

Preventing Dangerous Military Incidents in Peacetime

Discussion Paper for a Track II Dialogue on U.S.-Russian Crisis Stability

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In determining the appropriate actions to stabilize the U.S.-Russian relationship, it is advisable to reexamine previous interactions and methods of deescalating tension. Specifically, this paper draws upon Cold War interactions to identify parallels—and contrasts—to contemporary U.S.-Russian military interactions. This is achieved primarily through the examination of the 1972 Incidents at Sea (INCSEA) Agreement and the 1989 Agreement on the Prevention of Dangerous Military Activities. It is critical to examine the events that demanded these agreements as well as to explore the process of drafting and enforcing them. Further, this paper analyzes the effectiveness and longevity of such agreements.

Following an examination of the circumstances and conditions that successfully established and allowed for a largely successful execution of these agreements, this paper recommends how to best apply past experiences to the modern relationship between the Russian Federation and the United States. In particular, it seeks to understand why the Incidents at Sea Agreement has remained largely successful more than four decades after it was signed. Yet this examination also highlights deficiencies of INCSEA and proposes avenues for exploration that will ensure the future prevention of dangerous military incidents in peacetime.

The Incidents at Sea Agreement (INCSEA)

In the 1950s and 1960s, the Cold War rivalry was intensifying and becoming increasingly evident across a number of fronts, from the nuclear weapons arms race to the space race to the ideological struggle that had enveloped the bipolar world. Both sides sought to maximize each and every opportunity to demonstrate their own power and diminish that of their rival. Each meticulously prepared their militaries for what was perceived as inevitable conflict.

As both sides sought to expand influence and power, military forces kept close surveillance of the other side in an effort to assess strengths and weaknesses while also remaining on the highest alert for signs of escalation. While land forces amassed and prepared for a potential ground war in bases

strategically located across North America, Europe, and Eurasia, naval forces operated without constraint in international waters. The open sea-lanes were critical for both trade and influence, particularly following the imposition of U.S. containment policies. The U.S. Navy, established in the traditions of the British naval fleet and having played a significant role in World War II, demonstrated early naval supremacy in the Cold War with naval forces operating globally.

Yet Adm. Sergei Gorshkov took command of the Soviet Navy in 1956 and transformed the fleet into a global sea power during his nearly 30-year tenure. Gorshkov invigorated the naval forces, transitioning from a submarine-dominated force with a coastal focus and defense orientation to a truly blue-water fleet that excelled at power projection and strategic strike.¹ While the force remained heavily focused on submarine capabilities, it also introduced a greater global presence mission. In 1968 Admiral Gorshkov was featured on the cover of *TIME* magazine, issuing the following warning: “The flag of the Soviet navy now proudly flies over the oceans of the world. Sooner or later, the U.S. will have to understand that it no longer has mastery of the seas.”

With the Soviet Navy seeking sea power capabilities to rival that of its Cold War adversary, it became inevitable that the oceans would witness confrontations between the two superpowers. The uniqueness of naval operations—and the historical precedent of ships freely navigating the high seas—meant that warships were free to patrol the high seas. Interactions between the Cold War rivals were frequent in strategically important locations; the Sea of Japan, Mediterranean, and Baltic Sea became the principal areas of confrontations. By the late 1960s, warships were steaming dangerously close to each other, with both sides setting collision courses for intercepts, aiming weapons, and launching flares.

With tasks to monitor the naval assets of the opposing superpower, U.S. and Russian naval forces often had dangerously close interactions. Carrier operations were disrupted when the opposing side maneuvered to cross the carrier’s bow at close distances during the already tense time of launching or recovering aircraft. Commanding officers would routinely challenge each other by engaging on direct collision courses in a game of chicken with immense consequences. Both sides were hesitant to alter course, lest it demonstrate a loss of courage. Scraping paint or minor collisions became commonplace. U.S. naval officers routinely asked for—and received—permission from fleet commanders to “take a bump or two,” as denoted in Admiral Zumwalt’s memoir *On Watch*. Aircraft also played a role; patrol aircraft from both superpowers frequently buzzed the other’s warships, often flying barely above mast height as they passed over while conducting intelligence and presence operations. A concern noted by the Americans stemmed from the relatively junior commanding officers of Soviet warships. Admiral Gorshkov’s rapid expansion of the fleet necessitated more officers to fill command positions and some analysts surmised that some—but certainly not all—of the dangerous interactions could be caused by lack of skill rather than intent.

