



Confidence Building  
Measures in the Maritime  
Domain in Northeast  
Asia: An Analysis of  
Japan-China Maritime  
and Aerial Mechanisms

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# **CONFIDENCE BUILDING MEASURES IN THE MARITIME DOMAIN IN NORTHEAST ASIA: AN ANALYSIS OF JAPAN-CHINA MARITIME AND AERIAL MECHANISMS**

**Kyoko Hatakeyama**

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## **INTRODUCTION**

Asia's maritime security environment is becoming uncertain due to overlapping sovereignty claims to reefs and shoals and aggressive naval and maritime activities in the East and South China Seas. For instance, China not only claims sovereignty over reefs, uninhabited islands, and maritime territory within its "nine-dash line" in the South China Sea but is also strengthening its effective control to block coastal states from engaging in fishing and resource-based economic development in areas which China considers are under its jurisdiction. China's increasingly assertive behaviour also extends to the East China Sea where it claims sovereign rights to the Senkaku Islands. It has intruded into the islands' contiguous zones and territorial waters on a daily basis, and in response, Japan Coast Guard (JCG) vessels have patrolled the area around-the-clock to defend the islands.<sup>1</sup>

The tense situation affecting the Senkaku Islands and China's assertive behaviour in the maritime domain have created an environment in which accidents or unintentional encounters could eventually spiral into conflict between Japan and China. To avoid this risk, it is important to establish effective mechanisms to prevent dangerous encounters in the maritime domain and thus reduce the risk of unnecessary conflict.

This paper assesses the effectiveness of confidence-building measures (CBMs) in Northeast Asia, with a particular focus on current maritime and air communication mechanisms set up between Japan and China. First, the paper surveys the inventory of maritime CBMs in Northeast Asia. It



then examines the Maritime and Air Communication Mechanism (MACM), which Japan and China set up in 2018 to prevent accidental clashes between Japan's Self-Defence Forces (SDF) and the Chinese military. Finally, it assesses the effectiveness of the MACM. The paper argues that the MACM's effectiveness is limited because of the lack of binding force, and exclusion of civilian institutions and territorial waters due to continued disputes over sovereign rights to the Senkaku Island. Despite this, CBMs remain an essential part of the security infrastructure of the Northeast Asian maritime domain. It is crucial that states continue to pursue them to maintain stability in the region.

## **CBMs IN NORTHEAST ASIA'S MARITIME DOMAIN**

CBMs are defined as measures taken for crisis management without necessarily settling conflicts between states.<sup>2</sup> The aim of confidence-building measures is "to contribute to, reduce or, in some instances, even eliminate the causes for mistrust, fear, tensions and hostilities, all of which are significant factors in the continuation of the international arms build-up in various regions."<sup>3</sup> These measures aim to reduce the risk of escalation derived from miscalculation or miscommunication and increase predictability. To achieve this aim, regular communication between the parties and a protocol that all parties will abide by are essential.

Though not geared towards Northeast Asia, one of the most successful CBMs in the maritime domain has been the Incidents at Sea Agreement (INCSEA) signed between the United States and the Soviet Union during the Cold War. Since both the United States and the Soviet Union were routinely engaged in dangerous behaviours such as "playing chicken" during the mid-1960s, both states sought to avoid serious clashes.<sup>4</sup> Following a collision that took place between US and Soviet destroyers in the Sea of Japan in May 1967, both states began negotiating a mechanism to prevent similar incidents. In 1972, both states concluded the INCSEA, which aimed at avoiding collisions of military aircraft and vessels of these states over or on the high seas by restricting dangerous behaviours and harassment. The agreement was then reinforced and became comprehensive by the additional protocol of 1973, which stipulated that states were not to make simulated attacks on the other side's non-military vessels.<sup>5</sup>

