



FEASIBILITY STUDY REPORT

# **Crisis Avoidance: Preventing Dangerous Maritime Incidents and Unintended Escalation in the Asia-Pacific**

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The Asia-Pacific Leadership Network for Nuclear Non-Proliferation and Disarmament (APLN) is a network of political, military, and diplomatic leaders from countries across the Asia-Pacific tackling security and defence challenges with a particular focus on addressing and eliminating nuclear weapon risks.

The Verification Research, Training and Information Centre (VERTIC) is an independent, non-profit making charitable organisation. Established in 1986, VERTIC supports the development, implementation and verification of international agreements and related regional and national initiatives

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## **LIST OF IMPORTANT ACRONYMS**

**AIS:** Automatic Identification Systems

**APLN:** Asia-Pacific Leadership Network

**ASEAN:** The Association of Southeast Asian Nations

**CCG:** China Coast Guard

**CoC:** Code of Conduct

**COLREGs:** Convention on the International Regulations for Preventing Collisions at Sea

**CSBM:** Confidence and security building measure

**CUES:** Code for Unplanned Encounters at Sea

**ECS:** East China Sea

**EEZ:** Exclusive Economic Zone

**FONOP:** Freedom of navigation operation

**GAME:** Guidelines for Air Military Encounters

**ICG:** Indian Coast Guard

**IFC:** Information Fusion Centre

**ILO:** International Liaison Officer

**IMO:** International Maritime Organization

**INCSEA:** Incidents at Sea Agreements

**IUU:** Illegal, Unreported, and Unregulated

**MACM:** Maritime and Air Communications Mechanism

**MDA:** Maritime Domain Awareness

**MLE:** Maritime law enforcement

**MMCA:** Military Maritime Consultative Agreement

**PMSA:** Pakistan Maritime Security Agency

**PRC:** People's Republic of China

**SCS:** South China Sea

**UNCLOS:** United Nations Convention on the Law of the Sea

**VERTIC:** Verification Research, Training and Information Centre

# EXECUTIVE SUMMARY

## I. BACKGROUND

The maritime regions of the Asia-Pacific – South Asia, Southeast Asia, Northeast Asia and the South Pacific – face complex dynamics and growing military competition between naval powers. Countries are modernising and expanding their naval capabilities, conducting more frequent multinational exercises, and making significant strides in naval power projection from the Western Pacific and South China Sea to the Indian Ocean. The past decade has witnessed a growth in encounters at sea and in the airspace above East and Southeast Asia's contested waters. As multiple maritime forces come into closer contact with one another, there is a growing risk of incidents and conflict escalation.

The United States has also increased its military activities and freedom of navigation operations (FONOPs) in the region since 2018, resulting in increased cases of military-to-military encounters with Chinese forces at sea and in the airspace over the South China Sea. Between 2010-2022, most military-to-military encounters in Asia's maritime and air domains took place between the United States and the People's Republic of China (PRC). With tensions rising between the United States and China, any incident - whether intentional or through miscalculation, misunderstanding or mistake - risks escalating into serious conflict.

Six key factors were identified as contributing to the growing instability in the Asia-Pacific's maritime environment:

- growing grey zone incidents involving non-military vessels in violent encounters at sea;
- different interpretations of the law of the sea, and China's selective interpretation of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) when it comes to determination of jurisdictional zones and effects on navigation;
- sovereign impunity of actors resulting from unenforceability of treaties and formal agreements;
- great power rivalries overshadowing and compounding maritime challenges for smaller powers;
- growing military and technological assets and capabilities of regional powers crowding the maritime and overhead air spaces in the Asia-Pacific;
- limited maritime domain awareness inhibiting regional actors from developing a shared understanding of maritime security threats.

Risk reduction mechanisms and maritime confidence and security building measures (CSBMs) to manage dangerous military activities and incidents at sea

are rather limited.<sup>1</sup> The challenge is further compounded by lack of transparency, paucity of data on the scale of the challenge, poor enforcement mechanisms for current CSBMs, and an absence of agreements/protocols for managing hazardous maritime incidents. These conditions, as they interact, have led to a normalisation of aggressive behaviour at sea.

## II. POLICY RECOMMENDATIONS

To identify pathways forward to address these challenges, the APLN-VERTIC project conducted wide consultations with experts from countries across the Asia-Pacific, and published three scoping papers on the extant Asia-Pacific maritime CSBM context and areas for improvement.<sup>2</sup> From these initial analyses, APLN-VERTIC identified existing gaps in the CSBM architecture, that could be addressed by combinations of:

- broadening the geographical scope of existing arrangements;
- expanding the vehicle classes and civil/military statuses of vessels covered;
- adding new participating states;
- extending agreements to include non-military maritime agencies such as coast guards;
- standardising and regularising information and data exchange processes;
- reducing the selective interpretation of UNCLOS.

An overarching theme is the problem of impunity of action. In the absence of enforcement mechanisms for the violation of treaties or agreements, violators suffer only reputational costs, which they may be ready to bear to pursue their national interests and political objectives. A dedicated conversation is required on ways to ensure enforcement, verification, and compliance of maritime CSBMs and formal treaties.

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<sup>1</sup> Collin Koh discusses the term ‘confidence and security-building measures (CSBMs)’ in his scoping paper for our project: ‘What used to be called confidence-building measures (CBMs) and operational arms control measures then become more collectively known as CSBMs, which generally refer to “arrangements designed to enhance assurance of mind and belief in the trustworthiness of states and the facts they create.” Such measures do not seek to impose limits on the type and quantity of armaments acquired but only targeted at restraining freedom of military action and entail certain limitations on the use of military force. Therefore, CSBMs are especially promising for naval forces and activities.’ Collin Koh, “Confidence and Security Building Measures in Southeast Asia’s Maritime Domain,” Special Report, *Asia-Pacific Leadership Network*, 20 July 2023, p.4, <https://www.apln.network/projects/maritimeincidents/confidence-and-security-building-measures-in-southeast-asias-maritime-domain>

<sup>2</sup> See Rebecca Strating, “Assessing Military and Non-Military Incidents at Sea in the Asia-Pacific,” Special Report, *Asia-Pacific Leadership Network*, 11 July 2023, <https://www.apln.network/projects/maritimeincidents/assessing-military-and-non-military-incidents-at-in-the-asia-pacific>; Kyoko Hatakeyama, “Confidence Building Measures in the Maritime Domain in Northeast Asia: An Analysis of Japan-China Maritime and Aerial Mechanisms,” Special Report, *Asia-Pacific Leadership Network*, 28 August 2023, <https://www.apln.network/projects/maritimeincidents/confidence-building-measures-in-the-maritime-domain-in-northeast-asia-an-analysis-of-japan-china-maritime-and-aerial-mechanisms>; and Koh, “Confidence and Security Building Measures in Southeast Asia’s Maritime Domain.”

Despite these challenges, there was strong support among experts and policy practitioners at two in-person Track 2 workshops for strengthening existing CSBMs and concluding new bilateral and multilateral initiatives. The CSBMs assessed by these participants to be the most urgent, desirable, and feasible for the Asia-Pacific are provided below. They agreed that states should:

Rank	Proposal Description
1 <sup>st</sup>	Establish regional information-sharing centres to require mandatory incident reporting, to improve maritime transparency, avoid selective reporting, and create an incident database to support follow-on dialogue on establishing a single definition of 'dangerous maritime incident.'
Joint 2 <sup>nd</sup>	Facilitate a regional dialogue on best practices for use of crisis hotlines, as partly informed by India-Pakistan experiences.
Joint 2 <sup>nd</sup>	Upgrade and regularise existing maritime hotlines in the region as channels for coordinating efforts during both crisis and non-crisis conditions.
Joint 3 <sup>rd</sup>	Promote regional dialogue on inculcating a culture of safety in maritime encounters and maintenance of good order at sea throughout national sovereign fleet and flagged vessels, with consequences for breaches.
Joint 3 <sup>rd</sup>	Launch a Track 2 dialogue on 'good conduct' and 'endangering actions' at sea and rules of behaviour to prevent incidents (and establish a mechanism to review the implementation of the rules of behaviour).
4 <sup>th</sup>	Highlight the need for compliance with existing multilateral treaties (especially COLREGs) <sup>3</sup> in the discourse on preventing dangerous maritime incidents and escalation to emphasise the relevance of existing norms.
5 <sup>th</sup>	Strengthen requirements for flag states to ensure suitable understanding of international maritime law by ship operators and captains with consequences for breaches.
6 <sup>th</sup>	Establish regional dialogue on effective coordination on crisis management, including for natural disasters; on regularising their use; and on strengthening existing or establishing new mechanisms.

