NAVAL ARMAMENTS AND DISARMAMENT

A multilateral agreement for the prevention of incidents at sea

Working paper submitted by Sweden

1. Following the important agreement on the prevention of incidents at sea between the United States of America and the Union of Soviet Socialist Republics in the early 1970s, several similar agreements have been concluded by some of the world's major naval Powers. These agreements represent significant confidence-building measures and are an important contribution to international security on the high seas.

2. Security on the high seas is a function of the conduct of all coastal States with national navies. Therefore, the positive results of bilateral agreements in this area of essentially international jurisdiction suggest that security at sea could be further improved through a multilateralization of certain principles already embodied in the existing bilateral arrangements.

3. A multilateral agreement is not intended to replace or supersede existing bilateral understandings. It would be a complement to existing and future bilateral agreements and customary international law. An international régime for the prevention of incidents at sea would benefit all naval Powers, regardless of the size of their navies.

4. First, a multilateral convention would strengthen and accelerate a norm-creating process that has already proved useful on a bilateral basis. The very fact that these norms already exist in the context of the International Maritime Organization (IMO) Convention on Regulations for Preventing Collisions at Sea (the "Rules of the Road") as well as in bilateral arrangements indicates their potential for the suggested multilateral framework.
5. The "Rules of the Road" are primarily intended to govern nautical lighting, manoeuvring and signalling procedures to ensure safe navigation. A multilateral agreement on prevention of incidents at sea will, however, also cover simulated attacks on ships or planes, close reconnaissance by aircraft and shining searchlights on the bridges of vessels.

6. Secondly, a multilateral convention would produce homogeneity in the normative system. The norms for avoiding collisions at sea, adopted for the benefit of international commercial shipping, will mutatis mutandis apply to all military and semi-military contacts at sea. This clear-cut normative expansion would furthermore be helpful from an information point of view.

7. Thirdly, a multilateral convention would reduce the dangers to individuals and States posed by collisions at sea. The physical danger to lives and property is obvious. There is also a risk that incidents may lead to direct and immediate combat and/or increase political tensions. Confrontational naval encounters might even lead to war. A multilateral agreement on the prevention of incidents at sea would, however, provide an important confidence-building measure among all parties on the high seas and reduce the risk of conflicts.

I. HISTORICAL BACKGROUND AND EVOLUTION

8. On 25 May 1972, representatives of the Governments of the United States and the Soviet Union signed a bilateral agreement on the prevention of incidents on and over the high seas. This was one of several agreements in the category of confidence-building measures concluded as forerunners of the Interim Agreement on certain measures with respect to the limitation of strategic offensive arms (with Protocol) (the SALT I treaty).

9. The objective of the treaty was to avoid collisions and other dangerous incidents, which had occurred in increasing numbers when naval forces of both Powers mixed and watched each other at sea. The treaty was technically a complement to the multilateral International Regulations for Preventing Collisions at Sea ("Rules of the Road"), adopted by the Inter-Governmental Maritime Consultative Organization (IMCO) in 1960. IMCO subsequently, in October 1972, adopted a Convention on international regulations for preventing collisions at sea. In 1982, the organization changed its name to the International Maritime Organization (IMO).

10. The treaty between the United States and the Soviet Union developed the approach of IMCO, thereby crossing into the field of international security and confidence building. A table of special signals was annexed to the treaty. One year later, on 22 May 1973, the same parties signed a protocol to the first agreement, prohibiting confrontation between warships of one of the parties and non-military ships of the other party.

11. On 3 May 1979, the parties agreed to amend articles containing a reference to the 1960 "Rules of the Road" regulations by referring instead to the 1972 regulations, which had entered into force as part of the IMO Convention of that year.
12. On 15 July 1986, a similar agreement on the prevention of incidents at sea beyond the territorial sea was signed in London between the United Kingdom of Great Britain and Northern Ireland and the Soviet Union. Shortly thereafter, the signals annexes of the two agreements were made identical by additions to the United States–Soviet Union agreement.

13. On 25 October 1988, an almost identical agreement was signed in Moscow between the Federal Republic of Germany and the Soviet Union. Meanwhile, talks have been reported between France and the Soviet Union aiming at an understanding concerning naval incidents.

14. The implementation of the 1972 agreement is considered positive, and later bilateral developments have confirmed the view that this normative approach to confidence building shows considerable promise.