On May 10 and 11, 1967, the U.S. destroyer USS *Walker* (DD-517) experienced dangerous interactions with two different Soviet destroyers while conducting antisubmarine warfare exercises in the Sea of

¹ Jessica Huckabey, “The Paradox of Admiral Gorshkov,” Center for International Maritime Security, October 1, 2014, <http://cimsec.org/paradox-admiral-gorshkov/13197>.

Japan. The incidents set into motion a furious exchange of diplomatic demarches.² The U.S. protested the “dangerous performance” that violated international rules of the road (international rules that guide prudent seamanship of all mariners). However, the commander of the Soviet task force transmitted a terse message via flashing light to the Naval Task Force embarked onboard the U.S. aircraft carrier USS *Hornet* (CV-12), noting a “hooligan’s action” and requesting that the U.S. ship “stop the violations of international rules of shipping at open sea immediately.”³ The following day, the *Walker* was again engaged in shouldering activities to protect the carrier when a Russian destroyer, attempting to approach the carrier, charted a dangerous collision course. As a result, both ships sustained damage although there were no personnel casualties. The *Walker* noted a violation of Rule 21 of the International Rules of the Road—and also reported that the Russian destroyer deliberately rammed the U.S. ship.⁴ A second, more strongly worded note was delivered to the Soviet chargé d’affaires the day after this incident. The Soviets countered with a note charging the U.S. task force with engaging in provocative maneuvers. The incident became a political one in both the U.S. and Soviet Union. House Republican leader Gerald Ford suggested U.S. commanders should be authorized to fire on offending Soviet ships in the future. Admiral Gorshkov retorted in an article a few days later “it is not hard to imagine what might happen if warships were to begin shooting at each other when they collide.”⁵

The *Walker* incident demonstrated the danger that could emerge from the two navies operating in close proximity, with each side continually testing the other while operating at heightened tensions. The following year saw a succession of incidents between U.S. and Soviet naval forces, including ships aggressively shouldering each other (often “swapping paint” in the process) and aircraft flying aggressive profiles. In May 1968, a Soviet Tu-16 Badger conducted a dangerously close pass of the U.S. aircraft carrier USS *Essex* (CVS-9), with an observer noting the fuselage of the aircraft was below flight deck level. When the aircraft turned after clearing the ship, it dipped its left wing inadvertently into the water and crashed. The *Essex* rescue helicopter found no survivors. The Badger’s crash was captured by an *Essex* crew member, who was on deck with many other crew members watching the aircraft’s dangerous maneuvers and filming the episode on his personal 8 mm movie camera.⁶ The U.S. commander sent an immediate flash message traffic to communicate the incident to Washington in an attempt to preempt any potential misperceptions; a U.S. destroyer further delivered the news to a passing Soviet destroyer to ensure the Soviets would understand that the aircraft had not been shot down. The Pentagon recorded the Badger crash as the 18th U.S.-USSR incident in 1968, though only four more incidents were recorded by the end of the year. Indeed, incidents appeared to drop the following year, with only 10 recorded. Whether this was from a deliberate attempt by Soviet naval leadership to adjust tactics or whether it was a broader reflection of shifting U.S.-USSR foreign policy goals remains unclear.

² “U.S.-Soviet Naval Incident: U.S. Ship Bumped Twice,” May 17, 1967, <http://web.stanford.edu/group/tomzgroup/pmwiki/uploads/2930-1967-05-17-FoF-a-EYJ.pdf>.

³ David Winkler, *Incidents at Sea: American Confrontation and Cooperation with Russia and China, 1945–2016* (Annapolis: Naval Institute Press, 2017), 65.

⁴ *Ibid.*, 66.

⁵ *Ibid.*, 67.

⁶ Interview with A. Denis Clift, NSC staff member, during INCSEA negotiations on January 30, 2018.

These incidents and the escalations in interactions at sea afterwards prompted the Lyndon B. Johnson administration in 1968 to propose opening negotiations with the Soviets on the topic the following year. Concerns were growing that the heightened tensions during these U.S.-USSR interactions at sea, potentially combined with faulty judgment calls or mistakes, could result in misunderstandings or deliberate actions that would inadvertently lead to escalation and direct conflict between the superpowers. The U.S. chief of naval operations, Adm. Elmo Zumwalt, noted that the U.S. and Soviet navies were “engaged in an extremely dangerous, but exhilarating game of chicken.”⁷ The Soviets only agreed to negotiations in late 1970, following additional incidents, including one with the British aircraft carrier *HMS Ark Royal* that resulted in the deaths of two Soviet sailors.⁸ Meetings were proposed for the following year.

