

Code for Unplanned Encounters at Sea and Maritime Stability in the Indo-Pacific

by MAJ Lim Han Wei

Abstract:

In this essay, the author talks about the maritime security challenges that are faced by countries in the Indo-Pacific region, as well as the possible policy measures that can be put in place to help ease tensions between countries involved in territorial disputes. Due to the benefits that the Indo-Pacific region presents, it is thus subjected to maritime security threats. If left unattended, the tensions have the potential to escalate into great conflicts. Throughout the essay, the author maintains the stand that despite the interests of individual countries, there is a need for everyone to come to a common consensus and work together so as to maintain peace and stability in the region.

Keywords: Tensions; Territorial Disputes; Maritime Security Threats; Common Consensus; Peace and Stability

INTRODUCTION

The Indo-Pacific region, spanning the Western Pacific Ocean to India, has emerged as a key geostrategic region in the 21st century for global commerce, energy supplies and economic investments. It encompasses close to half of the world's population, numerous island chains and some of the world's most important sea-lanes for global trade, including the Strait of Malacca and the South China Sea (SCS). More than half of the Indo-Pacific states' population live along the coast and depend on its oceans and seas economically, such as fishing, tourism and energy resources. At the same time, these maritime zones present a host of dangers that threaten the security of states and economic livelihood of the local population, ranging from territorial disputes and transnational crimes to environmental pollution.¹ These present complex maritime security challenges for the region's naval forces and any successful responses to such threats

require international cooperation as they are transnational in nature and do not respect maritime boundaries.

This essay seeks to examine the challenges of maritime security and stability in the Indo-Pacific region. As the Indo-Pacific region is a vast area, it is necessary to scope this paper's analysis to the context of maritime tensions and territorial disputes in Northeast and Southeast Asia since they present the greatest potential for conflict escalation and hence pose the largest threats to maritime security and stability in the Indo-Pacific region. This essay contends that while China's agreement to the Code for Unplanned Encounters at Sea (CUES) is a positive step forward in reducing the prospects for maritime conflicts, this measure alone is insufficient in ensuring that maritime stability and security will prevail in the region. This argument will be elucidated via analysing the causes and drivers behind maritime tensions and

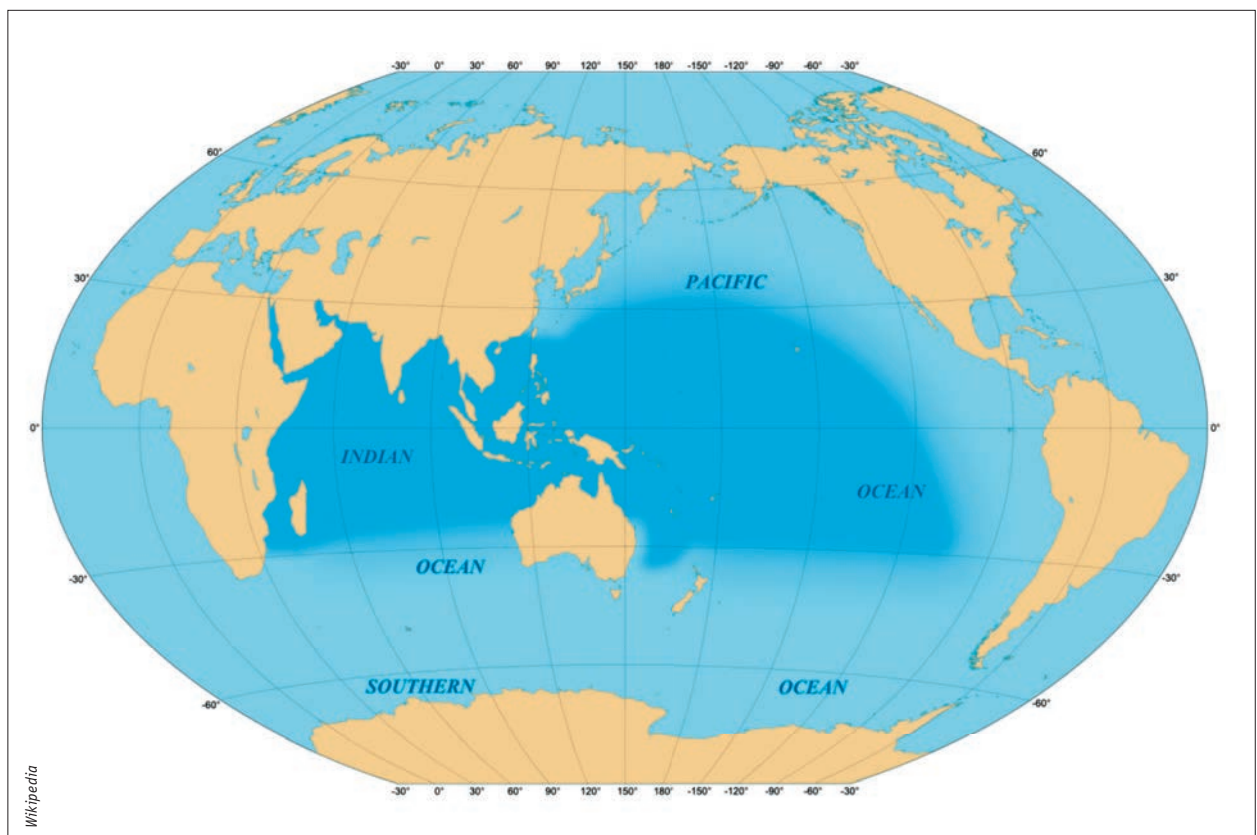
disputes in the region. The relevance and utility of the CUES agreement and its principles will be scrutinised, with a view to identifying its strengths and weaknesses in de-escalating such disputes and conflicts. The essay will then conclude by examining a range of policy options that can be employed to further ease inter-state tensions and de-escalate the risks of maritime conflicts in the Indo-Pacific region.

