

MCBMs in Northeast Asia: Can Effective and Functional Solutions be Found?*

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I . Introduction

Conceptual Maritime Confidence-Building Measures (MCBMs) prevailing in the disputed seas of Northeast Asia have had a variety of constructive and operational impacts upon regional maritime security. There remain, however, intractable problems with their functional implementation. Dr. Ian Storey pointed out in his 2012 paper that the vague and ambiguous phraseology of these agreements allows unscrupulous equivocation, and together with the difficulty of adapting the voluntary action items of such MCBMs to the Northeast Asian seas, the results have been disappointing: a failure to mitigate maritime confrontations and accidental conflicts in all regional maritime domains.¹⁾ As Dr. Sam Bateman argued in 2011, it is time to establish functional MCBMs encompassing technical and operational solutions to address both the “traditional problems” and the more intractable “wicked problems” of maritime security.²⁾ This will require the best and most effective of maritime cooperative mechanisms which can be devised; only thus can the fractious nations of the region be prevented from descending into ever more chaotic and dangerous maritime scenarios. The Northeast Asian seas desperately need a creative burst of fresh thinking about how to develop truly functional MCBMs, and somehow a way must be found to avoid always repeating the same old mistakes of the past. Some useful elements can be adapted from existing functional MCBMs, and technology can also make a contribution, but the formulation of effective conflict management solutions to ensure regional maritime security in Northeast Asia will ultimately rest upon trust.

1) Ian Storey, “ASEAN is House Divided,” *The Wall Street Journal*, Friday-Sunday, June 14-17, 2012, p. 11.

2) Sam Bateman, “Solving the ‘Wicked Problems’ of Maritime Security: Are Regional Forums up to the Task?” *Contemporary Southeast Asia*, Vol.33, No.1 (2011).

II. The Failure to Make Conceptual MCBMs Functional

MCBMs in this region tend to be based on compromises which depend upon individual countries – their political will, cultural fabric and geographical disposition – instead of deriving from a functional code of cooperation with mandatory principles and guidelines designed to reduce the risk of miscalculation and conflict. The security and safety of shipping and seaborne trade is a common concern throughout Northeast Asia, yet in all the seas of the region, the South China Sea (SCS), East China Sea (ECS), West Sea (a.k.a. Yellow Sea)³⁾ and East Sea (a.k.a. Sea of Japan)⁴⁾, there has been an disappointing failure to implement functional MCBMs despite the work which has been done to develop a theoretical framework to underpin such agreements. Effective MCBMs require robust and binding principles and guidelines to which all parties adhere, but the vague language of the existing conceptual MCBMs has rendered self – restraint problematic, and the frequency of dangerous incidents at sea continues to increase. The transformation of conceptual MCBMs for the Northeast Asian seas into binding bilateral or multilateral operational MCBMs is now most urgent.

Many commentators are pessimistic about the prospects for enhanced maritime security, pointing to a number of recent attempts at regional conceptual MCBMs which have been operationally unsuccessful. These include: ① the “Declaration on the Conduct (DOC) of Parties in the SCS” signed on November 4, 2002 of which the Regional “Code of Conduct (COC) in the SCS” between ASEAN and China should have been issued at the meeting of ASEAN foreign ministers on July 20, 2012, ② the “South–North

3) Both West Sea and Yellow Sea are interchangeable in this paper.

4) East Sea and Sea of Japan are interchangeable in this paper without any preferences of terms.

Agreement on Maritime Navigation” signed on May 28, 2004 and the “Agreement on the Prevention of Accidental Naval Clashes in the West Sea” signed on June 12, 2004 between North and South Korea, ③ the “Guidelines for Navigation and Overflight in the Exclusive Economic Zone(EEZ)” published December 2006 by the Ocean Policy Research Fund in Japan, and ④ the “Principled Consensus on the ECS Issue” signed by both China and Japan on June 18, 2008.

Indeed, none of these conceptual MCBMs has been supported by a mandatory operational framework, so in practical terms these agreements have been ineffective at improving regional maritime security. There are intractable problems of interpretation: due to nationalistic sensitivities, regional rivalry, and a historical legacy of distrust, it has proved impossible, so far, to find forms of words capable of constraining individual interests to the serve the common benefit.⁵⁾ The United Nations Convention Law Of Sea (UNCLOS) has proved too vague and malleable a foundation to support really functional MCBMs for Northeast Asian, and unless and until the nations of the region can agree upon common interpretations of this treaty, then maritime instability will continue to fester.⁶⁾ There are a number of long-standing maritime disputes outstanding, and to reduce the possibility of accidental incidents in the confined waters escalating into serious conflict it is vital to establish functional MCBMs, only thus can maritime peace and good order be maintained in the seas of Northeast Asia.

Absent such functional MCBMs, the military will remain the dominant influence in deciding policy in the disputed waters. Moreover, third-party involvement in regional maritime disputes by extra-regional military actors, especially the US Navy’s forward deployment in the Asia-Pacific, is a

5) “Banyan: Seas of troubles,” *The Economist*, May 18th 2013, p. 29.

6) See Sukjoon Yoon, “Regional Maritime Security: Old Issues and New Challenges, paper presented at the workshop of Common Concerns for Maritime Security and Safety, co-hosted by Korea Institute for Maritime Strategy, Institute of East and West Studies at Yonsei University, and SLOC Study Group-Korea in 3 April 2013, in Seoul, Korea.

significant factor disrupting the formulation of effective MCBMs.

