Breaking News: Incidents at Sea Did Not End with the Cold War!

David F. Winkler

Unlike terra firma, which separates opposing military forces through international boundaries, space on the high seas is open to all comers. Given the increased tension in the South China Sea and the East China Sea, there seems to be good reason to promote agreements that reduce the likelihood of naval accidents snowballing into wholesale confrontation. Can we learn something from the Incidents at Sea Agreement (INCSEA) signed between the United States and the Soviet Union during the Cold War?

During the second decade of the Cold War, growing Soviet maritime activities placed ships bearing the hammer and sickle in daily contact with the West. Soviet merchant ships berthed in Cuba and North Vietnam found themselves in harm’s way, others found themselves under constant surveillance, and others performed a surveillance role. These intelligence collection trawlers often hindered Western navy operations, but it was a growing Soviet Navy that truly alarmed the Americans. Collisions involving USS *Walker* in the Sea of Japan in May 1967, followed by close interactions between Sixth Fleet and Soviet warships in the Mediterranean a month later during the Six-Day War, moved US Navy leadership to push for bilateral talks with the Soviets about safety at sea. With this in mind, the US State Department approached the Soviets in April 1968.

In the wake of a collision between a British aircraft carrier and a Soviet destroyer in November 1970, the Soviets accepted the American proposal, and negotiations led to the May 1972 “Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents On and Over the High Seas” (INCSEA). Mainly devised by naval personnel, the accord served to moderate the behaviour of the naval surface and air forces of the two sides up to the end of the Cold War, and has continued to do so with Russian naval assets. It did so despite the October 1973 Middle East War and the 1980s, a period of deteriorated superpower relations and reassertion of American maritime superiority.

At the conclusion of my dissertation on the INCSEA accord in 1998, I postulated that the lessons learned from the Cold War at sea would have applications for international relations in the 21st century. I cited seven fundamental reasons for the accord’s success and why it should be used as a model confidence-building measure.

1. Best interests of both sides: USN Rear-Admiral Robert Hilton once wrote: “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: Over the long term, the American insistence on a simple formula calling for commanders to abide by the rules and use prudent judgement probably served each side’s best interests.

3. Professionalism: Former ship operators and aviators served on the delegations. 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. 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 organized in advance.

5. 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.

6. Lack of publicity/visibility: INCSEA received little press attention at its signing, and a consistent effort has been made to maintain this low profile.

7. Verification and accountability: The establishment of direct navy-to-navy communications mechanisms and the provision of annual consultations 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 to demonstrate which party was at fault.²

Although INCSEA did not end all US-Soviet incidents at sea, it served as a confidence-building mechanism addressing the serious problem of harassment at sea that plagued both sides in the late 1960s and early 1970s.

In October 2012, US and Russian naval delegations met in Washington DC to clink glasses of vodka to celebrate the 40th anniversary of the accord.³ Nowadays, there are few reports of American and Russian ships confronting each other. Thus the annual consultations called for in the agreement have had a scripted rapidity followed by a signing ceremony. Given the pro forma ritual of the meeting, is it worth the logistics involved? With the Cold War a quarter century in the rear window, is INCSEA still germane?

Apparently the answer is affirmative. The accord continues to serve as a forcing function in several ways, reminding those in command at sea that behavioural norms have been established and they can be held accountable for their actions. This has become even more germane in recent years as the Russian Navy strives to reestablish a blue-water presence. The ongoing crisis in Syria, for example, has led to the presence of both Russian and US naval vessels in the same location and in a situation where national interests do not coincide.

Another reason why the accord has remained alive and well is that the dance that occurs every autumn has morphed into a platform for additional constructive engagement. At the 1992 20th anniversary review in Moscow, for the first time, the two navies held staff talks to exchange information, coordinate activities and discuss joint training opportunities. In the years following the 20th anniversary talks, staff talks held in conjunction with the INCSEA review assumed the greater portion of the annual get-together. For example, in 1993, the United States hosted the talks in San Diego, allowing the Russian delegation to tour facilities of the US Pacific Fleet. The US Navy hosted the 1996 talks in Seattle to familiarize the Russians with Trident missile submarine and other facilities in and around Puget Sound.
These navy-to-navy staff talks might have fallen by the wayside given budgetary constraints faced by the Russians in the 1990s and current fiscal challenges that the US Navy confronts if not for the existence of a government-to-government accord that forces delegations from the two states to review safety at sea issues.

Perhaps as a result of dialogue that led to additional operational interaction, in 2005 the Americans shifted responsibilities for preparing for the annual reviews from the staff of the Chief of Naval Operations to an operational commander, Commander US Naval Forces Europe. That administrative adjustment aside, the American delegation continues to have representatives from various agencies in the Pentagon and the State Department.

