

Northeast Asia: Navigating Neptune's Neighborhood¹

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INTRODUCTION

Northeast Asia² has long been a security complex³ entwining the interests of Russia, China, Japan and the United States. During the Cold War, international relations in the region were heavily influenced by the U.S.–Soviet dynamic and were thus almost indistinguishable from the global system.⁴ However, with the end of the Cold War, the layering of conflict involving outside powers has peeled away to reveal an emerging Asia–Pacific system. The future central dynamic of this system is likely to depend on relations among the Northeast Asian countries themselves. In the past century these relations have been characterized by cyclical patterns of amity and enmity, frequent tension between the strongest powers in the region, and resultant attempts to forge alliances with the lesser powers. Moreover, Northeast Asian countries have generally operated on the basis of ‘worst case’ scenarios: the large powers were motivated by fear of being isolated by the other large powers, and the lesser powers most feared a hegemonic alliance of the strongest powers.⁵ Intra-regional tension and conflict has tended to be focused along the boundaries between the major powers—the Korean Peninsula, Taiwan, Manchuria, Mongolia, and the Northern Territories/the Kuril Islands. In this period, the seas between these powers formed a particularly dangerous frontier.

However, we are now witnessing a transformation of the political system in the region. As survival has ceased to be the prime concern of the powerful states, their quest for relative gains has become less driven and consistent. Most Northeast Asian governments now accord a higher priority to maximizing wealth than controlling territory, and their increasing economic interdependence makes outright conflict too costly.

Although the dominance of the United States in the region throughout the Cold War obviated the need for multilateral cooperation, the trans–Pacific axis is now gradually being eroded by more multidirectional intra–Asian relationships.⁶ This multidirectional pattern implies a more diversified set of cooperative and conflictual relations in much of Northeast Asia, creating a need for rules, codes of conduct and harmonization of domestic practices—in short, regional regimes and institutions. This is particularly so for the seas that both separate and link Northeast Asian states.

This paper (1) explains the need for maritime CBMs in Northeast Asia; (2) delineates the obstacles that must be overcome or outmaneuvered; (3) summarizes lessons learned elsewhere; (4) applies these lessons to Northeast Asia; (5) reviews ongoing and potential maritime co-operation; (6) provides suggestions for conflict avoidance; and (7) maps out the way forward to multilateral maritime regimes, including naval CBMs.

THE NEED FOR CBMs IN THE MARITIME ARENA

The extension of jurisdiction authorized by the 1982 United Nations Convention on the Law of the Sea (UNCLOS) has introduced new uncertainties and conflict points into the region, particularly regarding overlapping exclusive economic zones (EEZs) and continental shelf claims (Table 1). Indeed, the extension of maritime jurisdiction by all coastal states has occurred within a transitional and unstable geopolitical environment. Ideological and political adversaries in the region had hitherto pursued their maritime affairs without much concern for their neighbors, particularly those situated across hundreds of miles of open sea. But now almost no marine area is left unclaimed, and many areas are claimed by two or more countries. Northeast Asian states are finding themselves cheek by jowl with unexpected and sometimes uncooperative or downright unfriendly neighbors. At the least, all states will now have to delimit their sea boundaries with their new maritime neighbors. Because features which are only tiny flyspecks on a map may be used as a basis for claims to 200 nautical mile (nm) EEZs, some disputes focus on their ownership. Other maritime boundary disputes are concerned with unusual claims. In a worst-case scenario, historical and transboundary issues will be politicized, with maritime frontiers in particular becoming dangerous 'no man's lands,' and island and maritime disputes re-emerging as 'hot spots.' Indeed, maritime issues are already rising to the forefront of regional security concerns.⁷

On the heels of these jurisdictional extensions, nations bordering Northeast Asian seas are now trying to identify and pursue their national interests in the oceans. Yet many ocean resources and activities, such as fish and fishing, pollutants and environmental protection, sea lanes and shipping, and hydrocarbon-bearing basins and hydrocarbon exploration are transnational in character.

Table 1. Jurisdictional Claims Permitted by the 1982 UN Convention on the Law of the Sea

The Convention entitles every country with a coastline to claim

- a 12 nm territorial sea, measured from baselines (lines drawn along the general direction of the coast following the Convention's rules);
- a further 12 nm contiguous zone in which nations can prevent and punish infringement of their customs, fiscal, immigration or sanitary laws and regulations within their territory or territorial sea;
- a continental shelf – the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of a country's land territory—to a maximum of 350 nm;
- an Exclusive Economic Zone (EEZ) extending 200 nm from baselines and in which states have sovereign rights over resources and all related activities, as well as jurisdiction over artificial structures, marine scientific research, and protection and preservation of the marine environment.

Source: United Nations Convention on the Law of the Sea, New York, United Nations (opened for signature 10 Dec. 1982, UN doc. A/CONF.62/122, 1982).

And there may well be insufficient understanding and consideration of this transnational and interdependent character of the ocean environment, and the resources and activities that it harbors and supports. Clearly, the overlaying of a mosaic of uncoordinated national jurisdictional regimes on inherently transnational resources and activities creates potential for conflict. And this potential will be enhanced as each nation develops its capabilities to patrol and enforce its regulations in its newly gained waters.⁸

Moreover, the expansion of the meaning of 'security issues' to include, for example, pollution, piracy and poaching will necessitate acceptance of broader responsibilities and different priorities by military authorities, both for force structure development and for their

operations and training.⁹ Together with the requirements for defense self-reliance and force modernization, these concerns are reflected in the significant maritime dimension of the current arms acquisition programs in the region. Equipment and facilities purchases include maritime surveillance and intelligence collection systems, multi-role fighter aircraft with maritime attack capabilities, modern surface combatants, submarines, anti-ship missiles, naval electronic warfare systems, and mine warfare capabilities. Because some of these new systems have offensive capabilities, they can be seen as provocative, and thus destabilizing, by those countries that do not have them, particularly if they lack the means to acquire them. Possession of these systems undoubtedly increases the risk of inadvertent escalation in time of conflict.

OBSTACLES TO BE OVERCOME OR OUT-MANEUVERED

Maritime Boundary Disputes and Petroleum Potential

The declarations of 200 nm Exclusive Economic Zones (EEZs) by South Korea,¹⁰ Japan,¹¹ and China¹² have raised tension in the region and drawn the attention of high level policy makers (Figure 1). North Korea and Russia had earlier claimed 200 nm EEZs.¹³ China and South Korea also both claim a continental shelf to the extent of the natural prolongation of their respective continental margins.

Many of the areas of overlapping claims or unresolved boundaries involve basins with good petroleum potential¹⁴ (Figure 2). Oil supplies are in surplus at present, but global demand will eventually outstrip supply¹⁵ and as it does, the Northeast Asian seabed will receive renewed attention from oil companies and national governments. Already tenuous and difficult relations may then be stressed by a renewed oil rush.¹⁶ To further complicate matters, most of the boundary disputes revolve around the ownership of rocks or islands. These disputes are a major obstacle to maritime CBMs.

Overlapping Claims in the East China Sea

Situated about 90 nm northeast of Taiwan lie the Senkaku islands, a group of five islands under the control of Japan. They are also claimed by China and Taiwan; the Chinese name for the group is Diaoyu. Possession of the islands could confer on the owner title to over

Figure 1. Jurisdictional claims

Source: Mark Valencia, "Northeast Asia: Petroleum Potential, Jurisdictional Claims, and International Relations," in *Ocean Development and International Law*, n. 14.

Figure 2. Petroleum potential and concessions

Source: Mark Valencia, "Northeast Asia: Petroleum Potential, Jurisdictional Claims, and International Relations," in *Ocean Development and International Law*, n. 14.