The single most salient feature informing the security situation of Northeast Asia is the very marked interdependency of the region's economies, and these interactions grow ever deeper and more complex. If the nations of the region continue to allow their mutual interests to be undermined by an insistence on narrowly defined individual interests, and by rigid attitudes toward the kind of diplomatic and legal resolution which might be applicable to the disputed territories and overlapping maritime jurisdictional areas, then the maritime security of the region can only become more unstable. Surely the time has come for the present conceptual MCBMs to be converted into truly functional MCBMs.

III. Why is it so Difficult to Establish Functional MCBMs?

Some essential elements of functional MCBMs are already in place to support Northeast Asian conceptual MCBMs.⁷⁾ Indeed, there are a number of bilateral/joint measures which could be built up into the permanent and substantial institutional solutions necessary to mitigate the ongoing confrontations and conflicts and encourage trust-based maritime cooperation. Such measures include: ① bilateral “Navy – To – Navy Talks (N–T–N–Ts)” between/among navies and the “Military Maritime Consultative Arrangements (MMCAs)” between China and the US, ② adapting the “multilateral Code for Unaltered Encounters between Ships (CUES)” and the Maritime Information Exchange Directory (MIED), both developed by

7) Sukjoon Yoon, “Naval modernization in East Asia: four puzzles,” Geoffrey Till and Jane Chan, ed. al, *Naval Modernization in South-East Asia: Nature, causes and consequences* (London: Routledge, 2013), pp. 263–282.

the members of the Western Pacific Naval Symposium (WPNS), and the “multilateral External Tactical Doctrine (EXTAC) Series-1000” put out by the US navy, ③ various “technology-oriented” mechanisms supporting the agreement between states or other parties for the prevention of Incidents at Sea (INCSEAs), such as the “Maritime Identification System” (MIS), the “Automatic Identification System” (AIS), the “Vessel Tracking System” (VTS), “Maritime Domain Awareness”(MDA), and so on.

Some of these mechanisms have indeed been successful in providing binding norms which effectively constrain the actions of states, but others have been far less effective, and cannot be characterized as contributing toward functional MCBMs. On top of the problems already mentioned which have made the implementation of the various conceptual MCBMs so difficult, the building of effective functional MCBMs in Northeast Asian seas has also been hindered by some specific and unwelcome maritime issues: ① the inconsistent approaches taken by governments in projecting sufficient political will to damp down tensions and promote stability, ② the complexity of the three-dimensional boundaries of the disputed maritime avenues and the militarization of the disputed islands and areas, ③ the opacity of command and control systems responsible for monitoring accidental contingencies, ④ the lack of operational manuals and doctrines to integrate different kinds of maritime force units, and ⑤ the halfhearted attitude taken by existing governmental authorities toward bilateral and multilateral forums and discourses.

First, political will is a vital prerequisite for functional MCBMs. With the change of the government in Northeast Asia, however, the coherent and persistent political will necessary to implement binding MCBMs has suddenly disappeared, rendering some documents or agreements essentially dead. Thus, despite the agreement between North and South Korea on the prevention of INCSEAs, the North Korean navy has completely ignored the bilateral communication procedures and shown a perilous disregard for the

Northern Limit Line (NLL, a *de facto* sea boundary drawn unilaterally by the United Nations Command (UNC) at the end of the Korean War, and intended to be temporary), and the reaction from South Korea is likely to be a tougher attitude toward North Korean bad behavior.⁸⁾ Similarly, the new Japanese Prime Minister, Shinzo Abe, has indulged his own impulse toward historical revisionism by signaling his unwillingness to endorse the statement made by an earlier Prime Minister, Tomichi Murayama, apologizing for Japan's wartime militarism. There was also a visit by 168 Japanese politicians to the Yasakuni Shrine, where convicted war criminals are commemorated, thus risking damage to relations with Seoul and Beijing—and also Washington. And then there was the sudden decision by the Japanese government to bring three of the inhabited Diaoyu/Senkaku Islands into public ownership. This came after blatant historical revisionism by the Chinese had already fanned the flames, with Beijing formally designating the islands as a “core interest” and encouraging, or at least tolerating, jingoistic popular demonstrations.⁹⁾

Rigid attitudes have also prevailed in the disputed sea between Japan and Russia, over the islands known respectively as the Chishima Islands or “The Northern Territories”. Facing strong internal nationalist sentiments, neither Japan nor Russia was willing to agree a resolution. The Japanese government insists that the Northern Territories were occupied by the Soviet Union at the end of the Second World War, and Japanese domestic sentiment has meant that their ownership has remained in dispute ever since, preventing these two nations from signing an official peace treaty. It is unfortunate that the US can no longer mediate from a position of strength in these deteriorating situations. In the absence of the US as a credible moderator of the competing claims, in the ECS between China and Japan, and in the SCS between China and ASEAN members, domestic factors may

8) See Michael A. McDevitt, Catherine K. Lea, Abraham M. Denmark, Ken E. Gause, Bonnie S. Glaser, Richard C. Bush III, and Daniel M. Hartnett, *The Long Littoral Project: East China and Yellow Sea: A Maritime Perspective on Indo-Pacific Security* (Washington, D.C.: Center for Naval Analysis, September 2012).

9) *The Japanese Times*, 26 April 2013.

prove crucial in escalating tensions and increasing the chance of a military clash.

