

A MARITIME SECURITY REGIME FOR NORTHEAST ASIA

Mark J. Valencia

The Six Party Talks can be the crucible for forging a regional security mechanism in Northeast Asia. This mechanism should originally focus on maritime security. The rationale includes the region's geography, competing maritime and island claims, the resultant maritime military buildup and changing priorities, increasing frequency of dangerous incidents, and the existence of a foundation for conflict avoidance and resource sharing. The Declaration on the Conduct of Parties in the South China Sea could serve as a model for a similar Declaration for Northeast Asian Seas that may ultimately include guidelines for activities in others' Exclusive Economic Zones.

Key words: Northeast Asia, multilateral security – East Asia, maritime security, territorial disputes

Conceptual and Practical Context

The Functional Approach to Conflict Resolution

The first step toward the peaceful settlement of conflict is the creation of a sense of community.¹ The creation of such a commu-

1. Mark J. Valencia, *A Maritime Regime for Northeast Asia* (Hong Kong: Oxford University Press, 1996), pp. 10-11.

nity presupposes at least the mitigation and minimization of conflict, so that shared interests and common needs outweigh the factors that separate the parties. A functional approach can help the growth of positive and constructive common work and of common habits and interests, decreasing the significance of artificial boundaries and barriers or the lack thereof by overlaying them with a web of common activities and administrative agencies. The challenge then for Northeast Asia is to develop a variety of arrangements that will demonstrate that a habit of dialogue and working together can build common—and eventually cooperative—security. Tactical learning—in which behavior toward cooperation changes—must be replaced by complex learning in which values and beliefs about reaching goals through cooperation change. In this context, cooperation in the maritime spheres satisfies the conceptual criteria and can be a means of building confidence, reducing tension, and eliminating points of conflict. It can also have positive spillover effects on relations between nations.

With progress in the Six Party Talks (6PT) regarding the Korea conundrum, analysts and politicians alike are again thinking and talking about a new security architecture for Northeast Asia.² At the 2006 ASEAN (Association of Southeast Asian Nations) Regional Forum meeting in Kuala Lumpur, U.S. Secretary of State Condoleezza Rice called for a “robust dialogue on Northeast Asian security” that could help overcome historical tensions, increase security, and create a “better basis for enhanced prosperity throughout the region.”³ In February 2007, the parties to the 6PT agreed to negotiate a “peace regime” in “an appropriate separate forum.”⁴ In January 2008, Rice expressed her belief that the Six Party Talks can be used for “larger purposes” such as “forging a regional security mechanism.”⁵ New Australian Prime

2. James Goodby and Markku Heiskanen, “Emerging Regional Security Architecture in Northeast Asia,” *Napsnet Policy Forum Online*, January 3, 2008, online at www.nautilus.org/fora/security/08001GoodbyHeiskanen.html.

3. Jane Morse, “U.S. Urges Robust Dialogue on Northeast, Asian Security,” *America.gov*, July 28, 2006, online at www.america.gov/s/washfile-english/2006July/20060728150433ajesrom07706.html.

4. “Six-Party Talks,” *Wikipedia*, online at <http://en.wikipedia.org/wiki/Six-party-talks>.

5. “Rice Says N.K. Can Stop Being Enemy,” *Yonhap* (Seoul), January 24, 2008.

Minister Kevin Rudd is an enthusiastic supporter of the concept—if it includes Australia.⁶

The general hope is that the process of managing transition on the Korean peninsula can create new patterns of cooperation and thus lay the foundation for a 21st century security architecture in the region. However, some—perhaps many—in ASEAN see the proposal as diluting the ASEAN Regional Forum's position as the only region-wide overarching security mechanism.⁷ Thus, starting "small and specific" in Northeast Asia might be more politically palatable to all concerned. In this context, some prominent analysts are urging Japan and the United States to build international institutions initially focused on "concrete issues such as resource sharing, environment and particular security issues," e.g., maritime conflict, that could gradually develop into larger institutions.⁸

Inspiring Examples from Maritime Agreements

In building mutual security, there are several significant reasons to focus initially on the maritime sphere. Much of Northeast Asia is essentially maritime, encompassing peninsulas, archipelagos, disputed islands, strategic straits, and sea lanes. These features surround and are embedded in a series of semi-enclosed seas—the Sea of Japan (East Sea), the Yellow Sea, and the East China Sea.

For many years these seas were dangerous frontiers and Northeast Asian nations attempted to avoid escalating tension with their neighbors by either refraining from extending their maritime jurisdiction or foregoing provocative activities there.

6. Alan Goodall, "Rudd Pencils in Tokyo Visit," *Japan Times Online*, April 7, 2008, at <http://search.japantimes.co.jp/cgi-bin/eo2008408a1.html>.

7. Kavi Chonkittavorn, "Taking Engagement with N Korea to the Next Level," *The Nation* (Bangkok), March 3, 2008, online at www.mysinchew.com/node/7944?tid=14.

8. Hiromu Namiki, "Expert Urges Revitalized Japan-US Alliance," *Yomiuri Shimbun* (Tokyo), March 31, 2008, online at www.yomiuri.co.jp/dy/world/20080331YDY02310.html; Chung Ok-Nim, "Solving the Security Puzzle in Northeast Asia: A Multilateral Security Regime," CNAPS Working Paper (September 1, 2000).

