

Policy Forum 99-01: Toward an Ocean Management Regime in the Sea of Japan

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NE Asian Marine Issues - #4

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I. Introduction

This essay is the fourth in a series of essays on energy-related marine issues in the regional seas of Northeast Asia. The energy, environmental and security aspects of such issues are explored with the purpose of engaging a broad community of experts, policymakers, non-governmental organizations, and interested citizens in a dialogue on ocean policies in the Northeast Asian region. The essay is based on a paper ("Marine Environmental Cooperation in Northeast Asia") by Dr. Hyon-Jin Kim. Dr. Kim's publications include "Regional Cooperation for the Environment of the Sea of Japan: The Case of Radioactive Waste Dumping by Russia" and "Historical Examination of the Name 'Sea of Japan'."

In this essay Kim examines the attempts to institutionalize marine environmental cooperation in Northeast Asia. Creation of a marine environment regime was initiated by the United Nations Environment Programme (UNEP) in 1991. Negotiation among the five member states over an Action Plan lasted until 1994 when the Northwest Pacific Action Plan (NOWPAP) was adopted. The regime formation process was slow in part because sub-national actors as well as the governments gave low priority to marine environment issues. In the negotiations over NOWPAP disputes over political issues (such as use of the name "Sea of Japan" and legal terminology) not environmental issues dominated. However, regime building efforts have accelerated due to such events as the *Nakhodka* oil spill in January 1997.

II. Kim Essay

1. Introduction

Since the late 1980s, regional concern about transboundary environmental problems in Northeast Asia has increased and collective efforts to control them have been initiated. Specifically, in the field of marine pollution, efforts to institutionalize marine environmental cooperation began in 1989. The Governing Council of the United Nations Environment Programme (UNEP), at its fifteenth session (Nairobi, 15-26 May, 1989, Decision 15/1), approved preparation of new Action Plans for seas not already covered by their regional seas programs, in particular, for the Northwest Pacific and the Black Sea.

UNEP's Regional Seas Programme was initiated in 1974 as a regional mechanism for implementing UNEP's priority program for the "Ocean." The substantive core of all regional seas programs is typically outlined in an "Action Plan." Action Plans normally address environment assessment and management issues, including environment legislation, institutional arrangements, and financial arrangements. Important provisions of an Action Plan, however, can differ considerably from region to region. Since the establishment of the Regional Seas Programme, its scope has expanded to include thirteen regional seas in which Action Plans are operative or presently under development.

In developing the Action Plan for the Northwest Pacific region (Yellow Sea and Sea of Japan), four meetings of experts and policymakers were held--Vladivostok, the Russian Federation in October 1991, Beijing, People's Republic of China in October 1992, Bangkok, Thailand in November 1993, and Seoul, Republic of Korea (ROK) in September 1994. An Action Plan for the protection, management and development of the marine and coastal environment of the Northwest Pacific Region--Northwest Pacific Action Plan, or NOWPAP--and three *Resolutions* were adopted at the first intergovernmental meeting held in Seoul on 14 September 1994.

At a fifth meeting of experts and policymakers in Bangkok in 1995, an Ad Hoc Meeting of Technical Experts in Bangkok in 1996, and the second intergovernmental meeting in Tokyo in 1996 implementation of the Action Plan was reviewed. In accordance with Resolution 1, adopted at the first intergovernmental meeting, two meetings of a Northwest Pacific Action Plan Forum have been

held to date. The first meeting was held in Toyama, Japan in 1997, and the second in Taejon, ROK in 1998. At these meetings the creation of effective measures for regional cooperation in marine pollution preparedness and response were discussed.

Even though a regime on the marine environment in Northeast Asia has been created, it has only been a qualified success in institutionalizing cooperation on marine issues in the region. Three aspects of regime formation are useful in judging progress on marine environment cooperation in the region: 1) has a regime formed, 2) how long does it take to reach closure on the terms of a constitutional contract establishing a regime, and why does the process take much longer in some cases than in others, and 3) what is the regime's substantive content--not only whether and when a regime forms but also how its principal provisions are arrived at."

