



# CRISIS MANAGEMENT IN THE EAST CHINA SEA

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## INTRODUCTION<sup>1</sup>

On 10 November 2014 Chinese President Xi Jinping and Japanese Prime Minister Shinzo Abe met officially for the first time at the Asia-Pacific Economic Cooperation (APEC) summit in Beijing. During their meeting the two leaders reaffirmed the resumption of working-level talks on the China-Japan maritime communication mechanism—which had been suspended in June 2012. Prior to the meeting, China and Japan had also jointly announced a four-point principled agreement in which the two governments agreed to disagree on their views regarding territory and history in order to resume talks on crisis communication and other issues.<sup>2</sup> Accordingly, China and Japan resumed working-level talks on a maritime communication mechanism on 12 January 2015.

The maritime communication mechanism was first proposed in April 2007 as part of an agreement between Chinese Prime Minister

Wen Jiabao and Japanese Prime Minister Abe and was designed to prevent the occurrence of unforeseen circumstances at sea. The agreement emphasized a ‘mutually beneficial relationship based on common strategic interests’.<sup>3</sup> Working-level talks in April 2008, July 2010 and June 2012 led to China and Japan reaching a basic agreement on the objectives, structure and communication methods for the mechanism, with both countries agreeing that it would promote mutual confidence and cooperation.<sup>4</sup>

Meanwhile, tensions between China and Japan were increasing over the status of the Senkaku/Diaoyu Islands and differing historical perceptions on Japan’s past aggression in the region. While these tensions made the creation of a crisis management mechanism more important, they simultaneously disturbed the talks that were attempting to establish such a maritime communication mechanism. In fact, elements of the mechanism were supposed to be implemented by the end of 2012

<sup>1</sup> For general background on the disputes in the East China Sea and other papers in this series see ‘Promoting crisis management in the East China Sea’, SIPRI, Feb. 2015, <<http://www.sipri.org/research/security/china/promoting-crisis-management-in-the-east-china-sea>>.

<sup>2</sup> Japanese Ministry of Foreign Affairs, ‘Regarding discussions toward improving Japan-China relations’, 7 Nov. 2014, <[http://www.mofa.go.jp/a\\_o/c\\_m1/cn/page4e\\_000150.html](http://www.mofa.go.jp/a_o/c_m1/cn/page4e_000150.html)>.

<sup>3</sup> Japanese Ministry of Foreign Affairs, ‘Japan-China joint press statement’, 11 Apr. 2007, <<http://www.mofa.go.jp/region/asia-paci/china/pv0704/joint.html>>.

<sup>4</sup> Japanese Ministry of Defence, 海上連絡メカニズムについて [Regarding the Maritime Communication Mechanism], [n.d.], <[http://www.mod.go.jp/j/approach/exchange/nikoku/asia/china/kaijou\\_mechanism.html](http://www.mod.go.jp/j/approach/exchange/nikoku/asia/china/kaijou_mechanism.html)>.

## SUMMARY

● Despite their differing views on territory and history, China and Japan have resumed talks on crisis management in the East China Sea. Nonetheless, the diverging views on freedom of navigation and overflight pose a fundamental challenge to crisis management. China and Japan need to agree to a hotline between naval staff officers in charge of operations, and to regular staff talks. Elements of the 1972 International Regulations for Preventing Collisions at Sea 1972 (COLREGS) and the 2014 Code for Unplanned Encounters at Sea (CUES) will form the basis of a common code of conduct. This navy-navy mechanism can also provide a foundation for a code of conduct for the two countries’ respective coast guards. Disagreements over scrambling and airspace surveillance in the East China Sea are unlikely to be easily resolved. It will be important for China and Japan to agree on talks to establish such a code of conduct in the sky despite their different interpretations of the freedom of overflight.



but, in September 2012, when the Japanese Government purchased three of the Senkaku/Diaoyu Islands from their private owner, China refused to proceed with the implementation. After returning to power in December 2012, Abe called for dialogue with President Xi, but the new Chinese leader set two preconditions for such talks: first, that Japan acknowledge the existence of a sovereignty dispute over the Senkaku/Diaoyu Islands; and second, that Abe stop visiting the Yasukuni Shrine, which has been dedicated to Japanese war dead since the late 19th century.<sup>5</sup>

Despite their differing views on territory and history, China and Japan have resumed talks on crisis management in the East China Sea. Nonetheless, the diverging views of China and Japan on the freedom of navigation and overflight rules pose a fundamental challenge to the crisis management process. This Policy Brief draws on lessons from the experience of the United States in establishing maritime crisis management mechanisms and considers how China and Japan can best promote crisis management despite their different interpretations of freedom of the seas.