11,700 nm² of the continental shelf landward of the 200 m isobath. It is generally believed, but not yet proven, that this disputed area contains rich petroleum deposits.¹⁷

The Senkakus re-erupted into the news in June 1996 when China and Taiwan protested Japan's declaration of a 200 nm EEZ around the islands. The issue came to a boil in September and October 1996 when a right-wing Japanese group erected a lighthouse on one of the islands. Anti-Japanese demonstrations broke out in Hong Kong and Taiwan. Activists from both Hong Kong and Taiwan eluded Japanese coast guard vessels and planted the flags of China and Taiwan on one of the features. Japan and China struggled to keep the issue from causing a confrontation between two Asian giants. Then a flotilla of Taiwanese and Hong Kong protest vessels was blocked by the Japanese coast guard from landing on the disputed islands. Japanese nationalists repeated the landing in June 1997. And on 5 September, 1999 three members of the Japanese Youth League landed on one of the features, drawing a strong protest from China.¹⁸

Even if the issue of the Senkakus was settled amicably, there would still remain a potential difficulty. The equidistant line between undisputed islands of Japan and the Chinese mainland leaves an area of 9,000 nm² of the continental shelf landward of the 200 m isobath on the Japanese side of the line. China claims the broad adjacent continental margin as its continental shelf and argues that the margin terminates at the trough with depths of 2,000 m close to the Ryukyu chain. Japan argues that the trough is just an incidental depression in a continuous continental margin between the two countries and that the median line is the appropriate boundary. To underscore its claim, China has drilled wells more than 40 nm beyond the median line.

Overlapping Claims in the Yellow Sea (West Sea)

In the Yellow Sea, China claims a continental shelf extending to the "silt line." The so-called silt line is one indication of the eastward extent of recent sediment derived from China and deposited by the outflow of the Yellow and Yangzi rivers. The influence of these rivers is also reflected in the topography of the seabed, in that an axial valley two-thirds across the Yellow Sea toward the Korean Peninsula divides a smooth, gentle slope extending from the Chinese shore from the steep and less regular slope extending from the Peninsula.¹⁹

The Yellow Sea Basin is thought to contain between one and ten billion barrels of oil. China disputes the western boundaries of all South Korean oil concessions in the Yellow and

East China Seas. Indeed, in 1973, when South Korean-authorized exploratory drilling took place, Chinese gunboats appeared in the vicinity and China officially denounced the drilling. The American oil companies involved were cautioned by the U.S. government not to force the issue.²⁰ Problems could even develop between China and North Korea if China maintains its "silt line" principle or tries to give full effect to its Haiyang Island, lying 43.4 miles off the Liaodong Peninsula.

Overlapping Claims in the Sea of Japan (East Sea)

In the Sea of Japan, both South Korea and Japan claim territory called Tokdo or Takeshima, respectively. Controversy over ownership raised its ugly head again in 1996, this time stressing already fragile relations. North Korea got involved, warning Japan not to seek "territorial expansion." And South Korea conducted air and naval exercises around the disputed rocks in a clear attempt to intimidate Japan into dropping its claim.²¹

The dispute over ownership of the rocks prompted both countries to formally declare 200 nm EEZs, even though this led to further difficulties in sorting out the boundaries of such zones—between themselves, as well as between each of them and North Korea and China. Both South Korea and Japan have included the rocks within their EEZs. The problem is complicated by nationalism and Japan's historical domination of Korea, as well as by fish and possible mineral and petroleum wealth in the waters and seabed surrounding the features.

The rocks—which have been occupied continuously by South Korea since 1950—consist of two tiny islets 18 miles east of South Korea's Ulleung Do and 31 miles northwest of the Japanese Dogo. These islets appear to be unable to support human habitation as there is no indigenous source of drinking water, and they do not have an economic life of their own. Therefore, under Article 121 of the 1982 U.N. Convention on the Law of the Sea, they are rocks and are entitled only to a 12 nm territorial sea, not to a 200 nm EEZ or continental shelf. However, South Korea built a small desalination plant there in March 1996, thus attempting to make the feature a legal island entitled to an EEZ and continental shelf.²²

The features could allow claims to about 16,600 nm² of sea and seabed. Alternatively, a median line between Korea's Ulleung-do and Japan's Oki Islands would place the feature in Korea's EEZ. Further complicating the issue is the possible overlap of the North Korean EEZ with the area that might be claimed by Japan or South Korea based on these rocks. At stake is the northeastern Tsushima Basin—which may have some oil and gas potential—and the

southwestern Yamato Rise and Trough. The Japanese oil and gas concession system already includes most of the eastern portion of the disputed area, and even overlaps an EEZ boundary which could be claimed by North Korea. The area is also an important squid fishery.

These disputes can easily spin out of control. In January 1998, failure to agree on a *modus operandi* for Tokdo/Takeshima and the surrounding waters and thus on a maritime boundary led Japan to unilaterally terminate its fisheries agreement with South Korea. South Korea then lifted all restrictions on South Korean fishing boats operating in Japan's claimed waters. In response, Japan began arresting South Korean boats fishing within its territorial seas. This in turn inflamed the South Korean public, resulting in anti-Japanese demonstrations and calls by politicians for South Korea to recall its ambassador to Tokyo.²³ While the fisheries dispute was resolved with a new agreement in 1998,²⁴ there is lingering resentment in South Korea about the "unfairness" of the agreement and continuing Japanese claims to Takeshima.

Northern Territories/Southern Kurils

In dispute are a group of four islands and some islets at the southern end of the Kuril Island chain. This dispute has an underrated maritime dimension. Indeed, these islands generate a large EEZ which includes very rich fisheries and potential minerals and petroleum. The dispute over these islands is the main sticking point in the normalization of relations between Japan and Russia. Japanese feel that the islands had always been under Japanese control, and that Soviet forces "treacherously" occupied the islands in the closing days of World War II. Meanwhile, Russians feel that Japan launched a war of aggression and that losing the islands was one of the penalties it had to pay for starting (and losing) that war.²⁵

The Influence of Domestic Politics

These disputes all have an underlying commonality²⁶—they are primarily driven and fanned by domestic politics. Indeed, this is what makes them much more dangerous than they should be. While not discounting the importance of competition over perceived resources in the disputed waters around the various islands, resource issues are not the fundamental barrier to achieving a resolution of these disputes. Rather, the disputes are primarily about unassuaged historical grievances and the politics of national identity. As an indication of the primacy of nationalism in these disputes, if either side in either of the disputes were prepared to concede sovereignty, there is little doubt that the other would be generous in granting a share of any resources as compensation.

Somewhat paradoxically, democratization in Russia, South Korea and Taiwan has made these sovereignty disputes more difficult to resolve. Strong governments unconstrained by domestic constituencies can make deals more easily than those that must heed domestic political concerns. It is no accident that Chinese in authoritarian China, which can and does control domestic protest, responded in a more measured way to the Senkaku/Diaoyu incidents in 1996 than did Chinese in Hong Kong and Taiwan. Democratic governments are by definition susceptible to domestic political pressures, and weak democratic governments facing elections, as were Japan and Korea in the 1996 flare-ups, are most susceptible to domestic pressure.

Leonid Brezhnev's authoritarian Soviet government could have settled the Northern Territories/Southern Kurils dispute had it decided that this was in the Soviet interest. By contrast, Boris Yeltsin's far more democratic Russian national government was deeply constrained by nationalist forces that bitterly oppose any concession on the disputed "sacred" territories. In Japan, numerically small but well-funded extreme nationalists make "surrender," or even concessions, on sovereignty claims politically difficult if not impossible.²⁷

Indeed, these sovereignty disputes have often been exploited for domestic political ends that have little to do with the islands in question. In the Senkaku/Diaoyu dispute, for example, Taiwan's New Party used the fishing disagreements and the emplacement of the lighthouse by Japanese rightists to attack President Lee Teng-hui for being too "soft" on Japan. The timing of the incident also made it difficult for Japanese Prime Minister Hashimoto to be conciliatory. An election was looming in Japan, and Hashimoto, himself a nationalist who had caused considerable controversy by visiting Yasukuni shrine, could not afford to be seen as soft on such a sensitive sovereignty issue.