These three aspects of regime formation can be used as a framework for evaluating the efforts to institutionalize marine environmental cooperation in Northeast Asia. In the case of forming a regional seas environmental protection regime in Northeast Asia, a regime--NOWPAP--has been formed (aspect #1). However, the timing of regime formation (aspect #2) was such that it took much longer to adopt an Action Plan in Northeast Asia as compared to other regions. Also, the content (aspect #3) of the Action Plan is weak or incomplete when compared to those of other regions. By way of comparison, in the Mediterranean region not only was an Action Plan adopted quickly in 1975 but also shortly after adoption in 1976 a Convention for the Protection of the Mediterranean Sea against Pollution and two protocols were also agreed upon. As another comparison, the Kuwait region of the Persian Gulf was incorporated into UNEP's Regional Seas Programme in 1975. The eight governments of the region adopted a framework convention and protocol as well as an Action Plan in 1978. Two legal instruments were ratified and entered into force in 1980. And again, in the Black Sea region, which was requested by UNEP to prepare an Action Plan at the same time as the Northwest Pacific region, a Convention and three protocols were adopted by 1992. In comparison to the above cases, the Northwest Pacific region has only recently succeeded in adopting an Action Plan (1994), and, at this point in time the adopted Action Plan excludes the possibility of the development of legally-binding conventions.

Why has the process of creation of a marine environment protection regime taken much longer than in other regions? What made the content of the Action Plan weak and incomplete in the region? This essay examines the factors behind these "failures" to institutionalize marine environment cooperation in Northeast Asia.

2. Early Negotiations over NOWPAP

No Concern, No Action.

NOWPAP was initiated not by the governments of the region but by UNEP. Hence, impetus for a marine protection regime in Northeast Asia originated outside the region itself. Why? Compared with the Mediterranean region, for instance, where concern about pollution emerged in the late 1960s, concern did not surface in Northeast Asia until about 1990. Most of the concern was limited to specific problems not the more general problem of the health of the regional seas. One of the first major incidents to draw attention to environmental degradation in the Northeast Asian regional seas was the dumping of radioactive waste into the Sea of Japan by Russia in 1993. This generated enormous concern among the general publics and sub-national actors in Japan and South Korea. Domestic environmental groups, local governments, and expert groups in both countries formed a loose movement that led to the problem becoming a regional issue. These anti-radioactive waste dumping movements pushed the governments to stop the dumping. Thereafter intensive negotiations were initiated between the three governments of Russia, Japan, and South Korea to resolve the issue.

In conclusion, the governments of the region played a passive role up until the adoption of NOWPAP in 1994. One factor explaining this passivity is the fact that there was a general lack of knowledge and concern among national and sub-national actors in the region about marine degradation. While the dumping of radioactive generated significant interest in the region, it did not trigger widespread interest in the general issue of marine degradation.

No Common Interest

Negotiations among the Northeast Asian countries on an Action Plan for the Northwest Pacific started in 1991. Four Experts Meetings were held between 1991 and 1994. A draft Action Plan and three draft Resolutions which were prepared by UNEP were discussed at the meetings. The main disputes regarding the draft Action Plan revolved around the following two issues: 1) use of the name "Sea of Japan," and 2) terminology implying legally-binding conventions or protocols. Each of these disputes will be discussed below.

The issue of the name "Sea of Japan" was first raised by the delegation from the Republic of Korea. The ROK delegation suggested that the Sea of Japan is also called the "East Sea" and that there is no international agreement on a geographical name for this sea which is acceptable to all countries in the region. They argued that the use of the geographical term "Sea of Japan" in the Action Plan must not influence discussions held under the auspices of the United Nations Conference on the Standardization of Geographical Names. The DPRK also insisted that the sea between Korea and Japan has been called the East Sea of Korea by the Korean people for many centuries and that they could not accept the geographical name Sea of Japan. Japan requested that the name be written without any additional alternative names in parenthesis because this name is already well-established internationally. Japan also pointed out that the meetings discussing the Action Plan were not the appropriate forum to discuss such a political question.

As a result of the above different point of views, it was decided that the geographical term Sea of Japan would be used in only one sentence in the document which describes the geographical scope of NOWPAP. However, shortly before the First Intergovernmental Meeting, this issue returned with a vengeance. The South Korean mass media picked up on the issue and it became headline news. Korean public opinion exploded. The Korean Ministry of Foreign Affairs, which had accepted the name Sea of Japan became the target of intense criticism. Eventually, the Korean government publicly stated that it could not participate in an international conference containing the name Sea of Japan, and that if the Action plan included the name Sea of Japan, the Korean government could not adopt the Plan. After much dispute between the Korean and Japanese governments, it was decided to specify the geographical scope of NOWPAP in terms of longitude and latitude instead of names.

The issue of legally-binding conventions or protocols in the future was a second major dispute area over the draft Action Plan. The Japanese government opposed any terminology which implied that something might be legally-binding. Thus, they opposed the use of terms such as "legal" or "legislative." The Japanese delegation said that although they understood the importance of legally-binding conventions in the future, their government would not join a legally-binding instrument. The Japanese delegation also insisted that the terms "convention" and "protocol," which were included in the draft Action Plan, be deleted. However, UNEP strongly insisted that they could not agree to deleting these terms from a general description of UNEP's Regional Seas Programme which was included in the Action Plan. In the end, terms implying "legally-binding" were deleted from the entire document except for the description of the UNEP Regional Seas Programme.