<sup>3</sup> 1972 Convention on the International Regulations for Preventing Collisions at Sea.



7 <sup>th</sup>	Upgrade and standardise data systems and information-sharing protocols across international information fusion centres (IFCs), along with expanded international liaison officer (ILO) cross-posting, to promote maritime transparency and accountability.
8 <sup>th</sup>	Establish regional dialogue on harmonising national approaches to maritime law enforcement (MLE) of multilateral treaties in areas of national jurisdiction, on enforcing flag state jurisdiction over civilian vessels with consequences for breaches, and on building capacity for such MLE in small states.
9 <sup>th</sup>	Initiate collective diplomatic action and establish a mechanism to coordinate grassroots efforts highlighting climate change and loss of environment as regional security challenges in Asia-Pacific, as especially relevant to small coastal states.
10 <sup>th</sup>	Expand CUES (Code for Unplanned Encounters at Sea) to include coast guards, commercial and private vessels, and elevate it to legally binding status.
11 <sup>th</sup>	Initiate new International Maritime Organization (IMO) focus (perhaps under IMO Maritime Safety Committee) toward common agreement on maritime actions (e.g. precise minimum safe stopping distances), which are behaviourally consistent and inconsistent with upholding safe practice.

Experts emphasised information sharing, data integration and greater maritime domain awareness as the most urgent and desirable area for confidence and security building among states. The proposal to *establish regional information-sharing centres to require mandatory incident reporting, to improve maritime transparency, avoid selective reporting, and create an incident database to support follow-on dialogue on establishing a single definition of ‘dangerous maritime incident’* was ranked as the overall top proposal by the group. Such a mechanism could allow various national and regional agencies to develop shared understandings of maritime security threats and strengthen the norm of supporting greater shared transparency of Indian Ocean and Asia-Pacific operating environments as a core characteristic of a responsible maritime actor.

This would, however, require CSBMs to encourage states to broaden and increase their reporting of incidents (and avoid selective reporting) including those involving military vessels, maritime law enforcement agencies, research and surveillance vessels, and non-military commercial vessels like merchant, fishing, and other commercial vessels. This data could then be consolidated with regional information-sharing centres, allowing for greater cross-verification and validation of claimed incidents, to enable consistent patterns of transgressing states and non-state actors to be identified in a way that is not driven by great power competition dynamics. Participants also emphasised that while Chinese

participation would be key in such mechanisms, its non-participation (while other states lodged incidents involving China) would normatively generate more costs for China. It would also build transparency for all states in terms of the trends and scale of maritime security problems in the region and propel a dialogue on defining a 'dangerous maritime incident.' However, participants also acknowledged the legitimate practical concerns regarding security and data protection, maintaining confidentiality and preventing sovereignty damage, especially as multiple nations with varying interests and technologies get involved in coordinating information.

CSBMs related to crisis communications were also prioritised by experts. Hotlines were noted to be reasonably effective mechanisms to review behaviour, curb violations and prevent escalation in case of crises. The proposal for a *regional dialogue on best practices for use of crisis hotlines, as partly informed by India-Pakistan experiences*, and a second proposal to *upgrade and regularise existing maritime hotlines in the region as channels for coordinating efforts during both crisis and non-crisis conditions* were both jointly ranked second. Given the poor record of the actual use of hotlines in Southeast Asia and between the United States and China, a regional dialogue is recommended to clarify the function of naval and maritime hotlines and to agree to the modalities of using them.

The proposal for a *regional dialogue on inculcating a culture of safety in maritime encounters and maintenance of good order at sea throughout national sovereign fleet and flagged vessels, with consequences for breaches* was ranked overall third (jointly with *Track 2 dialogue on good conduct at sea*) indicating that regional experts attribute high priority to safety and accountability of sovereign and flagged vessels. Flag states must ensure that vessels under their jurisdiction comply with the 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGs), and violation of these guidelines should be penalised in the form of sanctions or de-flagging of the vessel.

## Feasibility Study Report

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### INTRODUCTION

The maritime regions of the Asia-Pacific - South Asia, Southeast Asia, Northeast Asia and the South Pacific - face complex dynamics and growing military competition between naval powers. Countries are modernising and expanding their naval capabilities, conducting more frequent multinational exercises, and making significant strides in naval power projection from the Western Pacific and South China Sea to the Indian Ocean. As multiple maritime forces, both regional and extra-regional, come into closer contact with one another, there is a growing risk of incidents and conflict escalation.

The past decade has witnessed a growth in encounters at sea and in the airspace above East and Southeast Asia's contested waters. Incidents at sea reported in these regions from 2010 to 2022 involved both regional actors and extra-regional actors.<sup>4</sup> Despite protracted diplomatic negotiations over a South China Sea Code of Conduct between the ASEAN states and China, the region has become host to Chinese provocations and aggressive assertions of sovereignty vis-a-vis disputed waters and territories, creating growing unease among its disputant neighbours.<sup>5</sup> More recently, tensions have escalated between the Philippines and China, involving a near-collision in the South China Sea between a China Coast Guard ship and a Philippines patrol vessel.<sup>6</sup>

The United States has also increased its military activities and freedom of navigation operations (FONOPs) in the region since 2018,<sup>7</sup> resulting in increased

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4 Rebecca Strating, "Assessing Military and Non-Military Incidents at Sea in the Asia-Pacific," Special Report, *Asia-Pacific Leadership Network*, 11 July 2023, <https://www.apln.network/projects/maritimeincidents/assessing-military-and-non-military-incidents-at-in-the-asia-pacific>

5 "Philippines accuses China of more 'harassment' near disputed reef," *Reuters*, 6 July 2023, <https://www.reuters.com/world/asia-pacific/philippines-accuses-china-more-harassment-near-disputed-reef-2023-07-05/>

6 Dzirhan Mahadzir, "Philippine Coast Guard Cutters, Chinese Warship Almost Collide in South China Sea," *USNI News*, 1 May 2023, <https://news.usni.org/2023/05/01/philippine-coast-guard-cutters-chinese-warship-almost-collide-in-south-china-sea>

7 Jim Gomez, "US carrier Roosevelt displays capabilities in disputed South China Sea," *Navy Times*, 11 April 2018, <https://www.navytimes.com/flashpoints/2018/04/10/us-carrier-roosevelt-displays-capabilities-in-disputed-south-china-sea/>

cases of military-to-military encounters with Chinese forces at sea and in the airspace over the South China Sea<sup>8</sup> With tensions rising between the United States and China, any incidents - whether intentional or through miscalculation, misunderstanding or mistake - risk escalating into serious conflict. Risk reduction mechanisms and maritime confidence building measures to manage such problems are rather limited. These issues are further compounded by a lack of transparency; paucity of data on the scale of the challenge; and absence of agreements/protocols for managing hazardous maritime incidents. These conditions, as they interact, have led to a normalisation of aggressive behaviour at sea.

Increased military activity and maritime sovereignty disputes require effective mechanisms and open dialogue to reduce escalatory risks. In 2022 and 2023, the Asia-Pacific Leadership Network (APLN) and the Verification Research, Training and Information Centre (VERTIC) conducted a project on preventing dangerous maritime incidents and unintended escalation in the region. The project brought together senior experts and policy practitioners from the Asia-Pacific in two regional Track 2 dialogues, to identify current risks, discuss and evaluate the suitability of existing bilateral and multilateral agreements, and bring forward new proposals to fill important gaps. Participants at the two workshops came from Southeast Asia (Indonesia, Malaysia, the Philippines, Singapore, Thailand, Vietnam), Northeast Asia (China, Japan, South Korea), South Asia (India, Pakistan, Sri Lanka), South Pacific (Australia, New Zealand), and the United States. Three expert scoping papers were published in July-August 2023. The discussions, findings and recommendations from these substantive dialogues and reports are detailed below.