15. The relative success of the agreement between the United States and the Soviet Union was also noted by an international expert panel, appointed by the Secretary-General of the United Nations, when preparing a report on the naval arms race in 1985. The report, inter alia, summarized some of the more important measures of naval arms control proposed in the past. In its conclusions, the report singled out four such measures for special consideration. One of these was the suggestion of "making multilateral the existing bilateral agreement between the Soviet Union and the United States on the Prevention of Incidents on and over the High Seas" (A/40/535, para. 322).

16. When the expert panel's recommendation was discussed at the 1986 session of the United Nations Disarmament Commission, the item was entitled "Multilateral agreement corresponding to the existing bilateral agreement between the Union of Soviet Socialist Republics and the United States of America on the prevention of incidents on and over the high seas" (A/CN.10/83). A multilateral agreement was thus not intended to supersede the bilateral one, but to complement it.

17. At the 1987 session of the United Nations Disarmament Commission, the expert panel's recommendation was described as "negotiating a multilateral agreement concerning the prevention of incidents at sea beyond the territorial sea in addition to existing agreements", taking into account the new United Kingdom–Soviet Union agreement concluded between the 1986 and 1987 sessions (A/CN.10/102).

18. Finally, at the 1988 session it was added that States "with particular concerns may prefer" to conclude bilateral agreements (A/CN.10/113).

19. It is clear that States which have participated in the deliberations at the United Nations Disarmament Commission on this issue are interested in a multilateral prevention-of-incidents agreement, in addition to existing bilateral ones.

20. The recommendation of the Secretary-General's expert panel and the possible confidence-building effect of a multilateral régime have certainly played an important role in creating support for the proposal.
II. ELEMENTS OF A POSSIBLE MULTILATERAL AGREEMENT

21. A possible set of main elements of a multilateral agreement are presented below. They are based on the following principles, in order to be both practical and negotiable:

(a) The scope of the agreement should generally be the same as that of the agreements between the United States and the Soviet Union; the United Kingdom and the Soviet Union; and the Federal Republic of Germany and the Soviet Union. There should be no special rules for submerged ships or for ships or aircraft carrying nuclear weapons;

(b) The agreement should be a complement to the "Rules of the Road", i.e., the 1972 International Regulations for Preventing Collisions at Sea. A prevention-of-incidents agreement will thus be a set of complementary rules providing further refinement and codification for naval units. The "Rules of the Road" are primarily intended to facilitate the safe navigation of individual vessels directly from one point to another. Warships, on the other hand, occasionally operate in ways other than straight passage. They may also operate in formations which make the moving unit larger than an individual vessel. A complement to the "Rules of the Road" is therefore needed;

(c) The terminology of an agreement should be in harmony with the 1982 United Nations Convention on the Law of the Sea and other relevant international agreements. The treaty language should be as similar as possible to the existing bilateral agreements in order to avoid future differences in interpretation. The United States-Soviet Union agreement was concluded long before the ending of the Third United Nations Conference on the Law of the Sea, while the United Kingdom-Soviet Union and the Federal Republic of Germany-Soviet Union agreements were concluded after the adoption of the law of the sea Convention. The two recent treaties take the contents and terminology of the 1982 United Nations Convention on the Law of the Sea into account;

(d) Technological features and terms could be updated to cover recent developments;

(e) Consultation procedures in the event of incidents should be either between the parties immediately concerned or through other appropriate measures;

(f) Where a separate bilateral agreement exists on the prevention of incidents at sea between two parties to a multilateral agreement, the bilateral agreement could take precedence as far as the bilateral relation is concerned.

22. Main multilateral rules and norms based on these principles may be summarized as follows:

(1) Ships operating in proximity to each other, except when required to maintain course and speed under the 1972 Collision Regulations, shall in all cases remain well clear to avoid a risk of collision.
(2) Ships meeting or operating in the vicinity of a formation of another party shall, while conforming to the 1972 Collision Regulations, avoid manoeuvring in a manner which would hinder the evolutions of the formation.

(3) Formations shall not conduct manoeuvres through areas of heavy traffic where internationally recognized traffic separation schemes are in effect.

(4) Ships engaged in surveillance of other ships shall stay at a distance which avoids the risk of collision and also shall avoid executing manoeuvres embarrassing or endangering the ships under surveillance. Except when required to maintain course and speed under the 1972 Collision Regulations, both the surveillant and the surveyed shall take positive early action so as, in the exercise of good seamanship, not to embarrass or endanger ships either surveying or under surveillance.