### **LESSONS FROM THE EXPERIENCE OF THE USA**

As a navy with global reach, the US Navy has established a number of crisis management mechanisms, including one with the Soviet Union during the cold war (which was relatively successful) and one with China since the end

<sup>5</sup> Japan annexed the Senkaku Islands in 1895, while China initiated its claim to their ownership in 1971.

of the cold war (which is still in development). A comparison of these two mechanisms indicates that the most important factor for crisis management between adversaries and rivals is a common understanding of international law.

### **The 1972 Incidents at Sea Agreement**

In 1972, after nearly a decade of dangerous incidents involving the navies of the Soviet Union and the USA (including the intentional bumping of surface ships, simulated attacks and other threatening manoeuvres), the groundwork was laid for the negotiation and signing of the 1972 Incidents at Sea Agreement (INCSEA) between the two countries.<sup>6</sup> INCSEA was designed to eliminate unsafe and unprofessional aerobatics and ship handling during close encounters between Soviet and US naval forces on the high seas. It contained a set of requirements designed to promote safety of navigation and overflight for ship commanders conducting operations on the high seas, and for aircraft operating in international airspace. The agreement specifically prohibited simulated attacks and other measures that might endanger ships and aircraft under surveillance. It also reflected the navigation 'rules of the road' set out in the 1972 International Regulations for Preventing Collisions at Sea (COLREGS).<sup>7</sup> The

<sup>6</sup> 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, signed and entered into force on 25 May 1972, <<http://www.state.gov/t/isn/4791.htm>>.

<sup>7</sup> Convention on the International Regulations for Preventing Collisions at Sea (COLREGS), adopted by the International



Soviet Union and the USA agreed to include the COLREGS provisions, which were still under negotiation at the International Maritime Organization, in INCSEA.<sup>8</sup>

On the one hand, INCSEA did not reduce the frequency of incidents between Soviet and US naval forces: there were a total of 150 incidents before INCSEA came into force, and 246 afterwards, or an annual average of 6 before INCSEA and 15 afterwards. On the other hand, it did reduce the seriousness of the incidents: a total of 11 incidents in which military personnel were killed or military platforms were damaged occurred before INCSEA came into force, compared to just 3 since 1972.<sup>9</sup> INCSEA functioned successfully within the cold-war environment because the Soviet and US navies both operated globally and shared a common interest in freedom of navigation and a similar understanding of the law of the sea.<sup>10</sup> Therefore, INCSEA became part of overall US–Soviet cold-war management.

### The 1998 Military Maritime Consultation Agreement

In the early 1990s, after several dangerous encounters between the Chinese and US navies in Chinese-claimed exclusive economic zones (EEZs), the USA sought a consultation with China in order to

manage potential crises at sea. In 1998 China and the USA signed the Military Maritime Consultation Agreement (MMCA) as a ‘mechanism to strengthen military maritime safety, which will enable their maritime and air forces to avoid accidents, misunderstandings or miscalculations’.<sup>11</sup> The MMCA consists of three pillars: (a) an annual meeting; (b) working groups to discuss issues set by the annual meeting; and (c) special meetings to discuss specific activities of military forces in the sea and air. In 1999 the MMCA led to agreements on maritime safety, navigation and communications, based on existing international regulations.<sup>12</sup>

However, the MMCA has failed to prevent serious military incidents between the two countries. In April 2001 a Chinese combat aircraft collided with a US surveillance aircraft over the high seas near Hainan Island in the South China Sea.<sup>13</sup> The incident was caused by China’s frustration with what it regarded as intrusive US surveillance along the Chinese coast. While China denounced this surveillance as both illegal and a safety issue, the USA emphasized freedom of navigation in foreign EEZs. In other words, the root cause of this incident was a difference in

Maritime Organization 20 Oct. 1972, entered into force 15 July 1977, *United Nations Treaty Series*, vol. 1050 (1985), and subsequently amended.

<sup>8</sup> Pedrozo, P., ‘The US–China Incidents at Sea Agreement: a recipe for disaster’, *Journal of National Security Law and Policy*, vol. 6, no. 1 (Jan. 2012), p. 210.

<sup>9</sup> Kraska, J., *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics* (Oxford University Press: Oxford, 2011), p. 229.

<sup>10</sup> Pedrozo (note 6), p. 217.

<sup>11</sup> Agreement between the Department of Defence 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, entered into force 19 Jan. 1998.

<sup>12</sup> Japanese National Institute for Defense Studies (NIDS), *NIDS China Security Report 2013* (NIDS: Tokyo, Jan. 2014), p. 30.