## **BACKGROUND: FACTORS CONTRIBUTING TO INSTABILITY IN ASIA'S MARITIME SECURITY ENVIRONMENT**

Maritime Asia is at the centre of the emerging Asian order, characterised by an ever-growing economic potential with respect to trade, commerce and marine resources, and complex geopolitical dynamics involving multiple maritime disputes and great power rivalries. Over the last decade, this region has seen an increase in military activities at sea and much of these are closely linked with maritime claims, territorial disputes and overlapping sovereignty issues involving regional and extra-regional actors. With multiple maritime forces coming into

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<sup>8</sup> See for instance, Brad Lendon, "Videos show both sides of US-China aerial encounter – and highlight the risks involved," *CNN*, 4 January 2023, <https://edition.cnn.com/2023/01/03/china/us-china-south-china-sea-intercept-intl-hnk-micml/index.html>; Ivan Watson, Emiko Jozuka and Dan Campisi, "Chinese fighter jet confronts US Navy plane with CNN crew aboard as tensions simmer in the South China Sea," *CNN*, 24 February 2023, <https://edition.cnn.com/2023/02/24/asia/usnavy-south-china-sea-flyover-intl-hnk-ml/index.html>; and "Provocative, dangerous: China blames US for air confrontation," *Al Jazeera*, 31 May 2023, <https://www.aljazeera.com/news/2023/5/31/provocative-dangerous-china-blames-us-for-air-confrontation>

closer contact with one another in the context of increased deployments and exercises close to disputed borders and adjacent areas, the risk of collisions at sea and conflict escalation is rising. Between 2010-2022, most military-to-military encounters in Asia's maritime and air domains took place between the United States and the People's Republic of China (PRC). Over the same period, military-to-non-military and non-military-to-non-military incidents were three times more frequent, and more widely reported, than between military-to-military vessels. Over fifty percent of incidents (excluding accidents) involving 'non-military vessels' were related to coast guards interacting with fishing vessels.<sup>9</sup>

Given the multiple territorial and sovereignty disputes and major flashpoints in the region, including the Taiwan Strait, South and East China Seas, and the Korean Peninsula, six factors contribute to the growing instability in the maritime environment.

- **Grey zone incidents:** A growing number of incidents in the Asia-Pacific involve non-military vessels, like coast guards, fishing boats, research vessels, and survey vessels. In most of these cases, the China Coast Guard (CCG) have been involved in collisions or incidents with coast guards and civilian vessels of Japan, Vietnam, Philippines, and South Korea. In the South and East China Seas, China engages in 'grey zone' tactics for its strategic ends through the CCG and its fishing militia (also called 'maritime militia' and 'China's third sea force')<sup>10</sup> to pressure smaller powers and prevent them from exploiting maritime space.<sup>11</sup> Besides its strategic objectives in the South China Sea, Chinese maritime grey zone operations also target US surveillance operations within the Chinese-claimed Exclusive Economic Zone (EEZ), and Japanese claims to the Senkaku/Diaoyu Islands in the East China Sea. Its Coast Guard Law of 2021 authorises the CCG to use force against foreign ships and foreign fishing vessels that operate in areas claimed by China as its own, including the Senkaku/Diaoyu Islands.

Some grey zone incidents pose a high risk of escalation where 'non-military' vessels clash with military vessels. Grey zone operations are, unfortunately, not covered by any of the existing CSBMs in the Asia-Pacific, making these incidents hard to track, report and manage. It is also difficult to find comprehensive data on grey zone incidents because of a lack of clear definitions of an 'incident at sea' involving non-military vessels. Non-military-to-military and non-military-to-non-military incidents therefore remain largely unaccounted for and understudied in the discourse on maritime security.

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9 Strating, "Assessing Military and Non-Military Incidents at Sea in the Asia-Pacific."

10 Conor Kennedy, and Andrew Erickson, "China Maritime Report No. 1: China's Third Sea Force, The People's Armed Forces Maritime Militia: Tethered to the PLA," China Maritime Reports, CMSI, 2017, p. 2. <https://digital-commons.usnwc.edu/cmsi-maritime-reports/1>

11 Strating, "Assessing Military and Non-Military Incidents at Sea in the Asia-Pacific."

- **Chinese interpretations and applications of international law:** China claims sovereignty over reefs, islands, and maritime territories in the South and East China Seas, as well as larger territorial waters than is permitted under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Beijing asserts that permission is required for foreign military vessels to conduct ‘innocent passage’ in its territorial waters and EEZ, contrary to UNCLOS.<sup>12</sup> It casts US FONOPs and surveillance operations as threatening to its maritime rights and interests and therefore ‘destabilising’ to the regional order.<sup>13</sup> China also claims historical rights to 90 percent of the South China Sea.<sup>14</sup> However, this claim was dismissed by the 2016 UNCLOS international tribunal ruling.<sup>15</sup> Nevertheless, China still adopts a differing interpretation of international law governing boundary delimitations and rights in its maritime zones, which are enforced at the national level. For example, China’s domestic laws prohibits foreign military activity in its Exclusive Economic Zone.<sup>16</sup> Its Coast Guard Law of 2021 authorises its coast guard to use force against foreign ships and foreign fishing vessels that operate in areas claimed by China as its own, including the Senkaku/Diaoyu Islands.
- **Sovereign impunity regarding maritime disputes:** There is no central authority which is able to enforce international laws and impose costs for CSBM violations in South China Sea disputes. This means that belligerent states – and most prominently China - can act with impunity in advancing and defending their maritime claims, regardless of their legitimacy under international law or CSBMs the state subscribes to. For example, the 2014 Code for Unplanned Encounters at Sea (CUES) and 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGS) lack enforcement mechanisms. China has ignored the 2016 ruling of the Permanent Court of Arbitration that its activities in the South China Sea are unlawful under UNCLOS.<sup>17</sup> While the United States has not ratified UNCLOS,

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12 Japan and China, and the ROK and Japan also have disagreements over innocent passage.

13 Ministry of the Foreign Affairs of the People’s Republic of China, Transcript of Vice Foreign Minister Xie Feng’s Interview with the Press on “UNCLOS at 40: Retrospect and Prospect,” 3 September 2022, [https://www.fmprc.gov.cn/mfa\\_eng/wjbxw/202209/t20220902\\_10760385.html](https://www.fmprc.gov.cn/mfa_eng/wjbxw/202209/t20220902_10760385.html)

14 “How China is bending the rules in the South China Sea,” *The Interpreter*, 17 February 2021, <https://www.lowyinstitute.org/the-interpreter/how-china-bending-rules-south-china-sea>

15 Permanent Court of Arbitration, *PCA Case No. 2013-19 in the Matter of the South China Sea Arbitration before an Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People’s Republic of China, Award*, 12 July 2016, <https://docs.pca-cpa.org/2016/07/PH-CN-20160712-Award.pdf>

16 Hatakeyama, “Confidence Building Measures in the Maritime Domain in Northeast Asia: An Analysis of Japan-China Maritime and Aerial Mechanisms,” p.11.

17 Caitlin Campbell and Nargiza Salidjanova, “South China Sea Arbitration Ruling: What Happened and What’s Next?,” Issue Brief, *US-China Economic and Security Review Commission*, 12 July 2016, [https://www.uscc.gov/sites/default/files/Research/Issue%20Brief\\_South%20China%20Sea%20Arbitration%20Ruling%20What%20Happened%20and%20What%27s%20Next071216.pdf](https://www.uscc.gov/sites/default/files/Research/Issue%20Brief_South%20China%20Sea%20Arbitration%20Ruling%20What%20Happened%20and%20What%27s%20Next071216.pdf)

Washington still determines that its national naval and maritime practices demonstrate fidelity to those treaty rules that confirm existing maritime law and practice.<sup>18</sup>

This sovereign impunity is possible because international law as currently practiced with regard to South and East China Sea disputes is not collectively enforced, and instead relies on good faith adherence by states. The challenges of this international legal context are especially underlined by Beijing's frequent refusals to answer crisis hotline calls in maritime incidents involving its forces or vessels; it can pursue dangerous maritime actions knowing it will not incur meaningful violation enforcement costs.

- **Major power rivalry:** Maritime risks are compounded by major power rivalries in the region. With tensions increasing between the United States and China, many experts fear that a misunderstanding in the Asian maritime domain could risk escalating into conflict. The findings from a study for this project show that a military-to-military incident between the US and China is feared to be a potential catalyst for a conflict in the region, and highlight the urgent need for greater dialogue and enhanced CSBMs between the two states.<sup>19</sup> Intensifying US-China tensions mean that this competition is also playing out in the South and East China Seas over resources, political influence, and tactical postures. From the perspective of middle and small maritime powers in the Asia-Pacific, this is destabilising for efforts to resolve regional maritime disputes, especially those involving China and regional states in East Asia, and in regional confidence and security building processes.

Major power rivalries also eclipse the challenges and maritime concerns of smaller states vis-a-vis traditional and non-traditional security threats, including Illegal, Unreported, and Unregulated (IUU) fishing, drug trafficking, human trafficking, climate change and environmental issues like radiation waste disposal and plastic dumping. In South Asia, the emerging maritime competition between India and China is similarly a problem for smaller states like Sri Lanka and the Maldives, who are unable and reluctant to highlight their maritime concerns assertively for fear of getting caught in the major power geopolitical and technological competitions. The nuclear armed status of these major powers further generates an additional security concern of nuclear escalation risks, from the perspective of the smaller powers.