However, in the last two decades all coastal countries of Northeast Asia have claimed 200 nautical mile Exclusive Economic Zones (EEZ) and continental shelves.⁹ This has resulted in a major change in the maritime arena in which disputes between unfriendly nations have seriously exacerbated relations between them.

The resultant maritime military buildup is another good reason for a Northeast Asian security dialogue to focus initially on the maritime sphere. Indeed, given the region's geography and the plethora of maritime boundary and territorial disputes stimulated by this wave of extended maritime jurisdiction, it is not surprising that maritime issues have risen to the forefront of regional security concerns.¹⁰ Recent examples of serious maritime disputes include the Japan-China wrangles over East China Sea boundaries, and potential gas in their disputed area; Japan-China claims to sovereignty over the Senkaku or Diaoytai islands, the Japan-South Korea dispute over Takeshima/Dokdo and fish; the Japan-Russia dispute over the Northern Territories (Southern Kuriles) and their maritime resources; and the North-South Korea dispute over their western maritime boundary and valuable crabs. There are other similar disputes that may soon surface. Maritime Northeast Asia has thus become an increasingly dangerous milieu where the building of trust and confidence is sorely needed.

The increasing prominence of these and other issues, such as spying and illegal maritime activities, including piracy and potential "terrorism," dictates broader responsibilities and changing priorities for military force structure, operations, and training. Together with the requirements of self-reliance and force modernization, these concerns are reflected in the significant maritime dimension of current arms acquisition programs.¹¹

9. Valencia, *A Maritime Regime*, pp. 10-11.

10. For example, see Shin Nagahara, "Aso: Widen Japan-U.S. Sea Alliance," *Yomiuri Shimbun*, March 7, 2008, online at www.yomiuri.co.jp/dy/national/20080307TDY01902.htm; James C. Hsiung, "Sea Power, Law of the Sea and China-Japan East China Sea Resource War," paper presented to *Forum on China and the Sea*, Institute of Sustainable Development, Macao University of Science and Technology, October 9-11, 2005.

11. See for example Arthur Ding, "The Chinese Navy: Expanding Capabilities, Evolving Roles?" *RSIS Commentaries* No. 1 (January 2, 2008), online at www.rsis.edu.sg/publications/Perspective/RSIS0012008.pdf; also see Valencia, *A Maritime Regime*.

This includes maritime surveillance and intelligence collection systems, multi-role fighter aircraft with maritime attack capabilities, modern surface combatants, submarines,¹² anti-ship missiles, naval electronic warfare systems, mine warfare capabilities, and now missile defense systems. Because some of these new systems are perceived to have offensive capabilities, they are seen as provocative, and thus destabilizing, particularly by those countries that do not have them and lack the means to acquire them. Moreover, possession of these systems undoubtedly increases the risk of inadvertent escalation in time of conflict.

A third reason is that there are already precedents and even an incipient foundation on which a regional maritime security regime can be built. Indeed these nations have quite pro-actively constructed a web of conflict avoidance mechanisms. Some are of direct security significance, such as incidents-at-sea agreements between the United States and Russia (1972),¹³ Russia and South Korea (1994),¹⁴ and Russia and Japan (1993);¹⁵ a maritime consultative agreement between the United States and China (1998);¹⁶ and a North-South Korea agreement to prevent accidental naval clashes in the West Sea.¹⁷ These military-to-military

-
12. Sam Bateman, "Perils of the Deep: the Dangers of Submarine Operations in Asia," *RSIS Commentaries* No. 12 (February 21, 2007), online at www.rsis.edu.sg/publications/Perspective/RSIS0122007.pdf.
 13. "Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents On and Over the High Seas," May 25, 1972, and its "Protocol" (May 22, 1973), online at www.state.gov/t/ac/rt/4791.htm.
 14. "1994 Agreement Between the Government of the Republic of Korea and the Government of the Russian Federation Concerning the Prevention of Incidents at Sea Beyond the Territorial Sea," online at http://untreaty.un.org/unts/60001_120000/29/38/0057861.pdf.
 15. "1994 Japan-Russia Agreement on Prevention of Incidents On and Over the High Seas," online at www.sipri.org/conents/worldsec/k/agreemets.html.
 16. "Agreement Between the Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China on Establishing a Consultative Mechanism to Strengthen Military Maritime Safety," January 19, 1983, online at www.nti.org/db/china/engdocs/milmarag.htm.
 17. "Agreement on the Prevention of Accidental Naval Clashes in the West Sea," June 4, 2004, online at www.sipri.org/contents/worldsee/nk/2004_Accidental_Clashes.pdf.

agreements have varying degrees of effectiveness and most are U.S. influenced. Nevertheless, they all aim to avoid unintended conflict during naval and air operations.

Perhaps the most successful multilateral maritime effort in Northeast Asia is the North Pacific Coast Guard Forum (NPCGF).¹⁸ Most important, it includes all of the states engaged in the 6PT except North Korea.

A web of bilateral confidence-building measures already exists.¹⁹ Japan and China and Japan and South Korea are exchanging military officers at their respective national defense universities. In 2008, China's People's Liberation Army (PLA) Navy and Japan's Maritime Self-Defense Force (SDF) hosted each other's ship visits. As well, Japan and South Korea have cooperated in maritime search and rescue operations.

All Northeast Asian states except North Korea have ratified the 1982 UN Convention on the Law of the Sea.²⁰ 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 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.²¹ 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 their respective disputed areas.²² North and South Korea are dis-

18. Stanley Foundation, "Envisioning a Future Multilateral Security Mechanism in Northeast Asia—What's at Stake for the US," *Maxim News Network*, March 15, 2008.