While the INCSEA agreement relied mainly on the self-restraint of commanders to avoid behaviours that could cause misunderstanding or miscalculation, it provided concrete steps to avoid collision by establishing methods of communication, such as using accepted international signals. It also specified that both states would adhere to the 1958 Geneva Convention on the High Seas.<sup>6</sup> While maritime incidents between the United States and the Soviet Union continued to occur even after the conclusion of the agreement, Secretary of the Navy John Lehman praised the agreement, stating that the frequency of incidents was "way down from what it was in the

1960s and early 1970s."<sup>7</sup> The degree of damage from accidents was also reduced to a substantial degree.<sup>8</sup>

In 1993, Japan and Russia concluded a treaty along the lines of INCSEA<sup>9</sup> to prevent an incident between their vessels and aircrafts, based on the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS), stipulated by the International Maritime Organization.<sup>10</sup> The agreement was mutually beneficial given the Soviet Union's frequent naval activities in the vicinity of Japan. It aimed to strengthen communication at sea and set up annual meetings between the defence authorities to exchange views and discuss measures to prevent a collision. It also proscribed dangerous behaviour. Since the conclusion of the treaty, the meetings have been held annually, nurturing confidence between the two states.<sup>11</sup> However, the meetings have been suspended due to Russia's invasion of Ukraine in 2022.

Likewise, China and the United States have a bilateral agreement to avoid incidents at sea. Triggered by a 1994 incident in the Yellow Sea in which a US aircraft carrier and a Chinese submarine confronted each other, both states agreed to conclude the Military Maritime Consultative Agreement (MMCA) in 1998. The accord was initially limited due to the lack of code of conduct specifying how to avoid clashes.<sup>12</sup> For instance, in April 2001, an incident occurred over Hainan Island in which a US EP-3 aircraft and a Chinese interceptor jet collided in mid-air. The collision was caused by disagreement between the United States and China on the right of overflight.

The MMCA, however, became more effective after both states concluded two memorandums<sup>13</sup> regarding air and maritime encounters and notification of major military activities in 2014.<sup>14</sup> In these memorandums, they confirmed the rules of COLREGS and Code for Unplanned Encounters at Sea (CUES), a protocol designed to ensure safety in the event of unexpected encounters by vessels or aircraft of each country, and also set up Maritime Navigation Warning Areas.<sup>15</sup> They also agreed to cover the activities of the Chinese Coast Guard (CCG) and the US Coast Guard.<sup>16</sup> Making the agreement more comprehensive and substantial, these memorandums produced substantial results. For instance, when in October 2015, the destroyer *USS Lassen* conducted a freedom of navigation operation near the Spratly Islands in the South China Sea over which China claims sovereign rights, the US and the Chinese navies interacted cordially and professionally.<sup>17</sup> Interactions between the *USS Lassen* and Chinese vessels and aircrafts at sea and in the air occurred on as many as fifty occasions from May to November that year.<sup>18</sup> Yet no incident as dangerous or as severe as the 2013 *Cowpens* incident, a near-collision encounter between the American vessel *Cowpens* and a Chinese amphibious transport dock in the South China Sea, has occurred since the conclusion of the treaty. Although it is clear that the risk of

dangerous encounters has not disappeared, the MMCA enabled Chinese and US officers to maintain open lines of communication and deal with the encounter peacefully.<sup>19</sup>

The effectiveness of the MMCA was partly attributed to the conclusion of CUES. In the early 2010s, China's increasingly assertive behaviour in the East and South China Seas began to attract global attention. Concerned with a growing possibility of collision as a result of Chinese assertive maritime activities, some states began to explore mechanisms to prevent accidents at sea. Such moves gained momentum, resulting in the proposal of CUES at the 2012 Western Pacific Naval Symposium to reduce the risk of incidents at sea among participating countries. However, the proposal initially could not be adopted due to an objection by China, who suspected that the word "code" could be interpreted as binding, thereby affecting its territorial claims in the East and South China Seas.<sup>20</sup> However, China shifted its stance when it began to endorse the concept of CBMs to avoid serious collisions and, in 2014, agreed to the adoption of CUES.