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18 Office of the Staff Judge Advocate, U.S. Indo-Pacific Command, "The U.S. Position on the U.N. Convention on the Law of the Sea (UNCLOS)," *International Law Studies*, Vol 97, Stockton Center for International Law, 2021, <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2949&context=ils>

19 Strating, "Assessing Military and Non-Military Incidents at Sea in the Asia-Pacific."

- **Increase in maritime assets and capabilities in sea and airspace:** As China's aggressive maritime behaviour attracts more global attention, Canada and several European states have sent naval ships to the region to reinforce their commitment to peaceful resolution of disputes.<sup>20</sup> This, however, also adds to the congestion of these maritime spaces.

Growing numbers of unmanned vehicles are also being deployed in the region, elevating risks of brinkmanship, unplanned encounters, and unintentional escalation through miscalculation of adversary intentions. These systems include Unmanned Aerial Vehicles (UAVs), Unmanned Surface Vehicles (USVs) and Unmanned Underwater Vehicles (UUVs) used for industrial and military applications. The use of aerial and underwater drones, deployed just beyond an effective response range, enable risky and provocative manoeuvres in the airspaces above maritime zones. Drones allow greater flexibility to conduct surveillance, hinder navigation and adversary surveillance,<sup>21</sup> intimidate, and provoke while limiting the risk to human life. Moreover, counter-drone capabilities have been developed and deployed, further elevating the risks of escalation.

The induction of technologies like Artificial Intelligence (AI) and quantum computing in military warfare, including maritime warfare, can also be expected to increase the speed of confrontation and escalation. The primary policy challenge related to autonomous systems concerns the attribution of responsibility. Whereas present codes of conduct and legal regulations for maritime and naval vessels do not cover these emergent technologies and underwater autonomous systems, some experts suspect rules would be different from those applicable to surface vessels.

- **Lack of maritime domain awareness and information-sharing:** Every day, tens of thousands of shipping vessels, fishing boats, and other vessels operate in the maritime zones in Asia (and especially in Southeast Asia) for both legitimate and illicit purposes. There is, however, little to no consolidated information on Maritime Domain Awareness (MDA) in the Asia-Pacific; on how the various fusion centres operate across the region; and how their jurisdictions and operations overlap. Applications of MDA differ from country to country, and currently there are few horizontal linkages for information sharing between national and regional agencies dealing with MDA. Information within some agencies often remains largely siloed from agencies operating in other sectors.

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20 Ralph Jennings, "Western Countries Send Ships to South China Sea in Pushback Against Beijing," VOA, 22 February 2021, [https://www.voanews.com/a/east-asia-pacific\\_voa-news-china\\_western-countries-send-ships-south-china-sea-pushback-against/6202367.html](https://www.voanews.com/a/east-asia-pacific_voa-news-china_western-countries-send-ships-south-china-sea-pushback-against/6202367.html)

21 "China jams US spy drones over disputed South China Sea," *The Peninsula*, 23 May 2015, <https://thepeninsulaqatar.com/article/23/05/2015/china-jams-us-spy-drones-over-disputed-south-china-sea>



For instance, in the Pacific, if the Forum Fisheries Agency spots a suspicious vessel that may be engaged in drug smuggling - but not illegal fishing - there are no formal ways of sharing that information with relevant authorities. On the other hand, bureaucratic competition can be seen where there has been a proliferation of agencies dealing with MDA, with negative impacts for national MDA capabilities.

There are also constraints in collecting accurate and credible data, resulting in only partial data being available publicly for obtaining a comprehensive picture of MDA in the Asia-Pacific. MDA is especially a challenge for smaller coastal and island states in the region, with their limited capacities and vast areas to monitor. It is especially difficult for countries in Southeast Asia to track vessels that fish illegally after turning off their Automatic Identification Systems (AIS). Another MDA challenge is China's ongoing use of militia ships. These fly the PRC flag and sometimes act on behalf of the Chinese government to advance sovereignty claims and block foreign ships from areas that Beijing claims. These smaller states therefore rely on countries with both the capacity and capability to detect and report incidents. An additional complication is that there are no universally accepted definitions of what an 'incident' means, creating legal space for aggressive maritime behaviour by some states.<sup>22</sup>

## **GENERAL CHALLENGES FOR REGIONAL CSBMs**

Contemporary approaches to maritime confidence and security building measures are informed by three overarching concerns. These consist of selective regional adherence to relevant international law; a growing questioning of the value of 'ASEAN centrality' in approaches to building regional security; and caution around converting the largely bilateral and hence patchwork nature of existing CSBMs into more robust multilateral measures.

### ***A. Selective Application of International Law in Maritime Disputes***

There is a broad agreement among experts that the principles of UNCLOS should be applied while framing regional mechanisms. However, these analysts note that China does not respect the spirit and letter of UNCLOS provisions concerning the status of exclusive economic zones (EEZs) and activities allowed in them. Beijing does not view its claims and actions in the South and East China Sea as challenging the legitimacy of UNCLOS, as it contends the treaty does not apply

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<sup>22</sup> For instance, when regional information centres like ReCAAP and the International Maritime Bureau (IMB) reported a two-fold annual increase in incidents of armed robbery and piracy in Indonesian waters in 2020, Indonesia's Vice Admiral Aan dismissed this information as 'disproportionate'. See: Ronna Nirmala and Drake Long, "Indonesia Launches Maritime Information Center to Tackle Crimes at Sea," *Benar News*, 23 July 2020, <https://www.benarnews.org/english/news/indonesian/Maritime-Information-Center-07232020184427.html>

to territorial claims in semi-enclosed seas.<sup>23</sup> China has ignored a Permanent Court of Arbitration ruling against its activities in the South China Sea. The actions of Chinese pilots and naval crews in the Taiwan Strait are also viewed by regional actors as pursuing additional Chinese territorial goals.

The United States, on the other hand, has not ratified UNCLOS. However, it, exercises and asserts customary international law rights of navigation and overflight, reflected in UNCLOS, in the Asia-Pacific through its Freedom of Navigation Operations (FONOPs).<sup>24</sup> The unenforceability of UNCLOS allows the United States and China to act with impunity based on their unilateral interpretations of rights and responsibilities. The persistence of conflicting national interpretations of UNCLOS and its lack of universality complicates the process of establishing a robust maritime CBM based upon the treaty. At the same time, experts warn that reopening the UNCLOS treaty for debate and potential amendments would not only dismantle the global maritime order but also incentivise China to withdraw from the treaty. Indeed, some Chinese scholars have suggested that withdrawal from UNCLOS would place China on a level playing field with the United States (outside the jurisdiction of the UNCLOS arbitration) so that other states cannot raise claims against China based on the treaty.

## **B. Reconsidering ‘ASEAN Centrality’**

Second, the concept of ‘ASEAN centrality,’ which lies at the crux of ASEAN’s approach to regional confidence and security building in Southeast Asia has been called into question in recent years. While ASEAN-centric bodies are important forums for discussion, they lack enforcement mechanisms, unlike NATO or the European Union. Differences between ASEAN members have been most significant on how to respond to China’s growing aggression and sovereignty claims in the South China Sea. This is compounded by ASEAN’s consensus-based model, which allows for a single dissenting member state to block an entire process. China has been able to exploit these limitations at the Code of Conduct negotiations for two decades since 2002.<sup>25</sup> ASEAN has also not been able to assert

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23 This argument was rejected by the Permanent Court of Arbitration, which ruled in 2016 that UNCLOS members, under Article 123, were still obligated to ‘cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention,’ including ‘the management, conservation, exploration and exploitation of the living resources of the sea,’ and ‘the implementation of their rights and duties with respect to the protection and preservation of the marine environment.’ Permanent Court of Arbitration, *PCA Case No. 2013-19 in the Matter of the South China Sea Arbitration*, p. 377.

24 Office of the Staff Judge Advocate, U.S. Indo-Pacific Command, “The U.S. Position on the U.N. Convention on the Law of the Sea (UNCLOS),” p. 83.

25 Prashanth Parameswaran, “What’s Behind the New China-ASEAN South China Sea Code of Conduct Talk Guidelines?” Blog Post, *Asia Dispatches*, 25 July 2023, <https://www.wilsoncenter.org/blog-post/whats-behind-new-china-asean-south-china-sea-code-conduct-talk-guidelines>

its centrality with regional powers and dialogue partners through credible threats of imposing costs for non-compliance; it is instead dependent on the same external actors to voluntarily recognise ASEAN centrality. Some experts, therefore, believe that there is a need to relook at redefining what constitutes 'ASEAN centrality,' and whether, according to the group, such a primary role in regional dispute resolution matters is an optimal arrangement.