The February 1996 flare-up of the Takeshima/Tokdo dispute also took place just weeks before elections in South Korea. Because popular antipathy toward Japan is widespread in South Korea, competing political parties and the government seized the opportunity to try to outbid each other in their condemnation of Japan.

China's government also has its own domestic reasons for pushing such issues. Although these reasons are perhaps best exemplified by its actions in the Spratly/South China Sea disputes, they are applicable to the Diaoyu dispute as well. Beijing wants to demonstrate to its increasingly assertive provinces, as well as to the democracy movements in China and Hong Kong and the independence movement in Taiwan, that it is firmly in control of national policy. China's actions are the result of a rising tide of nationalism that is replacing socialism

as the preferred societal glue. In this view, the economic reforms that Deng Xiaoping pushed put China's conservatives on the defensive, and they are using nationalistic issues, such as sovereignty over the South China Sea, to reassert themselves.

For Japanese politicians, the increased presence in the later part of the Cold War of the Soviet "enemy" just a few miles off Hokkaido, on what Japanese perceive as sovereign Japanese territory, was a potent symbol of the "threat from the East." The Japanese government exploited this symbol to build domestic support for increases in defense expenditure and a strengthening in the alliance with the United States, both of which were highly sensitive issues in domestic politics. The islands thus became more politically important than they would have been because of the high-profile public and anti-Soviet diplomatic campaign waged by the Japanese government. Over a generation, this policy stance has come to be an unquestioned article of faith within Japan's bureaucracy and government, making any concessions or compromise politically impossible.²⁸

There is a further complicating, if common, factor. Much of the intense resentment of Japan's claims to these territories relates to the widespread resentment in Russia, Taiwan, China, Hong Kong, and both Koreas of what is perceived as Japan's ongoing failure to confront and deal satisfactorily with its militarist past. Both the Takeshima/Tokdo and the Senkaku/Diaoyu islands are perceived as territories seized from Korea and China during Japan's imperialist period. Also, the Northern Territories were taken in a war that Japan started and lost. Japan's refusal to concede sovereignty to Korea and China/Taiwan and its campaign to regain what it lost through its own fault, provide further evidence to these countries' citizens of Japan's lack of repentance for its aggressive past, and worse, it stimulates the fear that Japanese adventurism could reappear.²⁹

Obstacles to Navy to Navy Cooperation

There are also serious political and practical obstacles of a military nature to strengthening navy-to-navy cooperation in Northeast Asia. These practical obstacles stem from the fundamental political fact that each views the others as potential enemies.³⁰ Thus there are no natural' naval 'partners' in the region. The practical problems overlaid on these deep-seated political sensitivities include:

- C tight operating budgets;
- C lack of common doctrine, language and interoperability of equipment;
- C widely varying stages of technological development and the reluctance of less advanced navies to reveal their technological weaknesses;
- C the possibility that naval cooperation may be used to gain intelligence about the capabilities of potential adversaries; and
- C the confined maritime geography of Northeast Asia and the sensitivities about foreign naval vessels operating in areas of overlapping EEZs or near features whose sovereignty is contested.

Thus progress on the harder maritime security issues—such as military security—may well depend on successful development of a softer, essentially civil, maritime safety regime. Asian specialists list similar maritime problem areas for greater cooperation: piracy, smuggling, illegal immigration, transnational oil spills, incidents at sea, search and rescue, navigational safety, exchange of maritime information, illegal fishing, and management of resources in areas of overlapping claims. These issues are all maritime safety problems of a civil, as opposed to a military, nature. Proposals for maritime cooperation can be formulated against common problems of crime, human depredation, pollution and natural disaster, rather than a single adversary. In this context, regional oceans management may be the most significant of all the current proposed maritime confidence-building measures. To move regional oceans management forward, what is needed is a framework and a blueprint – for developing multilateral regional marine policy regimes.

WHAT LESSONS HAVE BEEN LEARNED FROM ATTEMPTS AT MARINE REGIONALISM ELSEWHERE?³¹

Full or partial marine regimes exist or have been proposed in several semi-enclosed seas, e.g., the Baltic, the Mediterranean, the North Sea, and the Arctic. These experiences yield

several lessons that may be useful for Northeast Asia. For a maritime regime to form, several conditions must be met.

1. First and foremost, a positive perception of cooperation must exist throughout the region as a foundation for forming and nurturing a regime. Public and private institutions must have established regional links, and a community must have developed that is committed to the concept of regionalism. The regime can therefore be supported by a significant political constituency.
2. The member countries must perceive that the benefits of participation outweigh the costs. Such benefit/cost considerations include direct benefits like better use of marine resources, as well as indirect benefits such as the advancement of state aspirations for regional leadership. In the initial stages of cooperation, the economic and political costs should be kept as low as possible.
3. The regime must be widely perceived as equitable, however measured. The distributive consequences of the regime over time should be difficult to predict, thus expanding the contract zone and thickening the veil of uncertainty. These ambiguities will mute the positional and distributive aspects of bargaining and encourage the singling out of a few key problems and approaches to them that each participant can accept as a package, rather than as discrete elements. Expanding the contract zone also allows participants to perceive themselves as occupying different roles, e.g., as both sources and sufferers of pollution, or as perpetrators and victims of over-fishing. De-emphasizing or avoiding distributive issues enhances regime formation by enabling the participants to focus their attention on the search for mutually beneficial solutions.
4. A shock or crisis outside the negotiating process can enhance regime formation or speed it along once the process has begun, and the participants would be prepared to make the most of such “windows of opportunity.” Such an event can stimulate the emergence of political will to address the issues in integrative bargaining and thus open windows of opportunity so that the regime will form. Such factors might include broad shifts in values and ideas (such as a growing environmental consciousness), changes in the

political system (such as the end or muting of the Cold War), or specific events (such as an environmental crisis, or a clash between claimants to disputed islands or maritime space).

Among the integrative forces within a region that support maritime regime formation are: (1) the existence of other international arrangements among the member states that could contribute to the regional consciousness of the participants; (2) ethnic, cultural, historical, or other ties among the region's countries; and (3) clear indicators of economic benefits or other advantages to be gained through regional action, or clear indicators of common cost that might be avoided through regional cooperation.

Why do Maritime Regimes Fail?

There are both obvious and subtle reasons why some marine regional efforts do not succeed. Prime dis-integrative forces include: (1) political, territorial, ideological, or other differences among countries of the region; (2) competition for positions of leadership among two or more states of the region; and (3) opposition to multilateralism or non-participation by one or more critical regional or outside powers.

Other practical problems include inadequate leadership, limited management authority, lack of effective enforcement powers, shortage of funds, and shortage of trained personnel or equipment. More subtle problems include limited information and/or the ability to use it, jurisdictional limitations, differing time horizons, and 'freedom' costs.

Boundary disputes or uncertainties retard implementation of jurisdictional control, and without this, cooperation is made more difficult. Furthermore, existing jurisdiction may not encompass the entire ecosystem and thus critical elements of the unit requiring management remain beyond state control.

There is obviously a time gap between the average length in office of decision-makers and the tens of years required to implement and sustain successful cooperation. Yet policy makers need to show results in the short term. This dilemma favors multiple short-term programs which may be insufficient to achieve long-term results.

More fundamental are 'freedom costs.' Both individuals and states will have to surrender their absolute 'freedom of the seas,' that is, their absolute rights to use the ocean

environment at any time for any purpose and to do so without regard for the interests and well-being of anyone else. Such freedoms will be surrendered with considerable reluctance in the absence of anything less than a clear, overwhelming and immediate need.