While signed by 21 Pacific states, including Japan and the United States, CUES is a non-binding and voluntary agreement. It does not stipulate regular meetings for promoting communication between signatory states, nor is it applicable to territorial waters. It also did not apply to coast guards, who were involved in many incidents. Nonetheless, CUES had a certain positive impact on crisis avoidance because it provided a standard of behaviour to the navies of states concerned. After its adoption, the Chinese Navy practised the code with ships from the United States, Brunei, Indonesia, Singapore, and Australia. Such a practice was vital since it nurtured greater operational "professionalism,"<sup>21</sup> as exemplified by the aforementioned interaction between the USS *Lassen* and Chinese vessels. The practices made the agreement substantial by raising awareness of the code.

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States have also taken to pursuing CBMs outside of formal treaties to reinforce or supplement the existing treaties and frameworks. These measures most commonly look like crisis hotlines and dialogues. For instance, China established a defence minister's hotline with Russia and a military hotline with the United States in 2008. In the same year, China and South Korea started a direct telephone line between their militaries; it was upgraded to the ministerial level in 2015.

China and Vietnam also started a hotline between their respective national defence authorities. Countries have also engaged in maritime affairs dialogues to promote communication and cooperation between the officials of the coastal states, as seen in the cases of China and Japan in 2012 and between China and South Korea in 2021.<sup>22</sup> Measures such as hotlines and dialogues are not formal treaties or agreements, but they contribute to confidence-building between states through frequent and direct communication.

## JAPAN-CHINA MARITIME AND AIR COMMUNICATION MECHANISM

**Background and adoption:** In 1992, China adopted the Territorial Sea Law, which claimed its sovereign rights to the Senkaku Islands.<sup>23</sup> Since then, China has gradually increased its presence in the East China Sea in three ways: research activities, intrusions into the waters around the Senkaku Islands, and oilfield exploitation. In the 2000s, China's scientific research activities within Japan's Exclusive Economic Zones (EEZ) became more frequent despite a 2001 agreement between the two, which stipulated that any research activities in the area required prior notification.<sup>24</sup> In 2003 and 2004, Chinese activists claiming territorial rights over the Senkaku Islands intruded into the islands' territorial waters and even landed on one of the islands in March 2004.<sup>25</sup> Moreover, confrontation between Japan and China around the islands intensified over the exploitation of the Shirakaba/Shungyo oilfield located at the alleged median line marking the divide between Japan's and China's EEZs. Despite protests by Japan, China continued to drill the oilfields and even dispatched military ships to patrol the area.

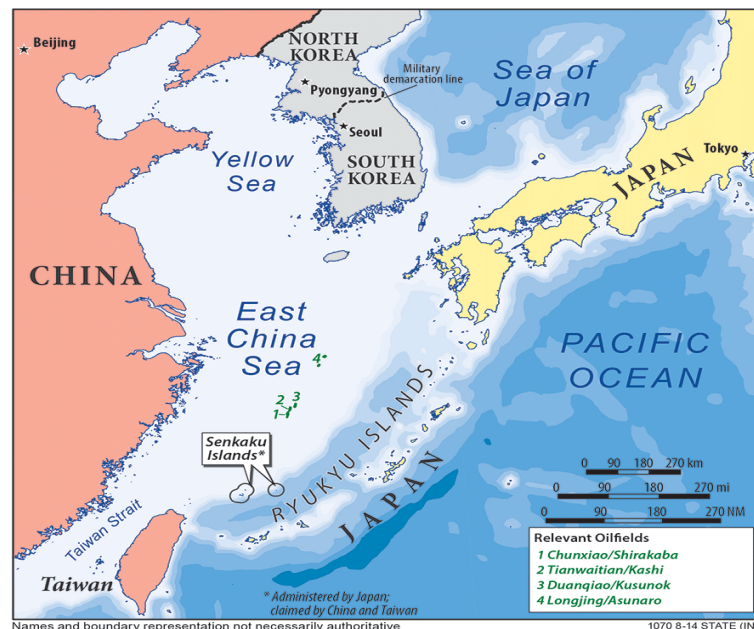


Image: Map showing the Senkaku Islands.