### ***C. Scepticism about transitioning from primarily bilateral to multilateral arrangements***

Third, most regional CSBMs in the Asia-Pacific maritime domain are bilateral in nature and there is broad scepticism of multilateral CSBMs. Multilateral CSBMs are relatively difficult to accomplish, both in terms of their process of negotiation as well as implementation because of the diverse and even conflictual interests of the concerned parties. Multilateral maritime confidence and security building mechanisms are few and far between in Southeast Asia, even though ASEAN member states often build multilateral security cooperation on pre-existing bilateral initiatives. One expert cautions that multilateral CSBMs in the Southeast Asian maritime domain may not be able to largely achieve their objectives, with prevailing national interests often undermining the effectiveness of CSBMs.<sup>26</sup>

Besides these concerns, maritime CSBMs in the Asia-Pacific are limited in their geographical and legal scope, their jurisdiction over actors, and the nature of activities that they cover. The patchwork CSBM architecture – and efforts to enhance it – are further complicated by domestic politics, resource competition, and asymmetric economic and military capabilities, including maritime domain awareness visibility. These challenges also intersect with blue crimes, such as Illegal, Unreported, and Unregulated (IUU) fishing, smuggling, and other transnational crimes which further undermine risk reduction and confidence and security building efforts.

## **LIMITATIONS OF CURRENT CSBMs IN FORCE**

Existing maritime CSBMs in the Asia-Pacific exhibit common shortcomings. These usually comprise a lack of legal standing, enforcement mechanisms, scope of vessels and/or issues covered, and limited state membership of each CSBM. In East Asia and the Western Pacific, the **2014 Code for Unplanned Encounters at Sea (CUES)** forms a series of non-legally binding rules for coordinated means of communication that provide basic safety, communication, and manoeuvring instructions to prevent an escalation of tensions between different militaries at sea. CUES was signed by 21 Pacific nations at the Western Pacific Naval Symposium in Qingdao, China in 2014.

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<sup>26</sup> Koh, "Confidence and Security Building Measures in Southeast Asia's Maritime Domain," pp. 8, 21.

As rules-of-the road to maximise safety at sea, CUES is particularly aimed at preventing ‘unintended’ encounters at sea. In disputed waters, however, it can be difficult to distinguish between planned and unplanned encounters, especially where grey zone tactics are being employed. Despite the addition of ‘naval auxiliaries’ to CUES version 2.0 (revised version), the agreement is still not applicable to coast guards and irregular forces such as maritime militia that are now increasingly involved in encounters and incidents at sea. Additionally, in the absence of an arbitral mechanism, states can resort to plausible deniability. A Chinese participant pointed out that yet another limitation of CUES is that it doesn’t define ‘safe distance.’ Overall, experts agree that despite being a well-designed code of conduct, the CUES framework is flawed as parties have no obligation to comply with the guidelines.

**The 2018 Guidelines for Air Military Encounters (GAME)** is another multilateral CSBM and escalation risk reduction mechanism that seeks to promote safe aerial interactions amongst regional militaries in Southeast Asia. Adopted in 2018 as an ASEAN Defence Ministers Meeting (ADMM) initiative, GAME takes on what CUES does not for the broader region, and applies Article 2 of the ASEAN Charter on sovereignty and peaceful resolution. GAME has benefited from the political trust built among ASEAN members from the resolution of several extant territorial and sovereignty disputes, especially in the maritime domain until the early 2000s.<sup>27</sup> In practice, however, GAME is a voluntary and non-binding agreement which only applies to the ten ASEAN member-states, who do not fully comply,<sup>28</sup> and has no bearing on players such as China and the United States. They are not as elaborate as the **1998 Military Maritime Consultative Agreement (MMCA) between China and the United States**, which facilitates a regularised operational dialogue between the US and Chinese militaries to strengthen military maritime safety, improve operational safety in the air and sea, and reduce bilateral military escalation risks. Since 2020, however, there has been an uptick in unsafe aerial and maritime encounters involving Chinese fighter jets and American, Australian and Canadian military aircraft operating in international airspace across the Southeast Asia and the western Pacific regions.<sup>29</sup>

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27 Koh, “Confidence and Security Building Measures in Southeast Asia’s Maritime Domain,” p.9.

28 For example, a Myanmar Air Force aircraft violated Thailand’s airspace in June 2022 while attacking Myanmar’s own population. This operation forced the Royal Thai Air Force to scramble fighter jets. According to the Secretary-General of Thailand’s National Security Council, “similar (Myanmar) airspace violations” had already occurred “four to five times” by this point in 2022. Akhil Kadidal, “Myanmar MiG-29 Violates Thai Airspace,” *Janes*, <https://www.janes.com/amp/myanmar-mig-29-violates-thai-airspace/ZnlJK3dHVU9mZ28xajRlVkc5dV15VFp1cVMwPQ2>, 4 July 2022.

29 See Appendix in Strating, “Assessing Military and Non-Military Incidents at Sea in the Asia-Pacific,” p.21.

In Northeast Asia, the **2018 Maritime and Air Communications Mechanism (MACM)** is a bilateral risk reduction agreement designed to avoid accidental clashes between Japan's Self Defence Forces (SDF) and Chinese naval forces (PLA Navy, or PLAN). The MACM has three major shortcomings: lack of legally binding status, exclusion of non-military actors such as coast guards and fishing vessels, and the exclusion of territorial waters and airspace.<sup>30</sup> The mechanism does not apply to the contested waters of the Senkaku/Diaoyu Islands, where collisions and incidents regularly occur between Japanese and Chinese coast guards and fishing vessels. China's Coast Guard Law of 2021 authorises its coast guard to use force against foreign ships and foreign fishing vessels that operate in areas claimed by China as its own, including the Senkaku/Diaoyu Islands. The MACM duplicates certain provisions of the COLREGS and CUES, which also lack compliance obligations as non-binding CSBMs.

Other maritime CSBMs relevant to the Asia-Pacific such as the 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGs) and the US-China bilateral 1998 Military Maritime Consultative Agreement (MMCA) also have their limitations. COLREGs is intended for commercial activity, and its guidelines are not applicable to military activity and military vessels. Moreover, intended incidents emerging from sovereignty disputes and involving civilian vessels used in militia roles cannot be solved by COLREGs. The MMCA, as noted above are consultative talks intended to strengthen military maritime and aviation safety between the two militaries. However, in recent years the Chinese side has used MMCA dialogues as opportunities to press political and legalistic arguments on why military activities are not allowed in Exclusive Economic Zones;<sup>31</sup> and specifically arguing that the peaceful purpose clauses in UNCLOS prohibits these activities, despite UNCLOS not banning foreign military activity in EEZs. Even in the context of the MMCA, different interpretations of what constitutes 'professional behaviour,' 'safe distance' and 'unsafe interactions' at sea, impacts the implementation of the MMCA. In August 2022, China cancelled the MMCA bilateral talks as a retaliation for US Speaker Nancy Pelosi's visit to Taiwan.

Formal **bilateral channels of communications such as hotlines** are not regularly used. Both the United States and China agree on the value of hotlines, but not on how to use them. For instance, it was pointed out how the hotline system failed during the 2023 Chinese balloon incident because the Chinese side did not answer the call from the United States. Other countries in Southeast Asia, like Vietnam and the Philippines, have also complained of Chinese refusal to answer

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30 Hatakeyama, "Confidence Building Measures in the Maritime Domain in Northeast Asia: An Analysis of Japan-China Maritime and Aerial Mechanisms," p.13.

31 It was also noted that US negotiators have tried to focus on technical matters at the MMCA talks.

the hotline during crises.<sup>32</sup> Given the centralised bureaucracy in China, hotline use is more complex than in other states. Another key point of difference is that China considers the use of hotlines only possible when the overall bilateral relationship is on good terms, whereas the United States argues that they are needed during times of crisis. China also worries about the use of risk reduction measures enabling bad behaviour by the other side without repercussions, again evidencing distinct understandings of how risk reduction mechanisms should be used.

In July 2023, ASEAN and China were able to inject new life into the deadlocked **Code of Conduct (CoC) on the South China Sea (SCS)** negotiations by agreeing to a new set of guidelines for concluding the process. The CoC reaffirms freedom of navigation and overflight and commits the parties to resolve disputes peacefully. The CoC promises to be the most significant maritime CSBM in Southeast Asia because it applies to the contested waters in the semi-enclosed seas and is expected to be a guiding framework for ‘good behaviour’ in the SCS.