<sup>13</sup> For the details of the incident see Kan, S. A. et al., *China–US Aircraft Collision Incident of April 2001: Assessments and Policy Implications*, Congressional Research Service (CRS) Report to Congress RL30946 (CRS: Washington, DC, Oct. 2001), <<http://fas.org/sgp/crs/row/RL30946.pdf>>.



views on international law, rather than a lack of safety regulations. China has since sought to use the MMCA talks to stop intrusive US surveillance.<sup>14</sup>

While China and the USA continue to hold divergent views of international law, there has been some change in Chinese practice. For instance, the Chinese People's Liberation Army Navy (PLAN) has commenced surveillance activities in US EEZs around Guam and Hawaii.<sup>15</sup> The Chinese Government describes these activities as 'reciprocal' and insists that its interpretation of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) remains unchanged.<sup>16</sup> Indeed, in December 2013 the PLAN harassed a US warship in the South China Sea, no doubt illustrating China's continued disagreement with the US view on surveillance activities in EEZs. Nonetheless, in the context of freedom of navigation, reciprocity is the key to common understanding. If the PLAN enjoys freedom of navigation in foreign EEZs, it can hardly deny freedom of navigation to foreign militaries operating in Chinese EEZ. In addition, the PLAN has agreed to the Code for Unplanned Encounters at Sea (CUES), a regional naval code of conduct for risk reduction and better communication adopted when the PLAN hosted the Western Pacific Naval Symposium (WPNS) in Qingdao, China, in April 2014.

These changes in the PLAN's policies and practices may reflect

<sup>14</sup> Pedrozo (note 6), p. 216.

<sup>15</sup> US Department of Defense (DOD), *Military and Security Developments: Involving the People's Republic of China 2013*, Annual Report to Congress (US DOD: Washington, DC, 2014), p. 39.

<sup>16</sup> United Nations Convention on the Law of the Sea (UNCLOS), opened for signature 10 Dec. 1982, entered into force 16 Nov. 1994, *United Nations Treaty Series*, vol. 1833 (1994).

President Xi's call for a more cooperative relationship with the USA as part of a 'new model of major power relations'. Accordingly, during the November 2014 APEC meeting, China and the USA signed two memoranda of understanding (MOUs) on notification rules for major military activities and a code of conduct for naval and air safety.<sup>17</sup> Under the terms of the MOU on prior notification, each country's military will notify its counterpart of defence policy reports and military exercises. The MOU on code of conduct is based on existing international regulations, including COLREGS and CUES. Both MOUs are voluntary. Nonetheless, if implemented fully, they will reduce the risk of accident between the two militaries at sea.

A similar code of conduct for air traffic is urgently required, particularly as air accidents are both more likely and more difficult to manage.<sup>18</sup> The PLA Air Force (PLAAF) still remains a coastal air force and may be more interested in restricting freedom of overflight than guaranteeing air safety for foreign militaries. To illustrate the urgency of this issue, in August 2014 a number of PLAAF combat aircraft were involved in a series of dangerous close encounters with US surveillance aircraft in the South China Sea.

<sup>17</sup> US Department of Defense, Memorandum of Understanding regarding the rules of behavior for safety of air and maritime encounters, 9 Nov. 2014, <[http://www.defense.gov/pubs/141112\\_MemorandumOfUnderstandingOnNotification.pdf](http://www.defense.gov/pubs/141112_MemorandumOfUnderstandingOnNotification.pdf)>; and US Department of Defense, Memorandum of Understanding on notification of major military activities, 9 Nov. 2014, <[http://www.defense.gov/pubs/141112\\_MemorandumOfUnderstandingRegardingRules.pdf](http://www.defense.gov/pubs/141112_MemorandumOfUnderstandingRegardingRules.pdf)>.

<sup>18</sup> Glaser, B., 'A step forward: US-China military ties: two military CBMs', CSIS Asia Maritime Transparency Initiative, 11 Nov. 2014, <<http://amti.csis.org/us-china-cbms-stability-maritime-asia/>>.



The US experiences in reaching agreements with the Soviet Union and China illustrate the importance of shared views on international law to crisis management. While the USA shared the Soviet Union's views on freedom of navigation, the same has not been true with China. Nonetheless, as China expands its naval reach and the current political leadership in the Chinese Government seeks cooperative military relations with the USA, the quality of bilateral military communications is also improving.