MARITIME TENSIONS IN INDO-PACIFIC REGION

This section will provide an analysis of the factors and drivers behind maritime tensions in the region. Northeast and Southeast Asia are characterised by historical animosities and complex geopolitical dynamics between states. The rise of China as an economic and military power, lingering disputes over maritime territories and United States (US)

rebalancing towards Asia all point to the sea as the key to continued security and stability.² China is currently embroiled in maritime disagreements with Japan and South Korea in the East China Sea (ECS), due to differing interpretations in defining their Exclusive Economic Zones (EEZs) based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This same issue arises in the SCS and China is similarly involved in several maritime disputes with Southeast Asian nations over the Spratly and Parcel Islands and its 'nine-dash line' claim.³ There are three main factors contributing to these maritime disputes.

Firstly, the rise of China has caused relative powers between states to be shifted significantly in the past decades. Notably, China's defence strategy has shifted from one of continental defence to forward active



The areas covered by the Indo-Pacific biogeographic region.

defence, resulting in a resurgent People's Liberation Army Navy (PLAN) that aspires to control the waters out to the 'first island chain'.⁴ This has led to China's growing aggressiveness in asserting control over her maritime spaces and resulted in increased suspicions among states on China's hegemonic intentions in the region. Consequently, the power balance has evolved from Japan's predominance of China to a condition of parity in the ECS and from parity to China's predominance over Association of Southeast Asian Nations (ASEAN) claimants in the SCS.⁵

More than half of the Indo-Pacific states' population live along the coast and depend on its oceans and seas economically, such as fishing, tourism and energy resources.

Secondly, both regions are marred by unresolved historical baggage and national interests to pursue 'historical claims' due to strong nationalist sentiments. Japan and China have traditionally possessed deep-seated hatred towards each other due to past clashes in the Sino-Japanese War and World War Two (WWII), while most ASEAN countries have previously experienced occupation under colonial powers that left a deep scar in their histories. Hence, any explicit actions to lay claim to disputed territories will invariably spark off nationalistic sentiments in claimant states and cause unnecessary escalation in tensions. China's recent oil rig deployment in the disputed Paracel Islands is a case in point, having stroked nationalistic fervour in both China and Vietnam, resulting in violent protests.⁶

Thirdly, after UNCLOS III established the EEZ regime, 87% of the world's known hydrocarbon fields were placed under the coastal states' jurisdiction. As the disputed territories and their maritime

delimitations are potentially rich in economic resources such as energy and fishery, states are motivated to maximise their maritime zone claims for economic exploitation, either through EEZ or extended continental shelf claims.⁷ This has resulted in numerous overlapping claims, especially in the SCS.