However, differences in current positions on the CoC exist not only between China and ASEAN, but also between the ten ASEAN member states given their differing perceptions and interests vis-à-vis the SCS. Disagreements persist over the geographical scope of the code, the scope of permissible maritime activities, measures to manage escalation of disputes and promote self-restraint, the roles of different regional powers, and the issue of whether the code should be legally binding or otherwise. Claimants do not have to commit to refrain from building new structures on the islands, reefs or shoals that they already occupy, but the CoC prohibits claimants from occupying new uninhabited areas in the SCS. Some experts warn that China will violate the CoC after it is adopted as a ‘defensive measure’ against the United States in the SCS. As a non-binding measure, the CoC cannot prevent states from violations and is designed to manage disputes in the SCS, not to resolve them.

Some experts argue that the Asia-Pacific needs more formalised, binding treaties to significantly reduce the risks of escalation, especially in the East China Sea. In Southeast Asia as well as Northeast Asia, CSBMs need to address the activities of coast guards, which are now increasingly involved in collisions and incidents in the contested waters. Chinese experts point out that none of the current CSBMs clearly define ‘safe distances.’ Confidence building efforts, however, fall victim to the overall trust deficit between the states. Military activities that increase tensions and mistrust also undermine CSBMs. Implementing CSBMs is most difficult when they are most needed. In the Asia-Pacific, CSBM efforts involving China have increasingly become dependent on Beijing’s perceptions and responses to US activities in the region.

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<sup>32</sup> “Hotline between PH, China coast guards now defunct – PCG,” *CNN Philippines*, 12 August 2023, <https://www.cnnphilippines.com/news/2023/8/12/pcg-ccg-hotline-now-defunct.html>

## POTENTIAL NEW CSBM FOCAL POINTS

Despite their limitations, regional mechanisms such as CUES, MACM, GAME and the CoC for the South China Sea have helped remove a degree of unpredictability in maritime encounters in crisis situations. For instance, Chinese military forces have applied the guidelines of CUES during their interactions with their American counterparts. This signifies that there is a level of shared political willingness to reduce dangerous incidents at sea.

Project participants explored the potential for new and more effective maritime CSBMs in the areas of communication and notifications, information exchanges, personnel exchanges, maritime domain awareness, monitoring systems, expert and official dialogues, and code of conduct applications. This discussion highlighted two pathways for potential new confidence building efforts in the Asia-Pacific. The first includes expanding, updating and upgrading existing initiatives and mechanisms to build more robust and inclusive CSBMs. The second pathway involves formulating additional CSBMs that address new issues such as emerging technologies and diverse stakeholders.

### *Improving existing initiatives and mechanisms*

Proponents of this approach emphasised the norm-making function of present mechanisms and argue that there is a need to strengthen compliance rather than create new rules of the road. In considering **formal treaties**, it is important to note that these can be effective if they provide provisions for addressing grievances, verifying compliance and penalising violations. However, the existence of legally binding treaties doesn't necessarily strengthen confidence between actors, especially those involved in overlapping sovereignty claims. For example, the MACM case, China's cancellation of consultative talks in 2022 and the maritime encounter in June 2023 evidence that national political objectives can supersede even legally binding arrangements. Similarly, agreement on maritime jurisdiction and innocent passage in South and East China seas is ultimately dependent on whether claimant states and extra-regional powers agree on a common interpretation of UNCLOS.

The question of **multilateralising current bilateral agreements** is case-specific; there is no consensus on prioritising multilateralisation of existing agreements over strengthening their current bilateral functioning. The bilateral nature of the Incidents at Sea (INCSEA) agreements, for instance, is considered critical to their success. Multilateral agreements are dependent on enforcement mechanisms for their success. There is strong support for regional agreements between not like-minded parties since there is greater potential for conflict. Given the risk of conflict escalation between the United States and China in the Taiwan Strait, the South China Sea, and East China Sea, a resumption of US-China MMCA talks and implementing bilateral-CUES exercises between the two countries is needed.

**The expansion of regional Codes of Conduct** needs to account for the complex geopolitics of the region, the variety and scale of activities that generate tensions and the multiplicity of stakeholders, rather than a general-purpose approach. In this regard, the expansion of present navies-only CUES to include coast guards and irregular forces and their activities is considered the most favourable. The growing assertiveness of the China Coast Guard (CCG) over the last decade in the maritime zones of East Asia has prompted calls to expand CUES to include coast guards. This was first proposed by Singapore in 2015. While this might be challenging to implement since coast guards are regulated by domestic laws and states consider them to be sovereign vessels, a separate but equivalent code of conduct for coast guards is also seen favourably by experts. The CoC for the South China Sea could add value if it can define the list of activities that can generate tensions and escalation. Chinese experts suggest adding multilateral mechanisms and CUES to the CoC in the South China Sea could be viable. They also stress the need for governments to abide by the rules of behaviour.

**Greater cooperation on MDA** and improved information sharing across countries in the Asia-Pacific, through an expansion of the international fusion centres, could facilitate better mutual understanding of maritime security threats and how best to address them. Commonly agreed standards for information sharing, including standardised formats, could be developed to build trust. Information sharing agreements between national agencies such as between the navy and the coast guards could also help plug the gaps in MDA. The absence of a common maritime database, despite initiatives like the Trilateral Cooperation Agreement between Indonesia, Malaysia and the Philippines, remains a key hurdle to consolidating MDA efforts in the Asia-Pacific regions.

### ***Formulating new CSBMs***

Despite the shortcomings highlighted above on the existing CSBMs in the region, there is potential for improving current mechanisms, and creating new CSBMs to facilitate more information exchanges, enable greater transparency on military modernisations and notifications on exercises, and to encompass particular types of unplanned encounters and dangerous incidents which are not covered by existing arrangements. Agreements on **personnel exchanges, and updating and regularising the use of communication channels and hotlines**, even during non-crisis situations, offers an opportunity for trust and confidence building. An expansion of multilateral and bilateral Track 1.5 and Track 2 dialogues **on how to differentiate between planned (intended) and unplanned (unintended and accidental) incidents at sea involving non-military vessels** would help lay the groundwork for initiating new mechanisms. Defining **'safe' and 'unsafe' distances**, especially outside of the High Seas, would be a particularly helpful step in deepening understanding between states.



The region could also benefit from regional discussions **on how to bridge the current gap in UNCLOS interpretations**, especially with China. Processes to streamline Track 2 and Track 1.5 discussions and recommendations into Track 1 channels are specifically relevant for ASEAN, which lacks systematic processes for information exchange between its various tracks and agencies.

**A dialogue between national maritime law enforcement (MLE) agencies** is also recommended.<sup>33</sup> This includes MLE dialogues to discuss safety standards and accountability for civilian vessels including commercial and fishing vessels, and not only coast guards. Such a dialogue could promote a greater mutual understanding of regional issues, objectives and interests of each state, the national laws applied and enforced, and the means for coordinating different national law enforcement actions. MLE in East Asia could benefit from strengthening regional cooperation on information sharing, capacity building on safety and joint operations, and promoting professionalism in maritime enforcement agencies.

Cooperation on information sharing can be achieved by **improving national capacities for detection and reporting of incidents, local interagency coordinating mechanisms, and data integration through coordinated maritime centres (national and regional cooperation centres) and fusion centres with regional points of contact**. It is only when regional states agree on common objectives, minimum set of rules and their applicability, and a unifying legal framework for MLE, that the prospects for **the creation of a region-wide maritime agency** could be feasible for MLE cooperation.

The Asia-Pacific also has potential for **greater cooperation on maritime environmental issues and climate change mitigation**. This extends to economic cooperation and capacity building – especially among small island and coastal states in the Asia-Pacific – regarding maritime domain awareness and dealing with non-traditional security threats including IUU fishing and climate change. To be successful, however, regional states must recognize how geopolitical interests shaped by great power rivalries often overshadow the concerns and maritime security challenges faced by small states, who are most vulnerable to the fallouts of geopolitical competitions. Moreover, the multidimensional and interacting strategic, economic, environmental, and human security impacts of climate change form a critical security interest truly shared by all states. Cooperation and dialogue on these concerns is therefore highly recommended also for the

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<sup>33</sup> The United Nations Office on Drugs and Crimes (UNODC) has conducted a series of Maritime Law Enforcement Dialogues (MLED) for Southeast Asia which serves as a platform for maritime law enforcement actors of regional states (Indonesia, Malaysia, Philippines, Thailand and Vietnam), including legal advisors, to share current maritime trends and identify areas of concern and improvement through table-top scenarios, to bolster international and regional cooperation, and to better understand and develop responses to a variety of maritime crimes linked to insecurity in that area.

potential trust-building function such initiatives could serve, in paving the way toward dialogue on more strategically sensitive issues.

