidents at Sea (INCSEA) agreement, which remains in force between the U.S. and present day Russia. Another example is the 1972 International Regulations for Preventing Collisions at Sea (COLREGS) published by the International Maritime Organisation (IMO).<sup>12</sup> In this paper, INCSEA is used as a reference case to compare against CUES, but COLREGS saliently applies as yet another case to contrast with this Code as well. As some analysts argue, one of the key reasons why INCSEA, for instance, was relatively effective was because it lacked publicity and visibility—it “received little press attention at its signing, and a consistent effort has been made to maintain this low profile.”<sup>13</sup> The same could be said about COLREGS in terms of low publicity despite its implementation.

It is critical then to repeat that the “purpose” of CUES, as it was articulated in the official document, is to serve as a “coordinated means of communication to *maximize safety at sea*”.<sup>14</sup> The CUES document further elaborates that it “offers safety measures and a means to limit mutual interference, to limit uncertainty and to facilitate communication when naval ships or naval aircraft encounter each other in an unplanned manner.”<sup>15</sup> International news agency, *Reuters*, was accurate in its evaluation of the CUES document when it was first unveiled, calling it a “handbook for maneuvers when naval ships and aircraft encounter each other unexpectedly.”<sup>16</sup> It is also clarifying to revisit the views and expectations set by the PLAN in signing the document. Calling the code “a milestone document” in the history of the WPNS, Admiral Wu Shengli, then-Commander of the PLAN (in the words of the

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<sup>11</sup> The authors confirmed this with several regional naval officials, who echoed the same sentiments. See also Holmes, James R. “The Limits of Pacific Maritime Law.” *The Diplomat*, April 28 2014. <http://thediplomat.com/2014/04/the-limits-of-pacific-maritime-law/>.

<sup>12</sup> “Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) - Adoption: 20 October 1972; Entry into force: 15 July 1977,” International Maritime Organisation <http://www.imo.org/en/About/conventions/listofconventions/pages/colreg.aspx>.

<sup>13</sup> Winkler, David F. “Breaking News: Incidents at Sea Did Not End with the Cold War!” *Canadian Naval Review* 9, (2014): 15-16.

<sup>14</sup> “Primary Sources: Conduct for Unplanned Encounters at Sea (published 25 April 2014),” *Council on Foreign Relations*, <http://www.cfr.org/oceans/conduct-unplanned-encounters-sea/p333908>.

<sup>15</sup> Ibid.

<sup>16</sup> Tiezzi, Shannon. “Small But Positive Signs at Western Pacific Naval Symposium,” *The Diplomat*, April 24, 2014. <http://thediplomat.com/2014/04/small-but-positive-signs-at-western-pacific-naval-symposium/>.

*China Daily* article that carried his sentiment), “urged participants to take this opportunity to encourage frontline forces in the air and at sea to develop effective and efficient communication channels and procedures.”<sup>17</sup> Admiral Wu said during his speech that:

We need to respect history and take history as a mirror and continue to resolve maritime disputes and conflicts through peaceful means as well as avoid extreme behavior that may endanger regional security and stability. The People's Liberation Army Navy will unswervingly adhere to peaceful development and sincerely hopes to maintain the peace and stability of the region together with other navies.<sup>18</sup>

Echoing this view, a researcher from the PLA's Naval Military Studies Research Institute also commented that CUES will “effectively control maritime crises and help avoid incidents of interference and collisions in international waters.”<sup>19</sup> An analyst from IHS Maritime was therefore correct to describe the Chinese view of CUES as serving as a “much needed de-escalation mechanism”.<sup>20</sup>

The difficulty of appreciating CUES for what it fundamentally is—an operative de-escalation mechanism between navies at sea, has been further stymied by the majority of discussions that make reference to INCSEA or COLREGS as general precursors, but then argue or imply that such initiatives have nothing significant to teach CUES, especially when applied in the SCS, or even the CoC. In an case study on INCSEA, one authoritative maritime analyst pointed out that:

previous INCSEAs applied only to activities on or over the high seas, where much Cold War naval confrontation occurred. But in the western Pacific the waters where any regional agreement should apply are not high seas—they're exclusive economic zones (EEZs). Negotiations would open up differing views about the rights of other states to conduct military activities in an EEZ without permission of the coastal state.<sup>21</sup>

Another analyst said that proponents of a CoC “seem to pattern their advocacy of such an accord on [INCSEA]” that “confuses tactical measures taken to ease tensions on the high seas with the resolution of political disputes that verge on insoluble.”<sup>22</sup>

While these concerns over differences in both (i) what militaries and navies may (or may not) be permitted to carry out in the high seas as compared to EEZs and (ii) what distinguishes the nature of the political dispute in the Cold War as compared to the SCS, are not completely unwarranted, they obfuscate the central point that INCSEA and COLREGS are simply “method[s] of risk reduction” and

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<sup>17</sup> Shengnan, Zhao. “Pact to reduce sea conflicts,” *China Daily*, April 23, 2014. <https://goo.gl/iVC7nF>.

<sup>18</sup> Shengli, Wu. “Pact to reduce sea conflicts,” *China Daily*, April 23, 2014. <https://goo.gl/iVC7nF>.

<sup>19</sup> Junshe Zhang. “Xinhua Insight: Naval symposium endorses CUES to reduce uncertainty,” *Xinhua News*, April 22, 2014. [http://news.xinhuanet.com/english/indepth/2014-04/22/c\\_133281654.htm](http://news.xinhuanet.com/english/indepth/2014-04/22/c_133281654.htm).

<sup>20</sup> Li, Gary. “Pacific accord on maritime code could help prevent conflicts,” *Reuters*, April 22, 2014. <http://www.reuters.com/article/us-china-military-idUSBREA3L0NC20140422>.