APPLICATION OF LESSONS LEARNED TO NORTHEAST ASIA

What is most worrying about potential conflict in Northeast Asia is that it would take place in a region whose diversity and disputes have never been ameliorated by multilateral cooperation and where security has always been defined by military might. It is increasingly recognized that the prospects for peace and stability in the region may depend on the success of multilateralism. Indeed, the first step toward the peaceful settlement of international conflicts is the creation of a sense of international community.³² The creation of such a community presupposes, at least, the mitigation and minimization of conflict so that the interests and common needs shared by different nations outweigh the interests separating them. Common recognition that even a poor regime is better than none should compel nations to collaborate to the extent of developing a minimally satisfying solution.

In Northeast Asia, a functional approach in the marine sphere could help the growth of positive and constructive common work and of common habits and interests, decreasing the significance of boundaries or conflicting claims by overlaying them with a natural growth of common activities and administrative agencies. The goal is a middle ground between perfect internationalism and unilateralism, i.e., regionalism—building consensus and capacity on a regional scale.³³ The challenge for the region then, is to find a variety of multilateral arrangements that will demonstrate that a habit of dialogue and working together can build common security. Tactical learning—in which the behavior of states towards cooperation is changed—must give way to complex learning in which values and beliefs about reaching goals through cooperation are changed.³⁴ The generational change in leadership in most of the Northeast Asian countries offers the opportunity for such learning.

Meanwhile, extension of jurisdiction has placed maritime issues on the ‘front burner’ of international relations. Just as the extension of jurisdiction creates an opportunity for the reexamination of national ocean management, it also presents an opportunity for reexamining a nation's relationship with its neighbors, with a view to moving toward a more cooperative structure of international relations. Technological change and increasing maritime use and user conflicts also makes the need for regional cooperation even more obvious.³⁵ At the least,

increased bilateral and multilateral consultations and a new degree of coordination are required to meet the challenge presented by changes in marine use patterns and concepts.

The coming into force of the Convention on the Law of the Sea³⁶ gives further impetus to regional cooperation in ocean management. Indeed with its advent, the venue for addressing issues of ocean law and policy has moved from the global to the regional and bilateral level. Most significant is the positive atmosphere created by China's joining with most of the world's nations in implementing this result of a truly multilateral process. South Korea, Japan and Russia have also ratified the Convention, thus legitimizing regional cooperation in marine matters. This puts pressure on North Korea to at least abide by the Convention's provisions. Also significant is the fact that the Law of the Sea Treaty does not support the use of uninhabited rocks with no economic life of their own to generate maritime zones beyond a territorial sea. Nor are such rocks allowed to significantly affect the location of maritime boundaries. This should greatly diminish the relevance of such features to jurisdictional disputes and therefore the real value of their ownership.

The Convention serves as a framework within which nations can carry out their ocean management rights and responsibilities.³⁷ More specifically, the declaration of an EEZ confers certain responsibilities, e.g., for protection of the marine environment,³⁸ which may be fulfilled through multilateral cooperation.³⁹ Indeed, cooperation in the management of enclosed or semi-enclosed seas—like the Japan, Yellow and East China Seas—is emphasized in Article 123 of the Convention, which holds that states bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate regional organization:

1. to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
2. to coordinate in implementation of their rights and duties with respect to the protection and preservation of the marine environment;
3. to coordinate their scientific research policies and undertake, where appropriate, joint programs of scientific research in the area;

4. to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

Most important, it would appear that the most fundamental obstacle to cooperation—the concept of sovereignty—is being eroded.⁴⁰ This has positive implications for cooperation in Northeast Asia’s maritime sphere. According to Westphalian principles, sovereignty is and should be territorial. Security is and should be the security of the territory of the state, including the maritime area under its jurisdiction. Threats occur when one state gives the appearance of wishing to invade another state, or in the maritime sphere, to use or damage its maritime resources. Place and state are central factors in this model. Many of the globe’s ‘hotspots’ including its maritime ‘hotspots’ owe their ‘heat’ to this concept of sovereignty. But no concept as complex as ‘sovereignty’ could possibly have remained unchanged in meaning or relevance for four hundred years.⁴¹

Indeed, Westphalian sovereignty has been and continues to be eroded. For example, new concepts emphasize moral protection of the individual over spatial sovereignty.⁴² According to this doctrine of sovereignty, state sovereignty extends throughout the territory, but only if the state does not oppress the human beings who live there. The immoral state, especially one that kills or expels large numbers of its citizens, forfeits its right to sovereignty. Security in this anti-Westphalian conception is and should be the security of the moral individual, in his or her capacity as a member of the human race—an identity that transcends nationality.

The concept of sovereignty or exclusive ownership over resources and the environment is also changing. For example, a state does not have exclusive sovereignty over resources claimed or shared by another state. Indeed, its sovereignty is therefore constrained by the interest of the other state. For resources that transcend nationality, particularly shared or endangered resources, cooperative management is becoming more of a moral imperative than their neglect or unilateral exploitation. Once the ostensibly moral case for cooperation is established, its distinctively ethical character makes non-cooperation seem, in contrast, unethical.

Just as Westphalian principles framed the Cold War in Northeast Asia and its *realpolitik*, so have the post-Cold War acceleration and globalization of trends toward freer markets and polities unleashed multiple occasions for Asians to creatively reconsider their

conceptions of sovereignty. This open-ended process could produce a range of ways of dealing with Westphalian sovereignty.

Emmerson suggests five possible revisions of monolithic sovereignty: *distraction*, *decomposition*, *disregard*, *dissent*, and *destruction*.⁴³ The first three are particularly relevant to cooperation in the management of shared maritime resources.

Distraction means changing the subject—from sovereignty to, say, development—in the hopes of shifting the attention of rival claimants to physical space from what divides them to what they may have in common. This includes for example, the concept of joint development of resources in areas of overlapping maritime claims such as the Senkaku/Diaoyu dispute. Here it is suggested that the jurisdictional issue be set aside and the claimants jointly develop the resources in the area of overlapping claims.

Decomposition means taking the monolith apart—unpacking all-or-nothing sovereignty into components available for reallocation between and within variously ‘sovereign’ countries. Again joint development involves the separation of operational sovereignty from formal sovereignty. The latter is maintained while the former is eroded. The idea is to compromise the integrity of sovereignty—its all-or-nothingness—for the sake of its viability.

Disregard. The transnational proliferation of maritime non-governmental organizations (NGOs), the birth and growth of Track II and III maritime dialogues, the spread of joint development arrangements and cooperative maritime management regimes—all are combining to erode traditional notions of sovereignty in the maritime sphere. If enough relevant actors disbelieve in the old national fortresses of sovereignty—detouring around them, tunneling under them, sneaking through them, and generally acting as if they did not exist—the old concept of exclusive sovereignty over what are increasingly recognized as shared maritime resources will be undermined.

Even given these positive factors, there are still serious obstacles to marine regionalism in Northeast Asia. Indeed, the immediate benefits of international functional arrangements may fade in the light of the immense political conflicts that still divide the region. In Northeast Asia there are four countries with six governments with little history or experience in multilateral cooperation. The participation of the major powers in the region is critical to a successful regime, but they may be reluctant to participate unless they can dominate. In general, most big powers prefer to avoid multilateral regimes in which the smaller nations can form blocks against

them. It will thus be necessary to present a convincing argument that such major powers can gain more benefit from a multilateral regime than bilateral agreements which they can dominate.

Another difficulty for Northeast Asia is the isolation and non-participatory stance of North Korea. Since North Korea borders and claims continental shelf, 'security zones' and EEZs in the Japan and Yellow Seas, its *eventual* participation in functional marine policy regimes is important. As North Korea emerges from its 'shell' it should be invited and encouraged to join multilateral marine management dialogues and regimes.