The U.S. had initially proposed pre-summit talks that would focus on preventing escalatory incidents at sea. When the Soviets unexpectedly accepted this proposal and noted that a naval officer would likely head their delegation, there was some concern as to who should lead the U.S. delegation. Under Secretary of the Navy John Warner was nominated by the secretary of defense and confirmed by President Nixon to chair the U.S. delegation.⁹ Kissinger released National Security Study Memorandum (NSSM)-19 tasking the State Department with leading an intergovernmental working group. Meanwhile, the Soviets selected Adm. Sergei Gorshkov as their chief negotiator.¹⁰

Several rounds of talks were held between the United States and the Soviet Union, with the first held in Moscow in October 1971 and the last in Washington, D.C., in May 1972. Both sides carefully navigated their positions in this series of negotiations, with a mutually beneficial agreement emerging. The official *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) was signed in Moscow on May 25, 1972, by Admiral Gorshkov and Secretary Warner as one of the first formal actions of the 1972 Moscow Summit.¹¹

In an effort to prevent misunderstandings—and the risk of an inadvertent escalation—INCSEA provided measures to help avoid coalitions, protocols for maintaining safe distances from surveillance ships (notably without specifying a precise standoff, a point of contention among the U.S. and USSR delegations), and prohibited interferences in formations or simulated attacks on the other’s ships or aircraft. The agreement mandated the use of international signals when ships maneuvered in the vicinity of each other to increase communication and reduce surprises. It further provided for advance notice of three to five days for any projected actions that could “represent a danger to

⁷ Amy East, “An Analysis of the Bilateral United States/Soviet Union Navy Agreement of the Prevention of Incidents on and over the High Seas (INCSEA),” Cold War Museum, <http://www.coldwar.org/histories/incsea.asp>.

⁸ Narushige Michishita, Peter Swartz, and David Winkler, “Lessons of the Cold War in the Pacific: U.S. Maritime Strategy, Crisis Prevention, and Japan’s Role,” Wilson Center Asia Program (March 2016), 13, https://www.wilsoncenter.org/sites/default/files/lessons_of_the_cold_war_in_the_pacific_0.pdf.

⁹ A. Denis Clift, “Chicken of the Sea: U.S.-USSR Incidents-at-Sea Agreement,” Navy League Council, September 11, 2013.

¹⁰ East, “An Analysis of the Bilateral United States/Soviet Union Navy Agreement of the Prevention of Incidents on and over the High Seas (INCSEA).”

¹¹ U.S. Department of State, “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,” May 25, 1972, <https://www.state.gov/t/isn/4791.htm#treaty>.

navigation or to aircraft in flight.” The initial effectiveness led both sides to agree to a subsequent protocol the following year, building on the premise of INCSEA by pledging not to make simulated attacks against nonmilitary ships of the other state. It also stipulated that each country’s naval attaché would serve as the channel for communications of any violations. Delegations would meet annually to review the agreement and any incidents.¹²

The INCSEA agreement prescribed the new code of conduct between the U.S. and USSR navies in clean, specific language. It brought immediate and positive results, and Secretary of the Navy John Lehman would credit INCSEA with improving U.S.-Soviet relations at sea. Both sides viewed it as an effective tool in enhancing mutual understanding and reducing the risk of conflict stemming from a misunderstanding. While incidents continued to happen on occasion, they were duly noted and discussed; interactions between the two navies were clearly safer and more professional.

Upon the break-up of the Soviet Union, the Russian Federation assumed the agreement. Both sides continue to hold annual Prevention of Incidents on or over the High Seas (INCSEA) discussions. The delegations did not meet in 1994 or 2014, as they could not determine a mutually agreeable time for the meeting. The most recent, the 43rd annual review was held in Newport, Rhode Island in June 2017. The annual reviews offer professional discussions of the agreement and interactions between the two navies. Most recently, the U.S. has raised concerns over the recent Russian air-to-air intercepts of U.S. aircraft and interactions with ships in international waters.¹³