<sup>21</sup> Bateman, Sam. “Managing Incidents at Sea.” *The Strategist*, Accessed February 14, 2013. <https://www.aspistrategist.org.au/managing-incident-at-sea/>.

<sup>22</sup> Holmes, James R. “A Cold War Solution for the South China Sea?” *The Diplomat*, Accessed November 30, 2012. <http://thediplomat.com/2012/11/a-cold-war-solution-for-the-south-china-sea>.

that CUES can be as well.<sup>23</sup> After all, INCSEA, for example “helped reduce the chances of accidental crises or armed conflicts that might ensue should ships or aircraft collide, weapons be flourished, or tempers flare” and this was possible because INCSEA was simply “tactical in nature”.<sup>24</sup> INCSEA continues to be a “longstanding success” which is remarkable because it “illustrates that an accord can be signed by two competitive non-allied world powers, and that it can work well to prevent incidents (or accidents) at sea from having serious consequences.” At the same time, neither side “relinquished [their Cold War] prerogatives in the maritime domain because of INCSEA.”<sup>25</sup> Seven “fundamental reasons” for INCSEA’s success have been identified that are, predominantly operational and tactical in nature. Five of them are directly relevant here:

1. **Best interests of both sides do exist:** Winkler cites USN Rear-Admiral Robert Hilton who retired in 1983 as Vice Director for Operations on the Joint Chiefs of Staff, who once said: “Neither country wants to have its valuable ships damaged by inadvertent or imprudent actions of its officers. Neither nation wants an incident to escalate into a governmental confrontation.”
2. **Simplicity is key:** Over the long term, the American insistence on a simple formula calling for commanders to abide by the rules and use prudent judgment, probably served each side’s best interests.
3. **Naval/military professionalism will see it through:** “Rooted in a shared environment, professional naval officers are often able to communicate better with officers from other navies than with those from sister services.”
4. **Lack of publicity and visibility:** “INCSEA received little press attention at its signing, and a consistent effort has been made to maintain this low profile.”
5. **Verification and accountability:** The establishment of direct navy-to-navy communications mechanisms and the provision of annual consultations in INCSEA provided means for holding both parties accountable. Since a violation of INCSEA occurs only in the presence of the other party, each side produces photographs, videotapes, charts and deck logs at the annual reviews as evidence as to which party was at fault.<sup>26</sup>

Next, that China has also made it clear, that its support for CUES does not suggest any change in its position on its territorial claims, should not deter all parties from continuing efforts to make this initiative more effective, and where possible, to expand and refine its scope. As described by the editor of *The Diplomat* the general view, including the American one, during the inception of CUES,

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<sup>23</sup> Jones, Justine. “Background paper: A naval perspective of maritime confidence building measures,” Paper presented at the Maritime Confidence Building Measures in the South China Sea Conference, Sydney, August 11–13, 2013.

<sup>24</sup> Holmes, James R. “A Cold War Solution for the South China Sea?” *The Diplomat*, November 30, 2012. <http://thediplomat.com/2012/11/a-cold-war-solution-for-the-south-china-sea>.

<sup>25</sup> Winkler, David F. “Breaking News: Incidents at Sea Did Not End with the Cold War!” *Canadian Naval Review*, 9 (2014): p. 17.

<sup>26</sup> The other two are: (6) Preparation: If an incident occurred, the reported violation was passed through the other state’s naval attaché well in advance of the normal review, allowing the opportunity to investigate. Agendas were organised in advance; and (7) Atmospherics: Establishing a touring/entertainment itinerary as the first item of discussion at the initial plenary session enabled the two delegation heads to get a sense of each other’s likes and dislikes. *Ibid*, pp. 15-16.

While CUES will help reduce the chance of miscommunication, it will not address the root cause of the tensions: territorial disputes and the resulting convergence of different naval fleets in the same maritime areas. In other words, CUES will not prevent maritime confrontations, but seeks to set some ground rules to prevent confrontations from escalating into conflict.<sup>27</sup>

What is critical here is that the descriptions of CUES as a manual or set of ground rules on how to de-escalate an unplanned encounter between naval vessels in the Pacific and the SCS indicate—as they should have from the very beginning—that CUES’ centre of gravity, like that of INCSEA and COLREGS, is located at the operational and tactical levels.

For all its limitations and imperfections, CUES may be doing much better than it is given credit for. Shortly after its implementation, CUES was put into practice by some of the regional navies, for example, the U.S. Navy and Japan Maritime Self-Defense Force, and the Chinese and Indonesian navies—all in June of the same year.<sup>28</sup> The PLAN and the USN also practiced CUES during an anti-piracy exercise in the Gulf of Aden in December 2014, which set this initiative off to a good start.<sup>29</sup> It is also worth noting that CUES was definitely a welcome respite amidst the simmering tensions over the SCS disputes, especially following the previous Scarborough Shoal standoff between China and the Philippines and the filing by Manila for a legal challenge against Beijing at the Permanent Court of Arbitration the following year, and the reported frenzy of Chinese island-building and fortification works in the disputed waters. To be certain, CUES cannot be expected to ameliorate the root causes of the maritime disputes in SCS that are historical, political and legal in nature. Yet, at the very least, it can be argued that CUES has contributed to safer interactions between opposing navies in the SCS. Speaking to the press on the sidelines of the International Maritime Defence Exhibition (IMDEX) held in Singapore in May 2015, the U.S. Vice Chief of Naval Operations of the time, Admiral Michelle Howard, pointed out that an encounter three months prior between the Littoral Combat Ship USS *Fort Worth* and the PLAN frigate *Hengshui*—in international waters of the South China Sea—had been handled in a professional manner, thanks to the prior bilateral agreement to implement CUES.<sup>30</sup>

Despite the U.S. Navy conducting its first freedom of navigation operations (FONOPS) in 2015, early in the following year during a television conference, the PLAN and U.S. Navy chiefs were reportedly “satisfied and encouraged” with the increased use of CUES, and pledged to continue with this

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<sup>27</sup> Tiezzi, Shannon. “Small But Positive Signs at Western Pacific Naval Symposium,” *The Diplomat*, April 24, 2014. <http://thediplomat.com/2014/04/small-but-positive-signs-at-western-pacific-naval-symposium/>.