The INCSEA between the United States and Soviet Union/Russia has been a longstanding success. This 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. But can this experience be extrapolated to other relationships? Would it work between the United States and another competitive non-allied world power, China?

Until the 1990s, the People’s Liberation Army Navy (PLAN) was a coastal defence force with few encounters with foreign naval vessels. Those that occurred were considered non-confrontational, such as a three-day October 1994 encounter between US Navy anti-submarine warfare assets supporting USS Kitty Hawk and a Chinese nuclear-powered Han-class submarine in the Yellow Sea. The hide-and-seek games in which no direct contacts were made by the opposing forces provided real-world training opportunities that money can’t buy. However, when news of the encounter broke in the Los Angeles Times in December 1994, the Foreign Ministry of China expressed its concerns about violations of Chinese airspace by US Navy aircraft. Two months later, in February 1995, it was reported that the United States intended to open dialogue with the Chinese for an agreement modeled on INCSEA.4

It took nearly three years to reach an accord. This is not surprising, especially with the occurrence of the serious events in 1996 – i.e., the visit of the President of Taiwan to the United States, and China’s missile tests in the Strait of Taiwan conducted in response. In addition, the two sides looked at safety at sea through different prisms. From the US perspective, the issue was and remains providing for the physical security/safety for sailors and aviators operating in international waters. China took a broader interpretation, thus, as well as the security/safety of its forces, it includes a homeland free of foreign interlopers – an expansion of a Soviet view in the 1970s negotiations for the INCSEA at which the Soviets proposed fixed-distance regimes to stand off American forces.

of China on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety” (Military Maritime Consultative Agreement (MMCA)) was signed by US Secretary of Defense William S. Cohen and Chinese General Chi Haotian. A review of the nine articles indicates that many of the positive lessons learned from the INCSEA were incorporated into the language of the MMCA. Since the term ‘incidents’ had Cold War connotations, it was replaced with ‘accidents’ in the accord.

As with INCSEA, MMCA provides for annual consultations to be hosted on a rotating basis and that details of the consultations should be kept between the parties to encourage a free exchange of views. The INCSEA annual review features working group and plenary sessions. At the working group level, mid-grade officers and civilian subject-matter experts examine specific issues, share positions and draft statements. If there is a disagreement, it is put in writing. At the plenary sessions, senior officers of flag or general rank review the efforts of the working group and sign a summary of proceedings. A similar format has been instituted with MMCA, except that working group meetings are not only conducted during the annual consultative meeting but also independently, usually every four to six months.

The executive-level government-to-government status of the INCSEA accord helped to sustain the annual consultation process despite breaks in military-to-military contacts following the Soviet invasion of Afghanistan. Perhaps because the MMCA is a ministry-to-ministry accord, it has been subject to the ongoing relational flux between the two states. The first consultation meeting was held in July 1998, but the unintentional US Air Force bombing of the Chinese Embassy in Belgrade in May 1999 during the NATO air campaign against Serbia led to the postponement of the second round of talks. Two years later, the April 2001 collision between a USN EP-3E aircraft and a PLAN F-8 interceptor near Hainan again pushed back the meeting. Thus the third consultation was conducted in Shanghai during the fourth year of the accord in April 2002.

Annual consultations have continued, as have the bumps in the road. No doubt the Chinese harassment of USNS Impeccable in March 2009 made the agenda for the MMCA talks held in Beijing in August 2009. The “cautiously optimistic” assessment that progress had been made at the 2009 MMCA discussions was set back the following January when China suspended military-to-military communications following the announcement that Taiwan would acquire $6.4 billion of US-produced arms. Following a meeting in Beijing in September 2010 between Assistant Secretary of Defense for East Asia Security Michael Schiffer and Director of the Chinese Defense Ministry Foreign Affairs Office Major General Quan Lihua the meeting ban was lifted and MMCA resumed in Hawaii in October 2010. The problem with this pattern, however, is that you need discussions and meetings when relations are difficult, not when they are easy.

For the United States, US Pacific Command represents the Department of Defense and provides leadership for the MMCA plenaries. For the working groups, Pacific Command turned to its US Pacific Fleet naval component to provide the mid-level expertise to staff the groups. The ongoing working group face-to-face engagement is useful, considering the direct navy-to-navy communication mechanism that was incorporated into the 1972 accord is missing in MMCA. If there is an incident/accident about which one state wishes to express immediate concern, it has to be handled through a démarche, as was the case with the United States and Soviet Union prior to 1972.