Source: [United States Energy Information Administration](#)

Concerned about growing Chinese military presence in the East China Sea, at a summit meeting in April 2007, then Japanese Prime Minister Shinzo Abe proposed launching a mechanism designed to avoid incidents with China in the maritime domain.<sup>26</sup> In April 2008, the two states held their first working group meeting, but their differing understandings of sovereignty over the Senkaku Islands hindered the negotiation of the mechanism. In fact, it took ten years to launch the mechanism due to fluctuating Japan-China relations.

While exploring the mechanism to avoid incidents, an unplanned encounter around the Senkaku Islands resulted in a collision. In September 2010, a Chinese fishing boat intentionally collided with a JCG patrol vessel. Japan arrested the captain and crew of the Chinese fishing trawler for illegally fishing within Japan's territorial waters around the Senkaku Islands. The Chinese government protested the arrest of the captain and crew by Japan and demanded their prompt release. However, while the crew were released, the Japanese government decided to extend the detention of the Chinese captain. This decision angered China, resulting in a temporary suspension of exports of all rare earth elements (REEs) to Japan, which caused the surge of the REEs price. Although the collision did not turn into a military clash, this was a case of an unplanned encounter at sea led to an incident.

In the wake of this collision incident, Japan and China began to explore a new framework in efforts to promote confidence-building and communication. This led to the first Japan-China High-Level Consultation on Maritime Affairs in May 2012.<sup>27</sup> To promote confidence at various levels, the meetings encompassed many parties from both Japan and China, including the People's Liberation Army (PLA), SDF, the JCG and CCG, and their respective National Oceanographic Administrations. However, these meetings were soon suspended because the Japanese government purchased the Senkaku Islands from a Japanese national who owned them.<sup>28</sup> This decision to nationalise the islands infuriated China, leading to massive demonstrations and riots targeting Japanese companies operating in China.

Since then, China's intrusions into the territorial and contiguous waters of the Senkaku Islands have surged dramatically. In response, the number of JCG patrol ships in the area increased, thus raising the risk of collisions between Japanese and Chinese vessels. Dangerous behaviours that could cause collisions or incidents also increased. For instance, in January 2013, a Chinese warship directed its fire control radar at an SDF destroyer in the East China Sea, which could be regarded as a simulation attack.<sup>29</sup> In November of the same year, China unilaterally established an Air Defence Identification Zone (ADIZ) over the East China Sea.<sup>30</sup> After setting up the ADIZ, dangerous incidents occurred, in which Chinese fighter jets approached an SDF aircraft in May and June 2014.<sup>31</sup> With a growing probability of collision, the 2014 Japanese White Paper noted

that establishing a maritime and aerial communication mechanism was an “urgent matter.”<sup>32</sup> The situation had become so tense that the former Australian Prime Minister Kevin Rudd described it as the “Maritime Balkans” of Asia.<sup>33</sup>

In November 2014, Japan and China agreed to resume talks on installing a mechanism. Given increasing encounters at sea and air, both states acknowledged the need to strengthen confidence by promoting exchanges at the defence official level and to build mechanisms to enable defence authorities to communicate with each other to prevent accidental collisions.<sup>34</sup> Chinese intrusions, however, continued on a daily basis. Notably, a Chinese warship entered the contiguous waters of the Senkaku Islands for the first time in June 2016.<sup>35</sup> In August of the same year, some 200 to 300 Chinese fishing boats turned up in the contiguous waters of the Senkaku Islands, and CCG vessels repeatedly intruded into the islands’ territorial waters as they followed these Chinese fishing boats.<sup>36</sup> In January 2018, a Chinese submarine and several vessels entered the islands’ contiguous waters. These continuous forays by Chinese civilian and military vessels into the Senkaku Islands can be seen as a signal of China’s determination not to concede its claims of sovereign rights over the Senkaku Islands. The ongoing territorial dispute made it difficult to reach agreement on the content of the mechanism, particularly when it came to whether the mechanism should cover both territorial waters and airspace. While China insisted on the inclusion of both territorial waters and airspace, Japan opposed it since, given its administration, it regarded the inclusion as a compromise.<sup>37</sup> The two states ultimately agreed to exclude territorial waters and airspace from the agreement’s scope, and in May 2018, the MACM was concluded with the aim of avoiding unintended confrontations between the SDF and the PLA.