While this forum offers an opportunity to address contemporary issues, it is also clear that a resurgent Russia is increasing its naval activities after years of absence. Highly publicized interactions—such as the April 2016 USS *Donald Cook* (DDG-75) incident in the Baltic Sea—have raised questions as to the Russian commitment to the agreement. Following the 2016 annual review in Moscow, Vice Adm. James Foggo noted discussions as “candid and frank.” He further observed that Russian behavior during the next BALTOPS exercise—a large multinational force of ships and aircraft that primarily includes NATO countries—the Russians observing were “well behaved and professional . . . they’ve gone from tactical kinds of reactions to BALTOPS to more strategic reaction.”¹⁴

Yet two days after Vice Admiral Foggo spoke, a shouldering incident occurred between the Russian frigate *Yaroslav Mudry* and U.S. destroyer USS *Gridley* (DDG-101), the escort for the aircraft carrier USS *Harry S. Truman* (CVN-75). Nearly two weeks later, the *Yaroslav Mudry* maneuvered erratically near the U.S. cruiser USS *San Jacinto* (CG-56), also engaged in escort duties for the aircraft carrier USS *Dwight D. Eisenhower* (CVN-69).

Incidents continue to plague U.S.-Russian naval interactions at sea, though statistically they represent a very small fraction of overall interactions. On January 29, the U.S. Navy reported an unsafe intercept of an EP-3 surveillance plane flying in international airspace over the Black Sea by a Russian Su-27 jet. The U.S. Naval Forces Europe deemed the interaction to be “unsafe due to the SU-27 closing to

¹² Ibid.

¹³ U.S. Naval Forces Europe-Africa/U.S. Sixth Fleet, “U.S. Navy Statement on INCSEA,” July 26, 2017, <http://www.c6f.navy.mil/news/us-navy-statement-incsea-0>.

¹⁴ Winkler, *Incidents at Sea*, 190.

within five feet and crossing directly through the EP-3's flight path, causing the EP-3 to fly through the Su-27's jet wash."¹⁵ Yet the Russian Defense Ministry responded that its jet flew "strictly in accordance with international rules for the use of airspace and there were no extraordinary events" in investigating an "unidentified air target." The Russian jet then "reported the identification of an American reconnaissance aircraft and accompanied it, preventing it from violating Russian airspace, observing all necessary secondary measures."¹⁶

The January incident was not an isolated one. In November a U.S. P-8A Poseidon aircraft was intercepted by a Russian Su-30 over the Black Sea; the Pentagon deemed this an unsafe interaction due to the manner in which the intercept was conducted. What is unclear is whether the trend of incidents will rise or diminish.

The increasing trend of incidents, after years of diminished interactions between the U.S. and Russian navies, may demand a review of the agreement to determine whether it remains a viable and effective avenue to prevent inadvertent escalations.

Lessons for Today

The Incidents at Sea Agreement of 1972 was largely successful in achieving its goals. It remains in effect nearly 46 years after it was initially signed, a testament to the practicality and simplicity of the agreement. The framework has undoubtedly served to improve safety at sea and help prevent inadvertent misunderstandings. While it has never prevented all incidents at sea, it is undoubtedly responsible for a significant reduction of incidents. But the achievements of INCSEA are not limited to a reduction of incidents alone. INCSEA has contributed to international security and stability between the United States and Russia in several notable ways:

- The agreement allowed for annual reviews that served as confidence and trust-building measures. The opportunity for U.S.-USSR—and then U.S.-Russia—delegations to meet on an annual basis, alternating locations, served to develop relationships and improve understanding.
- The U.S.-USSR INCSEA guided the drafting of bilateral agreements between 10 other countries and the USSR to prevent incidents at sea. These agreements largely reflected the framework established by the 1972 U.S.-USSR INCSEA and were signed from 1986–1991. In 1990, Germany and Poland signed the first bilateral INCSEA that did not have the U.S. or USSR as a signatory, indicating that the framework had become an ideal working model.¹⁷
- The agreement clearly served the interests of both sides; neither the United States nor the Soviet Union wanted an inadvertent escalation to war based upon a misunderstanding or escalation of tensions. Both sides were clearly motivated—having experienced numerous

¹⁵ Ryan Browne and Zachary Cohen, "Russian jet flies within 5 feet of U.S. Navy plane, Pentagon says," CNN, January 29, 2018, <https://www.cnn.com/2018/01/29/politics/russia-jet-us-navy-black-sea/index.html>.

¹⁶ Ibid.