<sup>28</sup> Shortly after its implementation, CUES was put into practice by some of the regional navies, for example: between the U.S. Navy and Japan Maritime Self-Defense Force, and between the Chinese and Indonesian navies—all in June of the same year. Troutman, Jeff. “Blue Ridge Performs CUES Training with Japanese Vessel Kunisaki.” Department of Defense, United States of America, June 3, 2014; Rahmat, Ridzwan. “Chinese, Indonesian vessels hold first drill under new naval code of conduct.” *Jane’s Navy International*. June 10, 2014.

<sup>29</sup> “China, US navies implement code of conduct,” *China Daily*, 13 December 2014, *China Daily*, [http://www.chinadaily.com.cn/world/2014-12/13/content\\_19077725.htm](http://www.chinadaily.com.cn/world/2014-12/13/content_19077725.htm)

<sup>30</sup> Minnick, Wendell “IMDEX: US Vice CNO Urges CUES Use,” *Defense News*, May 19, 2015. <https://goo.gl/afSrDr>; see also Lauryn Dempsey. “USS Fort Worth Conducts CUES with Chinese Navy,” Accessed February 26, 2015, [http://www.navy.mil/submit/display.asp?story\\_id=85767](http://www.navy.mil/submit/display.asp?story_id=85767).

initiative, among other cooperatives.<sup>31</sup> That same year in March, safe vessel-to-vessel interactions were reported between the USS John C. Stennis carrier strike group (JCSCSG) and PLA Navy vessels in the SCS. The commanding officer, Captain Greg Huffman, described inter-bridge interactions with the Chinese as “good communications between professional mariners.”<sup>32</sup> Rear Admiral Marcus Hitchcock, commander of the JCSCSG later praised the PLA Navy as “completely professional” and described the CUES implementation to be “going very well”.<sup>33</sup>

Next, both the separate criticisms of CUES and criticisms of INCSEA appear to have arrived—unwittingly—at a conceptual middle ground, which should provide confidence that current discussions and debates are congealing towards a constructive direction. For example, an article published by the U.S. Naval Institute commented that the “basic premise of INCSEA is solid, but lessons can also be garnered from the 2014 Western Pacific Naval Symposium, where the Code for Unplanned Encounters at Sea (CUES) was agreed to by member states.”<sup>34</sup> It argued that a further developed INCSEA should be one that is “more akin to CUES than [the current] INCSEA” which is still in place between the U.S. and Russia. For one, an improved INCSEA should be multilateral in its remit like CUES.

### **Expanding CUES to Include MLEAs in the SCS: ‘Phased’ versus ‘Blanket’ Approaches**

Despite the imperfection of CUES, it has at the very least been implemented between navies, and would still come in handy where it comes to mitigating the risks of armed clashes in the SCS. The crux of the problem with this mechanism, however, is that it still does not cover non-military categories of vessels such as those under MLEAs so far. In May 2016, Rear Admiral Mark Montgomery, Director of Operations of the U.S. Pacific Command, assessed the risk of accidental armed clash between the U.S. and Chinese navies in the SCS to be “still pretty low,” but cautioned that “the highest risk is associated with non-military vessels who have poor... communications systems on board,” adding that “anywhere in the world my worst maritime experiences have been with fishing boats. And this is nothing to do with any one country.”<sup>35</sup> In fact, the U.S. Navy had proposed to the expansion of CUES back in August 2015, to include the Chinese Coast Guard, as part of their bilateral confidence-building mechanisms at sea.<sup>36</sup>

Indeed, regional governments have also caught up with this problem, and hence sought to expand CUES beyond naval domain to include surface, sub-surface and aerial-based actions that can trigger unplanned encounters, leading to unintended escalations. With the goal of a comprehensive CUES in

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<sup>31</sup> Shalal, Andrea “U.S., Chinese officers encouraged by use of rules for ship meetings,” *Reuters*, January 20, 2016. <http://uk.reuters.com/article/uk-usa-china-navy-idUKKCN0UY0C1>.

<sup>32</sup> Frost, Christopher. “The Great Green Fleet Operates in the South China Sea.” March 4, 2016, [http://www.navy.mil/submit/display.asp?story\\_id=93472](http://www.navy.mil/submit/display.asp?story_id=93472).

<sup>33</sup> Mathieson, Rosalind. “Chinese Navy in South China Sea Draws U.S. Admiral’s Praise.” *Bloomberg*, April 26, 2016, <https://goo.gl/rrBmCd>.

<sup>34</sup> Gosnell, Rachael. “It’s Time to Update INCSEA.” *U.S. Naval Institute (blog)*, September 26, 2016. <https://blog.usni.org/2016/09/23/its-time-to-update-incsea>.

<sup>35</sup> Ghosh, Nirmal. “Low risk of accidental China-US clash in South China Sea: US navy official,” *The Straits Times*, May 6, 2016.

<sup>36</sup> Tweed, David. “U.S. Seeks to Expand China Navy Code to Coast Guard, Swift Says.” *Bloomberg*, August 25, 2015. <https://goo.gl/pEJgFH>.

the SCS in mind, the spirit of a broad pursuit in the discussions must be maintained, even if the details have yet to be worked out and agreed upon.