(5) When ships of parties manoeuvre in sight of one another, such signals (flag, sound and light) as are prescribed by the 1972 Collision Regulations or the International Code of Signals or other mutually agreed signals shall be adhered to for signalling operations and intentions. Existing bilateral agreements include instructions for use of special signals that might be adopted for multilateral use.

(6) Ships of the parties shall not simulate attacks by aiming guns, missile launchers, torpedo tubes and other weapons in the direction of a passing ship or aircraft of another party or let fire control radars lock on such ships or aircraft; nor shall they launch any object in the direction of passing ships or aircraft of another party in such a manner as to be hazardous to those ships or aircraft or to constitute a hazard to navigation, or use searchlights or other powerful illumination devices to illuminate the navigation bridges of passing ships or aircraft of another party. Artificial fog should also not be formed around naval units of another party.

(7) When conducting exercises with submerged submarines, exercising ships shall show appropriate signals prescribed by the International Code of Signals to warn ships of the presence of submarines in the area.

(8) Ships of one party, when approaching ships of another party conducting operations as set forth in Rule 3 (g) of the 1972 Collision Regulations, and particularly ships engaged in replenishment under way, shall take appropriate measures not to hinder manoeuvres of such ships and shall remain well clear.

(9) Commanders of aircraft of the parties shall use the greatest caution and prudence in approaching aircraft and ships of other parties operating on and over the sea beyond the territorial sea. In particular, ships engaged in launching or landing aircraft shall in the interest of mutual safety not permit simulated attacks by the simulated use of weapons
against aircraft and ships, or the performance of various aerobatics over ships or the dropping of various objects, including chaffs, near them in such a manner as to be hazardous to ships or to constitute a hazard to navigation.

(10) Ships and aircraft of the parties shall not make simulated attacks by aiming guns, missile launchers, torpedo tubes and other weapons at non-military ships of another party, neither shall they launch nor drop any objects, including chaffs, near non-military ships of another party in such a manner as to be hazardous to these ships or to constitute a hazard to navigation.

(11) Ships of parties operating in sight of one another shall raise proper signals concerning their intent to begin launching or landing aircraft.

(12) Aircraft of parties flying over the sea beyond the territorial sea in darkness or under instrument conditions shall, whenever feasible, display navigation lights.

(13) Parties shall provide through the established system of radio broadcasts of information and warning to mariners, not less than three to five days in advance as a rule, notification of actions on the sea beyond the territorial sea which represent a danger to navigation or to aircraft in flight.

(14) Parties shall make timely and prudent use of the informative signals contained in the International Code of Signals or other mutually agreed signals to signify the intentions of their respective ships when manoeuvring in proximity to one another. At night, or in conditions of reduced visibility or under conditions of lighting and such distances as render signal flags indistinct, flashing light or radio should be used to inform ships of manoeuvres which may hinder the movements of others or involve a risk of collision.

(15) Parties involved in instances of collision, incidents which result in damage or other incidents at sea between ships and aircraft of the parties shall promptly exchange appropriate information concerning such occurrences through their respective naval or defence attachés or other diplomatic channels. The modalities for such consultation need to be elaborated in more detail, taking into due account the security interests of States, in order to make them practical, speedy and unambiguous. A pragmatic approach is needed and the creation of a new machinery should be avoided. Guidance for these efforts could be found in the way this is resolved in the existing bilateral agreements as well as in other international agreements with consultation procedures.

(16) Any two States parties to the agreement may, if deemed necessary, hold consultations to review the implementation of the terms of the agreement by the two parties at a mutually agreed time or interval.
III. CONCLUDING REMARKS

23. While the substantial 16 elements listed above are drafted with the intention of serving as background material for a possible future negotiation on the issue, there are many other possibilities.

24. It may be that States which have already solved the major part of their incident problems bilaterally would prefer to apply those agreements in their bilateral relations, particularly the consultation clauses. If so, participation of such countries in a multilateral régime would be reduced to solving possible incident problems with all other parties.

25. In that case, the bilateral agreements would remain as they are and the multilateral agreement should be as similar to it as possible to avoid confusion at sea. This should be the case also for the system of special signals.

26. As interest in a prevention-of-incidents régime has been expressed globally, such a régime should preferably be negotiated to reach an agreement intended for global application. The natural forum for such negotiations would be the Conference on Disarmament.