19. James J. Przystup, "Of Summitry, Peace Declarations, Peace Regimes and Security Mechanisms: What Are We Talking About? What Should We Be Thinking About?" *PacNet*, No. 35 (September 14, 2007), online at www.csis.org/media/csis/pubs/pac0735.pdf.

20. "United Nations Convention on the Law of the Sea of 10 December 1982." In force from November 16, 1994. For an overview and full text, see Division of Ocean Affairs and the Law of the Sea, last updated October 23, 2007, online at www.un.org/depts/los/convention_agreements/conventio_overview_convention.htm.

21. "United Nations Convention on the Law of the Sea," 1982, Articles 74 (3) and 83 (3).

22. "China-Japan Fisheries Agreement of 11 November 1997, Japan-South

cussing a similar temporary solution to their imbroglio in the Yellow Sea.²³ More significant, Japan and South Korea have been undertaking joint development of hydrocarbons in their area of overlapping continental shelf claims in the northern East China Sea for nearly thirty years.²⁴ Japan and China have also agreed in principle to do the same in the central East China Sea.²⁵ Even more remarkable, in December 2005, North Korea and China forged a similar arrangement in West Korea Bay.²⁶

After several serious incidents, Japan and China established a mutual "prior notification" regime for scientific research in their disputed area in the East China Sea.²⁷ Moreover, such "courtesy" or expectation has been proposed and is being discussed by Japan and South Korea for their disputed area in the

Korea Fisheries Agreement, and the South Korea-China Fisheries Agreement of 11 November 1998," in David Rosenberg, "Managing the Resources of the China Seas: China's Bilateral Fisheries Agreements with Japan, South Korea and Vietnam," ZNet (July 1, 2005), online at <http://www.zmag.org/znet/viewArticle/5924>.

23. "Joint Fishing Area in Disputed Border to Top Agenda in Prime Ministerial Talks," *Korea.net*, November 14, 2007, online at www.Korea.net/News/Issues/issueDetailView.asp?board_no=18441.
24. "Agreement Concerning Joint Development of the Continental Shelf Between Japan and Korea, 30 January 1978," reprinted in Choon-Ho Park, "Joint Development Between Korea and Japan in the East China Sea" in Mark J. Valencia, ed., *The South China Sea: Hydrocarbon Potential and Possibilities of Joint Development* (New York: Pergamon Press, 1981), p. 1335.
25. "Special Report: Premier Wen Visits ROK, Japan," *Xinhua*, April 11, 2007, online at http://news.xinhuanet.com/english/2007-04/10/content_5955524.htm; "No Breakthrough with China-Japan Drilling Talks," *Platts Commodity News*, May 25, 2007, online at www.uofaweb.valbeta.ca/chinainstitute/nav03=60789&nav02=58018&nav01=57272; Sourabh Gupta, "An Early Summer: Sino- Japanese Cooperation in the East China Sea," *Napsnet Policy Forum Online* (February 5, 2008), online at <http://www.nauti.us.org/fora/securty/08010Gupta.html>.
26. Yoo Gang-mun, "Bohai Oil and North Korea," *Hankyoreh* (Seoul), online at http://english.hani.co.kr/arti/english_edition/e_editorial/208111.html.
27. "Aso Song Agree to Hold EEZ Talks this Month," *Japan Times* (Tokyo), June 4, 2007. Voluntary prior notification of joint military exercises in the disputed area is also part of the ASEAN-China Declaration on Conduct in the South China Sea (November 4, 2002), online at www/asea.sea.org/13163.htm.

Sea of Japan (East Sea).²⁸ Perhaps more important is that North Korea's tentative first steps toward rapprochement with the South included agreements on passage of its ships through South Korean waters²⁹ and a joint commercial fisheries venture. And since 2004, the United Nations Environmental Program's Northwest Pacific Action Plan has had in place an oil spill contingency arrangement, which was activated in December 2007 to deal with a massive oil spill off the coast of South Korea.³⁰

Thus, emerging from one of the most conflict-prone regions of the world is a conflict avoidance regime—in short, an expectation of self-restraint and sharing of resources in disputed areas. This is the core around which can be created a maritime confidence- and security-building architecture. Most of the above regimes are not multilateral, nor have they evolved in that direction despite the hopes and recommendations of policy analysts and practitioners. However, they can be expanded and have a spillover effect on relations in general and creation of a maritime security regime in particular.

Indeed, given this network of arrangements, a multilateral agreement or declaration³¹ on a “code of conduct” for Northeast Asian seas would be a natural next step. Outside powers active in the maritime region might be expected to adhere or even accede to relevant elements of the declaration. In an optimistic scenario, Taiwan might also unilaterally adhere to the declaration (as it did to the ASEAN-China Declaration on Conduct in

28. “Japan, China Agreement on Maritime Notice System Detailed,” *BBC Monitoring Asia-Pacific Political* (London), February 13, 2001.

29. “Official Signature and Exchange of the Inter-Korean Maritime Agreement and Subsequent Agreement” (Summary) (June 5, 2004), online at www.globalsecurity.org/wmd/library/news/rok/2004/rok-040614-rok-mou01.htm.

30. Nick Nuttall, “UNEP Spokesman, UNEP Deploys Team of Experts to Help with Oil Spill in Republic of Korea,” *UNEP NEWS*, December 18, 2007.

