

Policy Forum 09-048: UNSC Anti-North Korea Resolution a Recipe for Conflict?



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UNSC Anti-North Korea Resolution a Recipe for Conflict?

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By Mark Valencia

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I. Introduction

Mark Valencia, a Visiting Senior Fellow with the Maritime Institute of Malaysia and Nautilus Institute Senior Associate, writes, "To get China and Russia to agree to more binding and mandatory language, the U.S. should 'walk the talk' of President Obama's promise to 'listen', 'compromise' and

'co-operate' in multilateral endeavors. In other words, it will have to give up control of the decision to interdict, the definition of 'reasonable grounds' to do so, and the actual interdiction itself."

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II. Article by Mark Valencia

- "UNSC Anti-North Korea Resolution a Recipe for Conflict?"

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In response to North Korea's latest nuclear weapons test, the UN Security Council has passed a resolution (1874) that expands and tightens the sanctions specified in its earlier resolution (1718), passed in response to North Korea's first nuclear test in 2006. But it goes a step further and endorses "inspections" of suspect vessels entering or leaving North Korea. This is a recipe for conflict.

In an attempt to choke off its main source of foreign currency, the resolution imposes almost a complete embargo on the export and import of weapons from and to North Korea. It establishes detailed expectations and obligations for all states regarding the inspection of suspected prohibited cargo bound to or from North Korea on their territory or in their airports or ports.

It also 'calls upon' states to consent to inspection of their flag vessels on the high seas if there are 'reasonable grounds' to believe they are carrying prohibited cargo. If the flag state does not consent to the inspection, then "the flag state shall direct the vessel to proceed to an appropriate and convenient port for the required inspection". The resolution also prohibits the provision of bunkering services to DPRK vessels believed to be carrying contraband.

Moreover it expands financial sanctions related to WMD and missile production and provides for the designation of additional banned goods, entities and individuals and enhances monitoring of the implementation of these sanctions.

This appears to be a pretty robust resolution. However, it does not close all the gaps and leaves key terms undefined. The UNSC issued the resolution under Chapter III, Article 41 of the UN Charter which specifically does not authorize the use of force. That means that if a North Korean (or other) flagged vessel refuses to consent to inspection and further, refuses to proceed to an "appropriate port" as 'directed' for the 'required' inspection, the interdicting vessel could not threaten or use force to make it do so. If it did it would itself apparently be violating the resolution's call that any inspection be consistent with international law and that all states refrain from any action that might aggravate tensions. This would be particularly so if the interdicted vessel were a state - owned or operated vessel used only for non-commercial purposes which, under the 1982 UN Convention on the Law of the Sea, has sovereign immunity.

Moreover, the resolution contains several key terms that may be interpreted in different ways, such as "reasonable grounds" to believe that the vessel is carrying prohibited items. There also seems to be some disagreement as to whether "calls upon" means states 'should', 'may' or are *expected* to inspect such suspect vessels. This 'wiggle room' could be dangerous.

For example, the resolution appears to provide UN cover for a U.S. unilateral declaration of "reasonable grounds" and interdiction of North Korean vessels on the high seas or even in others territorial waters- and thus erodes the age-old regime of freedom of navigation. The U.S. says it will

interdict North Korean vessels 'but not forcibly board them.' Nevertheless, North Korea has repeatedly vowed that it would consider interdiction of its vessels an act of war and respond accordingly. Given the antagonism between the U. S. and North Korea and that North Korea has made good on many of its threats including the testing of nuclear weapons, there is good reason to believe that implementation of this aspect of the resolution by the U.S. will result in conflict -and possibly war--an outcome the U.S. and the region can ill-afford.

China and Russia resisted a binding use of force resolution because they do not want to encourage U.S. military operations in their waters. They also fear that such interdiction will generate a violent response from North Korea and that the decision to interdict will be made unilaterally. To get China and Russia to agree to more binding and mandatory language, the U.S. should 'walk the talk' of President Obama's promise to 'listen', 'compromise' and 'co-operate' in multilateral endeavors. In other words, it will have to give up control of the decision to interdict, the definition of 'reasonable grounds' to do so, and the actual interdiction itself.

One way to do this would be to have any interdictions/inspections on the high seas carried out by UN- flagged vessels. They would be acting on behalf of a UN organization (perhaps an enhanced sanctions committee or a group of 'experts') that would assess intelligence, co-ordinate and fund activities, and make recommendations or decisions regarding specific or generic interdictions. Such an organization -if perceived to be neutral, transparent, fair and objective - could eliminate double standards, increase transparency and answer key questions such as what combinations of actors and materials represent threats and what are 'reasonable grounds' for interdiction. It would also help avoid erroneous judgments and disagreements that might impede legitimate commerce, delay action or increase tensions. Further, the organization would provide a concrete structure with a consistent strategy and *modus operandi* , as well as a budget to fill gaps in interdiction and intelligence collection efforts. It could also ensure that such activities stay within existing international law or serve as a vehicle for changing it. Most important, it would avoid direct confrontation between North Korea and its perceived arch-enemy-the United States.

III. Nautilus invites your responses

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send responses to: napsnet-reply@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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