In this vein, the year 2016 was a highlight of sorts for such proposals, which is encouraging. In March that year, ASEAN and China agreed to explore Singapore's proposal to expand CUES to include coast guard vessels.<sup>37</sup> About two months later, during the ASEAN Defence Ministers Meeting (ADMM) held in Vientiane, Philippine Secretary for National Defense at the time, Voltaire Gazmin, proposed expanding CUES to include coast guards and "other maritime forces".<sup>38</sup> At the same occasion, Vietnamese defence authorities proposed an aerial version of CUES.<sup>39</sup> During the Second Submarine Operational Safety Conference that was held in South Korea, the Republic of Singapore Navy proposed, among a slew of measures designed to promote underwater safety, a set of underwater CUES to minimise the risk of incidents at sea involving submarines.<sup>40</sup>

While keeping an open mind to the multidimensional nature of incidents in the SCS is critical, a more comprehensive CUES cannot be attained if the existence and role of MLEAs such as coast guards and maritime militia cannot be acknowledged and included as the next step. This section turns to this issue, putting it in context of what it refers to as 'Phased' and 'Blanket' Approaches.

While the basic notion of expanding the existing navy CUES to include MLEAs and non-government vessels is logical and necessary, given the observed spate of incidents in the SCS involving such forces—the fabled Chinese maritime militia—and the need to mitigate the consequences, it would not be an easy and straightforward exercise. The obstacles that stand in the way come from operational and technical matters, to issues relating to legal and organisational culture. In the first place, most MLEAs are designed from the start to enforce, and are also regulated by domestic laws. Therefore, expanding CUES to include these agencies would mean subjecting them to the regulations by international laws.<sup>41</sup>

Moreover, the manner that MLEAs operate is in many respects dissimilar to that of their grey-hulled counterparts. For example, MLEAs are typically mandated to carry out enforcement at sea, which means having to come into close contact – instead of avoiding it – with their targets of interest, which could include civilian or other countries' government vessels. To complicate the situation, applying CUES to these agencies in the broader East Asian region would prove a challenge when one considers that some of them are relatively young entities which are still attempting to centralize maritime law enforcement powers from the various agencies, thus making it harder for their

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<sup>37</sup> Singapore Foreign Minister Vivian Balakrishnan remarked that the proposal was made as part of the country's role as coordinator for ASEAN-China relations. Beng, Kor Kian. "China, Asean agree to examine S'pore proposal on South China Sea." *The Straits Times*, March 2, 2016.

<sup>38</sup> Retired Analyst. "Include coast guards, other maritime forces in CUES –Gazmin," *Philippine News Agency*, May 27, 2016. <https://goo.gl/QBCQof>.

<sup>39</sup> Vietnam ASEAN Portal. "Politics: Vietnam Defense Minister Proposes Code for Operation of Aircraft in East Sea." *Vietnam News Brief Service*, May 27, 2016. <https://goo.gl/jY0wnx>.

<sup>40</sup> Tat, Ong Hong. "Promoting safer submarine operations," Ministry of Defence, Singapore. June 1, 2016. <https://goo.gl/tklj45>.

<sup>41</sup> At some regional Track 1.5 conferences, the authors understood from MLEA officials that they found the navy CUES unsuitable for adoption, and hinted at the prospect of conceptualising one between themselves from scratch instead.



governments to commit to such a code. China Coast Guard for example, formerly a maritime arm of the People's Armed Police, essentially absorbs the former China Marine Surveillance, the Fisheries Law Enforcement Command, and the General Administration of Customs to constitute a unified coast guard agency since 2013. Yet it continues to cope with the need to standardise its organisational culture and operating procedures.<sup>42</sup> The China Maritime Safety Administration is not merged with the CCG and remains a separate organisation.

Arguably one of the most successful of young MLEAs in Southeast Asia considering its short history—just 12 years since its formation in 2005, the Malaysian Maritime Enforcement Agency (MMEA) is still in the process of achieving intra-agency standardisation of organisational culture, among other aspects.<sup>43</sup> The Indonesian Maritime Security Board (Badan Keamanan Laut, or BAKAMLA) has the arguably unenviable task to coordinate the many diverse agencies, each jealously guarding its own turf, and are yet still trudging on with standardising processes uniformly.<sup>44</sup>

Given that these dynamics would take time to be addressed internally, it becomes clear that expanding CUES to addressing MLEAs would be a realistic challenge. In September 2016, ASEAN and China signed a joint statement on applying CUES in the SCS.<sup>45</sup> But a closer examination of the wordings in this document yields the mention of just “naval ships and naval aircraft”, not non-naval forces such as MLEAs and non-government entities. In a way, this joint statement merely reinforces what had been agreed back in 2014, and serves therefore as nothing more than a political declaration. This omission is deliberate, and should not come as a surprise, given the aforementioned problems.

However, there is another challenge that is often overlooked is one that concerns naval arms control. In particular, many types of naval armaments are dual-functional, which allows them to fulfill both offensive and defensive roles. The type and quantity, as well as the manner of deployment of naval armaments also complicate arms control negotiations. In this case, an expanded CUES is aimed at regulating the interactions of MLEAs and non-government vessels. This constitutes what arms control theorists would call “operational arms control”—controls on activities of naval forces; their operations;

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<sup>42</sup> Personnel of the CCG are still also trying to standardise such mundane aspects as dress, and many of them continue to don the uniforms of their former agencies. Authors' discussion with a senior CCG officer, July 2016.

<sup>43</sup> It is important to note that the MMEA was first constituted without its very own personnel and assets; rather, it absorbed these resources from the Royal Malaysian Navy and other maritime government departments. Consequently, the MMEA started off as an interesting “salad bar” of cultures, which may conflict with each other since it takes time for standardization to take place. Authors' discussion with a senior MMEA officer, June 2016.