¹⁷ Winkler, *Incidents at Sea*, 201.

incidents that resulted in both damage to ships and deaths—to establish behavioral norms for interactions at sea.

- The composition of the delegations—both those charged with conducting initial negotiations and developing the agreement as well as those tasked with the annual review—were comprised of experienced representatives who understood naval operations. Furthermore, the selection of high-level delegations—Admiral Gorshkov and Under Secretary of the Navy (later Secretary of the Navy and Virginia Senator) John Warner resulted in significant ownership and enforcement of the agreed-upon document. Admiral Gorshkov remained the head of the Soviet Navy for more than a decade after the agreement went into force; his longevity and role in guiding the Soviet Navy ensured the agreement became ingrained into the culture of the Soviet naval forces. Similarly, Under Secretary of the Navy Warner led an interagency team that successfully represented the respective views of their organizations and were built upon a solid understanding of professional seamanship.
- The agreement provides a streamlined process to report violations through the other country's naval attaché when they occur. This typically permits sufficient time for both sides to investigate the incident prior to the annual review. The reviews further utilize an agenda that is set weeks in advance of the meeting, ensuring no unexpected surprises. Indeed, the reviews have established a unique format where the proposed touring (entertainment) schedule for the review is not promulgated in advance but rather agreed upon at the outset of the meeting, where the visiting delegation's preferences can be taken into consideration. This furthers the spirit of cooperation throughout the review.
- The scope of the agreement was appropriately limited; INCSEA identified specific areas that were of greatest concern to both parties and clearly defined interactions. Contentious issues—such as interactions between submarines—were left off the negotiating table. As a result, all aspects of the agreement were supported and adhered to by both parties.
- INCSEA largely avoided politicization. The negotiating delegations focused on the mutually beneficial goal of reducing incidents and relied upon the experience of seasoned mariners in determining the contents of the agreement. The agreement did not require U.S. Senate ratification.
- Finally, the agreement is remarkably simple in its wording and easy to both execute and identify transgressions. This has also made the agreement remarkably elastic, despite the significant changes in technology and tactics.

Overall, INCSEA has proven to be useful in both reducing incidents at sea and as a confidence-building measure. It has provided an exceptional template for similar efforts, notably the largely duplicative bilateral agreements signed between Russia and ten other countries (mostly NATO members).

INCSEA Legacy: Prevention of Dangerous Military Activities Agreement and Beyond

The success of INCSEA further allowed for the development of additional protocols, specifically the Prevention of Dangerous Military Activities Agreement (DMA) signed in Moscow on June 12, 1989, by U.S. Adm. William J. Crowe, chairman of the Joint Chiefs of Staff, and Marshal Mikhail A. Moiseyev, chief of the Soviet General Staff.

The DMA negotiations themselves were noteworthy, being the first direct U.S.-Soviet discussions aimed at reducing the likelihood of inadvertent war between the superpowers at the highest level of command since the end of World War II. General Moiseyev stated it was a “momentous occasion” at the signing ceremony and Admiral Crowe noted the agreement demonstrated “the courage of our political leaders to bring us toward developing a more sustainable, larger relationship.”¹⁸

This agreement contained wider provisions for managing potential confrontations and applied to all armed forces rather than just naval assets. DMA was intended to reduce the risk of serious, unintended confrontation as well as to resolve any incident that may arise between U.S.-USSR forces as a result of a dangerous military activity. Finally, it sought to promote safety of operations where U.S.-USSR forces operated in proximity.

It sought to build upon the success of INCSEA but to address wider issues. INCSEA had been designed to apply to surface ships and aircraft operating in international waters. The Chief of Naval Operations Instruction (OPNAVINST) 5711.96 notes that INCSEA is “operational in nature and is applicable to U.S. Navy, U.S. Marine Corps, Military Sealift Command, U.S. Coast Guard, U.S. Air Force, and U.S. Army units when operating on and over waters beyond the territorial sea.”¹⁹ INCSEA was specifically designed to be consistent and compliant with the International Regulations for Collisions at Sea (COLREGs, or Rules of the Road), particularly in that no standoff distances would—or should—be instituted, as this could contradict the internationally recognized Rules of the Road and would be imprudent seamanship. However, it further provided guidance for aircraft-to-ship and aircraft-to-aircraft situations for which there are no internationally recognized rules of conduct.