Second, the continuing militarization of the disputed islands and areas seems to be wicked problem (to use Bateman's term), which is exacerbated by the three-dimensional complexity of their boundaries. Confrontations may occur not only in surface situations, but also in the airspace above the surface seas or in the waters below them. With the expansion of maritime forces throughout this broad range of potential conflict zones the challenges for Northeast Asian maritime security have increased, and significant preventive naval diplomacy is needed to ensure the safety of ever more ships, submarines, and maritime aircraft operations. The chances of accidental collisions in the confined seas are growing rapidly, and it is becoming more difficult to establish the intentions of rival forces with any degree of certainty.¹⁰⁾

The prospect of increased submarine operations is particularly dangerous, and the detection of a submarine in disputed waters would surely lead to a serious deterioration in relations between the parties concerned. North Korea has already been expanding the scope of maritime conflicts: using a midget submarine to sink the ROKS *Cheonan* near the NLL, and launching an artillery attack on Yeonpyeong Island in 2010 following clashes between surface combatants near the NLL in 1999 and 2002.¹¹⁾ North Korea also continues to launch its indigenous medium- and long-range three-stage missiles through the airspace above the West Sea (these sometimes also reach the ECS and SCS), which is a potent source of maritime instability, with the Japanese Maritime Self-Defense Force (JMSDF) planning to intercept North Korean missiles. The latest such launch, in December 2012,

10) Sam Bateman, "Cooperation or Trust: What comes first in the South China Sea?" *RSIS Commentaries*, No. 167, 17 September 2013.

11) See Geoffrey Till and Yoon Sukjoon, *Korean Maritime Strategy: Issues and Challenges* (Seoul, Korea: Korea Institute for Maritime Strategy, 2011).

has provoked a “tit-for-tat” reaction, with US-led naval task units, including vessels from South Korea and Japan, supposedly deployed to monitor and track North Korean missiles, but also potentially infiltrating Chinese military areas and collecting military intelligence under the pretext of a United Nations Security Council Resolution. The Chinese have directed their suspicions against the US 7th Fleet and the JMSDF, which has various cruisers and destroyers using the sophisticated networked system known as Theater Ballistic Missile Defense (TBMD).¹²⁾

In the early part of this year Chinese People’s Liberation Army Navy (PLAN) frigates locked their fire-control radar on to a JMSDF ship and an air-borne anti-submarine warfare helicopter off the Diaoyu/Senkaku Islands, which almost triggered a physical confrontation between China and Japan. The use of underwater and air surveillance is becoming more widespread, as the nations of Northeast Asia seek a cost-effective advantage against potential adversaries, deploying Unmanned Aerial Vehicles (UAVs, also called drones) and stealth submarines to monitor and track both surface combatants and civilian law enforcement forces, such as coastguards. In the Chinese case this is the responsibility of China Maritime Surveillance (CMS) agency. The JMSDF also plans to deploy its own Marine Corps to be in a position to effectively mount operations to retake the islands, should it prove necessary, together with its naval task units.

Third, command and control systems are opaque and confused, typically blurring operational command and control chains between the navy and coastguards, and this is another impediment to the implementation of functional MCBMs in Northeast Asia. The nations of the region, in seeking to enhance their law enforcement capabilities to deal with maritime territorial disputes, have recently focused mainly on coastguard assets, rather than sophisticated naval assets like Aegis-equipped destroyers. There

12) James R. Holmes and Toshi Yoshihara, “Hardly the first time,” *US Naval Institute Proceedings*, April 2013, pp. 22–27.

are some good reasons for this, including the diversification of defense budgets, and the desire to reduce threat perception by their rivals. There are, however, operational difficulties in integrating civilian law enforcement agencies with naval forces, for which intra-agency joint operational guidelines are required. The lack of clear single and unified command and control systems to deal with the peacetime roles and missions in the confined seas of the disputed waters is another intractable and wicked problem: improved coordination of joint operations between naval forces and civilian law enforcement units deployed together on law enforcement missions, such as fisheries disputes in overlapping EEZs, is urgent and essential.

Fourth, the lack of operational manuals and Rules of Engagement (ROE) procedures for the on-scene commanders in the disputed seas is another issue likely to cause miscalculations in the event of unexpected problems, which may then result in serious clashes between rival claimants. Recent maritime confrontations in the Northeast Asian seas, including naval skirmishes between North and South Korea alongside the NLL, demonstrate the importance of ROE and a clear Operational Control (OPCON)/Operational Plan (OPLAN). This is the only secure method of constraining maritime forces to adhere to treaty obligations and international law – principally UNCLOS. Only through such mechanisms can on-scene commanders legally and safely fulfill their appointed roles and missions without allowing the heat of the moment to influence their decisions and actions.

Moreover, the nations of the Northeast Asia often appear to deploy their naval assets for peace-time missions in ways which are not well-defined. There seems to be a confusion between Area of Interest (AOI), an operational area within which established principles are applied to guide the on-scene commander mainly during peacetime operations at sea, and Area of Responsibility (AOR), an operational area defined by fighting doctrines dealing with the proper use of specific weapon systems and other resources.

Confusion of AOIs with AORs leads to a conceptual blurring in which peacetime operations take on wartime attributes, and this is why ROE and an OPLAN/OPLAN must be applied to prevent the development of war-like scenarios. Naval commanders on scene, patrolling in the AOI and carrying out missions in support of coastguard units, should be absolutely clear that they have no authority to intervene in law enforcement operations without an executive declaration that a war-like situation exists, which will be conveyed to them by their supreme commander. Maritime contingency operations in the AOI should respect the international navigation regime and the freedom of the seas, and except in response to actively hostile maneuvers, should absolutely refrain from engaging in physical confrontations.