CODE FOR UNPLANNED ENCOUNTERS AT SEA

This section will scrutinise the relevance and utility of CUES in de-escalating maritime disputes and contributing to regional stability and security. At the 2014 Western Pacific Naval Symposium (WPNS) in Qingdao, 25 navies, including the United States Navy (USN) and PLAN, agreed to adopt CUES as a means of communications between naval assets at sea, in an attempt to quell existing maritime tensions. This code recommends safety procedures, communications plan and manoeuvring instructions to improve communications between naval assets in the event of unplanned encounters at sea.⁸ Such an agreement serves to reduce the risks of strategic miscalculations that could lead to potential conflicts, such as the near-miss in December 2013 between a PLAN warship, supporting China's aircraft carrier *Liaoning*, and USS *Cowpens*, which was forced to alter its course abruptly to avoid a collision.⁹ CUES has been hailed as a substantial move to enhance maritime safety and communications, with Admiral Wu Shengli, PLAN Commander, praising it as a "milestone document," and Admiral Harry Harris, USN Pacific Fleet Commander, calling CUES as "an important step forward to reduce tension on the sea in the region."¹⁰ CUES is also a significant achievement for WPNS, considering that the idea was mooted over 10 years ago and China had initially expressed opposition to CUES at the 2012 WPNS, objecting to the usage of the term 'code' as implying legally binding and English as the primary language of communications for CUES.¹¹ China's turnaround and adoption of CUES demonstrated

PLAN's determination to strengthen cooperation with her partner navies and more importantly, signalled China's willingness to work with the global maritime community on internationally recognised standards for the peaceful conduct of maritime activities.¹² Besides warships, the inclusion of aircraft in CUES also offers potential for states to derive standardised rules and norms governing unplanned aircraft encounters in China's declared Air Defence Identification Zone (ADIZ) over ECS in November 2013.¹³

Despite its significance as a confidence-building measure, the signing of CUES marks only a baby step forward in enhancing maritime stability and security in the region. Several weaknesses exist within CUES that restrict it from fully carrying out its function of defusing inter-state maritime tensions in the region. Firstly, CUES only addressed communications between naval vessels and aircraft, but does not cover communications between maritime constabulary and 'white-hull' vessels, which have been increasingly deployed by states in disputed waters and EEZs for patrols and as a show of force.¹⁴ A case in point is the recent involvement of over 100 Chinese and Vietnamese naval, maritime police and fishery ships in the tense stand-off over the Chinese oil-rig deployment in the Paracels.¹⁵ It remains to be seen whether maritime constabulary vessels, such as those from the Chinese and Vietnamese Coast Guards, will adhere to CUES in such situations.

Secondly, CUES is a voluntary and non-binding agreement and its applicability seems to be limited to only the EEZs and high seas, but not territorial waters. This implies that naval vessels do not need to adhere to CUES when they are within 12 nautical miles of a disputed maritime territory, such as the Spratly islands in SCS or Senkaku/Diaoyu islands in ECS

where China disputes their sovereignty with ASEAN claimants and Japan respectively. PLAN vessels can potentially argue that CUES does not apply since they are operating within territorial waters claimed by China.¹⁶ The non-binding nature of the agreement also makes it weak in the eyes of international law and is probably the key reason for China's consent to it, knowing that it cannot be held accountable for PLAN's non-adherence to CUES in the ongoing territorial disputes. Vice-Admiral Xu Hongmeng alluded to this when he emphasised that CUES would not affect the conduct of Chinese ships in the disputed waters of ECS and SCS.¹⁷ Thus, in such cases, China is likely to restrict the application of CUES only to cases where they have established bilateral talks with extra-regional navies not involved in the disputes.¹⁸ This will hardly contribute towards the de-escalation of tensions in disputed waters.