### **THE CASE FOR CHINA–JAPAN CRISIS MANAGEMENT**

China, like other states, has every right to enjoy freedom of navigation outside foreign territorial seas and to innocent passage within foreign territorial seas. Accordingly, PLAN warships have undertaken a number of activities in Japanese EEZs. For example, Chinese Government ships have been observed conducting legal oceanographic surveys in Japanese EEZs, while a PLAN nuclear-powered submarine entered Japanese territorial seas in November 2004 in violation of the UNCLOS provisions. Since 2008, China's naval activities in the East China Sea and beyond have intensified in an effort to improve access to the open ocean through the Japanese straits. The most frequently used route is the Miyako Channel between Mainland Okinawa and Miyako Island, the widest channel along the first island chain. However, the PLAN also uses most of the other Japanese major straits on a regular basis.<sup>19</sup>

<sup>19</sup> For China's major maritime and air force activities around Japan see Japanese Ministry of Defense (MOD), *Defense of Japan 2014* (Japanese MOD: Tokyo, July 2014), <[http://www.mod.go.jp/e/publ/w\\_paper/pdf/2014/DOJ2014\\_1-](http://www.mod.go.jp/e/publ/w_paper/pdf/2014/DOJ2014_1-1-3_web_1031.pdf)

Each time a PLAN ship approaches Japanese waters, the Japan Self-Defence Force (JSDF) monitor its activities in accordance with international practice. However, there have been occasions when the PLAN has sought to disrupt the JSDF's legitimate monitoring activities on the high seas in potentially dangerous ways. For example, in April 2010, a PLAN fleet was passing through the Miyako Channel when a PLAN helicopter buzzed a Japanese destroyer that was monitoring the passage of the fleet. A PLAN ship was also suspected of directing its weapons at a Japanese patrol aircraft during the cruise. The Chinese Government justified these activities as 'necessary defensive measures' against Japanese surveillance activities.

In contrast, in the East China Sea, China makes excessive EEZ claims in the Okinawa Trough on the grounds of a natural extension of its continental shelf and regards 90 per cent of the waters as its 'jurisdictional sea'. This conflicts with Japan's claim, which is based on the principles of equity and equidistance. Thus, while Japan conducts regular maritime surveillance activities up to the median line, China occasionally tries to disrupt those activities. In January 2013, for example, a PLAN ship directed fire-control radar at a Japanese destroyer monitoring PLAN activities near the median line. The Chinese Government denied the incident had occurred but criticized Japanese surveillance activities as a 'source of safety problems'.

The naval tensions between the two countries have extended to the air. Since 2010, the number of PLAN and PLAAF aircraft approaching Japanese territorial airspace has

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increased.<sup>20</sup> Accordingly, the number of times Japan Air Self-Defense Forces (JASDF) aircraft have been forced to scramble against Chinese aircraft also continues to rise. Between October 2013 and September 2014, the JASDF made a total of 473 scrambles against Chinese aircraft—about a 23 per cent increase from the previous year. The majority of the Chinese aircraft involved were PLAN or PLAAF combat aircraft. Despite this, the Chinese military condemns the frequency of Japanese aircraft ‘tailing, observing and interfering’ with Chinese aircraft as the main cause of aviation safety problems between the two countries. China has also called on Japan to stop scrambling against Chinese aircraft. This increase in military activity indicates why the establishment of the communication mechanism is so urgent.

China’s announcement in November 2013 of an East China Sea air defence identification zone (ADIZ) may have been aimed at restricting the freedom of foreign military aircraft to overfly the Chinese-claimed EEZ.<sup>21</sup> A May 2014 incident, in which Chinese combat aircraft undertook dangerous manoeuvres against Japanese surveillance aircraft in airspace where Japanese and Chinese ADIZs overlap, further indicates that China regards its own ADIZ as an extension of territorial airspace.

<sup>20</sup> For detailed data on Chinese air activities see Japanese MOD, ‘China’s activities surrounding Japan’s airspace’, [n.d.], <[http://www.mod.go.jp/e/d\\_act/ryouku/](http://www.mod.go.jp/e/d_act/ryouku/)>.

<sup>21</sup> On China’s ADIZ practices see Kotani, T., ‘Reviewing the first year of China’s ADIZ: a Japanese perspective’, CSIS Asia Maritime Transparency Initiative, 25 Nov. 2014, <<http://amti.csis.org/reviewing-the-first-year-of-chinas-adiz-a-japanese-perspective/>>.

Chinese officials responded to the incident by criticizing the Japanese aircraft’s ‘intrusion’ into the Chinese ADIZ.