Fifth, a number of forums exist which might contribute to establishing functional MCBMs in Northeast Asian seas, but unfortunately they have so far produced very little of value in addressing these wicked problems: generally because of an insistence upon narrowly defined national interests and rights. Such forums should deliver constructive mechanisms to develop a series of MCBMs aimed at building trust and cooperation, but they have not succeeded in usefully addressing the essential issues of maritime security. The list of ineffective forums includes the WPNS, the International Sea power Symposium (ISS), the ASEAN Regional Forum (ARF), the East Asian Summit (EAS), ASEAN Plus Three (APT), the Heads of Asian Coastguard Agencies (HACGA), the annual Chiefs of Defense Conference (CHOD), and the ASEAN Defense Ministers Meeting (ADMM Plus). Even non-government multilateral forums, such as the Council for Security Cooperation in the Asia-Pacific (CSCAP) and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), have failed to address the realities of regional maritime instability, because their members hold widely different perceptions of the nature of maritime threats in the region and disparate interests in the maritime domain.¹³⁾ For

13) See Sukjoon Yoon, "Regional Maritime Security: Old Issues and New Challenges".

example, the MILANDA and ReCAAP express their different perspective on how to define piracy activities near the Malacca and Singapore Straits. Perhaps there is an opportunity for more honest discussions within and between sub-regional institutions and semi-governmental and NGO organizations, such as coastguards, the International Maritime Organization (IMO), the International Hydrographic Organization (IHO), the International Crisis Group, and other civic organizations. The genuine commitment of these bodies to protecting the freedom of navigation and the safety of shipping could be the starting point for a fresh and cooperative vision of MCBMs.

V. Functional MCBMs in Northeast Asia: A Survey of Status and Requirements

There are some existing cases in the Northeast Asian where functional MCBM regime have been instituted, and there are various types: ① agreeing tacitly to coordinate airspace and underwater management systems with neighboring countries, ② imposing robust and mandatory ROE and OPCONs capable of defusing high-intensity local conflict, or at least of preventing all-out war situations, ③ establishing hotline communications at sea and on land in order to forestall emerging crises and deter inadvertent accidents at sea, ④ reaching agreement to prevent INCSEAs, and thus to avoid the direct naval skirmishes which might result from misunderstanding or miscalculating the intentions of rivals in disputed waters, and ⑤ conducting a variety of policy dialogues seeking to identify mutual maritime interests and concerns. However, these existing functional MCBMs generally lack the essential principles and objectives necessary for successfully maintaining maritime good order and stability.¹⁴⁾

Regarding air and underwater space management, according to the “2013 Defense White Paper” published by the Japanese government, the East Sea and some parts of the ECS have been assigned as its submarine operational zone, a unilateral action which neighboring navies, especially the PLAN, might take exception to. South Korea and Japan have also tacitly coordinated their management systems in the East Sea, under the auspices of the US, to avoid any accidental incidents in the airspace and underwater domain between Korea and Japan.¹⁵⁾ It is well known that South Korean and JMSDF submarine units share information about underwater operations, giving one another prior notice of submarine patrols and missions in the East Sea. These two countries have also successfully adapted their respective Air Defense Identification Zones (ADIZs), to avoid overlapping air operations. A similar arrangement is urgently needed between China and Japan: there have been repeated instances where one country scrambles its air assets in response to an unexpected approach by the other to the disputed Diaoyu/Senkaku Islands. If military clashes are to be avoided, China and Japan must also agree some mechanisms for underwater coordination.

In the West Sea, certain ROE were unilaterally set out by General Mark Clark of the UNC, in order to deter unnecessary naval skirmishes between the two Korean navies. Later, in 1978, a single unified command and control chain, known as “Combined Forces Command (CFC) between the ROK and US Forces” was established to provide integrated binational command and control authority to execute clear-cut top-down military order and direction against military provocations. This structure seems to have allowed South Korean military authorities to patiently tolerate North Korea’s deliberate and repeated military violations of the 1953 Armistice Agreements, both at sea and in the air. This is an effective procedure-based functional MCBMs

14) Sukjoon Yoon, “Some ‘New Wicked Problems’ of the Asia-Pacific Regional Maritime Security: Can Solutions be found?” a paper presented at the 28th Annual Conference of Council on Korea-US Security Studies, in June 25-26, 2013, in Seoul, Korea.

15) Ibid.

between a hostile North Korean navy and a defense-oriented South Korean navy the ROE are robust, and the OPCON mandates a “never-shoot-first” principle and a doctrine of proportionate response to military provocations. These guidelines played a central role in preventing the two navies from extending the sea skirmishes of the so-called “2nd Korean War”, fortunately, and obliged the North Korean regime to more pay more attention to the agreements made between Pyongyang and Seoul, and sometimes to those between Washington and Beijing.¹⁶⁾

These guidelines, together with lesson learnt over the decades since the armistice, have allowed the two Koreas to moderate their hardline attitudes toward each other, and the NLL has been acknowledged as a temporary maritime boundary in inter-Korea agreements, such as the 2004 bilateral agreement on the avoidance of INCSEAs. When the South Korean President Roh Moo-hyun met with the North Korean leader Kim Jung-Il in Pyongyang in 2004, they agreed that their naval forces should communicate each other via commercial channels to prevent the reoccurrence of the inadvertent naval skirmishes which had happened in 1999 and 2002. The resulting bilateral functional MCBMs were the “South-North Agreement on Maritime Navigation” signed on May 28, 2004, and the “Agreement on the Prevention of Accidental Naval Clashes in the West Sea” signed on June 12, 2004.¹⁷⁾

Unfortunately, the continuing sea skirmishes between the North and the South, usually known as the “Yeonpyeong Sea Battle” meant that Pyongyang did not adhere to the 2004 agreement. It was intended that if one party had suspicions about the other’s intention, they should communicate via the commercial telecommunications equipment installed in the naval patrol vessels of both nations. The North Korean naval patrol craft have not,

16) See Andrew Forbes and Yoon Sukjoon, “Old and New Threats from North Korea Against the Republic of Korea,” in Geoffrey Till and Yoon Suk Joon, *Korean Maritime Strategy*, pp. 17–56.