The current system of marine management and resource exploitation in Asia Pacific is based mainly on national rights and obligations with some tentative first steps towards regional cooperation. It is ineffective because of overlapping claims to maritime jurisdiction, the lack of agreed maritime boundaries, and because countries continue to act largely in their own self interest. In Northeast Asian waters in particular, a system of unilateral EEZs and sovereign resource rights is an obstacle to an effective regional system of marine environmental management. Indeed, there is an unusually strong adherence to independence and sovereignty in the region. These countries are thus generally reluctant to agree to cooperative activities if they appear to compromise or qualify in any way their sovereignty or sovereign rights. This restraint is particularly significant in the maritime domain with the extended jurisdiction allowed by UNCLOS and numerous overlapping or conflicting claims to offshore areas, islands and reefs. It is reinforced by a lack of political commitment to regional seas programs and other cooperative activities and is also manifest in the failure to implement or comply with international instruments, because they involve some concession of sovereignty.⁴⁴

Finally, the lack of funding and resources, particularly for capacity building and marine scientific research, is an obstacle to implementing cooperative strategies. This is a major cause of the general failure to translate the cooperative rhetoric in International Maritime Organization Treaties, the Law of the Sea and the Commission on Sustainable Development into operational activities, including a higher level of technical cooperation between developed and developing countries.

In sum, the general absence of multilateral maritime regimes in Northeast Asia reflects political calculations by the nation-states regarding the rewards/risks and losses/benefits of maintaining the *status quo* versus developing regimes acceptable and beneficial to all sides involved. Asian countries are simply not yet sufficiently aware of the seriousness of the need

for a multilateral maritime regime that focuses on the management of fisheries resources and maritime environmental protection. Indeed, when countries in Asia think maritime, they think first and foremost about boundary disputes, not protection of the deteriorating marine environment or of management of dwindling fisheries. It is these perceptions that must change—and indeed they are changing.

As marine policy problems play an increasingly important role in the international relations of Northeast Asian states, the region's nations are being drawn slowly but surely into a continuing dialogue through which constructive and mutually beneficial marine policies will evolve.⁴⁵ Supporting this process is the growth of an epistemic community of maritime specialists. This community originated as a by-product of the Law of the Sea negotiations where such experts had frequent contacts and thus opportunities to discover their mutual interests,⁴⁶ and is being rapidly enhanced and extended to maritime CBMS.

ONGOING AND POTENTIAL COOPERATION: ENHANCING THE EPISTEMIC COMMUNITY

There is actually considerable ongoing cooperation involving Northeast Asian states in the maritime sphere, although most is of a 'soft' character.⁴⁷

Safety at Sea

There are five important areas of ongoing cooperation in maritime safety—regional nations' adherence to key safety conventions of the International Maritime Organization (IMO), the Tokyo Memorandum of Understanding (MOU) on Port State Control,⁴⁸ regional cooperation in Search and Rescue (SAR), cooperation in dealing with maritime disasters, and regional cooperation in training. The most important of IMO's safety conventions are the International Convention on Safety of Life at Sea (SOLAS 1974), the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS 1972), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978), and the International Convention on Maritime Search and Rescue (SAR 1979). All Northeast Asian nations, except North Korea and Taiwan, have ratified almost all of these critical maritime safety

agreements. This wide adherence provides an excellent basis for regional agreement on key maritime safety areas.

Law and Order at Sea

The key relevant IMO Convention regarding law and order at sea is the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 (Rome Convention) and the related protocol on offshore oil/gas platforms. The Rome Convention was originally a response to the *Achille Lauro* incident, but also clearly applies to piracy incidents in which violence is used or the ship is seized. It obligates states either to extradite or prosecute persons who seize ships by force, commit acts of violence against persons onboard ships, or place destructive devices onboard ships. Clearly, regional cooperation in law and order at sea would benefit by greater adherence of regional countries to this basic international convention.

Piracy has been an increasing problem in recent years in Northeast Asia. Under international law (Art. 101 of the 1982 UN Law of the Sea Convention), piracy is defined as illegal acts of violence or detention committed for private ends on the high seas (i.e., outside the 12 mile limit of territorial waters). But the broader definition of piracy of the International Maritime Bureau (IMB) of the International Chamber of Commerce, which includes such acts in territorial seas or even in ports, is more relevant to most Asian piracy, which generally occurs in such locations. In 1993, *ad hoc* agreements between the coast guard agencies of China and Japan, and unilateral naval patrols by Russia halted increasing piracy in the East China Sea.

Beyond piracy, transnational crime at sea—including illegal drugs, smuggling, and illegal migration—are of increasing concern in a globalized, modernized and increasingly urbanized Northeast Asia. Almost all illegal drug intercepts/arrests of drug traffickers are in ports or territorial waters, and most regional cooperation is closely held, bilateral, and between law enforcement agencies. Smuggling continues to be a major problem in regional waters, with scope for increased cooperation by customs and law enforcement agencies. Illegal migration, intensified in times of economic crisis, poses particular problems for national maritime authorities and requires closer cooperation between neighboring states.

There are several potential initiatives dealing with transnational crime at sea. The United States Coast Guard has developed a Model Maritime Service Code which could assist some regional nations in improving their own legislative and operational framework for enforcement of law and order, maritime safety and environmental regulations. More region-

wide information sharing on maritime smuggling and drug trafficking is needed, and could build on existing exchanges between cross-border criminal information databases. Unofficial regional cooperation in the Council of Security Cooperation in Asia–Pacific (CSCAP), which has International Working Groups on both Maritime Cooperation and on Transnational Crime, might jointly develop specific recommendations on cooperation in law and order at sea issues for future official consideration.

Illegal fishing is a major area of concern to enforcement agencies. Indeed, fishing disputes complicate relations throughout Northeast Asia, but several recent initiatives have the potential to improve regional fisheries law enforcement. In recent years, Japan and China, Japan and South Korea, Japan and Russia, and China and South Korea have all concluded bilateral fisheries agreements. This web of bilateral agreements is a natural basis for a regional fisheries agreement and its enforcement mechanisms. A recent Asia–Pacific Economic Cooperation (APEC) Oceans Conference declaration included agreement on enhanced cooperation and data sharing, and a comprehensive vessel registry. And the U.S. Coast Guard has an active program of cooperation with other regional nations, including China, to support the UN prohibition of large-scale high seas drift netting, and is also helping to develop a regional organization to implement the UN agreement on conservation and management of highly migratory species.

Marine Environment

The geography of Northeast Asia, as well as its high dependence on the sea as a source of food and energy, makes the safeguarding of the marine environment a necessity. Article 192 of the 1982 UN Law of the Sea Convention obligates states to protect the marine environment, and Article 61 requires the conservation of living resources in the EEZ. Similar commitments on the protection of oceans are contained in Chapter 17 of the UN's Agenda 21. The IMO has several major conventions designed to protect the marine environment from pollution by shipping and dumping of waste. Of these IMO conventions, a majority are dedicated to prevention of oil pollution, particularly Annex I and II of the MARPOL 73/78 International Convention for the Prevention of Pollution from Ships. Closely related are other conventions to deal with the consequences of any oil pollution that does occur, such as the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation, and various conventions on liability and damages. Other Annexes of MARPOL 73/78 establish strict rules to minimize pollution by packaged substances, sewage and garbage from ships. The 1972 London

Convention restricts dumping at sea, particularly of hazardous wastes. Finally, a convention is under development to establish standards for dumping of ship's ballast water in order to control global transfers of harmful non-native organisms in this water. Unfortunately, there is currently very limited overall adherence of Northeast Asian countries to IMO conventions on the marine environment.

In Northeast Asia, most maritime cooperation has been in scientific research and monitoring. The major initiative has been the Northwest Pacific Region Action Plan (NOWPAP) of the Regional Seas Program of the UN Environmental Program (UNEP). Objectives of NOWPAP include monitoring and assessing the state of the regional marine environment, creating an information base, integrating coastal area planning, and establishing a cooperative legal framework.