The presence of Chinese paramilitary and private vessels in Japanese waters—which China claims are disputed waters—increases the risk of unintentional accidents or incidents. For instance, intrusions by both Chinese Government-owned and privately owned ships into Japanese territorial seas around the Senkaku/Diaoyu Islands make crisis management more difficult. Such intrusions by Chinese Government-owned ships began in December 2008 and increased dramatically after September 2012.<sup>22</sup> While in 2014 the frequency of intrusions into territorial sea gradually declined, Chinese ships now operate more frequently in the contiguous zone. Chinese fishing fleets also operate around the Senkaku/Diaoyu Islands, and in September 2010 an illegal Chinese trawler collided with a Japanese patrol vessel. Ships carrying Chinese activists also occasionally approach the islands.

It is believed that recent Chinese territorial claims over the Senkaku/Diaoyu Islands are linked to a domestic power struggle in the Chinese Government. In 2008, when China and Japan agreed on joint development in the East China Sea as part of the China–Japan ‘mutually beneficial relationship’, Chinese hardliners used this agreement as an excuse to criticize the leadership of Chinese

<sup>22</sup> For data on Chinese intrusions see Japanese Foreign Ministry, ‘Trends in Chinese Government and other vessels in the waters surrounding the Senkaku Islands, and Japan’s response’, last updated 11 Nov. 2014, <[http://www.mofa.go.jp/region/page23e\\_000021.html](http://www.mofa.go.jp/region/page23e_000021.html)>.



President Hu Jintao. This then led the leadership to take a tougher stance on the East China Sea. In this sense, the East China Sea became a hostage to China's domestic power struggle, and this has remained the case since President Xi assumed power. In fact, Xi could not seek a meeting with Prime Minister Abe until his 'anti-corruption campaign' allowed him to consolidate his power.

Despite the urgent need for China and Japan to establish an effective mechanism for managing tensions in the East China Sea, agreement between the two countries has proven difficult to reach, for a number of reasons. First, as is the case in China-US relations, China and Japan have differing views on freedom of navigation. Second, and unlike China-US relations, China's military activities around Japan have become both more frequent and more regular. Third, China's territorial claims over the Senkaku/Diaoyu Islands constitute a further source of tension. Although these claims are mainly driven by China's domestic political struggles, they nonetheless make the establishment of a maritime crisis management mechanism more problematic.

### **PROSPECTS FOR CHINA-JAPAN CRISIS MANAGEMENT**

Now that China and Japan have resumed working-level talks on the maritime communication mechanism, and Chinese and Japanese defence officials have reaffirmed their basic understanding of the mechanism's structure (hotlines, regular consultations, and direct communication between ships and aircraft), the next task is to agree a code of conduct for the sea and

sky. Elements of COLREGS and CUES will form the basis of such a maritime code of conduct. This navy-navy mechanism can also provide a foundation for a code of conduct for the two countries' respective coast guards.

At the working-level talks, defence officials from both sides also acknowledged the importance of airspace communication and agreed to seek a maritime and aerial communication mechanism. Nevertheless, disagreements over scrambling and airspace surveillance in the East China Sea are unlikely to be easily resolved. It will be more difficult for China and Japan to establish an airspace code of conduct due to their different interpretations of the freedom of overflight and the lack of international standards for such a code of conduct.

As is the case with China-US military relations, different views on freedom of navigation will continue to result in incidents or close encounters at sea even after the mechanism is implemented. Nevertheless, the mechanism will almost certainly reduce misperception, increase predictability and lower the risk of naval and air accidents between China and Japan. In the absence of a mechanism for maritime communication, and given the persistence of mutual mistrust and ongoing military preparations, such incidents could quickly escalate.

### **POLICY IMPLICATIONS**

The year 2015 marks the 70th anniversary of the end of World War II, and history may intervene once again to hinder cooperation between China and Japan. The Chinese Government is already

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preparing to commemorate its victory in an 'anti-fascist war'. The ongoing review of Japanese security legislation and the Japan-US Defense Cooperation Guidelines, which define the division of roles and missions of the two countries' militaries, will also have a negative impact on bilateral relations between China and Japan. In order to establish and implement a crisis management mechanism with China under difficult circumstances, the Japanese Government should take the following measures:

1. Make security a main pillar of a 'mutually beneficial relationship' between China and Japan 'based on common strategic interests';
2. Prioritize a navy-navy code of conduct while simultaneously seeking consent from China on the necessity of an aerial code of conduct;
3. Allow JMSDF to communicate with the PLAN in the East China Sea, based on CUES, even before a new maritime communication mechanism is implemented;
4. Agree with China on prior notification of defence policy reports, and notify China of progress on the revision of the Japan-US Defense Cooperative Guidelines; and
5. Make a balanced and forward-looking statement on the historical interpretation that currently divides China and Japan.