

A Maritime Security Regime for Northeast Asia: Part I

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I. Introduction

Mark J. Valencia, Nautilus Institute Senior Associate and Visiting Senior Fellow at the Maritime Institute of Malaysia, writes, "there is a growing consensus that it is not too early to begin discussing a security architecture in Northeast Asia. That discussion should begin 'at sea'."

The views expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Nautilus Institute. Readers should note that Nautilus seeks a diversity of views and opinions on contentious topics in order to identify common ground.

II. Article by Mark J. Valencia

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Part I of this essay provided the conceptual basis and rationale for a declaration on agreed conduct in Northeast Asian seas (see Nautilus Policy Forum Online 30 August 2007). This Part highlights recent dangerous incidents in the area and provides a detailed draft "Declaration" based in large part on the 2002 ASEAN-China Declaration on Conduct of Parties in the South China Sea .

A Code of Conduct: The Increasing Need

What sort of activities present a danger for confrontation and conflict, and thus urgently need to be addressed by a code of conduct? The list is long and varied. It includes activities involving disputes over islands and maritime boundaries and the oil and gas and fisheries resources in the disputed areas; non-consensual marine scientific research in other's claimed waters, marine and aerial "spy" probes; other foreign military activities in or over claimed EEZs; and exercises of freedom of navigation in straits.

*Both Parts I and II of this essay are based on a paper prepared for a Workshop on Security Cooperation in Northeast Asia organized by the Department of International Relations , Australian National University and hosted by the Institute of Far Eastern Studies, Seoul, April 2008. The following is a sampling of recent serious maritime incidents in rough ascending order of conflict potential:

- Russia continues to seize Japanese fishing boats allegedly fishing illegally in Russian waters near the disputed Southern Kurile Islands/Northern Territories.
- In 2001 three way disputes over South Korean fishing around the Russian - controlled Southern Kurile Islands/Northern Territories brought South Korea Japan relations to a boiling point. Domestic politics reared its ugly head and confrontation became probable - between fisheries vessels from both countries or even between their patrol vessels.
- The Senkakus/Diaoyutai controversy in the East China Sea surfaces quite often and has led to confrontations between Japanese Maritime Enforcement Agency vessels and Chinese protestors from China, Hong Kong and Taiwan.
- Japan and South Korea exchanged threats regarding Japan's intent to survey the disputed area around Tok Do/Takeshima island in the East Sea/Sea of Japan.
- Chinese intelligence gathering vessels frequent the Japanese EEZ. Japan considers these forays provocative and even threatening. Particularly galling was the discovery of a Chinese submarine inside Japan's territorial waters. The same applies to Chinese 'marine scientific research' in Japan's claimed EEZ.
- China dispatched PLA Navy warships to protect its offshore drilling rigs in the East China Sea from any possible Japanese interference.
- In April 2001, China demanded that three Australian warships leave China's territorial waters in the Taiwan Strait because they were allegedly violating the innocent passage regime.
- In December 2007, China expressed "grave concern" to the United States because the U.S. Kitty Hawk carrier group transited the Taiwan Strait after being banned by Beijing from visiting Hong Kong. Some reports claimed that a Chinese destroyer and an attack submarine 'shadowed' the U.S. carrier group and brought it to a battle-ready halt.
- In September 2007, Chinese Hong-6 bombers conducted military movements in the East China Sea within Taiwan and Japan's Air Defense Identification Zones and Japanese F4 fighter jets were scrambled to the area.
- In February 2008, a Russian Tupolev 95 bomber allegedly violated Japanese airspace over the Izu

island chain and was warned off by scrambled Japanese fighter jets.