The mechanism stipulated that the two states will:

- (1) promote mutual understanding and confidence between Japan and China and enhance bilateral defence cooperation;
- (2) avoid accidental collisions; and
- (3) prevent unforeseen circumstances at sea and in the air from developing into military clashes or political or diplomatic issues.

The mechanism features:

- (1) annual and expert meetings between the defence authorities;
- (2) a hotline between the Japanese and Chinese defence authorities; and
- (3) on-scene communication channels between vessels and aircraft.<sup>38</sup>

The communication method agreed upon in the MACM is based on CUES<sup>39</sup> and the Convention on International Civil Aviation. However, the mechanism does not have binding force. It only

stipulates how the two sides should behave and communicate with each other in case of an encounter.

***Assessment of the Mechanism:*** Since the adoption of the mechanism in 2018, the two sides' defence authorities have held annual senior-official meetings and expert meetings. However, the MACM may be limited in its effectiveness for three reasons. First, as mentioned earlier, it is not a code of conduct or set of rules; it is only meant to promote inter-state communication and enhance mutual confidence. Given that Japan and China are both signatories to previous CBMs such as COLREGS and CUES, they need to respect the rules and a code of conduct stipulated by these agreements. This means that their respective naval forces need to operate at-sea by using channel 16 radio frequency to communicate with other vessels in English or using international signal flags in case of encounter.<sup>40</sup> Since these stipulations are already provided by CUES, this component (on-scene communication channels between vessels and aircraft) of the MACM adds nothing new to the relationship, and its effectiveness thus remains uncertain.

Second, the MACM's application is limited to the military, namely the SDF and the PLA. It does not technically apply to encounters between the CCG and the JCG, neither of which are subject to CUES. Although these civilian institutions have de facto communication channels at sea, communication channels alone cannot prevent incidents in the East China Sea. Given China's so-called grey zone strategy, in which it uses non-military assets like the CCG and fishing boats to challenge Japan's administration of the Senkaku Islands, the inclusion of civilian institutions in the mechanism is essential. Because the CCG and Chinese fishermen operate more aggressively than they once did, the situation created by the grey zone strategy is, while cannot be called as a 'state of war,' far from peaceful.

***The MACM ... does not technically apply to encounters between the CCG and the JCG, neither of which are subject to CUES. Although these civilian institutions have de facto communication channels at sea, communication channels alone cannot prevent incidents in the East China Sea.***

Moreover, the adoption of the Coast Guard Law in 2021 accelerated China's inclination to use civilian assets to achieve its goals. The law authorised the CCG to use force against foreign ships that operate in areas the Chinese government purports to administer. The adoption of this law sets the scene for a violent clash in the East China Sea because of China's normalisation of the use of force to defend what it perceives to be its sovereign territory. Moreover, CCG vessels have



become larger and are increasingly militarized. In 2018, the command of the CCG was even transferred to the People's Armed Police, which falls under the Central Military Commission. In response to a more robust CCG, the JCG has modernized its equipment and strengthened cooperation with the SDF. However, as the Chinese Coast Guard Law shows, the CCG's nature is increasingly becoming equivalent to a paramilitary force rather than a civilian law enforcement institution.<sup>41</sup> Chinese attempts to change the status quo of the Senkaku Islands by force continue to create a tense situation, which may lead to an incident, even if not intended.