<sup>44</sup> In fact, BAKAMLA first existed as the Indonesian Maritime Security Coordinating Board (Badan Koordinasi Keamanan Laut, or BAKORKAMLA) and it was so renamed thereafter (including being labelled as Indonesian Coast Guard) for the expressed purpose of reflecting greater empowerment over those subordinate agencies. However, BAKAMLA continues to exist as BAKORKAMLA—still coordinating, but not exercising real authority and unity of command over those agencies—and even has reached a point that it would acquire its own patrol assets. This could have reflected BAKAMLA top leadership's frustration over the persistence of “turf wars” between the agencies. Author's discussion with Indonesian BAKAMLA officials and Defense analysts, June and November 2016.

<sup>45</sup> Joint Statement on The Application of The Code for Unplanned Encounters at Sea in The South China Sea, ASEAN Secretariat, Jakarta, September 7, 2016. <http://asean.org/joint-statement-on-the-application-of-the-code-for-unplanned-encounters-at-sea-in-the-south-china-sea/>.

exercises; formations; movements; deployment areas and so forth.<sup>46</sup> There are two plausible ways to go about expanding CUES in specific regard to MLEAs as a starting point.

### ***The Phased Approach***

The first may be called a Phased Approach, focusing first on MLEAs. But this hits the first roadblock; the question on how one defines such entities. One may initially define MLEAs as agencies that, like regular military, possess distinctively marked personnel and assets. The Heads of Asian Coast Guard Agencies Meeting (HACGAM) may serve as a useful basis for this rather straightforward exercise by including its member MLEAs as natural participants in this “Phased Approach” initiative.<sup>47</sup> There are grounds to believe that this approach would have a relatively higher chance of success than the alternative described below, given that in the climate where maritime disputes are worsening, regional governments may seek quick victories and demonstrate their willingness to play a constructive role.

Moreover, for the wider international community, an expanded CUES based on this Phased Approach serves as a way of alleviating tensions through reducing uncertainties during any coast guard encounters. Following which, this successful initial phase of covering these distinctively identified coast guards may lead to the follow-on phase to look at irregular maritime forces. However, as discussed earlier, expanding CUES would not be straightforward even if a common platform such as HACGAM is identified, and it would be likely that these agencies would seek to create their own “customized” CUES from scratch.

### ***The Blanket Approach***

The second, which may be called a Blanket Approach, simply adopts a broader definition of MLEAs. But parties at the negotiating table will have to agree on what those forces are. Unlike the Phased Approach, this option is less straightforward and is prone to higher risks of failure typical of many negotiated arms control measures. This is because a Blanket Approach essentially conflates all types of MLEAs, which in this particular case would include irregulars such as maritime militia. The Philippine Government, for example, supports the idea of incorporating non-governmental (or even quasi-military, or simply irregular) forces in the expanded CUES,<sup>48</sup> to which some other parties (presumably China and Vietnam) may not necessarily agree to.

For both approaches, there is a common denominator that does not bode well for the prospects of an expanded CUES. Ultimately, parties involved in negotiating either approaches may find it difficult to

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<sup>46</sup> Fieldhouse, Richard. “Naval forces and arms control: a look to the future,” in *Superpowers at Sea: An Assessment of the Naval Arms Race*, edited by Richard Fieldhouse and Shunji Taoka, 158-159 Oxford, New York: Oxford University Press, 1989; also see Hill, J.R. *Arms Control at Sea*. P 159. London & New York: Routledge, 1989.

<sup>47</sup> Even this is not an easy exercise. HACGAM continues to suffer from capacity shortfalls, without its own secretariat to coordinate and manage cooperation between its member agencies. Rather, HACGAM serves more as a platform on which these agencies engage more bilaterally than multilaterally. Author’s discussion with a regional MLEA officer who has attended numerous HACGAM meetings and thus shared such observations, March 2017.

<sup>48</sup> “Include coast guards, other maritime forces in CUES –Gazmin,” *Philippine News Agency*, May 27, 2016. <https://goo.gl/QBCQof>.

agree on the existence and exact functions of non-government entities where it concerns maritime law enforcement and sovereignty assertion. Precisely because such forces are so elusive and ambiguous, that they render a wide range of tactical, operational, and strategic flexibility for their governments, it is hard to incorporate them in such mechanisms as far as compliance, verification and enforcement (CVE) by parties are concerned.<sup>49</sup>

Going down the path of the lowest common denominator of how MLEAs are defined will obfuscate the real crux of those realities playing out in the SCS and in the foreseeable future. Therefore, clearly identifying the forces in question will be the pre-requisite for meaningful discussions, the conclusion of such a mechanism, and future CVE implementation purposes. It is therefore necessary for parties at the negotiating table, be it at the follow-on discussions after Phase One for coast guards has been promulgated, or right at the onset of Blanket Approach talks, to agree that irregular forces do exist, and are involved in maritime law enforcement and sovereignty assertion tasks, in varying degrees. This constitutes the fundamental pre-requisite for an expanded CUES to be efficacious, not just in name but also in implementation. If not, the discussions may simply fall through, or parties will be compelled to seek the lowest common denominator, rendering this mechanism more as a shining political symbol that is operationally meaningless.

The imperatives of practical security cooperation—driven in no small part by commonly-perceived maritime challenges such as the scourge of trans-national criminal activities and terrorism for example, may nudge regional MLEAs towards at least initial discussions about expanding the present CUES or conceiving of a completely new one, optimised for MLEAs from scratch. It is evident that some preliminary efforts are indeed being undertaken at present. But domestic hurdles, largely stemming from bureaucratic dynamics and practical challenges stemming from such operational issues as mission mandates of various MLEAs, would at best slow down collective effort towards such a mechanism.

### **Adding to CUES: Strategic, Operational, and Tactical Level Possibilities**

This section develops the final thrust of this paper on raising specific proposals for expanding CUES in the SCS through the injection of several established and accepted measures used before, and to introduce new initiatives reinforcing the prevention and mitigation of incidents.