**Chinese compliance with new CSBMs** remains a concern. However, experts also noted the normative logic behind proceeding with new CSBMs, in making good-faith participation in CSBMs a marker of responsible maritime states. This would elevate the political costs to China and other non-compliant states of remaining outside stronger regional CSBMs.

## RECOMMENDATIONS AND FEASIBILITY STUDY

Based on wide consultations with experts from fifteen countries across the Asia-Pacific, the APLN-VERTIC project identified existing gaps in the CSBMs architecture, detailed in Sections 4 and 5 of this report, that could be addressed through combinations of a broadening of the geographical scope of existing arrangements; the expansion of vehicle classes and civil/military statuses of vessels covered; the addition of new participating states; the extension of agreements to include non-military maritime agencies such as coast guards; standardising and regularising information and data exchange processes, and reducing the selective interpretation of UNCLOS.

An overarching theme is the problem of impunity of action. In the absence of enforcement mechanisms for the violation of treaties or agreements, violators suffer only reputational costs, which they may be ready to bear to pursue their national interests and political objectives. A dedicated conversation is required on ways to ensure enforcement, verification and compliance of maritime CSBMs and formal treaties.

To identify what CSBMs should be prioritised, the APLN-VERTIC team identified thirteen recommendations from the expert papers and proposals offered in the workshop discussions. The following table provides the collective rank-ordering by regional project participants of those maritime CSBMs that they assess are the most feasible, urgent and desirable for the Asia-Pacific.

Rank	Proposal Description
1 <sup>st</sup>	Establish regional information-sharing centres to require mandatory incident reporting, to improve maritime transparency, avoid selective reporting, and create an incident database to support follow-on dialogue on establishing a single definition of 'dangerous maritime incident.'
Joint 2 <sup>nd</sup>	Facilitate a regional dialogue on best practices for use of crisis hotlines, as partly informed by India-Pakistan experiences.

Joint 2 <sup>nd</sup>	Upgrade and regularise existing maritime hotlines in the region as channels for coordinating efforts during both crisis and non-crisis conditions.
Joint 3 <sup>rd</sup>	Promote regional dialogue on inculcating a culture of safety in maritime encounters and maintenance of good order at sea throughout national sovereign fleet and flagged vessels, with consequences for breaches.
Joint 3 <sup>rd</sup>	Launch a Track 2 dialogue on ‘good conduct’ and ‘endangering actions’ at sea and rules of behaviour to prevent incidents (and establish a mechanism to review the implementation of the rules of behaviour).
4 <sup>th</sup>	Highlight the need for compliance with existing multilateral treaties (especially COLREGs) <sup>34</sup> in the discourse on preventing dangerous maritime incidents and escalation to emphasise the relevance of existing norms.
5 <sup>th</sup>	Strengthen requirements for flag states to ensure suitable understanding of international maritime law by ship operators and captains with consequences for breaches.
6 <sup>th</sup>	Establish regional dialogue on effective coordination on crisis management, including for natural disasters; on regularising their use; and on strengthening existing or establishing new mechanisms.
7 <sup>th</sup>	Upgrade and standardise data systems and information-sharing protocols across international information fusion centres (IFCs), along with expanded international liaison officer (ILO) cross-posting, to promote maritime transparency and accountability.
8 <sup>th</sup>	Establish regional dialogue on harmonising national approaches to maritime law enforcement (MLE) of multilateral treaties in areas of national jurisdiction, on enforcing flag state jurisdiction over civilian vessels with consequences for breaches, and on building capacity for such MLE in small states.
9 <sup>th</sup>	Initiate collective diplomatic action and establish a mechanism to coordinate grassroots efforts highlighting climate change and loss of environment as regional security challenges in Asia-Pacific, as especially relevant to small coastal states.

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34 1972 Convention on the International Regulations for Preventing Collisions at Sea.

10 <sup>th</sup>	Expand CUES (Code for Unplanned Encounters at Sea) to include coast guards, commercial and private vessels, and elevate it to legally binding status.
11 <sup>th</sup>	Initiate new International Maritime Organization (IMO) focus (perhaps under IMO Maritime Safety Committee) toward common agreement on maritime actions (e.g. precise minimum safe stopping distances), which are behaviourally consistent and inconsistent with upholding safe practice.

Experts prioritised information sharing, data integration and greater maritime domain awareness as the most urgent and desirable area for confidence and security building among states. The proposal to *establish regional information-sharing centres to require mandatory incident reporting, to improve maritime transparency, avoid selective reporting, and create incident database to support follow-on dialogue on establishing single definition of ‘dangerous maritime incident’* was ranked as the overall top proposal by the group. Such a mechanism could allow various national and regional agencies to develop shared understandings of maritime security threats and strengthen the norm of supporting greater shared transparency of Indian Ocean and Asia-Pacific operating environments as a core characteristic of a responsible maritime actor.

This would, however, require CSBMs to encourage states to broaden and increase their reporting of incidents (and avoid selective reporting) including those involving military vessels, maritime law enforcement agencies, research and surveillance vessels, and non-military commercial vessels like merchant, fishing, and other commercial vessels. This data could then be consolidated with regional information-sharing centres, allowing for greater cross-verification and validation of claimed incidents, to enable consistent patterns of transgressing states and non-state actors to be identified in a way that is not driven by great power competition dynamics. Participants also emphasised that while Chinese participation would be key in such mechanisms, its non-participation (while other states lodged incidents involving China) would normatively generate more costs for China. It would also build transparency for all states in terms of the trends and scale of maritime security problems in the region and propel a dialogue on defining a ‘dangerous maritime incident.’

Some experts underlined that information cohesion and data sharing between IFCs, and the expansion of existing regional IFCs for clear and timely delivery of maritime security inputs, are key prerequisites for strengthening region-wide maritime domain awareness. Along these lines, they also recommended improving regional maritime security threat assessment beyond piracy and IUU fishing, to also include coastal erosion and other climate change-related effects. Linking regional fusion centres with national and regional points of contact

and maritime cooperation centres for the purpose of consolidating data and information can also help states to enforce laws in their own states and maritime domains, and keep vessels accountable, as deterrence for bad behaviour.

In Southeast Asia, the ASEAN Information-Sharing Portal,<sup>35</sup> as it is operated under ASEAN auspices, raises the chances of pan-regional buy-in through support of the major powers (including China, Russia) for “ASEAN centrality.”<sup>36</sup>

Participants also acknowledged the legitimate practical concerns regarding security and data protection, maintaining confidentiality and preventing sovereignty damage, especially as multiple nations with varying interests and technologies get involved in coordinating information. Given the challenge of getting states to agree on the kind of data to be collected and shared, the proposal to *upgrade and standardise data systems and information-sharing protocols across international information fusion centres (IFCs), along with expanded international liaison officer (ILO) cross-posting, to promote maritime transparency and accountability* was therefore ranked relatively low (seventh) on feasibility and stood at a mid-level overall priority.

CSBMs related to crisis communications were also prioritised by experts. Hotlines were noted to be reasonably effective mechanisms to review behaviour, curb violations and prevent escalation in case of crises. The proposal for a *regional dialogue on best practices for use of crisis hotlines, as partly informed by India-Pakistan experiences* and a second proposal to *upgrade and regularise existing maritime hotlines in the region as channels for coordinating efforts during both crisis and non-crisis conditions* were both jointly ranked second. Given the poor record of the actual use of hotlines in Southeast Asia and between the United States and China, a regional dialogue is recommended to clarify the function of naval and maritime hotlines and to agree to the modalities of using them.

The memorandum of understanding (MoU) signed between the Indian Coast Guard (ICG) and Pakistan Maritime Security Agency (PMSA) was raised as an example of a successful maritime CSBM in South Asia. The agreement of 2005 covered exchange of information on EEZ violations, apprehended vessels, marine pollution, natural disasters/calamities, smuggling, illicit trafficking, piracy, and coordination in search and rescue. In November 2006, a coast guard-level hotline was set up between the ICG and PMSA, and directors general of the two agencies have since met annually to address issues pertaining to maritime security. The

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35 It is to be noted that ASEAN is not capable of enforcing these CSBM mechanisms and such an integrated IFC would focus on information-sharing as opposed to enforcement.