This sub-regional program is overlapped and complemented by various other regional initiatives. The 19 nation Working Group for the Western Pacific (WESTPAC), headquartered in Bangkok, was established in 1977 by United Nations Educational, Social Cultural Organization (UNESCO) to plan and coordinate multilateral ocean science programs of the International Oceanographic Commission (IOC). The IOC Sub-Commission for the Western Pacific (WESTPAC) is responsible for the implementation of the Global Ocean Observing System (GOOS). A regional component, North-East Asian Regional-GOOS, was established in 1994 and aims to share its data collected for the seas surrounded by Russia, China, Korea and Japan.⁴⁹ The UN Development Program/Global Environmental Fund/IMO (UNDP/GEF/IMO) Regional Program on Prevention and Management of Marine Pollution in East Asian Seas includes Japan, both Koreas, and China. The North Pacific Marine Science Organization, PICES, focuses on marine pollution and monitoring of its impacts. There are also various bilateral cooperation projects, such as the China/South Korea Action Plan for Monitoring and Protection of the Yellow Sea Large Marine Ecosystem, which is receiving World Bank assistance.

Regional Security Forums⁵⁰

The major forum specifically for naval dialogue and cooperation in the region is provided by the Western Pacific Naval Symposium (WPNS). The WPNS brings together leaders from the navies of the Western Pacific in their “unofficial” capacities to discuss issues of common concern, including law of the sea and the security of sea lines of communication (SLOCs). Its membership includes China, Japan, and South Korea from Northeast Asia,

together with the navies of the ASEAN countries, Papua New Guinea, Australia, New Zealand, France, and the United States.

The main thrust of the WPNS has not been multilateral naval operations, which were considered too sensitive, but rather the harmonization of existing procedures. A tangible outcome from the WPNS meetings has been a series of subordinate workshops which have led to the development of a Maritime Information Exchange Directory, a WPNS Tactical Signals Handbook, a WPNS Replenishment at Sea Handbook and planning for the conduct of a Command Post Exercise (CPX) to help the development of common doctrine and publications. Recent meetings of the WPNS have concentrated largely on civil responsibilities (maritime safety, search and rescue, disaster relief, and protection of the marine environment) because these were "safer" issues for the forum to consider. This is despite the fact that in most Asia Pacific countries, agencies other than navies usually have responsibility for these matters.

The ASEAN Regional Forum (ARF) has also entertained and sponsored discussions on maritime cooperation. However it is apparent that Northeast Asian navies generally have a preference for *bilateral* over multilateral cooperation and some, particularly China, are clearly uncomfortable even discussing military and naval activities in a multilateral forum. Nevertheless, ARF did sponsor two Intersessional Meetings on Search and Rescue (SAR) (Honolulu 1996 and Singapore 1997), with themes of SAR cooperation and SAR training. These meetings also drafted an ARF "Declaration on Search and Rescue Cooperation," and encouraged continued cooperation at the technical level. SAR exercises by regional navies (including even former adversaries) have been a common initial step in regional naval cooperation in recent years.

An ARF Meeting of Specialist Officials on Maritime issues (MSOM) was convened in Honolulu in November 1998 to consider and discuss ways and means for the ARF to add value to existing activities in the areas of maritime safety, law and order at sea, and protection and preservation of the marine environment. The recommendations arising from the meeting included information sharing about sub-standard vessels, oil spill response arrangements, measures to minimize the generation of shipboard waste, maritime law enforcement (particularly the control of piracy), marine information data exchange and the ratification of maritime conventions. These recommendations were subsequently considered at a further meeting of the Inter-sessional Support Group (ISG) on CBMs in Bangkok in March 1999, in which it was agreed that the countries would continue considering maritime cooperation, especially in the CBM context. It was also agreed that the Tokyo Memorandum on Port State Control (PSC),

anti-piracy efforts and the ratification of various maritime conventions, warranted specific monitoring by the ARF.

Regarding 'second track' activities, CSCAP has established a working group to look specifically at maritime security cooperation in the Asia Pacific region. This group has adopted a broad view of security and is considering a range of small 's' security issues, such as marine safety, resources conservation, oceans governance (particularly in areas where maritime boundaries are not agreed) and unlawful activities at sea, e.g. drug smuggling, illegal population movements and piracy, as well as more conventional maritime security issues. A major achievement of the CSCAP Maritime Cooperation Working Group has been the development and promulgation of proposed Guidelines for Regional Maritime Cooperation.⁵¹ These are a set of fundamental, non-binding principles to guide regional maritime cooperation and to ensure a common understanding and approach to maritime issues in the region. In addition to recognizing the general "confidence-building benefits of naval cooperation," the Guidelines support regional maritime cooperation in maritime safety (Articles 13–15), search and rescue (Articles 22, 23), marine resources (Articles 24, 25), marine scientific research (Articles 26, 27), technical cooperation and capacity-building (Article 28), and training and education (Article 29).

Developing the Guidelines was difficult, particularly as several countries were concerned that some of the guidelines could imply a significant undermining of their maritime jurisdictional claims. But it was significant that after several meetings on the Guidelines, an agreement was reached on wording which allowed a proposal to go forward for consideration by the ARF. It was these Guidelines that were considered by ARF's MSOM in Honolulu in November 1998, and again by its ISG on CBMS in Bangkok in March, 1999. However, they apparently will not be taken any further by the ARF.

There is, thus, quite a bit of maritime cooperation involving Northeast Asia, but what is less certain, is the extent to which that cooperation has real economic or political benefit for the future of the region. Some of the cooperative activities have the appearance of "talk shops" that lead to little action or implementation of the ideas that are discussed. There is a particular problem also with translating issues to an operational or practical level. Issues are often discussed at the "head office" level by senior officials with no migration of ideas to a working level. Nevertheless, "second track" forums have a particular role to play in spreading awareness of the problems and potentially identifying solutions that may be too sensitive or embryonic for consideration at a "first track" level. And they do help build an epistemic community supporting cooperation in the marine sphere.

SUGGESTIONS FOR CONFLICT AVOIDANCE MANEUVERING AROUND THE 'HOT SPOTS'

The sovereignty disputes are a main obstacle to robust functional cooperation. Given that their swift resolution is highly unlikely, the most pressing immediate task is to find effective mechanisms to manage them and prevent any escalation of incidents that cannot be prevented. The key problem lies not so much with governments, but nationalist political constituencies within the polity of each state and the pressures they can bring to bear. In the short and medium term, it is therefore critically important that the governments involved in these disputes take seriously the fact that governments of other claimant states are also constrained by domestic political considerations. There has been a marked failure to do so in the past.⁵² Japan, for example, rejects the “future generations” formula for seeking a solution to the Northern Territories dispute and “demands” a speedy resolution, even though Tokyo knows perfectly well that this is politically impossible for Russian leaders to accept.

Second, while democratic governments may feel unable or be unwilling to prevent citizens embarking on legal, but provocative, actions like the 1996 erection of a lighthouse on the Senkakus, they must refrain from conferring official status on such actions. Moreover, if they disapprove of them, they should have the courage to say so publicly. If this is perceived to be too politically difficult, they should at least ensure that their disapproval is communicated to the government of the rival claimant state.

Third, greater emphasis needs to be placed on the role of preventive diplomacy. This is an issue now being taken up by the ARF and CSCAP, but so far with little practical impact on policy. None of the claimant states have indicated any interest in taking the disputes to formal legal adjudication, but it might be still possible via the good offices of the Chairperson of the ARF for an “eminent persons’ group” to be created. Such a group should preferably undertake its preventive diplomacy task during a spell of relative calm. The task would not be to seek resolution, but rather to consider ways of managing the dispute non-violently and preventing or at least controlling escalation should there be more flare-ups in the future.

Fourth, if the creation of an eminent persons’ group is considered premature, Track II meetings involving scholars, ‘thinktank’ analysts, and officials ‘acting in their private capacity’ could be set up to investigate a range of CBMS designed to foster conflict management and to prevent conflict escalation rather than to seek a long-term solution. The Indonesian hosted Track II effort, the South China Sea Working Group, which deliberately avoids engaging in

discussions on sovereignty issues, provides a possible precedent. Here, the focus has been on building confidence between claimant states by encouraging maritime cooperation between them in non-controversial areas such as marine scientific research, environmental protection, including biodiversity, fisheries assessment and management, and mineral resource assessment. The focus is on what is achievable at the time. Although these are formally “Track II” meetings, officials from the claimant states take part under the polite fiction that they are acting in their “private capacity.” The hope is that Track II cooperation will form the eventual basis for formal official cooperation.