INCSEA was largely successful and greatly reduced friction between the two navies; this success led Admiral Crowe in 1987 to propose a high-level forum similar to the annual INCSEA forum to meet regularly to discuss ways to avoid dangerous military interactions over land and territorial seas—topics not covered by INCSEA. The joint U.S.-Soviet working group met six times in drafting the DMA, which went into effect on January 1, 1990. It applies to all U.S. and Russian armed forces, with the intent to reduce the risk of serious, unintended confrontation between U.S. and Russian forces (the Russian Federation assumed responsibility for DMA), and also to expeditiously resolve any incidents arising as

¹⁸ Kurt Campbell and Richard Weitz, “The limits of U.S.-China military cooperation: Lessons from 1995–1999,” *Washington Quarterly* 29, no. 1 (Winter 2005–06): 169.

¹⁹ Chief of Naval Operations, “OPNAV INSTRUCTION 5711.96C: United States/Russian Federation Incidents at Sea and Dangerous Military Activities Agreements,” U.S. Department of the Navy, November 10, 2008, https://fas.org/irp/doddir/navy/opnavinst/5711_96c.pdf.

a result of dangerous military activity. The agreement provides definitions and details for specific activities deemed dangerous military activities, necessitating direct preventive measures. These activities include entering into the national territory of the other party by *force majeure*, or as a result of unintentional actions; using a laser in a harmful manner; hampering the activities of personnel and equipment of the other party in a manner that could harm or damage; and interfering with command-and-control networks in a harmful or damaging manner.

The DMA further notes that the armed forces shall establish and maintain communications to exchange “appropriate information.” It established a Joint Military Commission to examine compliance and updates on an annual basis (or more frequently if agreed upon).²⁰

Indeed, INCSEA was used as the model in which the 1998 *Agreement between the Department of Defense of the United States of America and the Ministry of National Defense of the People’s Republic of China on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety* (MMCA) was constructed. The title reflected a desire by the U.S. delegation to not utilize the term “incidents at sea,” however, due to the potential for Cold War connotations to impact the U.S.-Chinese relationship.²¹

The Western Pacific Naval Symposium, first held in 1988, proposed a multilateral form of INCSEA at the 1994 gathering. Working groups noted some disadvantages of previous INCSEA bilateral accords and by 2000 a working group unveiled the Code for Unplanned Encounters at Sea (CUES). During the April 2014 Western Pacific Naval Symposium held in Qingdao, China, 21 regional navies voted on endorsing CUES. While not a legally binding agreement, it allows for a standardized protocol of safety procedures, basic communications, and maneuvering instructions. Chief of Naval Operations Adm. Jonathan Greenert noted the endorsement of CUES was just the beginning, with the real challenge being the implementation and training of future generations of naval officers.²² CUES has, thus far, proven to be a useful agreement for the Western Pacific, providing mechanisms to reduce misunderstandings and miscalculations. While it has enhanced communications and improved safety since implementation, it is only applicable to the signatories.

What Does the Future Hold?

The Incidents at Sea Agreement offers tremendous lessons on crafting and executing a mutually advantageous agreement that served to reduce the potential for misunderstanding and escalations. It has provided a useful and effective framework for numerous other bilateral and multilateral agreements aimed at reducing the chance of misunderstandings that could escalate to conflict.

However, the talks that successfully produced the Incidents at Sea Agreement in 1972 must be viewed in the context of the broader strategic picture in order to fully understand why they were successful.

²⁰ “UNION OF SOVIET SOCIALIST REPUBLICS—UNITED STATES: AGREEMENT ON THE PREVENTION OF DANGEROUS MILITARY ACTIVITIES,” *International Legal Materials* 28, no. 4 (1989): 877–95, <http://www.jstor.org/stable/20693340>.

²¹ Winkler, *Incidents at Sea*, 205.

²² Chief of Naval Operations Public Affairs, “Navy Leaders Agree to CUES at 14th WPNS [Western Pacific Naval Symposium],” U.S. Navy, April 23, 2014, http://www.navy.mil/submit/display.asp?story_id=80532.

By this time, President Nixon and his National Security Adviser Henry Kissinger were examining ways to reduce tensions between the United States and Soviet Union. Leonid Brezhnev was also seeking an improved relationship, hoping to improve the reputation of the USSR by cooperating on key issues that were mutually advantageous to both rivals.²³ 1972 would mark the first of three Nixon-Brezhnev summits aimed at reducing tensions and improving relations—the summits of détente. The Strategic Arms Limitation Talks—SALT negotiations—were the centerpiece. INCSEA was one of several additional bilateral negotiations that were being worked on by the two sides with summit signing as the objective. It was this political climate that helped to propel the delegations to successful negotiations and the eventual signing of INCSEA. Timing is critical and senior leadership must be supportive of such efforts to reduce tensions in order for an agreement to be enacted and enforced.