In conclusion, the major disputes over negotiation of NOWPAP focused on political issues, not environmental issues. Even though NOWPAP was adopted, during the negotiation process discussion

did not even advance to environmental issues. Therefore, there was no opportunity for building common interests among member states on environmental issues. Again, like the lack of concern over environmental issues among sub-national and national actors in the region, this inhibited institutionalization of marine environmental cooperation and helps explain the slowness of the regime formation process in Northeast Asia.

3. Implementation of NOWPAP and the *Nakhodka* Accident

Negotiations over Implementation of NOWPAP

To review the financial implications of the Action Plan and the procedures and timetables of project implementation under the Plan, a fifth Expert Meeting (Bangkok, 1995), an Ad Hoc meeting of technical experts (Bangkok, 1996), and the Second Intergovernmental Meeting (Tokyo, 1996) were held. At the Second Intergovernmental Meeting, the program and workplan for the 1997/1998 biennium and the arrangements for a NOWPAP Trust Fund were adopted.

The main issue at the Second Intergovernmental Meeting was member state contributions to the Trust Fund. The same issue of contributions was raised again at the Third Intergovernmental Meeting in 1998. Ultimately, the following scale was agreed upon tentatively. A 5% basic contribution based on common participation and shared responsibility was levied on all member states with the exception of the DPRK. In addition, an "Additional Contribution" was decided upon. This left 33% of the Trust Fund undistributed.

Nakhodka Oil Spill and NOWPAP

As indicated above in the dispute over financial arrangements, implementation of NOWPAP has been slow. However, an incident occurred in January 1997 that gave more urgency to implementation. An oil spill accident involving the Russian tanker *Nakhodka* occurred in the Sea of Japan off the coast of Japan in Fukui Prefecture. The *Nakhodka* spill was not considered merely an isolated accident but emerged in Japan as a symbol of the degradation of the Sea of Japan; degradation that it was feared could occur with increasing regularity. Reaction quickly spread in Japan. The Japanese government's inadequate response in dealing with the oil spill became the target of criticism by the public. Local governments and citizen groups demanded the establishment of a crisis management system in the Sea of Japan. The oil spill triggered progress toward cooperation on pollution issues not only between Japan and Russia and between other national governments in the region, but also between Japan and the U.S. and between local governments in the region.

The most significant repercussion was the Japanese government's change in attitude toward NOWPAP. On January 18, 1997, the Ministry of Transportation announced its intent to sponsor a regional forum on pollution preparedness and response as part of NOWPAP. Japan's change in attitude is evident in the Memorandum of Understanding (MOU) discussed at the First and Second Forums on Marine Pollution Preparedness and Response. Japan stated that it was important to investigate whether or not a binding measure was necessary on marine pollution preparedness and response. Such a change is significant given its previous opposition to any terminology implying legally-binding arrangements.

4. Conclusion

Efforts at marine environment regime formation started in Northeast Asia in 1989. However, it took about five years to create a regime--NOWPAP--and even though created, the substance and implementation of the regime is weak when compared to other regions' Action Plans. Why has the process of adopting and implementing NOWPAP taken longer than those of other regions? And what

has made the environmental content of the Action Plan weaker? Several answers to these questions have been given in this essay.

First, there was initially little concern over marine environmental issues at the national or sub-national levels in Northeast Asia. Initiation of the regime formation process was due to the efforts of an outside agent--UNEP--not regional (national or sub-national) actors. There were no movements by regional actors to push for international cooperation. The dumping of radioactive waste by the Russian in 1993 generated tremendous public concern, and provided impetus to the regime formation process; however, in general the activities of regional actors remained local, issue-specific, and fragmented.

Second, negotiation over NOWPAP and subsequent discussions over implementation have focused on political issues not environmental issues. In the negotiation phase, discussions did not even advance beyond terminology issues. The two major disputes were over use of the name Sea of Japan and use of terminology implying legally-binding arrangements. This hindered the process of building common interest on environmental issues among member countries. In the implementation phase to date, discussion of financial arrangements has dominated. Again, environmental issues have taken a back seat.

The *Nakhodka* oil spill in 1997 engendered a greater sense of urgency to environmental issues, however. This seems to be spurring more action toward regional cooperation within the NOWPAP framework. The change in the Japanese government's attitude toward accepting legally-binding arrangements is evidence of progress on institutionalizing marine environmental cooperation in Northeast Asia.

Read the full version of
["Marine Environmental Cooperation in Northeast Asia"](#)

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The Energy, Security, Environment in Northeast Asia Network invites your responses to this essay. Please send responses to: esena@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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