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A month after the Impeccable incidents in March 2009, the American Chief of Naval Operations, Admiral Gary Roughead, met with his counterpart, Admiral Wu Shengli, in Beijing and addressed the media. Asked if there was the need for an INCSEA between the United States and China, Roughead stated “I think the current existing rules, agreements and laws that exist and the professional nature of our navies is adequate to the types of operations that we are doing.” Should this be reconsidered in light of further hiccups in the US-PRC military-to-military relations since then?

There have been a number of academic articles discussing whether an INCSEA between China and the United States should be adopted. I’d like to examine two of them, one in favour and one against the idea. The first article,
published in 2010, was written by retired Canadian Navy Commander David Griffiths. Griffiths concludes that the MMCA is a good start but it lacks “the relationship-transforming elements” that could make it more useful. He blames the lack of provisions for real-time communications for inhibiting naval commanders on both sides from effectively co-managing their forces. In addition, he expresses concern that the MMCA delegations, often composed of non-seagoing officers and civilian advisors, lack the saltiness that has been seen in INCSEA delegations. According to Griffiths, “[e]xperience has shown that this works best when delegations are led by naval officers, with diplomats serving as advisers to the military head.”

The second article is by retired US Navy Captain and Staff Judge Advocate Pete Pedrozo. He argues against an accord because: (1) PLAN is not a blue-water navy as the Soviet Navy was and thus isn’t deserving of the elevated stature that INCSEA would render; (2) US and Chinese views on international law differ and cannot be reconciled; (3) INCSEA is a navy-to-navy accord and many of the issues with China have involved non-navy units; (4) INCSEA is a Cold War instrument not appropriate for the relationship that the United States is trying to forge with China; (5) China’s actions in the South China Sea undermine its credibility as a responsible state actor; and (6) international regulations and regional arrangements have been implemented to supplant the communications mechanisms associated with INCSEA.

In my opinion, both authors fall short in making their cases. In the case of Commander Griffiths, while US Pacific Command is a joint unified command assigned responsibility for the selection of the plenary delegation head, that delegation head has been a naval officer. Likewise individuals assigned to working groups from US Pacific Fleet also wear navy blue.

Captain Pedrozo undermines his own case through making incorrect or irrelevant arguments. Ironically, his reasoning for not bestowing equal status to the PLAN by arguing that it is not a true blue-water navy echoes arguments made by senior US naval officers about the Soviets during the negotiations for the 1972 accord. With operational experience in the Indian Ocean, the world’s most productive submarine-building program, and the placement into service of an aircraft carrier, the PLAN is improving its blue-water capability. Pedrozo is correct that the United States and China have different interpretations of the Law of the Sea, but Griffiths notes that the Soviets and Americans also had different interpretations. Griffiths cites the 1988 Black Sea incident in which two Soviet warships rammed USS Yorktown and USS Caron as they pursued rights under international law to free passage through Soviet territorial waters – rights that the Soviets clearly did not recognize. Strangely, Griffiths cites the incident as a positive example of force co-management.

Both Pedrozo and Griffiths incorrectly portray INCSEA
as a navy-to-navy accord. While the composition of the delegations may look all navy blue, many of the naval officers assigned to the delegations are representing other government agencies. Where Pedrozo is inaccurate is that the 1973 protocol to INCSEA extended the accord to cover non-military vessels and aircraft of the two sides. Regarding Pedrozo’s point that INCSEA was a Cold War instrument, it should be noted that when MMCA was being negotiated in the 1990s, the Cold War had just concluded and no one wanted to suggest a new Cold War struggle between the United States and China by declaring the need for an INCSEA. However, it has now been the US-Russia INCSEA for a longer period than it was the US-USSR INCSEA. Rather than adversary, Russia is a non-allied competitive power. The same can be said for China.

Pedrozo provides a long list of Chinese maritime transgressions. But how is that relevant – INCSEA was negotiated in the wake of numerous Soviet transgressions in the 1960s. Perhaps if an INCSEA were in place, the Chinese might be more constrained in their actions.

Pedrozo’s last argument, that international regulations and regional arrangements have supplanted the communications mechanisms associated with INCSEA, is his most reasoned. Pedrozo correctly points out that the capacity for naval commanders on both sides to communicate, which Griffiths argues is lacking, exists in spades starting with the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS), which came into existence only months after the INCSEA accord was signed in 1972. However, there are activities and manoeuvres unique to naval vessels that are not covered in COLREGS. The Western Pacific Naval Symposium (WPNS), beginning in 1988, has served as a biennial forum for naval leaders from the Western Pacific rim to discuss topics of mutual interest. Regarding the void in naval-specific signals, naval leaders attending the 7th WPNS in 2000 opted to incorporate elements of the original INCSEA wording and added tactical signaling and manoeuvring instructions common throughout NATO during the Cold War, thus creating the Code for Unalerted Encounters at Sea (CUES).