31. A formal code of conduct would be legally binding; an informal “declaration” such as for the South China Sea is a more politically palatable and likely first step. More ambitious is a proposal in a report by the Stanley Foundation that calls for “a high profile gathering of foreign ministers or leaders to sign a founding document of core principles [to] mark the transition from the 6PT to a permanent multilateral security regime.” The Stanley Foundation “Envisioning.”

the South China Sea³²), helping to reduce the mounting tension in the Taiwan Strait.³³

A Code of Conduct: Need and Basis

The Danger

What sorts of disputes or activities present a danger for confrontation and conflict, and thus need to be addressed? The list is long and varied but in summary includes disputes over islands and maritime boundaries and the oil and gas and fisheries in the disputed areas; responsibility for environmental pollution; non-consensual marine scientific research in other's claimed waters; marine and aerial "spy" probes and other foreign military activities in claimed EEZs; and freedom of navigation in straits.

The following is a sampling of recent serious maritime incidents in rough ascending order of conflict potential:³⁴

- In November 2007, it was announced that South Korea had found large-scale gas hydrate deposits in the Ulleung Basin in the East Sea.³⁵ Such deposits are considered highly desirable now due to soaring crude oil prices and growing concerns over climate change.³⁶
- On December 7, 2007, the oil tanker *Hebei Spirit* collided with a barge 100 kilometers south of Seoul, releasing some 2.7 million gallons of crude oil into the sea. The oil seriously impacted 160 kilometers of South Korea's coastline, including its wildlife and aquaculture farms there.³⁷ Russia continues to seize Japanese

32. "Declaration on the Conduct of Parties in the South China Sea" (2002), online at www.asean.sec.org/13163.htm.

33. David Lague, "China Planning Taiwan Strait Route for Commercial Aviation," *International Herald Tribune*, January 6, 2008, online at www.iht.com/articles/2008/01/06/business/aviation.php.

34. Some of the provocative activities that resulted in these incidents are ongoing.

35. Ryu Jun, "Large Gas Hydrate Deposits Found in East Sea," *Korea Times* (Seoul), November 22, 2007.

36. "Marine Resource Plan OK'd/Gov't Hopes to Exploit Oceanic Riches, Block Unauthorized Research," *Daily Yomiuri Online*, March 19, 2008, online at www.yomiuri.co.jp/dy/national/20080319TDY03302.htm.

37. "UNEP Deploys Team of Experts to Help with Oil Spill in Republic of

fishing boats allegedly fishing illegally in Russian waters near the disputed Southern Kurile Islands (Northern Territories).³⁸

- 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.³⁹ 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.⁴⁰ Japan and South Korea have exchanged threats regarding Japan's intent to survey the disputed area around Dokdo/Takeshima island in the East Sea/Sea of Japan.⁴¹ Other disputes remain just below the surface.⁴²
- Chinese intelligence gathering vessels frequent the Japanese EEZ.⁴³ 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.

Korea," December 18, 2007, online at www.unep.org/Documents/Multi-lingual/Default.asp?DocumentID=523&ArticleID=5728&=en; "Oyster Farms Wiped Out Along with Wild Life; Tourists Shun Area," *MSNBC.com*, December 10, 2007, online at www.Msnbc.msn.com/id/22184244/.

38. "Japan to Sue over Boat Seizure by Russians," *Japan Times*, July 6, 2007, online at <http://search.japantimes.co.jp/cgi.bin/nn2007070664.html>.
39. Mark J. Valencia and Yong Hee Lee, "The South Korea-Japan-Russia Fisheries Imbroglio," *Marine Policy*, vol. 26, No. 5 (2002), pp. 337-43.
40. "Former Taiwan Leader Sparks Furor over Disputed Islands," *Straits Times* (Singapore); "China Protests Japan's Leasing of Three Disputed Island," *BBC Monitoring Asia Pacific-Political* (London), January 6, 2003, online at <http://news.bbc.co.UK/1/hi/world/asia-pacific/2628641.stm>; "Diaoyutai Economic Zone to be Discussed," *Financial Times Information* (London), February 25, 2003.
41. "South Korea's and Japan's Dokdo/Takeshima Dispute Escalates Toward Confrontation," *Power and Interest News Report*, May 10, 2006, online at www.ponr.com/report.php?ac=view_report&report_id=487.
42. "China Disputes Japanese Claim That Uninhabited Outcroppings Are Bona Fide Islands," *Manichi Daily News*, April 9, 2008, online at www.japanaddicted.com/index.php?name=News&file=article&sid=4708.
43. *Security Outlook 2000, 2001* (Tokyo: Ministry of Defense); Reinhard Drifte, "Japanese-Chinese Security Relations since 1989," unpublished manuscript, 2000.

- China dispatched PLA Navy warships to protect its offshore drilling rigs in the East China Sea from any possible Japanese interference.⁴⁴
- 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.⁴⁵
- 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.⁴⁶ Some reports claimed that a Chinese destroyer and an attack submarine "shadowed" the U.S. carrier group and brought it to a battle-ready status.⁴⁷ During the March 2008 election in Taiwan, the *Kitty Hawk* and its strike group were deployed near the Taiwan Strait.⁴⁸
- 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.⁴⁹
- In February 2008, a Russian *Tupolev 95* bomber violated Japanese airspace over the Izu island chain and was warned off by scrambled Japanese fighter jets.⁵⁰
- On March 2008, a Russian reconnaissance aircraft approached a U.S. carrier in the East Sea/Sea of Japan and was escorted out of the ROK's air defense safety zone by two U.S. F/A-18 fighters

44. Noumitsu Onishi and Howard French, "China Deploys Ships to Area Japan Claims," *San Francisco Chronicle*, September 11, 2005.