17) See Ministry of National Defense, Republic of Korea, *2010 Defense White Paper* (Seoul, Korea: MND, 2011).

however, responded properly to phone calls made by the skippers of South Korean vessels questioning their intentions and the purposes of naval maneuvering, with the result that the West Sea has become progressively militarized. In the aftermath of the 2010 sinking of the ROKS *Cheonan* and artillery attack on Yeonpyeong Island, about 50 Rafael Spike Non-line-of-sight (NLOS) electro-optical guided missile systems have been deployed to the West Sea.¹⁸⁾ This is intended not only to deter long-range artillery attacks like the 2010 shelling, but also to constrain North Korean naval patrol vessels to adhere to the 2004 agreement and resist Pyongyang's territorial claims close to the NLL.

In the Diaoyu/Senkaku Islands dispute between China and Japan there seems to be a failure to properly define the character of the naval "Area of Operation (AO)" in the disputed seas, and this is a contributing factor to the action-reaction cycle in which mutual distrust inclines both parties toward wrong directions. Two recent dangerous confrontations have demonstrated the urgency of this problem: the clash between the PLAN and the JMSDF near the islands in early 2013; and the ramming of a Japanese coastguard vessel by a Chinese fishing vessel in 2010, after which the Japanese coastguard seized the Chinese vessel for illegal fishing activities, charging it with violation of Japanese domestic law, while the Japanese government imposed restrictions on the fishing activities of its own fleet near the Diaoyu/Senkaku Islands in order to lessen the possibility of confrontations between fishing vessels of the two countries.

The nature of the AO assigned by high command to the on-scene commanders should preclude them from any political role, being subject to the specific applicable ROE, and the AOR and war-fighting manuals, such as OPLAN, should not be applied to the Diaoyu/Senkaku Islands during peacetime

18) Sebastien Fallentti, "South Korea delays Spike NLOS deployment," *Jane's Defence Weekly*, 28 November 2012, p. 14; James Hardy, "Seoul displays Spike-NLOS, ballistic and cruise missiles," *Jane's defence Weekly*, 9 October 2013, p. 16.

naval operations on the high seas or disputed waters. This area, in which the navies of China and Japan are drawing closer to a war situation is, effectively, the high seas, and to respect neutral nations and third parties, should not be treated as wartime operational zone. It is legitimate for the parties of the UNCLOS to conduct peacetime operations pursuing their political and diplomatic objectives, but they are not engaged in a war, and should not dispose their forces as if they were.

The AO in which, in early 2013, the PLAN turned their fire-control radar on and off, presumably without any input from their supreme command, is not an AOR, but an AOI. So the Chinese navy should not adhere to wartime operational doctrines, such as OPLAN, as if it were an area of operational warfare, such as an AOR. For China and Japan, the use of naval weapons and combat systems should always be properly sanctioned by definite ROE and by orders promulgated through a single unified command and control chain, even as a response to hostile actions by adversaries, such as collision maneuvering and moving gunnery to aim toward ships at sea.

Past physical skirmishes also include a collision in 2001 between a US EP-3 navy plane and a Chinese PLA Air Force J-8 jet fighter off the coast of Hainan, and a clash in 2009 between Chinese quasi-governmental vessels and the USNS *Impeccable* and *Victorious* in the SCS. Naval assets deployed recently near the Diaoyu/Senkaku Islands include relatively heavy guns, missiles, and air assets, such as ship-borne helicopters, which provide targeting services.¹⁹⁾ The prolonged standoff between China and Japan, which has continued for several years without any diplomatic consultations, can only be alleviated by a sound top-down chain of command system with clear-cut operational regulations including ROE. These ROE should provide the on-scene commanders with clear guidance to ensure more prudent behavior during chaotic situations. The on-scene commanders in the recent

19) See Carlyle A. Thayer, "China at Odds with U.N. Treaty," *US Naval Institute News*, March 11, 2013.

incidents have apparently been misled by ambiguous command and control systems. Both Japan and China should designate the Diaoyu/Senkaku Islands as an AOI and impose definite ROE upon all naval assets deployed in the disputed waters: this must embrace the integration of all joint operations among their land, navy and air forces into a joint chain of command.

It was perhaps another failure of appropriate command systems, to deploy the ROKS *Cheonan* close to Baengnyeong Island where there was known to be a serious threat from entrenched North Korean positions in the shallow waters. Similar questions should be asked about the Japanese decision to deploy JMSDF naval assets close to the Diaoyu/Senkaku Islands during confrontations between Japanese coastguards and Chinese vessels fishing illegally, given that this area cannot be regarded as an AOR. The Japanese government has established a Japanese Chief of Staff Self-Defense Force (JCSSD) for implementing joint operations and challenges in providing humanitarian assistance, such as victims of the 3/11 tsunami and other natural or man-made disasters, such as nuclear explosions and leakages. The JCSSD has operational control overland, sea and air forces, and it is surely time for some similar helpful innovation to be applied to naval operations in disputed waters, both around the Diaoyu/Senkaku Islands and also near the NLL.