- The U.S. Navy survey vessel Bowditch - backed by an Aegis destroyer - continues to gather data from the Chinese EEZ in the Yellow and East China Seas despite threats from and confrontations with Chinese frigates and aircraft.
- In November 2007, a Chinese submarine surfaced in the middle of a U.S. Navy exercise in the East China Sea surprising and embarrassing the U.S. ships. In April 2001, a collision between a U.S. surveillance plane and a Chinese fighter jet over China's EEZ in the South China Sea chilled relations between the two powers. The surveillance flights are based in Okinawa and include the east coast of China; they are ongoing.
- In December 2001, Japanese Maritime Enforcement Agency vessels attacked and sank a North Korean spy vessel in its and China's claimed EEZ.
- In June 2002, a major naval clash broke out between South Korean and North Korean naval patrol boats in their disputed Western border area. Another clash occurred in June 2003.

The Declaration

A "Code of Conduct" is a formal legally-binding instrument while a "Declaration of Conduct" is a more informal statement of intent. Given the political sensitivities and aversion to legally-binding agreements by some nations in the region, a "Declaration" seems to be a more realistic first step. The specifics of the "Declaration" would be drawn from the ASEAN-China Declaration and previous bilateral agreements involving one or more countries in the region. They include agreements on incidents at sea, fisheries, prior notification, joint development, search and rescue, and environmental protection. The following is a draft declaration of conduct of parties in Northeast Asian waters.

DECLARATION ON THE CONDUCT OF PARTIES IN NORTHEAST ASIAN WATERS

The Governments of the People's Republic of China, the Democratic Peoples' Republic of Korea, Japan, the Republic of Korea, and Russia.

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view of promoting a 21st century-oriented partnership of good neighborliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in Northeast Asian waters for the enhancement of peace, stability, economic growth and prosperity in the region;

DESIRING to enhance favorable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, The Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;
2. The Parties are committed to exploring ways for building trust and confidence in accordance

with the above-mentioned principles and on the basis of equality and mutual respect;

3. Nothing contained in the Declaration or activities taking place pursuant to it, should be interpreted as prejudicing the position of any Party in its claims to sovereign rights or jurisdiction in its claimed territory, territorial sea, continental shelf, EEZ, or its rights and responsibilities therein under the 1982 UNCLOS.
4. The Parties undertake to use the sea for peaceful purposes only. In particular, the Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
5. The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the area provided for by universally recognized principles of international law including the 1982 UN Convention on the Law of the Sea;
6. The Parties undertake to exercise self restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from occupying presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner;
7. Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:
 1. Establishing military hotlines;
 2. Holding dialogues and exchanging views as appropriate between their defense and military officials;
 3. Notifying, on a voluntary basis, other Parties concerned of any impending military exercise in waters of interest to other Parties;
 4. Ensuring just and humane treatment of all persons who are either in danger or in distress;
 5. Exchanging on a voluntary basis, relevant information.
- 8.
9. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities including entering into provisional arrangements of a practical nature with respect to:
 1. Marine environmental protection;
 2. Marine scientific research;
 3. Safety of navigation and communication at sea;
 4. Search and rescue operations;
 5. Combating of transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.
 6. Sharing, or joint development of resources in areas of overlapping claims.
10. The modalities, scope and locations of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.
11. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the

observance of this Declaration, for the purpose of promoting good neighborliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolution of disputes among them;

12. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;
13. The Parties encourage other countries to respect the principles contained in this Declaration;
14. The Parties concerned reaffirm that the adoption of a code of conduct in Northeast Asian waters would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective;
15. The Parties concerned agree to consider incorporating the previous provisions into a formal code of conduct.
16. The parties concerned agree to negotiate guidelines for intelligence gathering and military activities in foreign EEZs.
17. The Parties concerned also agree to consider creating a maritime nuclear-weapon-free zone.

While this all may appear to be wishful thinking, a similar Declaration was agreed between China and ASEAN for the South China Sea. And this came about only after years of confrontation and actual conflict over maritime issues. The geopolitical conditions in the two regions are significantly different. However, there is a growing consensus that it is not too early to begin discussing a security architecture in Northeast Asia. That discussion should begin 'at sea'.

III. Nautilus invites your responses

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send responses to: bscott@nautilus.org. Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

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