Are the signals being used? One American commander of an Arleigh Burke-class destroyer recalled encountering a Chinese PLAN frigate in the East China Sea in the spring of 2008. “It was 3 AM in the morning and we were in the middle of a fog,” recalled Captain Winton Smith. A Chinese Jiangwei-class frigate had contacted his ship to determine identity. Smith responded and the Chinese warship remained astern hidden in the mist. This presented a problem for Smith who planned to conduct engineering casualty drills that would cause his ship to stop and go. Using the CUES signal book, he told his Chinese counterpart he was going to conduct engineering

On 5 December 2013, USS Cowpens (CG 63) was involved in a minor confrontation with a Chinese warship that was escorting the Chinese aircraft carrier Liaoning in the South China Sea. After Cowpens refused a Chinese demand to leave the area, the ship crossed in front of Cowpens and halted, forcing Cowpens into an emergency stop. China said that the action was intentional and that US ships sent to observe PLAN manoeuvres would be ‘blocked.’
drills and asked if the frigate could reposition itself 500 yards off the port beam. “We watched on radar and the Chinese frigate immediately responded to our request,” noted Smith. He closed the distance on the Chinese warship so it could finally be visible and friendly waves were exchanged.\textsuperscript{16}

Whether this anecdote reflects routine operations or is an exception is worthy of further investigation. Given the number of joint and multilateral exercises and humanitarian and anti-piracy operations in recent years, there are certainly opportunities for naval commanders to become proficient in their use.

So if it isn’t broke, is there a need to fix it? During the immediate post-Cold War era in which it was negotiated, it is understandable that the MMCA was framed to avoid the rigid INCSEA annual review process developed to accommodate a confrontational superpower relationship. What was more attractive to the MMCA drafters was to formalize the type of staff talks that had evolved with the Russians in conjunction with the bilateral INCSEA reviews in the early 1990s. In retrospect, the less structured format of the MMCA accord may give a wishy-washiness to the proceedings as the two parties have reportedly come with differing agendas and talk past each other. Matters of true substance do not get addressed. Another shortcoming could be that the ministry-to-ministry level of the accord has made its continuous execution vulnerable to the whims of senior government officials. The government-to-government nature of INCSEA has made it bulletproof to arbitrary foreign policy decisions.

Negotiating a government-to-government US-China INCSEA and holding the annual reviews concurrent to MMCA meetings could be one approach. However, a more expeditious solution could be for a renewal of wedding vows between the United States and China on this subject. By this I mean the signing of an enhanced MMCA at the head of state level, with provisions that the new agreement provide for a constructive safety at sea review process modeled on the current US-Russia INCSEA relationship.

The bottom line is mutual commitment. Signing a US-China INCSEA, upgrading the current MMCA, or just maintaining the status quo does little to enhance bilateral relations if there is non-compliance. Such was the case in the US-USSR accord following the shootdown of KAL 007 on 1 September 1983 when Soviet vessels harassed American maritime salvage operations. The Pacific Fleet Commander, Admiral Sylvester R. Foley, summed up what happened: “the Soviets gave us trouble and hassled us and we said, ‘if the Incidents at Sea Agreement means anything, cut it out,’ and they did.”\textsuperscript{17}

Notes
2. David F. Winkler, Preventing Incidents at Sea: The History of the INCSEA Concept (Halifax, NS: Centre for Foreign Policy Studies, Dalhousie University, 2008), pp. 209-11.
3. The author attended and spoke at the proceedings. In addition to the United States, the Soviet Union/Russia has signed 11 additional accords with states allied to the United States.
5. During the Cold War there existed a document stamp in the Pentagon that read “For US-USSR Eyes Only.”
6. There was six-month postponement of the annual review following the murder of Army Major Arthur Nicholson by Soviet soldiers in East Berlin in March 1985.
12. Winkler, Preventing Incidents at Sea, pp. 113-114.
14. Current participating countries include Australia, Canada, Chile, France, Indonesia, Japan, Cambodia, Tonga, Malaysia, Brunei, New Zealand, New Guinea, China, Peru, Philippines, South Korea, Singapore, Russia, Vietnam, Thailand and the United States, with Bangladesh, India and Mexico having observer status.
17. Quoted in Winkler, Preventing Incidents at Sea, p. 173.

David F. Winkler, PhD, is a retired US Navy Commander and historian serving as Director of Programs at the Naval Historical Foundation in Washington, DC.