There are many parallels that can be drawn between the period leading up to the drafting of the 1972 INCSEA Agreement and today, yet the differences are also stark. One can identify similarities between the contemporary Russian Navy—focused on a massive modernization plan as it resumes presence operations after nearly two decades of largely defense missions—to Gorshkov’s massive naval buildup in the 1960s, replete with new technology and manned by officers with insufficient experience to accommodate the surge in ships numbers. Establishing a culture of professional interactions is a deliberate effort that requires significant attention. Navies must train to the agreement, but those patrolling the high seas must also have clear support of the highest levels of leadership to adhere to the agreement. Failure of senior leadership to communicate the importance of adherence to the agreement will undoubtedly condemn the agreement to failure. While the Soviet Union generally averaged higher incident rates than the United States, the number of incidents was vastly diminished following the signing of INCSEA.

Yet incidents have been on the rise and it would be wise to examine the cause of this unsettling trend. While there is certainly a reasonable explanation for rising incidents in that Russia has only recently resumed naval operations at a higher operational temp, it would be imprudent to simply accept this as the only reason. Both sides should seriously consider the objectives and effectiveness of the 1972 agreement. In doing so, it would be prudent to reexamine the foundation of the Incidents at Sea Agreement given the vast changes that have occurred since its drafting. In 1990, the Soviet delegation presented a proposal for a multilateral INCSEA agreement with the Conference on Security and Cooperation in Europe (CSCE). NATO participants preferred to retain their bilateral agreements, but it may be worth examining if a multilateral proposal would provide any further benefit. Neutral countries Sweden and Finland had expressed their support for a multilateral proposal at that time.

Furthermore, the negotiations that led to the United Nations Law of the Sea (UNCLOS) Treaty may hold important lessons for the future. The treaty, signed in 1982 and effective in 1994, drew heavily from earlier conventions. The first Conference on the Law of the Sea was held in Geneva in 1956, which resulted in four treaties being signed in 1958. The decades-long efforts to draft and sign an international law of the sea served to bring together the best minds to examine oceanic issues and national security concerns. The opportunity for exchanging ideas and perspectives serves to build

²³ Interview with Mr. A. Denis Clift during INCSEA negotiations on January 30, 2018.

confidence and develop relationships. The convention was ultimately ratified by 168 parties, and the United States, while not a member to the agreement, strictly adheres to the protocol of UNCLOS.

Ultimately, an updated agreement focused on the prevention of dangerous military interactions in peacetime would need to be drafted with mutually agreeable objectives in a supportive political climate. It is questionable as to whether these can be attained given the current political situation; yet the lesson of UNCLOS may provide a bright point, in which academics, lawyers, think tank analysts, thought leaders, and practitioners can work to identify areas of cooperation and mutual interest before moving such an agreement to the governmental negotiation table in the right political environment. This UNCLOS model would lend itself to near-term substantive discussion and proposed, updated agreement language, without committing either government. One would be well advised to adhere to the lessons established by INCSEA, which has provided a successful framework for a number of bilateral and multilateral agreements. Furthermore, it must be noted that the success of INCSEA is also derived from its reliance on internationally accepted rules of the road—those rules that legally guide prudent seamanship, rather than mandating specific standoff distances that could be in direct conflict of the rules of the road. Adherence to international law has underpinned the agreement and ensured that it has remained viable in the decades since signing despite numerous technological changes. Any consideration of an updated agreement should be mindful to adhere to these principles, but working groups should examine multilateral approaches and combining the principles of DMA. The process of exchanging ideas and examining successes—and shortcomings—can serve as a confidence-building mechanism for all parties involved.

It is clear, however, that in the absence of a stronger agreement, INCSEA will continue to function and is an effective confidence-building measure. Formal agreements, such as the Incidents at Sea and Prevention of Dangerous Military Activities agreements, undoubtedly help avoid minor incidents from escalating to a dangerous confrontation. Yet we must never remain satisfied with the status quo and should seek to determine if there is a more effective way to achieve improved results—to establish a goal of preventing, or at the very least minimizing, dangerous military interactions during peacetime.

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