#### ***Strategic Level Possibilities***

The first proposal is that CUES ought to set the stage for the CoC—work-in-progress since 2002, as the tactical cooperation mechanism that enhances mutual trust through its judicious execution of agreed procedures.<sup>50</sup> As mentioned earlier, ASEAN and China adopted to apply CUES in the SCS, at

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<sup>49</sup> The CVE problem is a persistent one that has long dogged naval arms control. See *Rear Admiral J.R. Hill, Arms Control at Sea*, p. 154. London and New York: Routledge, 1989.

<sup>50</sup> Note that Chinese Foreign Minister Wang Yi announced in March 2017 that a first draft of a CoC has been finalised. Speaking at a forum on the southern island province of Hainan, Chinese Vice-Foreign Minister Liu Zhenmin said, a cooperation mechanism would enhance mutual trust and strengthens cooperation and is not

the ASEAN-China Commemorative Summit in September 2016. To reiterate, CUES must be expanded to involve and include MLEAs such as a state's coast guards and other government vessels that fall under this category. The first thrust of this paper also argued that the centre of gravity of CUES must be at the operational and tactical levels. Furthermore, putting any doctrine or procedure in operation requires training, testing and evaluation of effectiveness. In this vein, navies that are members of the WPNS should introduce CUES procedures in tabletop exercises, simulator exercises in shore based trainers and then progress to sea exercises. These serials could be included in bilateral and multilateral exercises like ADMM+ maritime security exercises. The value in conducting such exercises will help to sharpen the procedures if lessons learnt are captured and updated, and it will also proliferate the knowledge across tactical units. To be sure, the implementation of the CoC is not going to be free of challenges because unlike CUES, it is a binding agreement for easing tensions in the region.<sup>51</sup> Nevertheless, getting the operational and tactical mechanics of CUES right can facilitate buy-in for CUES.

The second proposal is the introduction of neutral forces that could play the role of a 'balancer' and 'marshal' to de-escalate encounters in the SCS. In the introduction, this paper highlighted the increasing maritime and naval activity in the SCS. In particular, the presence of both U.S. and Chinese forces (including maritime militia) further heightens the possibility of incidents. The EU and more recently Indonesia have indicated interest in joint patrols, but both suggestions have been met with lukewarm response. Most recently, Australia decided against joint patrols with Indonesia in the SCS. In contrast and in a reaction to China's growing presence, Japan has shifted its pacifist stance and will deploy its largest warship through the South China Sea to the Indian Ocean in May. While Japan has no claims in SCS, it sees its interests in working with strategic allies in freedom of navigation operations to maintain open seas.<sup>52</sup>

Joint patrols are usually purpose driven and involve participating nations directly. Such arrangements can be seen in the Malacca Straits Patrols (MSP) that involve a coordinated effort by Malaysia, Indonesia, Thailand and Singapore to combat piracy in the Straits of Malacca and Singapore Strait (SOMS), which include Malacca Strait Sea Patrol, Eyes-in-the-Sky and Intelligence Exchange Group activities. More recently, Malaysia, Indonesia and the Philippines established a Trilateral Co-operative Arrangement (TCA) for a joint patrol mechanism to combat piracy and kidnapping in the Sulu Sea. It is not hopeful that third party presence in the South China Sea disputed areas will come into fruition any time soon. But should there be an incident or skirmish that affects safe passage of shipping, interested parties could ramp up and start an active presence in the area to provide a balancing force

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about resolving disputes. The messages from China indicate a desire to maintain the status quo as far as territorial claims are concerned, while at the same time showing the desire to prevent incidents and conflict that can derail cooperation efforts. However, these statements also coincide with the nearing completion of construction of military facilities on the artificial islands constructed by China, which it will try to keep intact in the COC. See "China calls for more cooperation among S China Sea nations," *Today*, March 28, 2017. <https://goo.gl/s3U2B9>.

<sup>51</sup> Heydarian, Richard J. "Asean-China Code of Conduct: Never-ending negotiations" *The Straits Times*, March 9, 2017. <http://www.straitstimes.com/opinion/asean-china-code-of-conduct-never-ending-negotiations>.

<sup>52</sup> Sim, Walter "Tokyo sheds pacifist stance in South China Sea." *The Straits Times*, March 30, 2017. <http://www.straitstimes.com/asia/east-asia/tokyo-signals-shift-in-pacifist-stance>.

that could lower tensions. Drawer plans could be developed to prepare for such a need that could be put into rapid use when called upon.

### ***Operational and Tactical Level Possibilities***

The first proposal at these levels is the introduction of what can be called a 'Shared Incident Prevention Meeting' (SHIP). Multilateral meetings of an inclusive nature to develop and de-conflict procedures have proven to be effective in the Gulf of Aden (GoA) and SOMS. In the GoA, the Shared Awareness and De-confliction Meeting (SHADE) are held in Bahrain co-chaired by Combined Maritime Forces, EU and NATO. This meeting brings together multinational forces, independently deployed navies, maritime security organisations and representatives from the merchant marine, to share information and propose measures to deal with piracy. Similarly, the Information Fusion Centre (IFC) in Singapore hosts a Shared Awareness Meeting (SAM) that brings together maritime security agencies and merchant mariners to build awareness and discuss measures to deal with sea robbery and piracy in the SOMS. With SHADE and SAM as reference, SHIP could be established to study safe passage in the SCS, and measures to prevent incidents. The meeting could be sponsored and hosted by ASEAN members that are not directly involved in the SCS disputes. The meeting could be conducted post-WPNS for a start, and regularly thereafter. Such a meeting could also work out actions required to implement and put into operation CUES, and provide an operational level platform to further develop the COC.