36 By contrast, selecting an IFC with a Quad leaning, such as India's IFC-IOR or Quad Indo-Pacific Partnership was pointed out as more of an obstacle for MDA.

agreement was renewed in 2016 for another five years.<sup>37</sup> Drawing on India-Pakistan examples, some participants stressed the need to institutionalise and regularise maritime communications in other regions of the Asia-Pacific.<sup>38</sup>

The proposal for a *regional dialogue on inculcating a culture of safety in maritime encounters and maintenance of good order at sea throughout national sovereign fleet and flagged vessels, with consequences for breaches* was ranked as overall third (jointly with Track 2 dialogue on good conduct at sea) indicating that regional experts attribute high priority to safety and accountability of sovereign and flagged vessels. Flag states must ensure that vessels under their jurisdiction comply with the COLREGs and violation of these guidelines should be penalised in the form of sanctions or de-flagging of the vessel. In this regard, a proposal to *strengthen requirements for flag states to ensure suitable understanding of international maritime law by ship operators and captains, with consequences for breaches* was ranked a close fifth in the list of CSBM recommendations, whereas the proposal for a *regional dialogue on harmonising national approaches to maritime law enforcement (MLE) of multilateral treaties in areas of national jurisdiction, on enforcing flag state jurisdiction over civilian vessels with consequences for breaches, and on building capacity for such MLE in small states* was ranked eighth.

Notably, despite wide agreement on the need to *expand CUES to include coast guards, commercial and private vessels, and elevate it to legally binding status*, the proposal itself was ranked lowest on the list of recommendations. This is indicative mostly of a scepticism about the practical feasibility of including non-military vessels within CUES, and about the readiness of states to agree to a legally binding code.

Given the existential shared threat that climate change poses to maritime security, ecosystems, and economies, in all states, it is also notable that proposals related to climate change did not rank highly. Another reason they potentially could have been ranked higher was simply their nature as a relatively politically uncontroversial topic to initiate dialogue on (compared to mitigating core South China Sea territorial disputes), which could then lead to addressing tougher topics once sufficient trust and cooperation had been built. A proposal for a *regional dialogue on effective coordination on crisis management, including for natural disasters; on regularising their use; and on strengthening existing or*

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37 Government of India, Ministry of External Affairs, "Extension of MOU between Indian Coast Guard and Pakistan Maritime Security Agency," 26 February 2016, <https://mea.gov.in/press-releases.htm?dtl/26426/>

38 Article 10 of the 1991 India-Pakistan bilateral 'Advance Notice of Military Exercises, Maneuvers and Troop Movements' agreement also stipulates a minimum distance of 3 nautical miles as a safe distance between Indian and Pakistani ships and submarines in international waters. The treaty text is available at <https://treaties.un.org/doc/publication/unts/volume%201843/volume-1843-i-31420-english.pdf>

*establishing new mechanisms* was, however, given a mid-level priority at rank six and another for *collective diplomatic action and mechanism to coordinate grassroots efforts highlighting climate change and loss of environment as regional security challenges in Asia-Pacific, as especially relevant to small coastal states* came lower at the ninth rank. This could be partly because participants ultimately perceived more traditional territorial maritime threats as critical to their security (and that this represents a real threat prioritisation problem, and one which the United States should aim to emphasise in its diplomacy with regional states), and partly because of the dearth of participants from Pacific Island countries in the group.

The need for a common minimum agreement on definitions of 'good behaviour at sea,' 'safe distance' and 'militarisation' resonate across the many proposals. This indicates a priority for deeper CSBMs, and key topic for subsequent analysis and engagements in this area.

## **CONCLUSION**

Against a background of expanding military capabilities and rising military activities in the maritime zones of the Asia-Pacific, the APLN-VERTIC collaborative project has aimed to renew and reinvigorate efforts towards urgent maritime confidence and security building and crisis avoidance in the Asia-Pacific. Building on two decades of limited but important studies on dangerous military incidents in maritime zones and conflict escalation at sea in the Asia-Pacific, this project sought to engage regional experts and policy practitioners in a much-needed substantive dialogue on assessing the utility and suitability of existing arrangements and agreements, and designing and implementing new mechanisms for mitigating military escalation at sea, within the wider conversation on maritime security in Asia.

Six key factors were identified to contribute to the growing instability in the Asia-Pacific's maritime environment: first, growing grey zone incidents involving non-military vessels in violent encounters at sea; second, different interpretations of the law of the sea and the selective interpretation of UNCLOS by China relating to determination of jurisdictional zones and effects on navigation; third, sovereign impunity of actors resulting from unenforceability of treaties and formal agreements; fourth, major power rivalries overshadowing and compounding maritime challenges for smaller powers; fifth, growing military and technological assets and capabilities of regional and extra-regional powers crowding the maritime and overhead air spaces in the Asia-Pacific; and finally, limited maritime domain awareness inhibiting regional actors from developing a shared understanding of maritime security threats.

Experts agree that maritime CSBMs and agreements aimed at avoiding dangerous, damaging, and potentially fatal incidents at sea are worth the effort.

Concluding such arrangements that cover the Asia-Pacific region and all naval and maritime stakeholders operating in the region is, however, fraught with serious challenges. For all practical and policy purposes, it is rather difficult to distinguish between armed hostilities at sea and planned maritime incidents that take place below a conflict threshold. Such low-threshold intentional incidents are very hard to prosecute through crisis management mechanisms, especially in disputed waters. These incidents are usually perpetrated by non-military vessels, like the coast guard vessels or the fishing militia in the case of China.

Regulating the activities of these non-military actors and Chinese grey zone tactics has especially been a key limitation of existing maritime codes of conduct and CSBMs in areas like the South and East China seas. The aggressive activities of Chinese naval vessels and coast guards against regional and US vessels in South and Southeast Asia are mandated by Chinese domestic laws, but are often in contravention with regional codes of conduct and even international treaties like UNCLOS. These transgressions are justified either by a selective interpretation of UNCLOS or by exploiting loopholes in international and regional agreements. These ambiguities and interpretation issues could incentivise a reopening of debates on redefining the UNCLOS treaty text and continued state membership of the current treaty, which most experts warn would be a dangerous prospect to pursue.

And finally, emerging technologies bring with them new opportunities, problems and challenges for confidence and security building. Technological innovations are significantly outpacing the development of international regulatory policies. This dynamic encourages states to deploy these technologies in ways potentially unanticipated by neighbours and rivals, to sustain and widen a military edge.

Moreover, they can exacerbate MDA challenges encountered by smaller regional states not even equipped to consistently monitor older platforms.

In spite of these challenges, there is strong support among experts and policy practitioners for efforts at strengthening existing CSBMs and concluding new ones. The very act of negotiating an agreement helps build confidence. Such negotiations encourage one state to more seriously consider and appreciate the security concerns of another state. Experts generally agree that more dialogues are useful and person-to-person contacts encourage empathy among participants, helping correct worst-case-scenario perceptions of intentions, as well as pre-existing stereotypes. Toward this end, our project participants recommended and prioritised regional dialogues on inculcating a culture of safety in maritime encounters and maintenance of good order at sea; harmonising national approaches to maritime law enforcement of multilateral treaties; establishing a single definition of 'dangerous maritime incident'; and best practices for use of crisis hotlines.



Complementing these points, participants also expressed a need to develop best practices to harmonise policy perspectives and information across all levels of dialogue. In this vein, they valued meaningful codes of conduct. Experts particularly assessed that the CUES guidelines are well-designed and widely followed, and favoured addressing their limitations through expanding their remit to include regional coast guards, commercial ships, and private vessels. Furthermore, analysts recommended greater transparency in maritime and naval activities through information sharing and data exchanges, to reassure states that their security concerns are being adequately addressed by others. To this effect, project participants supported capacity building and integration practices for comprehensive maritime domain awareness in the Asia-Pacific.

Against this backdrop, the ASEAN-China progress on negotiating a South China Sea Code of Conduct has been one of the more notable positive developments for Southeast Asia this year. Arguably, this demonstrates some degree of success for ASEAN toward forming a united position vis-à-vis China. However, greater intra-ASEAN understanding is still required for the CoC talks with China to eventuate in a meaningful agreement. As an overall approach, these developments support a key point made by experts throughout our project: that strong bilateral mechanisms and CSBMs in Southeast Asia are really the brick and mortar of effective multilateralism in the region. In this light, states should not seek to create a multiplicity of mechanisms and duplication of efforts, but instead to build cross-compatibility across institutions within individual states, between the ASEAN members, and between ASEAN and other regional and interested states.



**Crisis Avoidance: Preventing Dangerous Maritime Incidents and Unintended Escalation in the Asia-Pacific** is a joint project undertaken by the Verification Research, Training and Information Centre (VERTIC) and the Asia-Pacific Leadership Network for Nuclear Non-Proliferation and Disarmament (APLN). Through a new substantive dialogue and wider international discussions with experts, the project aims to build a new and effective methodology for identifying the risks of dangerous maritime incidents in the Asia-Pacific, evaluating the suitability of existing bilateral and multilateral arrangements to contemporary strategic realities of the region, and bringing forward new proposals to fill important gaps in mitigating incidents and escalation at sea in the Asia-Pacific.



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