Domestic politics is a prime and dangerous factor in these disputes. But domestic politics runs in cycles of intensity. When the cycles in the respective nations reach their next common positive peaks, wise and courageous leaders must seize the opportunity to hammer out a preventative *modus operandi* to manage these conflicts. The alternative is continued mutual suspicion, unstable relations, unmanaged resources, an increasing frequency and intensity of incidents, and fueling nationalist sentiments and movements. Certainly navy-to-navy cooperation will be difficult as long as these features and their attendant waters remain in hot dispute.

Joint-Development

As noted above, one possible way around the sovereignty obstacle is to distinguish formal sovereignty from operational sovereignty. The latter can be “softened” in the interest of conflict avoidance. In this context, joint development is a specific CBM that should be considered by countries involved in maritime disputes. In the event of overlapping jurisdictional claims, the Law of the Sea Treaty binds its ratifiers to seek a provisional arrangement of a practical nature. One common provisional arrangement in such situations is joint development. Joint development is the agreement to put aside a sovereignty and/or jurisdictional issue to jointly explore and exploit any petroleum or other resources, e.g., fish, in the area in dispute. On 5 February 1974, Japan and South Korea agreed to create a joint development zone (JDZ) in the region of their overlapping continental shelf claims. The area was divided into nine sub-zones, which are being explored by concessionaires nominated by each country. The agreement has worked well, although no hydrocarbons have been found. The new Japan–China fisheries agreement delineates areas in the East China Sea where both can fish and is thus a form of joint development.

Based on previous experiences, the strongest reason for a state to opt for a joint undertaking is a sense of urgency or obligation to develop potential oil or gas deposits, combined with a desire to maintain good relations with another state which has reasonable claim to the area. Bilaterally, the concept of joint development could be applied to hydrocarbons in the East China Sea and the Yellow Sea and to fisheries resources in the overlapping maritime claims around the southern Kurils/Northern Territories, around Tokdo/Takeshima in the Sea of Japan, and someday, even between North and South Korea.

How well has joint development worked elsewhere? A Saudi Arabia—Kuwait arrangement is the only agreement which proceeded from political agreement, through the establishment of the necessary legal and institutional organizations, to successful exploration and development of resources. A Sudan—Saudi Arabia agreement functioned successfully through a three-month pre-pilot mining test, but a commercial project was not implemented due to uncertainty about its commercial viability.⁵³

The success of the Kuwait-Saudi Arabia agreement is attributable to: (1) an “unwritten agreement” to keep oil out of political differences; (2) the practical desire of both parties to develop the oil fields quickly; and (3) the small portion of total oil production by these states from the joint development area.⁵⁴ The two countries reached this agreement relatively easily and because of the good relations and practical attitude of the two countries the agreement works relatively smoothly.

Perhaps pan-Arabism and familiarity with the Islamic concept of *mushaa* (equal shares in joint and undivided property)⁵⁵ were additional factors in the successful implementation. The agreement of both countries on a single company (an operator who played a constructive and cooperative role in the exploration and development of the resources) was also a definite contribution to its success. Furthermore, the discovery of actual resources in the joint development area certainly cemented the effort. Based on this and other precedents, it appears that good political relations, practical mindedness, discovery of actual deposits, and cooperative private companies favor successful implementation of joint development arrangements. Joint development is an idea whose time has come and one which will look increasingly attractive as the demand for marine resources intensifies.

THE WAY FORWARD

Taken together, the array of positive and negative factors argues strongly for an *ad hoc*, issue-specific evolutionary process for multilateral maritime regime building. To move the process forward, the countries might agree to begin discussing objectives and principles for multilateral maritime regimes in Northeast Asia.

There appears to be a confluence of incentives for such a dialogue. Russian foreign ministry officials are concerned that the United States may engage in “adventures” regarding North Korea and are exploring ways and means to enhance multilateral dialogue in the region, specifically including maritime cooperation. Thus, Russia would certainly support such an initiative.

Meanwhile, South Korea is also supportive of such a dialogue. The new Vice-Minister of Maritime Affairs and Fisheries is particularly enthusiastic about such an effort. And even China appears to be willing to consider limited multilateral approaches on a sea-by-sea basis. Although Japan would be reluctant to lead such an effort, it would probably participate if it is initiated by another state or UN agency.

Thus, the time seems to be right for such exploration of *ad hoc* multilateral maritime cooperation in Northeast Asia. With the extension of jurisdiction, several bilateral agreements on fisheries have been already renegotiated. They set the stage and form the basis for a more comprehensive regional agreement harmonizing the bilateral agreements, and expanding the regime to include all the region’s nations. Although progress has been slow regarding a regional marine environmental protection regime, such a dialogue could speed up the process.

The Path to Multilateral Naval CBMs

It would be a mistake to conceive of naval cooperation in the region in tactical terms, as if the problem were simply one of assembling the right blend of cooperative measures, and as if the larger strategic context of the security dilemma did not exist.⁵⁶ A CSCAP review of the confidence and security building measures (CSBMs) produced guidelines with particular relevance to maritime CSBMs in Northeast Asia.⁵⁷ CSBMs are stepping stones or building blocks, not ends in themselves. As such, they should have realistic, pragmatic, clearly defined objectives. Gradual, methodical, incremental approaches work best. The best approach is to start small; use a gradual, incremental, building block process; avoid over-formalizing the process; and use unilateral and bilateral measures as steps towards multilateral confidence building.

Cooperation in ocean management could set the stage and have a spillover effect for true navy-to-navy CBMs. When the time is right to move in this direction, the focus should first be on low-level matters such as transparency and Incidents at Sea (INCSEA) agreements. Already, a gossamer web of bilateral arrangements is being spun. INCSEA or similar agreements exist between the United States and Russia, the United States and China, Japan and Russia, Japan and South Korea, and South Korea and Russia.⁵⁸ Further, Russian and Japanese naval forces staged a first-ever joint marine rescue drill in the Sea of Japan in 1998. And, Japanese and South Korean naval vessels staged a path-breaking joint search and rescue operation in the extreme northern East China Sea in early August 1999.⁵⁹ South Korea has proposed joint maritime search and rescue to China as well as exchange of visits by naval ships;⁶⁰ it has also proposed a joint naval exercise with Russia.⁶¹ Recently Russia has proposed that it, Japan, and the United States stage joint search and rescue drills.⁶² Meanwhile, the United States has proposed that the U.S.-Malaysia joint military search and rescue training mission be expanded to include China and Japan.⁶³ And even Japan and China have resumed their security dialogue,⁶⁴ while Russia and North Korea have signed a new treaty on friendship and cooperation.⁶⁵ In what could presage an emerging security relationship, Russia and China held joint naval maneuvers in October 1999.⁶⁶ More important however is the convergence of proposals by China, South Korea and Russia for a multilateral security forum for Northeast Asia. Initially, a sub-regional approach would be best, at least for specific maritime CBMs, albeit under the overall umbrella of a regional security forum.⁶⁷ Given the existence of a network of INCSEA agreements applicable in Northeast Asia, a multilateral agreement should be based on these standards.

But there are still formidable obstacles to a multilateral arrangement.⁶⁸ How can China, Taiwan and North Korea be persuaded to join? North Korea has heretofore shown little desire to participate in multilateral discussions on security issues that would be necessary for a sub-regional INCSEA agreement. And to attempt to include both China and Taiwan in an official agreement would be folly. Perhaps any sub-regional arrangement should not be called an "agreement," and a respected neutral party, e.g. Canada, should be the depository through which communications are transmitted. In this way, the issue of formal recognition would be avoided.