Thirdly, CUES only recommends communications protocols for vessels in unplanned maritime encounters, but does not regulate their behaviour in any way, unlike the 1972 US-Soviet's Incidents At Sea Agreement (INCSEA). In addition to regulating communications between US and Soviet naval assets, INCSEA also specified for both sides not to engage in simulated attacks, to maintain a safe distance and avoid manoeuvres that would endanger or embarrass naval forces under surveillance.¹⁹ An agreement that can regulate the behaviour of naval vessels will be more useful in defusing tensions at sea. As an example, Article III paragraph six of INCSEA stated for vessels to avoid pointing weapons at passing ships, which would have discouraged previous incidents, such as the lock-on of a Japanese warship and helicopter by Chinese fire-control radar in early 2013, from taking place.²⁰

Finally, and perhaps most importantly, CUES fails to address the fundamental differences in US and China's interpretations of a state's legal rights within its EEZ.²¹ During the decade-long UNCLOS negotiations, states agreed to establish EEZs as a specific legal regime under international law. This was a result of a compromise at UNCLOS III that conferred coastal states specific rights to regulate economic activities within their EEZs, but preserved the rights and freedoms of user states as laid out in the convention.²² Rightly so, the US and most countries have emphasised the importance of freedom of navigation in the EEZs on the high seas, where permission to conduct military activities is not required from the coastal state. However, China and at least 30 states are challenging the status quo to interpret UNCLOS as conferring coastal states the right to regulate all EEZ activities and that permission to conduct military activities has to be explicitly obtained from the coastal state. China's stand on this is in line with her maritime strategy of Anti-Access/Area-Denial (A2/AD) and to deny its adversaries freedom of navigation and use

of the sea.²³ As long as China continues to pursue this approach, any INCSEA-like agreement, CUES or the 1977 International Regulations for Preventing Collisions at Sea (COLREGS) can only offer a partial solution to defusing maritime tensions in the EEZs and on the high seas.

POLICY MEASURES TO DEFUSE INTER-STATE MARITIME TENSIONS

The prospects of a maritime dispute escalating into conflict in the Indo-Pacific region appear daunting. However, this can potentially offer more opportunities than threats. This section will provide recommendations on policy measures that can be employed to further defuse or contain inter-state maritime tensions in the region, using the broad Diplomatic-Military-Economic dimensions as a framework.

Diplomatic Measures

While regional states have expressed willingness to de-escalate tensions built up by recent incidents in SCS during the Shangri-La Dialogue (SLD) in June



A luncheon for ministers and representatives from various countries during the 2014 Shangri-La Dialogue.

2014, this is currently hampered by a lack of strategic trust among states. In order to overcome this, states will need to learn to build mutual trust through instituting resilient confidence-building mechanisms that will allow common consensus and political will to be forged.²⁴ There are four broad diplomatic measures that can help to achieve this. Firstly, states need to create avenues to have frank and open dialogues and to establish a clear understanding of one another's security challenges. These have the effect of promoting transparency and predictability, which is crucial in preventing strategic miscalculations. States should leverage on multilateral platforms, such as the SLD, WPNS and ASEAN Defence Ministers Meeting-Plus (ADMM-Plus) frameworks to strengthen mutual trust, as well as security and defence cooperation.²⁵ These will pave the way forward for states to work together to resolve security challenges and act as springboards for the discussion of risk-reduction measures to defuse tensions generated by maritime-related disputes.

Increased dialogue and expanded naval cooperation between US, Chinese and regional militaries can go a long way towards soothing inter-state tensions.

Secondly, the implementation of a binding code of conduct between China and ASEAN countries will aid in easing tensions involving SCS territorial disputes. While the parties have previously agreed to build confidence and reduce risks through adopting the 2002 Declaration on the Conduct (DOC) of Parties in SCS, including the 'exercise (of) self-restraint in the conduct of activities that would complicate or escalate disputes', none have adhered to its provisions thus far due to its non-binding nature. Discussions on a binding code have stalled due to China's preference to resolve such disputes bilaterally

instead of multilaterally and recent incidents in SCS did not help the cause. Resumption of long-delayed negotiations between Beijing and ASEAN on a binding code to govern behaviours at sea holds great promise in enhancing the maritime cooperation and conflict resolution mechanisms between regional states.