45. "Sino-Australian Relations Not Shaky Despite Navy Standoff: Howard," *Asia Pulse* (Sydney), April 30, 2001; "Fed: Navy Warships Provoke Formal Complaint from China," *AAP Newsfeed* (Sydney), April 30, 2001.

46. "More Dickie, Kitty Hawk's Taiwan Passage Angers Beijing," *Financial Times*, December 5, 2007.

47. "Report: Chinese Ships Confronted Kitty Hawk," online at www.navytimes.com/news/2008/01/kyo-china_080115/; Toshinao Ishii, "Chinese Sub; Kitty Hawk in Standoff," *Daily Yomiuri Online*, January 17, 2008, online at http://two--plus--two.blogspot.com/2008_01_01_archive.html.

48. "Taiwan Election Sees Kitty Hawk Deploy Near Strait," *Japan Times*, March 24, 2008, online at <http://search.japantimes.co.jp/cgi-bin/nn20080320a7.html>.

49. Russell Hsiao, "China Navy Floats Three-Carrier Plan," *Asia Times*, January 8, 2008, online at www.atimes.com/atimes/China/JA08Ad01.html.

50. "Russian Bomber Detected Violating Japanese Airspace," *Japan Times*, February 10, 2008, online at <http://search.japantimes.co.jp/cgi-bin/nn2008021a5.html>.

- from the carrier supported by four ROK air force F-16 fighters.⁵¹
- 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 confrontations and threats from Chinese frigates and aircraft.⁵²
 - 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.⁵³ 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.⁵⁴ 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.⁵⁵
 - In June 2002, a major naval clash broke out between South Korean and North Korean naval patrol boats in their disputed Western border area.⁵⁶ Another clash occurred in June 2003.⁵⁷ Analysts were predicting further clashes in April 2008.⁵⁸

-
51. Jung Sung-ki, "Korean, US Fighters Intercept Russian Aircraft," *Korea Times*, March 6, 2008, online at www.koreatimes.co.kr/www/news/nation/2008/03/116_20270.html.
52. James C. Bussert, "China Taps Many Resources for Coastal Defense," *Signal Magazine*, November 2002, online at www.afcea.org/signal/articles/templates/SIGNAL_Article_Template.asp?articleid=311&zoneid=30; personal communication with Gao Zhiguo, Maritime Affairs Institute, China.
53. "Chinese Sub Embarrasses U.S. Navy," *Wiki News*, November 11, 2007, online at www.afriguenligne.fr/index2.php?option=com_content&task=view&id=11176.
54. Mark J. Valencia, "Summary of the Bali Dialogue," in Mark J. Valencia and Kazumine Akimoto, eds., *Marine Policy, Special Issue*, vol. 28, No. 1 (2004), pp. 7-12; Mark J. Valencia, "The Rights of Spy Vessels," *Far Eastern Economic Review*, April 11, 2002.
55. Mark J. Valencia, "Japan in Hot Pursuit of Using Force in Territorial Waters Raises Concerns," *Washington Times*, January 25, 2002, p. A-19.
56. For an analysis of this incident and the boundary dispute, see Jon Van Dyke, Mark J. Valencia, and Jenny Miller Garmendia, "The North/South Korea Boundary Dispute in the Yellow (West) Sea," *Marine Policy*, vol. 27, No. 2 (2003), pp. 143-58.
57. "North Korean Navy Warns South Over Intrusions into its Territorial Waters," *BBC Monitoring Asia Pacific-Political* (London), June 3, 2003.
58. Kim Yon-se, "North Steps Up Criticism of South," *Korea Times*, March 30,

The specifics of the “declaration” would be drawn from previous bilateral agreements, involving one or more countries in the region. They include agreement on incidents at sea, fisheries, prior notification, joint development, search and rescue, and environmental protection.⁵⁹ The following is a draft declaration of conduct of parties in Northeast Asian waters.⁶⁰

A Proposed Declaration

DECLARATION ON THE CONDUCT OF PARTIES IN NORTHEAST ASIAN WATERS

The Governments of the People’s Republic of China, the Democratic People’s 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

2008, online at www.koreatimes.co.kr/www/mews/matopm/2008/04/113_21637.html.

59. The most significant multilateral accomplishment of UNEP’s NOWPAP has been the adoption of the 2003 NOWPAP Regional Oil Spill Contingency Plan and the 2004 MOU on Regional Cooperation Regarding Preparedness and Response to Oil Spill and related activities. See report of 11th NOWPAP Intergovernmental Meeting held in Moscow, Russian Federation, December 20-21, 2006, p. 4, online at http://dinrac.nowpap.org/documents/NOWPAP_IGM11.pdf.

60. The Preamble and Provisions 1, 2, 4, 5, 6 b-c, 7 a-c, and 8-11 are from the Declaration on the Conduct of Parties in the South China Sea 2002.