To be effective, the core agreement would have to include the United States, Russia, Japan, and most importantly, China. The inclusion of South Korea would be a political signal that the agreement is not exclusive or aimed at facilitating 'a new concert of powers.' However, Russia is not likely to be a steady partner in any cooperative system for some years to come. It should definitely be included but its role is likely to remain limited. Indeed, there were

significant protests by war veterans in the run-up to recent Russian–U.S. joint military exercises near Vladivostok.⁶⁹

And the attitude of the United States towards a multilateral INCSEA agreement to which it would be party is not entirely clear. Though U.S. diplomacy has made considerable strides towards recognizing the importance of multilateralism in its overall foreign policy, and in its approach to the Asia–Pacific region in particular, the U.S. Navy has yet to express its views. Indeed, the U.S. Navy may not perceive a need for a multilateral sub-regional agreement, and perhaps views the idea as too politically complex. But, without overhead and undersea intelligence support, which can only be supplied by the U.S. Navy, neither Japanese nor South Korean fleets can ever be considered blue-water or even regional. This may be why both Japan and South Korea would be reluctant to join a multilateral process that in any way undermines their alliance with the United States.

For these reasons, the arrangement should not be strictly hard-core military but multifaceted and comprehensive. A pure multilateral INCSEA agreement would be more appropriate when all regional navies have become blue-water fleets. The strategy should be to slowly increase the density of navy-to-navy contacts until a critical mass is reached. Eventually, one can envision piracy problems being effectively addressed in region-wide or, much more likely, sub-regional ‘Safety at Sea’ agreements which would also address other common civil maritime problems like search-and-rescue, environmental protection, drug trafficking, and illegal refugees.

Further out to sea—in space and time—an international naval or ‘self-defense’ force might be created to ensure ocean peacekeeping including safety of navigation. This joint force could focus initially on the area beyond national jurisdiction and emphasize protection of high seas fisheries, air-sea rescue and an open ocean environmental monitoring. However, when all is said and done, navy-to-navy arrangements will depend on the quality of political relations, and these can surely be enhanced by comprehensive bilateral and multilateral ocean management.

Endnotes

1. This research was assisted by a grant from the Abe Fellowship Program of the Social Science Research Council and the American Council of Learned Societies with funds provided by the Japan Foundation Center for Global Partnership, and was also supported by the East-West Center.
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43. *Ibid.*
44. The International Convention on Maritime Search and Rescue, 1979 has a relatively low level of acceptance possibly because of the costs involved in establishing a search and rescue infrastructure and a reluctance to allow searching ships or aircraft of another country access to sovereign waters or territory.
45. An East-West Center Conference series has focused on these issues—*International Conference on East Asian Seas: Cooperative Solutions to Transnational Issues*, Seoul, 21–23 September 1992; *The Soviet Far East and the North Pacific Region: Emerging Issues in International Relations*, Honolulu, 20–23 May 1991; *East China Sea: Transnational Marine Policy Issues and Possibilities of Cooperation*, Dalian, China, 27–29 June 1991; *International Conference on the Japan and Okhotsk Seas*, Vladivostok, Russia, September 1989; *International Conference on the Sea of Japan*, Niigata, Japan, 11–14 October 1988; *International Conference on the Yellow Sea*, Honolulu, 23–27 June 1987. Also see: "Japan to Seek Regional Meeting to Look at Water Pollution, Other Problems," in *International Environment Reporter* (4 December 1991); Northeast Asian Conference on Environmental Cooperation, 13–16 October 1992, Environment Agency of Japan and Niigata Prefecture. Indeed, Japan has established a center to elaborate the concept of regional cooperation and to prepare specific proposals for cooperation around the Sea of Japan (*Russia in Asia Report* No. 15, July 1993, 44).

46. The above conferences were attended by policymakers in their personal capacities from all the coastal states—North Korea, South Korea, Japan and Russia—as well as China, Taiwan, and international organizations. The topics discussed ranged from scientific assessments of the resources to transnational fishery management and conflicting navigation regimes.
47. Bateman, *supra* n. 30; Stan Weeks. “Overview of Regional Cooperation Activities.” CSCAP Maritime co-operation working group, Kuala Lumpur, 17–18 November, 1998. Stanley B. Weeks. “Strengthening Maritime Co-operation in the Asia–Pacific,” a paper presented at the 13th Asia–Pacific Roundtable, Kuala Lumpur, 30 May–2 June, 1999.
48. The Tokyo MOU on Port State Control of 1993 is one of several recent regional agreements encouraged by the IMO and designed to establish regional systems of reciprocal cooperation in inspecting and surveying ships to verify their compliance with international safety standards.
49. Sam Bateman. “Strengthening Maritime Co-operation in the Asia-Pacific,” a paper presented at the 13th Asia-Pacific Roundtable, 30 May–2 June, 1999.
50. *Ibid.*
51. The Guidelines for Regional Maritime Cooperation are available on the AU.S.CSCAP website at: <http://coombs.anu.edu.au/Depts/RSPAS/AU.S.CSCAP/Guidelin.mcw.html>
52. *Ibid.*
53. E. Blissenbach & Nawab, Metaliferous Sediments of the Seabed in E. Borgese and N. Ginsburg, eds, *Ocean Yearbook* (1982), 377–394; E. Blissenbach, “Technical and Economic Aspects of Ocean Mining,” a paper presented at the Pacific Marine Mineral Resources Training Course East-West Center, Honolulu, Hawaii, June 1985.
54. M. Miyoshi, “Some Comments on Legal Aspects of Precedents”, in Mark J. Valencia, ed., *The South China Sea: Hydrocarbon Potential and Possibilities of Joint Development*, (Pergamon Press, Boulder, 1981.)
55. W. Onorato, “A Case Study in Joint Development: the Saudi Arabia-Kuwait Partitioned Neutral Zone,” in Valencia *Ibid.* p. 1325; F. Fesharaki, “Joint Development of Offshore Petroleum Resources: the Persian Gulf Experience,” in Valencia, *Ibid.*, 1359.
56. Paul Brachen. “Naval Cooperation in Northeast Asia,” in *the Korean Journal of Defense Analysis*, v. IX, no. 1 (summer 1997), 203-214.
57. Ralph Cossa. “Moving From Confidence Building to Preventative Diplomacy: the Possibilities,” a paper presented at the 13th Asia–Pacific Roundtable, 30 May–2 June 1999, Kuala Lumpur.
58. Pauline Kerr. “Maritime Security in the 1990’s: Achievements and Prospects.” in Anrew Mack, ed. *A Peaceful Ocean?: Maritime Security in the Pacific in the Post-Cold War Era*, (Canberra: Allen and Unwin, 1993), 186-198.
59. “Japan, South Korea to Hold First Joint Naval Exercises,” *Japan Times*, 8 August 1999.
60. “Seoul, Beijing Begin to Build Military Confidence,” *the Korea Herald*. 25 August, 1999.
61. “Kim Calls for Military Cooperation with Moscow,” *the Korea Herald*, 6 September, 1999.
62. “Russia Proposes Joint Naval Rescue Drills with Japan,” *Korea Times*, 16 March 1998; BBC.
63. Bernama, 8 September 1999.
64. “Japan–China Defense Dialogue to Resume,” *the Daily Yomiuri*, 4 September, 1999.
65. *ITAR-TASS*, Moscow 0612 gmt 9 September, 1999.
66. “Russia, China Plan Joint Maneuvers,” *Honolulu Advertiser*, 28 September 1999.
67. Peter L. Jones. “Maritime CBMS in the Asia–Pacific: the Application of the INCSEA Concept in the Region,” in *the Korean Journal of Defense Analysis.*, v, VIII (1996), 7–36.
68. Jones, *supra* n.66.
69. *ITAR-TASS*. 0718 gmt. 21 July, 1998.