Thirdly, the emergence of transnational threats has precipitated the need for multilateral approaches in resolving common security challenges that are beyond the powers of individual states. This opens up opportunities for states, especially the US and China, to cooperate in common causes such as maritime security. States can leverage platforms such as the International Maritime Security Conference, held as part of the biennial International Maritime Exhibition (IMDEX) Asia, and ADMM-Plus's Maritime Security Experts' Working Group to establish a common understanding of maritime security challenges and enhance maritime cooperation among members.²⁸ As an example, an inaugural Maritime Security Field Defence Exercise was held in October 2013 in Australia, which allowed navies to promote information sharing and develop a baseline for communications at sea.²⁹

Lastly, WPNS states should work towards addressing the shortcomings of the recently-agreed CUES as mentioned earlier in this paper. While participation in CUES is currently voluntary and non-binding, WPNS states should also consider making CUES compulsory for both naval and maritime constabulary assets, as well as extend its coverage to non-WPNS states in the Indo-Pacific region through the Indian Ocean Naval Symposium. Navies of signatory states should also make it a point to regularly practise the CUES procedures in multilateral and bilateral exercises to instil confidence that such procedures will be adhered to in the event of an actual contingency at sea.³⁰

Military Measures

Increased dialogue and expanded naval cooperation between US, Chinese and regional militaries can go a long way towards soothing inter-state tensions. There are three measures to enhance this. Firstly, regional navies should aim to improve military-to-military communications at the operational level to mitigate the risk of a tactical blunder between naval assets at sea escalating into a full-blown conflict. This can be done through establishing communication mechanisms, such as military hotlines to manage maritime incidents or emergencies. This also serves as a direct channel and line of communication for operational commanders to clarify any misunderstandings.³¹ A case in point is Japan, who has recently urged China to set up a hotline between the maritime authorities of both countries to prevent unnecessary escalations, given their frequent encounters with military and naval assets in disputed

waters and airspace. This came after a Chinese aircraft buzzed a Japanese aircraft that China claimed had breached its ADIZ without permission in May 2014.³² Similarly, China and Vietnam had established a hotline to inform each other of fishery boats' detentions within 48 hours of an incident.³³

Secondly, the 1972 US-Soviet INCSEA proved to be an effective instrument for confidence-building and tension mitigation during the Cold War, and the establishment of an INCSEA-like agreement can aid in easing tensions caused by frequent interactions at sea. Although the US and China had signed a Military Maritime Consultative Agreement (MMCA) in 1998, this only acts as a consultation mechanism for regular meetings and possesses no concrete measures to respond to incidents such as the USNS *Impeccable* and EP-3 incidents. Moving forward, both militaries



Two Chinese trawlers stop directly in front of the Military Sealift Command ocean surveillance ship USNS Impeccable, forcing the ship to conduct an emergency 'all stop' in order to avoid collision.



The Senkaku/Diaoyu islands are a group of uninhabited islands. Diaoyu island is marked in blue, on the left of the island chain.

should seriously consider establishing an INCSEA-like agreement or bolstering the MMCA mechanism to include practical measures to manage and prevent incidents between both militaries.³⁴

Lastly, regional navies should leverage multilateral and bilateral exercises to enhance cooperation and build mutual trust and understanding. Joint naval exercises can also encourage greater military transparency and help to develop interoperability among navies, such as the PLAN-organised WPNS sea exercise in April 2014. These will enhance navies' abilities to cooperate in areas of common interests such as humanitarian assistance, disaster relief and maritime security. Notably, an encouraging sign is the PLAN's inaugural acceptance to participate in the US-led Rim of the Pacific exercise in July 2014, which will allow participating navies to build confidence and, at the same time, socialise the PLAN to international rules and norms.³⁵

While it can be argued that China's agreement to CUES is a positive step forward in reducing the prospects of maritime conflicts in the Indo-Pacific region, this code alone is insufficient to ensure that maritime stability and security will prevail.