Third, because of a lack of common understanding between the two states as to where maritime boundaries regarding territorial waters and EEZs lie, the MACM is unlikely to prevent collisions and contingencies. The agreement excludes territorial waters, despite waters around the Senkaku Islands being the area where collisions are most likely to occur. According to an interview with the president of the fishing union of Ishigaki Island, unplanned maritime encounters around the Senkaku Islands between Japanese fishing boats and the CCG have indeed diminished in recent years, but this is largely due to initiatives taken by Japanese fishermen: few Japanese fishing boats sail to the area to fish due to long distances, the unpredictability of the weather, and, most importantly, the risk of collision at sea.<sup>42</sup> However, frequent Chinese intrusions and concomitant JCG defensive moves may still result in a collision. Moreover, it is not clear whether both sides observe CUES for naval encounters in disputed areas. Given that the MACM specifically excludes territorial waters and airspace from the agreement's scope, it has little hope of reducing risk around the Senkaku Islands, where many unplanned encounters inevitably occur.

## **CONCLUSION**

CBMs in Northeast Asia have been successful in helping countries avoid escalation or major conflict, albeit limitedly. For instance, the INCSEA between the United States and the Soviet Union contributed to a reduction in incidents between the two countries, the adoption of CUES was a major step in preventing collision between military vessels, and the MMCA between the United States and China has been helpful in avoiding a major clash. What is common between these CBMs is the absence of territorial disputes among or between their signatory states, despite having different interpretations of acceptable military activities in the maritime domain. In contrast, tensions in the East China Sea and the probability of collisions of vessels remain high between China and Japan because of their protracted territorial dispute. China has sent CCG ships to the Senkaku Islands and intruded into the islands' contiguous and territorial waters, and in response the JCG has patrolled the area to defend the islands. As a result, the two continue to have unplanned or dangerous encounters.



Concerned with an unexpected collision, Japan and China launched the MACM in 2018 and belatedly a hotline stipulated in the mechanism in 2023. Although it is too early to conclude the effectiveness of the MACM, it is unlikely to materialise as a strong example of a Northeast Asian CBM. Three shortcomings have crippled it: lack of binding force, exclusion of non-military actors like coast guards and fishing vessels, and the exclusion of territorial waters and airspace from the agreement's scope. Although the mechanism may prevent unforeseen encounters at sea or in the air from developing into military clashes between the two states' military forces, it does not necessarily reduce the risk of collisions between civilian vessels, which China is now using in attempts to change the status quo.

*Although it is too early to conclude the effectiveness of the MACM, it is unlikely to materialise as a strong example of a Northeast Asian CBM.*

Nevertheless, introducing such a mechanism and a hotline for direct and more frequent communication will reduce the risk of large-scale military conflict. The 2018 launch of an Agreement on Search and Rescue (SAR), a framework for cooperation between Japan and China to locate and assist victims at sea, was an addition. Through such a framework for cooperation and regular maritime dialogues between the two states, Japan and China will be able to nurture a conducive environment for further cooperation.

As other CBMs show, as long as disputes about territorial rights do not arise between parties, a mechanism is likely to function by reducing the chances of a collision, even though the number of encounters may not decline. In contrast, differences in understanding regarding the extent of territorial waters and EEZs are not easy to resolve and will inevitably result in unplanned encounters at sea and in the airspace above it. Such an encounter may lead to collision since both sides do not give in.

Given the lack of law enforcement institutions in the world, the effectiveness of the CBMs is inevitably limited. Power politics also come into play. However, CBMs can foster positive communication habits that can help curb unintended escalation and may perhaps even lead to more effective long-term diplomacy on contentious issues. If both parties, whether military or civilian, respect a code of conduct such as CUES or COLREGS, or effectively utilise existing CBMs, they can significantly reduce the risk of a major collision. Strengthening the existing CBMs by making them binding will reinforce their effectiveness. After all, success of preventive measures rests on the parties' modest and prudent behaviour.

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