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:
 - Establishing military hotlines;⁶¹

61. Jung Sung-li, "Seoul Urges Beijing to Honor Pact on Hotlines," *Korea Times*, January 8, 2008; Edward Cody, "China and U.S. to Establish Mili-

- Holding dialogues and exchanging views as appropriate between their defense and military officials;⁶²
 - Notifying, on a voluntary basis, other Parties concerned of any impending military exercise in waters of interest to other Parties;
 - Ensuring just and humane treatment of all persons who are either in danger or in distress;
 - Exchanging on a voluntary basis, relevant information.
8. 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:
- Marine environmental protection;
 - Marine scientific research;
 - Safety of navigation and communication at sea;
 - Search and rescue operations;
 - Combating of transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.
 - Sharing, or joint development of resources, in areas of overlapping claims.

The modalities, scope, and locations of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.

9. 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;

tary Hotline," *Washington Post*, November 7, 2007; "China, Russia Open Direct Military Hotline," *Xinhua*, March 14, 2008, online at www.chinadaily.com.cn/china/2008-03/14/content_6538323.htm; "China, Japan Preach Consensus on Taiwan Issue Defense Co-op," *Xinhua*, March 31, 2008, online at www.chinadaily.com.cn/china/2008-03/31cpmtent_6579779.htm.

62. Christopher Bodeen, "US, China Navies Discuss Joint Drill," *Associated Press*, February 27, 2008, online at <http://au.ibtimes.com/articles/20080227/us-china-navies-discuss-joint-drills.htm>.

10. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;
11. The Parties encourage other countries to respect the principles contained in this Declaration;
12. 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, toward the eventual attainment of this objective;
13. The Parties concerned agree to consider incorporating the previous provisions into a formal code of conduct and to consider incorporating the following provisions as well:
 - Creation of a Maritime Nuclear Weapon Free Zone⁶³

63. These provisions are drawn or modified from the "Treaty on the Southeast Asia Nuclear-Weapon-Free Zone (Bangkok Treaty)" (1995), online at www.aseansec.org/2082.htm; Definitions:

- a. "nuclear weapon" means any explosive device capable of releasing nuclear energy in an uncontrolled manner but does not include the means of transport or delivery of such device if separable from and not an indivisible part thereof;
- b. "station" means to deploy, emplace, implant, install, stockpile or store;
- c. "radioactive material" means material that contains radionuclides above clearance or exemption levels recommended by the International Atomic Energy Agency (IAEA);
- d. "radioactive wastes" means material that contains or is contaminated with radionuclides at concentrations or activities greater than clearance levels recommended by the IAEA and for which no use is foreseen; and
- e. "dumping" means;
 - i. any deliberate disposal at sea, including seabed and subsoil insertion, of radioactive wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea; and
 - ii. any deliberate disposal at sea, including seabed and subsoil insertion of vessels, aircraft, platforms or other man-made structures at sea, containing radioactive material, but does not include the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of

- The “zone” means the internal waters, territorial seas continental shelves and exclusive economic zones of the Parties and the seabed, and the subsoil thereof and the airspace above them.
 - Each Party undertakes not to anywhere inside the zone develop, manufacture, produce, receive, possess, store, deploy, station, test or use nuclear weapons or to allow any other state to do so in its portion of the zone.
 - Each Party also undertakes not to dump or discharge in the zone any radioactive material or wastes or allow any other state to do so.
 - Nothing in this Declaration shall prejudice the right of Parties to use nuclear energy and material within the zone for peaceful purposes.
 - Each State Party, on being notified, may decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships through its territorial sea or archipelagic waters and overflight of foreign aircraft above those waters in a manner not governed by the rights of innocent passage, or transit passage.
- Guidelines⁶⁴ for Navigation and Overflight of the Exclusive Economic Zone,⁶⁵

disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures.

Joint Declaration of the Denuclearization of the Korean Peninsula, January 20, 1992, online at www.Fas.org/news/skorea/1992/appendix17.htm.

64. These “Guidelines” are selectively drawn from EEZ Group 21, *Guidelines for Navigation and Overflight in the Exclusive Economic Zone A Commentary* (Tokyo: Ocean Policy Research Foundation, 2006); and the “Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republic on the Prevention of Incidents On and Over the High Seas,” May 25, 1972 and its “Protocol” of May 22, 1973. See the first reference for the explanation and the rationale for each guideline.

65. Definitions of terms used in the Guidelines:

For the purposes of these Guidelines:

1. “abuse of rights” means the unnecessary or arbitrary exercise of rights, jurisdiction and freedoms, or interference with the exercise of rights by another State, or the abuse or misuse of powers by a State causing injury to another State;

I. Rights and duties of the coastal State

1. A State using another State's EEZ should ensure that its vessels and aircraft with sovereign immunity act, as far as is reasonable and practicable, in a manner consistent with the 1982 UNCLOS.
2. Any restriction on navigation and overflight imposed by a coastal State in its EEZ due to its weapons tests and exercises, or any other operational activity, should be temporary, in specified areas only, and only if such suspension is essential

-
2. "exclusive economic zone" means an area referred to as such in relevant Articles of the 1982 UNCLOS;
 3. "hydrographic survey" means a survey having for its principal purpose the determination of data relating to bodies of water. A hydrographic survey may consist of the determination of one or several of the following classes of data: depth of water, configuration and nature of the seabed; directions and force of currents; heights and times of tides and water stages; and location of topographic features and fixed objects for survey and navigation purposes;
 4. "marine environment" is the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and the oceans and the air immediately above those waters, as well as the seabed and ocean floor and subsoil thereof;
 5. "marine scientific research" means activities undertaken in the marine environment to enhance scientific knowledge regarding the nature and natural processes of the seas and oceans, the seabed and subsoil;
 6. "military activities" means the operations of military vessels, aircraft and devices, including intelligence gathering, exercises, trials, training, and weapons practices;
 7. "military surveys" refers to activities undertaken in the marine environment involving data collection for military purposes;
 8. "peaceful uses/purposes" in the context of the EEZ means that uses of that zone, or the purposes of activities conducted therein or there above, must not threaten or use force;
 9. "surveillance" means the observation by visual or any technical means of activities on, over or under the seas and oceans; and
 10. "threat of force" means a coercive attempt to compel another State to take or not to take certain specific action, or an action that is directed against or undermines the territorial integrity or political independence of that State, or against any of its assets or people, or taken in any other manner inconsistent with the UN Charter.

for the carrying out of such tests and exercises.