The second proposal is the implementation of an SCS Safe Passage Guide. The International Maritime Organization (IMO) promulgates various publications relating to safety at sea e.g. Safety of Lives at Sea (SOLAS) and regulations for Preventing Collisions at Sea (COLREG). These publications tend to be generic and not area specific. Collaborative publications like Best Management Practices for Protection against Somalia Based Piracy are produced for specific areas of interest. With increased military presence and fishing militia, a Safe Passage Guide for transit through the disputed areas in the SCS could be developed to include parts of the procedures in CUES, especially chapters on communication. This will equip merchant shipping with the knowledge of CUES, and the necessary means to convey intentions to prevent incidents.

The third proposal is the implementation of voluntary reporting. The Asian region is bound by functioning states under the rule of law. Also, naval forces operate openly in the region and in close cooperation with each other. The IMO advocates reporting to the nearest coastal states as they have the jurisdiction to respond. It also provides ownership to enforcement in the region and prevention of the maritime crime. The Voluntary Community Reporting (VCR) scheme was established by the IFC for the purpose of enhancing maritime security for all merchant ships operating in the IFC's Voluntary Reporting Area (VRA is depicted in Maritime Security Charts Q6112 and Q6113 and it covers the disputed areas in SCS). Merchant ships operating in the VRA are strongly encouraged to report maritime security incidents or anomalous behaviour to the IFC. Participation in this reporting scheme is free, and ships sailing under any flag are strongly encouraged to participate. All information provided is treated with strict commercial confidentiality, and will be used within the military and

maritime enforcement agencies. In return, IFC provides maritime security advisories to ships based on their reported position and intended destinations where applicable and appropriate. IFC will evaluate and monitor selected ships, sharing the information with other maritime enforcement agencies when required. Consistent reporting will allow IFC to pass on valuable information to the relevant maritime enforcement agencies in the event of an incident, and aid in their timely response to incidents by all ships<sup>53</sup>.

A similar practice is performed by the United Kingdom Maritime Trade Operations (UKMTO), for ships proceeding into the Gulf of Aden. UKMTO applies the Voluntary Reporting Scheme, under which merchant vessels are encouraged to send regular reports, providing their position/course/speed and ETA at their next port while transiting the region bound by Suez, 78°E and 10°S. UKMTO subsequently tracks vessels, and the positional information is passed to CMF and EU headquarters. Emerging and relevant information affecting commercial traffic can then be passed directly to ships, rather than through company offices, thereby improving responsiveness to any incident and saving time<sup>54</sup>. Provided that ships subscribe to the various voluntary reporting schemes, agencies like the IFC can play a wider role in monitoring and providing early warning of potential encounters at sea in the disputed areas. Early warning and potential encounter analysis could provide timely warning to prevent unintended encounters. Representative nations liaison officers within the IFC will be able to provide information on the movements of their own warships through their national reach back channels, and can use systems like the Automatic Identification System (AIS) and Long-range Identification and Tracking (LRIT). While it is unlikely that warships and fishing militia will practice voluntary reporting, and are unlikely to transmit their positions on the AIS and LRIT, they may be forced to do so when there is heightened tension or post-incident.

The fourth proposal is the implementation of a graduated level of actions that could be developed and adopted to prevent and mitigate incidents. This is particularly relevant in a tactical situation in which ships of claimant nations can come into close contact. The logical flow of actions is as follows:



Currently, CUES only outline certain required actions under “Emergency” signals which may be applied too late for the prevention of incidents. In terms of ‘Raising Attention’, the CUES procedures could provide the communications channels for naval vessels to raise attention of each other’s presence. This can be done beyond the visual horizon by analysing radar contact and Automatic Identification System (AIS). CUES does not have to provide the standard text for raising attention, but

<sup>53</sup> *Regional Guide to Counter Piracy and Armed Robbery against Ships in Asia*. Singapore: ReCAAP in collaboration with the Asian Shipowners’ Forum, (ASF), Federation of ASEAN Shipowners’ Associations (FASA), Information Fusion Centre (IFC), INTERTANKO, Oil Companies International Marine Forum (OCIMF), S. Rajaratnam School of International Studies (RSIS) and Singapore Shipping Association (SSA). 2016. <https://goo.gl/czz0Hz>.

<sup>54</sup> United Kingdom Marine Trade Operations (UKMTO) March 15, 2017. <https://www.ukmto.org/>

international norms can be applied. Depending on the area where attention is raised, it could escalate from awareness to cautionary broadcasts if the contact is in disputed waters. Such a procedure could be included in CUES and for the proposed SCS safe passage guide.

In terms of “Warning Off”, such an activity can be executed between naval vessels when an encroachment into territorial waters occurs. Each navy has its cleared text which are normally cleared by Legal and Policy offices for such encounters. It is imperative for the wording and tone of delivery of warning messages to be firm and yet maintain a balance to be non-escalatory. The Pedra Branca disputed areas was and remains one such area in which warnings are meted out between the claimant nations’ government vessels on a regular basis without the need for escalation to kinetic actions. Such a model of interaction could be adopted in the SCS disputed areas.

For “Break Away”, ships could conduct a standard break away procedure when a close quarters situation develops despite the steps taken with Raising Attention and Warning Off. To be certain, such procedures are already available in various naval publications and could be included in CUES. Moreover, such a drill could be practiced in training exercises not necessarily related to CUES, but as a part of normal safety preparedness. Break away procedures, if used judiciously, can prevent close quarters, contact and even weapon engagement. Next, ‘Break Off’ is about having vessels do exactly that—breaking off in the face of impending unintended contact through collision or weapon engagement, so as to halt further escalation of the situation. Ships involved should cease all further action that could lead to more damage. If possible, ships should turn and move off in opposite directions and take actions to perform damage control and casualty recovery. Should there be neutral third party, assistance could be requested.