Regarding China: because of the embedded linkages between the Chinese Communist Party (CCP), the PLA and the Chinese government, it is inherently unclear who is in charge; and many China-watchers have highlighted the consequences of these confused power structures.²⁰⁾ For instance, the overlapping command and control authorities between the CCP and the PLA are surely a recipe for chaos when China uses military force in the disputed

20) See Sarah Teo and Mushahid Ali, ed, al., *Policy Report: Strategic Engagement in the Asia-Pacific: The Future of the ASEAN Defence Ministers' Meeting - Plus (ADMM - Plus)*, S. RSIS, August 2013.

areas. Central military authority in China appears unable to specify definite ROE and OPLAN for the locally diversified China Maritime Surveillance Force (CMSF) units in coastal administrative counties, prefectures and local fisheries authorities, even provisional governments. Until the Chinese government can extend its reach to impose clear ROE and OPLAN upon these diversified maritime activities, they will be unable to ensure that the PLAN and the CMSF do not undermine the policies of the center through overly harsh attitudes towards neighboring nations, perhaps expressing monolithic nationalism or the narrower interests of local government. The West Sea has vicious illicit fishing activities from the Chinese local areas and the South Korean coastguard engaged action–reaction situation to deter the increasing Chinese illegal fishing activities, in particular, near/on the NLL in where the two Korean fishing has ostensibly been prohibited to mitigate military confrontations since the end of the Korean War. South Korean President Park Geonhye argued the Chinese leaders to establish working–level talks about to address it, but the feasibility seems to be very low due to different views from both countries.²¹⁾

China has recently deliberately blurred the distinction between coastguards and navy, making it more difficult to establish maritime control of operations in the disputed waters of the ECS and the active role envisioned for its coastguard is clear from its long–term plans to expand coastguard assets. Similar conclusions can be drawn from the overextended roles and missions of the CMSF operating under the State Oceanic Administration (SOA), which has been used to bolster naval deployments to protect Chinese core interests in the ECS and SCS. In practice, the CMSF is as much a political tool as the PLAN in promoting China’s vision for a renewed “Middle Kingdom” regional order. So while the US navy and coastguard are struggling to fund extended operations, laboring under their

21) Sukjoon Yoon, “Why Park must visit China first,” *China Daily*, April 10, 2013 & Sukjoon Yoon, “A New China Policy for South Korea: Options for President–elect Park,” *RSIS Commentaries*, No. 023, & February 2013.

unachievable fleet plans, the Chinese SOA is building strong and capable MSA vessels, planning 700 ships by 2030, to protect their self-defined maritime rights and interests in the region. This calculated blurring of the distinctions among major maritime forces, between the roles of navy and coastguard in the disputed waters, may undermine the maritime security of the region.

While inter-agency coordination in the region remains a problem for most countries, one positive sign from China is that the Chinese “state council” (equivalent to a “governmental organization” in Western terms) has recently established a single unified civilian law enforcement agency to deal with the various different and diversified maritime administrative agencies in overseeing law enforcement missions. Since the National People’s Congress (NPC) convened in March 22, 2013, the Chinese government has established “The Chinese Coastguard (CCG: 中國海警局)” to integrate intractable and various local CMS forces in monitoring China’s maritime rights and sovereignty and its fishing activities, of which has subordinated to the three organizations: SOA, Ministry of Agriculture, and Ministry of Security, into single command and control organization. Through there are some suspicious of CMS with weapons to conduct law enforcement operation, a single organization of commanding the Chinese MSF would be helpful to delivery of central direction to its subordinates around the Chinese coast areas.²²⁾

Ultimately, the best way to develop functional mechanisms for conceptual MCBMs is through bilateral or multilateral maritime policy dialogues

22) Wu Shicun, “China’s maritime policy for maintaining maritime peace and order in Northeast Asia,” presented at The 11th International Sea Power Symposium of Changing maritime security environment and the role of Navy: Challenges and Opportunities, co-hosted by Republic of Korea Navy, KIMS, and SLOC Study Group-Korea, in 6 September 2013, in Seoul, Korea;
<http://www.globalsecurity.org/wmd/library/news/china2013/china-130731-pdo05.ht...released August 28, 2013>.

between neighboring nations. These may incorporate institutional measures to limit uncertainties and encourage regional naval security forces to stick to their ROE and OPCODE, instead of reverting to their established patterns of using past memories to justify their own interests in disputed seas. For instance, South Korea has conducted various bilateral N-T-N-Ts with the US Navy, the JMSDF, and the Russian Navy, as well as with other like-minded navies including the Indonesian Navy, the Royal Malaysian Navy, and the Royal Singaporean Navy. At the working level, exchanges have been taking place not only through the hotline established between the Chinese North Sea Fleet and the South Korean Navy 2nd Fleet, but also through exchanges between regional naval combatant units, including these same fleets and also the South Korean Navy 3rd Fleet and the Chinese East Sea Fleet. Recently, for the first time, the South Korean navy conducted a maritime consultative dialogue with the PLAN and the Chinese government then allowed the South Korean Chief of Naval Operations, Admiral Choi Yoon-hee, to observe its submarine and operational center at the home-port of its North Sea Fleet in Qingdao.²³⁾ Multilateral maritime forums also exist at which the avoidance of INCSEAs is discussed, including the WPNS, the ISS and the International Fleet Review, and these surely have an important role in formulating some multilateral MCBMs along the lines of CUES, MIED and the EXTAC-1000 Series doctrines. Although some navies are likely to view these procedures with suspicion, these policy-based maritime security dialogues have successfully generated some functional MCBMs over the past few years among the Northeast Asian countries. It would surely be feasible to adapt the processes of CUES, MIED and the EXTAC-1000 into common procedures used to conduct bilateral naval operations between the navies of South Korea, Japan and Russia when they are involved in various maritime activities, such as mutual visiting, basic maneuvering exercises, and humanitarian relief operations in the West Sea, the East Sea and the ECS.²⁴⁾

23) 『Joongang Ilbo』, July 12, 2013, p. 4.