II. Rights and duties of other states

1. While exercising the freedoms of navigation and overflight in a coastal State's EEZ, States should avoid activities that unreasonably prejudice the peace, good order, or security of the coastal State.

III. Maritime surveillance

1. Maritime surveillance may be conducted by States for peaceful purposes in areas claimed by other States as EEZ. This surveillance should not prejudice the jurisdictional rights and responsibilities of the coastal State within its EEZ.

IV. Military activities

1. With the exception of the qualifications noted elsewhere in these guidelines, military vessels and aircraft have the right to navigate in, or fly over, the EEZs of other States, and to engage in other internationally lawful uses of the sea associated with the operations of ships and aircraft.
2. Ships and aircraft of a State undertaking military activities in the EEZ of another State have the obligation to use the ocean for peaceful purposes only, and to refrain from the threat or use of force, or provocative acts, such as stimulating or exciting the defensive systems of the coastal State; collecting information to support the use of force against the coastal State; or establishing a "sea base" within another State's EEZ without its consent. The user State should have due regard for the rights of others, including the coastal State, to use the sea and comply with its obligation under international law; such activities should follow the "Rules of the Road."
3. Warships or aircraft of a State intending to carry out a major military exercise in the EEZ of another State should inform the coastal State and others through a timely navigational warning of the time, date, and areas involved in the exercise, and if possible, invite observers from the coastal State to witness the exercise.
4. Military activities in the EEZ of other States should not hamper the search and rescue operations of the coastal State in its EEZ. States should cooperate in any such search and rescue operations.

5. Military activities by a State in the EEZ of another State should not involve the deployment of systems that prejudice the defense or security of the coastal State, or interfere with or endanger the right of the coastal State to protect and manage its resources and environment.
6. Military activities of a State in the EEZs of other States should not cause pollution or negatively affect the marine environment or marine living resources including mammals. In particular, if prohibited by the laws of the coastal State, such activities in a coastal State's EEZ should not involve live weapons fire, underwater explosions, or creation of sound waves and dangerous or radioactive materials that may directly or indirectly harm marine life or cause marine pollution.
7. Military activities by another State should not be conducted:
 - In areas which have been announced by the coastal State as temporarily closed for the purposes of safety of navigation and overflight;
 - In areas with intensive fishing activities declared by the coastal State;
 - In areas with special circumstances adopted in accordance with Article 211 (6)(a) of the 1982 UNCLOS;
 - In marine parks or marine protected areas declared by the coastal State as required by Article 194 (5) of the 1982 UNCLOS;
 - In areas with intensive navigation and near sea lanes and traffic separation schemes; and
 - Near submarine cables and pipelines on the seabed of the EEZ clearly marked by the coastal State on large-scale charts recognized by the coastal State.
8. If there are high seas immediately adjacent to the coastal State's EEZ, a State undertaking military exercises should make every possible effort to limit them to the high seas.
9. Ships and aircraft of the user State shall not make simulated attacks on ships of the coastal State, nor launch nor drop any objects near ships of the coastal State.

V. Non-interference with electronic systems

1. The activities of another State in the EEZ of a coastal State should not interfere with the communications, computer, and

electronic systems of the coastal State, or make broadcasts that adversely affect the defense or security of the coastal State.

2. The coastal State should not interfere with the communications, computer, and electronic systems of vessels or aircraft of another State exercising its freedoms of navigation or overflight in or over the coastal State's EEZ.
3. In order to make subparagraphs a and b effective, States should conclude agreements regarding mutual non-interference with communications, computer, and electronic systems.

VI. Suppression of piracy and other unlawful activities

1. Ships in an EEZ are subject to the exclusive jurisdiction of their flag State, except in circumstances provided by the 1982 UNCLOS or other international treaties.
2. States may act in an EEZ of another State to seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property onboard.
3. To suppress terrorism and illicit traffic in drugs, persons, arms, and weapons of mass destruction (WMD), their delivery systems and related materials, States should:
 - Board and search any vessel flying their flag in their EEZ that is reasonably suspected of transporting terrorists or being engaged in illicit traffic in drugs, persons, arms and WMD, their delivery systems, or related materials, and seize such cargoes that are identified as such; and
 - Consent, under appropriate circumstances, to the boarding and search of their own flag vessels by other States, and to the seizure of terrorists or drugs, persons, arms, and WMD-related cargoes on such vessels that may be mutually identified as such by both States;
4. The boarding and search of a foreign flag vessel in an EEZ without the consent of the flag State is not justified solely because it is suspected of illegal trafficking in WMD, their delivery systems, or related materials.
5. In cases of arrest or detention of foreign vessels in the EEZ of a coastal State, the arresting vessel should through appropriate channels inform the coastal State of the action taken.