Lastly, ‘Safe Boxes’ follows from the procedure on breaking off by having ships proceed to pre-determined safe boxes that could be spelt out in CUES or CoC. These boxes can be assigned in many areas over the disputed areas and could include a code of ethics where no hostile action is taken in these areas e.g. no firing of guns and no physical contact. Ships should operate under IMO’s SOLAS regime and could broadcast distress messages (Pan-pan—urgency on a ship but not life threatening; or Mayday—life threatening situations). If there is a third-party navy or enforcement vessel, they could be the marshal to ensure that things do not escalate any further and also provide assistance if there is damage, injury or worse, loss of life.

The fifth proposal is about overcoming the current limitation in effective communication due to varying degrees English proficiency by vessel operators from participating countries. Some countries have published the CUES document in two languages—one in English, and a national language. This is done to help operators to understand the messages easier and to translate these messages into executable actions. To overcome this limitation and language barrier, a data communications procedure could be developed in which pre-programmed messages extracted from CUES could be used for communication between naval vessels through the AIS or better still, a common web based system like the EU’s MERCURY system that is used by the three task forces and nations deployed independently in the Gulf of Aden. Singapore has developed such a system, codenamed ACCESS,

which could be adopted or be used as a standard. Data communications can overcome the language barrier and prevent misinterpretation of intentions between ships at sea and between operations centres.

The last proposal is about the need to formalise and standardise the conduct of CUES drills between participating navies whenever they carry out a passing exercise (PASSEX). As a note of encouragement, a visiting frigate of the Republic of Singapore Navy (RSN) and the PLAN conducted such drills during their PASSEX on 26 April of this year. Going forward, a chapter, annex or book of exercises could be developed for inclusion in the CUES document, stipulating CUES-related scenarios for tabletop exercises, simulator exercises, and at-sea bilateral and multilateral exercises. By stipulating such scenarios and form of conduct of such exercises, the structure will be fixed, and it will be easier for planning teams to get the clearance to conduct the exercises, and ease the planning. The conduct of CUES exercises could also be reported to the WPNS to leverage on the lessons learnt and further improvements that can be made to fine-tune the document.

There are certainly bright prospects for the expansion of CUES from its current form to incorporate some, if not all of the above discussed proposals, if one recognizes that there has been ample trust between navies of the Western Pacific Naval Symposium to adopt the document in April 2014. In fact, the signatory navies continue to discuss CUES in workshops and the mechanism remains a feature in high-level meetings of regional navy chiefs, taking the International Maritime Security Conference hosted in Singapore in May 2017. These ongoing discussions, as well as mostly bilateral at-sea interactions putting this mechanism into practice demonstrate how there is sufficient trust and traction between the signatory governments to build on CUES to possibly extend it to the underwater dimension, for example.

## **Conclusion**

To recap, this paper comprised three thrusts. The first thrust was about framing CUES, expanded versions of it, and any new initiatives to prevent and mitigate incidents at sea in the Asia Pacific littorals, and especially in the SCS, as methods in risk reduction. Framing must also make it mindful that the centre of gravity and theory of success for CUES must be at operational and tactical levels. Next, while the operational feasibility and other details needs working out, endeavours to broaden the scope of CUES to include sub-surface and aerial- based actions as other potential triggers for unplanned encounters and unintended escalations at sea must be encouraged. The end-state is that CUES needs to be comprehensive in light of the multidimensional nature of the maritime landscape in the SCS.

The second thrust assessed the prospects for the successful implementation of an expanded CUES—focusing on including MLEAs as a starting point for further expansion—through what this paper terms as ‘phased’ and ‘blanket’ approaches. This area of discussion returns to the diplomatic climate and politicisation. This paper argues that the expansion of the scope of CUES will take on either approach depending on how positive or negative the regional climate is. The phased approach



would have a relatively higher chance of success than the blanket approach in a worsening climate of the maritime disputes, and vice versa. In a worsening climate, regional governments may seek quick victories and demonstrate their willingness to play a constructive role. When atmospherics are more positive, the blanket approach could be exploited to push for the adoption of a broader definition of MLEAs that include irregular forces such as maritime militia. Either way, clearly identifying the forces in question will be the pre-requisite for meaningful discussions, the conclusion of such a mechanism, and for future CVE implementation purposes. It is therefore necessary for parties at the negotiating table to agree that irregular forces do exist, and are involved in maritime law enforcement and sovereignty assertion, to certain degrees.

The third thrust added to CUES by raising two proposals at the strategic level and six proposals pegged at the operational and tactical levels of planning and activity. The strategic-level suggestions included using CUES to set the stage for the CoC and introducing neutral forces that could play the role of a 'balancer' and 'marshal' to de-escalate encounters in the SCS. The operational and tactical level proposals included introducing a multilateral meeting of an inclusive nature to develop conflict resolution procedures called SHIP; the implementation of an SCS Safe Passage Guide; the implementation of voluntary reporting; the implementation of a graduated level of actions (Raising Attention, Warning Off, Break Away, Break Off, and Safe Boxes) so as to prevent and mitigate incidents; establishing a data communications procedure comprising pre-programmed messages extracted from CUES could be used to communicate between naval vessels through the AIS and other platforms; and formalising and standardising the conduct of CUES drills between participating navies whenever they carry out a passing exercise (PASSEX).

Finally, it serves to note that the work of expanding CUES and the implementation of new initiatives cannot be allowed to stagnate. The situation in the SCS disputed areas can rapidly deteriorate should an incident or skirmish occur. Claimants and regional countries should play an active role in developing procedures and measures to prevent incidents and mitigate incidents should they occur. While there has been some progress in CUES and very slow development of a CoC, much more effort is required in further expanding accepted procedures and introducing new proactive measures and procedures. It will do all of us well to prevent than to recover from increased tensions in the SCS, an area so vital to all for international trade and safe seas.

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