24) Ian Storey, "Implementing CBMs in the 2002 DOC: A Roadmap to managing the South

VI. The Next Step Toward Truly Functional MCBMs: Codes of Cooperation

Dr. Mark Valencia argued in his 2008 article that this sub-region faces similar maritime security to those of Southeast Asia, and to achieve a functional approach to conflict resolution it needs to negotiate a “Declaration on the Conduct (DOC) of Parties in Northeast Asian Waters” modeled on the DOC drawn up for the South China Sea.²⁵⁾ Some such guidelines for activities in confined seas and disputed waters is an indispensable first step, if Northeast Asia is to back away from the growing dangers of confrontation and conflict and transform conceptual MCBMs into truly functional MCBMs, and good intentions into lasting maritime security.

Any code of cooperation designed to lead to functional MCBMs should be based on rational approaches to building trust including: ① constructive interactions to develop a common understanding of strategic concepts and policy implications, ② active involvement in prearranged naval interactions, to establish modes of prior notification and identification of friends and foes in the complex environment of the disputed seas, ③ adapting technology-based identification systems to implement bilateral INCSEAs agreements, and ④ rationalizing naval and coastguard command and control chains into a single integrated hierarchical system, and adhering to clear and discrete ROE.

First, Northeast Asian nations should promote constructive interactions to develop a common understanding of strategic concepts and policy implications without prejudice. It is time to abandon the old games of “good government” against “bad government”, which have so constrained their

China Sea dispute,” Tran Troung Thuy, ed. Al., *The South China Sea: Towards A Region of Peace, Security and Cooperation* (Vietnam: The Gioi Publishers, 2011), pp. 357–368.

25) Mark J. Valencia, ‘A Maritime Security Regime for Northeast Asia,’ *Asian Perspective*, Vol. 32, No. 4, 2008, pp. 157–180.

policy choices in the past. Rival nations need to show scrupulous political sensitivity to allow appropriate and mutually tolerable concessions and compromises to emerge through well-intentioned dialogue without this flexibility being regarded as “bad government”.²⁶⁾ It is extraordinary, and quite lamentable, that the present Japanese government, led by the right-wing Liberal Democratic Party (LDP), has abandoned the pragmatic approach taken by the previous cabinet in implementing functional MCBMs to defuse Japan’s territorial disputes, over the Diaoyu/Senkaku Islands with China, and the Dokdo Islands with South Korea, in an unfortunate attempt to project an image of “good government”.²⁷⁾ On August 22 2013, the Japanese government published the results from a deliberately provocative official survey of Japanese public opinion about the sovereignty of the Dokdo Islands, to which the South Korean government responded angrily. The Japanese government has indicated by this behavior that the cycle of action and reaction over the Dokdo Islands issue will continue. The solution to such problems lies not with popular opinion, but rather in the legal and historical facts as established by international law and customary practice. Obviously the Japanese Prime Minister, Shinzo Abe, who is well-known for his ultra-nationalist sympathies, is more concerned with his own electoral popularity than with reaching negotiated solutions with neighboring countries, such as with South Korea on the Dokdo issue.

Second, prearranged naval activities among the regional navies are a very helpful step in supporting agreements to avoid INCSEAs and working toward the further development of functional naval interactions. Various bilateral and multilateral prearranged naval activities have already taken

26) See Sukjoon Yoon, “Sino-American Rivalry in the South China Sea: Time for the ROK to Project its Middle-Power Role”, a paper presented at *The 4th International Workshop, “South China Sea Cooperation for Regional Security and Development”*, November 19–21, 2012, at Ho Chi Minh city, Vietnam.

27) Jonathan Berkshire Miller, “Abe plays it safe but looks for defence reforms,” *Jane’s Defence Weekly*, 18 September 2013, p. 23 & Sukjoon Yoon, “Grasping Abe’s real objective,” *China Daily*, 11 September 2013.

place, or have been planned, including submarine Search & Rescue (SAR) cooperation for disabled and wrecked submarines, Mine Counter Measures Exercises (MCMEX), WPNS Maritime Security Information Exchange Seminars (WMSIES), WPNS Multilateral Sea Exercises (WMEX), and Regional Maritime Information Exchanges (ReMIX) via various information technologies. These prearranged naval interactions have great potential to build trust, replacing enmity by friendly competition. The experience gained in such exercises, by establishing modes of prior notification and the identification of friends and foes, is invaluable for mitigating the risk of miscalculation leading to dangerous incidents. The Chinese Navy has been invited for its participation in the multilateral maritime operation as China's contribution for dispatching its anti-piracy naval task unit to the Gulf of Aden and to be sent as its observer to the exercises. If it does so it would be a vital breakthrough in the formulation of the multilateral naval cooperation. The Chinese military has also been invited for bilateral annual ROK-US military exercises.