VII. Marine scientific research

1. Coastal State consent should in normal circumstances be granted for marine scientific research in its EEZ exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all humanity.
2. Marine scientific research in a coastal State's EEZ that has direct use for living and non-living resource exploration and exploitation, conservation and management is entirely under the jurisdiction of the coastal State, which is not obliged to grant consent to such research by foreign vessels.
3. Overflight by manned or unmanned aircraft or spacecraft of one State over the EEZ of another State should not be conducted for the purpose of marine scientific research without the consent of the coastal State.

VIII. Hydrographic surveying

1. Hydrographic surveying should only be conducted in the EEZ of another State with the consent of the coastal State. This does not apply to the collection of navigational data by a ship required for safe navigation during the ship's passage through an EEZ.
2. The Guidelines in Articles VII and VIII also apply to aircraft, autonomous underwater vehicles (AUVs), remotely operated vehicles (ROVs), and other remotely operated devices of a State conducting research or collecting data in an EEZ.

IX. Transparency of legislation

1. Those States with policies and/or legislation regarding military activities in their EEZs should make them as transparent and as widely known as possible, including to the military authorities of other States that are frequently using or navigating their EEZs.

The Importance of Multilateral Regimes

Some elements of the "code" might initially be bilateral and evolve from a web of bilateral arrangements into multilateral

regimes. This trend is already evident in the fisheries and environmental protection sectors. However, multilateral regimes reduce transaction costs, and establish and strengthen regional identity and the regime itself. For issues such as fisheries management, environmental protection, and scientific research, multilateral regimes are necessary for their effectiveness.

Initially, any formal multilateral arrangement should address common maritime problems such as search and rescue, environmental protection, drug trafficking, and smuggling of arms and humans. Further out to sea, in time and space, a Northeast Asian ocean peacekeeping force might ensure safety and security of navigation, undertake air-sea rescue, protect fisheries from illegal fishers, and the environment from pollution and potential polluters. The harder issues—comprehensive fisheries management, and ultimately, common security—would be next.

Such a trend, however, would have to overlie and be affected by the larger security dilemma—a preexisting pattern of suspicion and distrust based on fundamental political and ideological differences that extend like sensitive tentacles into the maritime sphere where these nations literally come face to face. And this fundamental fact is why the maritime frontier in Northeast Asia is a natural and perhaps even a necessary starting point for building confidence and common security.

Principal References

- Bateman, Sam. "Perils of the Deep: the Dangers of Submarine Operations in Asia," *RSIS Commentaries* No. 12 (February 21, 2007). Online at www.rsis.edu.sg/publications/Perspective/RSIS0122007.pdf.
- Bussert, James C. "China Taps Many Resources for Coastal Defense," *Signal Magazine* (November 2002). Online at www.afcea.org/signal/articles/templates/SIGNAL_Article_Template.asp?articleid=311&zoneid=30.
- Ding, Arthur. "The Chinese Navy: Expanding Capabilities, Evolving Roles?" *RSIS Commentaries* No. 1 (January 2, 2008). Online at www.rsis.edu.sg/publications/Perspective/RSIS0012008.pdf.
- Goodby, James and Markku Heiskannen. "Emerging Regional

- Security Architecture in Northeast Asia," *NAPSNet Policy Forum Online* 08-001A (January 3, 2008). Online at <http://www.nautilus.org/fora/security/08001GoodbyHeiskanen.html>.
- Gupta, Sourabh. "An Early Summer: Sino-Japanese Cooperation in the East China Sea," *NAPSNet Policy Forum Online* 08-010A (February 5, 2008). Online at www.nautilus.org/fora/security/08010Gupta.html.
- Morse, Jane. "U.S. Urges Robust Dialogue on Northeast Asian Security," *America.gov* (July 28, 2006). Online at www.america.gov/st/washfile-english/2006July/20060728150433ajesrom077026.html.
- Park, Choon-Ho. "Joint Development Between Korea and Japan in the East China Sea," in Mark J. Valencia, ed., *The South China Sea: Hydrocarbon Potential and Possibilities of Joint Development*. New York: Pergamon Press, 1981, p. 1335.
- Przystup, James J. "Of Summitry, Peace Declarations, Peace Regimes and Security Mechanisms: What Are We Talking About? What Should We Be Thinking About?" *PacNet*, No. 35 (September 14, 2007). Online at www.csis.org/media/csis/pubs/pac0735.pdf.
- Rosenberg, David. "Managing the Resources of the China Seas: China's Bilateral Fisheries Agreements with Japan, South Korea and Vietnam," *ZNet* (July 1, 2005). Online at www.zmag.org/znet/viewArticle/5924.
- Valencia, Mark J. *A Maritime Regime for Northeast Asia*. Hong Kong: Oxford University Press, 1996, pp. 10-11.
- _____. "Summary of the Bali Dialogue," in Mark J. Valencia and Kazumine Akimoto, eds., *Marine Policy, Special Issue*, vol. 28, No. 1 (2004), pp. 7-12.
- Valencia, Mark J. and Yong Hee Lee. "The South Korean-Japan-Russia Fisheries Imbroglia," *Marine Policy*, vol. 26, No. 5 (2002), pp. 337-43.
- Van Dyke, Jon, Mark J. Valencia and Jenny Miller Garmendia. "The North/South Boundary Dispute in the Yellow (West) Sea," *Marine Policy*, vol. 27, No. 2 (2003), pp. 143-58.