

# Policy Forum 10-050: Northeast Asia Needs a Maritime Code of Conduct

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# Northeast Asia Needs a Maritime Code of Conduct

Policy Forum, October 5, 2010

Mark Valencia

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## I. Introduction

Mark Valencia, senior associate at the Nautilus Institute, writes, "Although reverberations continue,

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Japan and China have wisely stepped back from the political brink in the East China Sea. But if the past has anything to say about the future, there will be similar serious confrontations at sea disturbing not only relations between the disputants but the security regime in Asia. This instability is not acceptable—not only for the parties directly concerned –but for their neighbors and extra-regional partners. What is needed are some guidelines or an agreed declaration of expected behavior in disputed areas that could avert such confrontations.”

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## II. Article by Mark Valencia

-“Northeast Asia Needs a Maritime Code of Conduct”

By Mark Valencia



Although reverberations continue, Japan and China have wisely stepped back from the political brink in the East China Sea. But if the past has anything to say about the future, there will be similar serious confrontations at sea disturbing not only relations between the disputants but the security regime in Asia. Indeed, Japan and South Korea have had some serious face offs regarding Tok Do/Takeshima in the East Sea/Sea of Japan. This instability is not acceptable—not only for the parties directly concerned –but for their neighbors and extra-regional partners. What is needed are some guidelines or an agreed declaration of expected behavior in disputed areas that could avert such confrontations.

For many years the East China Sea and the Sea of Japan were dangerous ‘no man’s land’. But Northeast Asian nations avoided escalating tension with their neighbors by refraining from extending their maritime jurisdiction and in general foregoing provocative activities. Once they extended their jurisdiction and disputes arose, they forged an ad hoc maritime conflict avoidance regime—incorporating principles of self -restraint and sharing of resources in disputed areas. Once the region wipes the sweat off its collective brow, the recent stampede towards a political cliff – and the fervent nationalism it released-- should encourage the expansion of this regime and the building of ballast in the relationship.

The fundament and intent already exist. In February 2007, the Six Parties to the talks regarding peace on the Korean Peninsula agreed to negotiate a regional security mechanism in an appropriate separate forum. Also just in May China, Japan and South Korea agreed to set up a permanent secretariat for closer trilateral cooperation. More to the point, all Northeast Asian states except North Korea have ratified the 1982 UN Convention on the Law of the Sea (UNCLOS). The Convention provides a general framework and some specific confidence and security building measures. For example, some agreements in the region already implement the Convention’s stipulation that pending agreement on EEZ and continental shelf boundaries, the parties concerned shall enter into “provisional arrangements of a practical nature” for management of resources in areas of overlapping claims. Such provisional arrangements in Northeast Asia include agreements between China and Japan, China and South Korea, and Japan and South Korea to share fish stocks in defined portions of their respective disputed areas. More significant, Japan and South Korea have been undertaking joint development of hydrocarbons for nearly 40 years in their area of overlapping continental shelf claims in the northern East China Sea. Even more remarkable, in December 2005 North Korea and China forged a similar arrangement in West Korea Bay, and Japan and China have agreed in principle to do the same in the central East China Sea. Moreover after several serious incidents, Japan and China established a mutual ‘prior notification’ regime for scientific research in

their disputed area in the East China. Bilateral military arrangements of direct security significance include incidents at sea agreements between the United States and Russia, Russia and South Korea and Russia and Japan, and a maritime consultative agreement between the United States and China which they have now agreed to reactivate.

Given this network of conflict avoidance arrangements, an agreed declaration of expected conduct would be a logical next step. But what should such a code contain? We have just witnessed the need for a clause addressing the question of arrest and detention of fishing vessels and crew of fellow claimants. It should also govern any and all other activities in disputed areas, e.g., resource exploration and exploitation, marine scientific research, marine and aerial “spy probes,” and other military activities in disputed EEZs.

Right up front must be a clause stating that nothing in the Declaration prejudices any party’s sovereign rights or jurisdiction in its claimed territory, territorial sea, continental shelf, EEZ or its rights and responsibilities under the 1982 UNCLOS. It should reaffirm the use of the sea only for peaceful purposes and the resolution of disputes without the threat or use of force in accordance with international law including the 1982 UNCLOS. It should also reaffirm the freedom of navigation and overflight consonant with international law. The parties would commit to exercise self restraint in the conduct of activities that might complicate or escalate disputes, including refraining from occupying presently uninhabited features. They would also agree to negotiate provisional arrangements of a practical nature to manage and share the resources and activities in disputed areas. And they would agree to notify each other of any pending activities including military exercises in waters of interest to other parties. Outside parties would be encouraged to adhere to the provisions of the Declaration. Looking forward, the parties would agree to consider making the Declaration a formal Code of Conduct.

While this all may appear to be wishful thinking, a similar Declaration forged in 2002 by ASEAN was agreed to by China 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 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](mailto: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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