Economic Interdependency and Cooperation

There are two economic measures that can help to alleviate inter-state tensions. Firstly, at the macro level, globalisation has resulted in greater economic interdependency between states. States are increasingly reliant on the international maritime trading system, with US\$5.3 trillion of trade transacting through the SCS alone annually. In the event of any regional tensions or conflicts, the diversion of commercial shipping to alternative routes and ports can hurt the pockets of regional economies deeply, due to longer transits and lower profit margins. This increased economic interdependency between states can be a powerful enabler to mitigate the risks of states escalating maritime disputes to a full-blown conflict in the region, as well as contribute to the maintenance of regional stability in a virtuous cycle. In this respect, states should continue to foster regional economic cooperation through developing the Regional Comprehensive Economic Partnership (RCEP) and Trans-Pacific Partnership (TPP) mechanisms, which will bring the goal of a Free Trade Area in the region closer to fruition.³⁷ Once their economies are closely intertwined by trade, the costs of escalating a dispute will be prohibitive and states will be more inclined to consider non-violent means to resolve their differences.

Secondly, the complex maritime disputes in ECS and SCS are unlikely to be resolved anytime soon since they involve sovereignty claims and multiple claimants. Hence, a practical and viable approach forward in defusing tensions is for claimants to set aside their differences and develop mechanisms for multilateral economic cooperation or joint development of resources.³⁸ This is in line with Deng Xiaoping's advocated principle of "setting aside disputes and pursuing joint development" in relation to the disputed Senkaku/Diaoyu islands in 1979.³⁹ These can take the form of provisional arrangements of a practical nature, as articulated in UNCLOS's Articles 74 and 83 and most importantly, will be without prejudice to existing sovereignty claims or determination of final maritime boundaries.⁴⁰ This is essentially a win-win situation as states can jointly harvest resources in disputed areas to meet their national interests, with no claimants having to back down from their claims. As an example, Japan and the Republic of China have agreed to recognise and protect one another's fishing rights in the Senkaku/Diaoyu islands in April 2013.⁴¹ Another concrete example of joint economic cooperation is China and Vietnam's agreement to establish a working group for the joint exploration of SCS, including the Gulf of Tonkin in October 2013.⁴² Hence, the earlier states are willing to cast aside their nationalist sentiments and join hands in creating the necessary political will for joint economic development of resources, the better positioned they will be to defuse maritime tensions and manage potential conflicts in the region.

CONCLUSION

The Indo-Pacific region continues to be characterised by globalisation and economic interdependence between states, with the maritime domain as the global wide commons for regional security and stability.

While it can be argued that China's agreement to CUES is a positive step forward in reducing the prospects of maritime conflicts in the Indo-Pacific region, this code alone is insufficient to ensure that maritime stability and security will prevail. Instead, states could adopt a range of policy measures that would help to ease regional maritime tensions and de-escalate the risk of maritime conflicts. Regardless of the forces driving the politics and policies of each country, ultimately, peace and prosperity is the shared common interest of all Indo-Pacific states. With increased economic interdependency between states and their reliance on the international maritime trading system, it remains in all stakeholders' interests to work with each other to adopt a multilateral and cooperative approach in overcoming security challenges and enhancing relations between states. This will mitigate the dangers and risks that states "may sink together if (they) do not swim together."⁴³ Embracing such an approach will go a long way in helping to defuse interstate tensions and guarantee the region's continued peace, stability and prosperity into the future. 🌐

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MAJ Lim Han Wei is a Naval Combat Officer by vocation and is currently a Staff Officer in Naval Warfare Centre, HQ RSN. He graduated with a Bachelors of Engineering (Electrical Engineering) with 1st Class Honours and a University Medal from the Australian Defence Force Academy. MAJ Lim also holds a Masters of Engineering (Electrical Engineering) from the Naval Postgraduate School, Monterey, California. He is a graduate of the 45th Command and Staff Course and was a winner of the Merit Award in the 2014/2015 Chief of Defence Force Essay Competition.