Third, automatic identification technologies have significant potential to enhance the procedures used to avoid INCSEAs by allowing direct linkages between the parties using the internet and other channels. Further helpful technical measures include: providing proper transparency via web-based homepages or sites, such as the All Partners Access Network (APAN) installment of MIS or AIS on ships; establishment of bilateral hotlines between naval fleets, ships and aircraft of disputing parties, and even between their defense departments or naval attaches; formulating a Standard Operational Procedure (SOP) for the prevention of INCSEAs, based on protocols like CUES, MIED and EXTAC-1000 Series manuals and mandatory information-sharing about naval exercises, naval patrols, and Marine Scientific Research (MSR) activities near or in the disputed waters, via APAN. These technology-based measures are an essential supplement to the language used in formal agreements, which is necessarily vague, and by revealing the situation as it really is, can greatly lessen the opportunities for misinterpretation of functional MCBMs. A useful approach is for one party

to provide financial support for the rival party to install technology-based instruments to confirm INCSEAs, and the funding can then be withdrawn as a sanction if agreements are not respected. This procedure could be applied to ease the tensions between the navies of the two Koreas confronting one another across the NLL in the West Sea off the Korean Peninsula. Such financial inducements may be effective in constraining North Korea not to abandon its promises to adhere to the inter-Korea agreement.

Fourth, a single integrated hierarchical command and control structure must be established by each nation in support of the functional MCBMs between security forces and civilian law enforcement forces: this is fundamental. Unless maritime forces are organized in this fashion, there is literally no hope of resolving the security issues of the region, specifically to ensure the freedom of shipping and to deter the recurring bilateral conflicts and confrontations. The South Korean government has set a good example by clearly assigning the roles and missions for dealing with general maritime security issues to the coastguard, and defining a national security agenda focused on North Korean military provocations directed at the South Korean navy. The South Korean coastguard is functionally subordinate to the military authority, the Joint Chiefs of Staff (JCS), during contingent crises, while operating under a sole independent command and control system in peacetime, to safeguard maritime peace and good order.²⁸⁾ Also, the Chinese government has recently decided to merge various local and civilian law enforcement forces into a single unified force under SOA leadership, but has yet to implement the decision.²⁹⁾

28) Sujoon Yoon, "The New Chairman of the JCS and South Korea's Evolving Military Strategy," *PacNet*, #73, October 3, 2013.

29) Sukjoon Yoon, "The ROK-US Alliance at Sixty: Vigorous, But Vigilance Required," *Asia Pacific Bulletin*, No. 236, October 22, 2013.

VI. Conclusions

The Northeast Asian region has some significant experience of attempting to develop functional MCBMs, and there will never be a better time to bring these solutions together to review the principles which underpin the (very fragmentary) success of such endeavors. All the nations of the Northeast Asian sub-region have signed up to some fine-sounding pledges intended to secure maritime good order and stability, which is indisputably the common interest of all parties, but adherence to the principles and objectives enshrined in such agreements has always been mixed. Resolution of the issues surrounding the disputed waters will inevitably entail “winners” and “losers”, and the clearest possible framework must first be established, so that by adhering to mutually agreed principles the mutually beneficial objectives can be attained. Adherence is the key, which means that a balance must be struck between the interests of the “winners” and “losers”. The nature of the framework required can be readily sketched in outline, being best articulated as discrete new “code of cooperation” to support and constrain the creation of truly reliable functional MCBMs. Such a common code of cooperation requires bold and significant steps from many parties in the region – we must square the circle between sovereign territorial integrity and economic interdependency – but the splendid prize of a secure maritime environment is not beyond reach. The alternative scenario, involving ever more frequent and dangerous military conflict, is too terrible to contemplate: conceptual MCBMs can and must be transformed into fully effective functional MCBMs.

요 약

동북아 해양신뢰구축방안: 효과적 기능적 방안은 무엇인가?

윤석준*

2010년 초반 이래 지역 해양안보는 보다 개선된 신뢰증진을 위한 안보구도와 메커니즘을 요구하고 있다. 특히 2011년 이래 전문가들은 지역 내 어려운 해양안보 문제들을 주요 현안으로 식별하고 있으며, 아울러 다양한 다루기 힘든 개념 위주의 지역 해양신뢰구축방안들을 제시하고 있었다. 최근 동북아는 다양한 해양분쟁과 갈등으로 점철되고 있으며, 대부분 국가들은 더욱 위험한 상황을 선택하기에 주저하지 않는 위험한 현상을 보이고 있다. 이러한 문제들은 첫째, 기본적으로 기존의 개념적 목적의 해양신뢰구축방안 이행에 대한 실패, 둘째, 개념적 해양신뢰구축방안을 넘어선 기능적이며 실질적 해양신뢰구축으로 변화에 어려움 그리고 셋째, 이를 동북아에서 어떻게 적용³⁰⁾해야 하는가” 하는 문제로 귀결되고 있다. 대체적으로 전문가들은 개념적 방안 보다 효과적이며 기능적 해양신뢰구축방안을 적용하고 이해하는 것이 바른 “정답”이라고 보고 있다. 따라서 본 논문에서는 기존의 개념적 논쟁에 빠졌던 개념적 해양신뢰구축방안에 대한 과거 미련을 버리고 점차 진화된 복합적 문제로 대두되는 동북아 해양에서의 해양분쟁과 갈등을 기능적이며 실질적 해양신뢰구축방안에 의해 해결하는 방법을 식별하여 제시하고자 한다. 이에 본 논문에서 제시하는 기술적이며 제도적 해양신뢰구축방안이 인정되면, 지금까지의 작용-반작용의 악순환적 주기를 넘어설 수 있는 효과적 해양신뢰 각론, 레짐 또는 거버런스가 될 수 있을 것이다. 궁극적으로 본 논문의 목적은 고질적이고 새로운 해양갈

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등을 해소할 수 있는 신뢰 구축 전략을 제시하여 지역 해양안전과 평화를 유지하는 것이다.

핵심 주제어: 지역 안보, 지역 해양안보, 해양협력, 해양신뢰구축방안, 해양 레짐 및 거버런스