



**War and Peace in the East Sea:
Reducing Tension Along the Northern Limit Line**

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Executive Summary

The Northern Limit Line (NLL), though only one of many problems on the Korean Peninsula, is the cause of nearly all of the bloodshed in the past decade between the two sides. This intangible boundary was originally established by the UN Command to prevent South Korean forces from reigniting the conflict after the end of hostilities during the Korean War. After years of silence, the first instance of on-the-record dispute of the line by the North was not until 1973. Although both Koreas are signatories to the UN Convention on the Law of the Sea (UNCLOS), the North has not ratified, and essentially every line they have established as a maritime border, or insisted is correct, is subject to dispute under international law. Dispute over the NLL is not just related to security – powerful economic factors riding the line include valuable blue crab found in the vicinity and a shortened travel route for North Korean commercial ships.

Five major incidents since the 1990s have resulted in at least 53 North Korean military personnel being killed and 95 wounded, and 54 South Korean military personnel being killed and 99 wounded (as well as two South Korean civilians). Clearly, this intangible line is the source of much tension and holds dangerous potential for larger regional conflict. Our paper proposes that efforts focus on short-term actions that reduce tension and build stability before engaging larger strategic issues such as a peace treaty or peace regime. These include action officer level communication, the creation of a coordination agency, and combined stability activities in vicinity of the NLL. These efforts reduce Northern incentive for hostility and likewise hedge immediate engagement and escalation risk while shaping the conditions to facilitate a future bilateral solution to the NLL.

War and Peace in the East Sea: Reducing Tension Along the Northern Limit Line

Introduction

On the morning of Nov. 23, 2010, North Korea (formally the DPRK) sent a message to South Korea (formally the ROK) vociferously opposing artillery exercises planned for that day off the coast of Yeonpyeong Island.¹ The South Korean commander dismissed the warning because the exercises were part of regular monthly training for soldiers on the island and, in any case, the artillery would not land in North Korean waters. The warning went unheeded, and exercises commenced later in the day. Making good on their threats, North Korea launched a massive artillery barrage, killing two South Korean soldiers and two civilians. South Korean soldiers described the aftermath of the attack as chaotic,² with soldiers clearly unprepared for what had occurred (in fact, only four of six self-propelled howitzers were even combat-ready).³ As the first artillery attack on South Korea since the end of the Korean War, it sent shockwaves throughout the region. Coming eight months after the sinking of the *Cheonan*, it once again underscored the volatility and uncertainty surrounding one of the major flashpoints in East Asia: the Northern Limit Line (NLL).

The NLL, though only one of many problems in the Korean Peninsula, is the cause of nearly all the bloodshed in the past decade between the two sides. Every event in this area, whether combined US-South Korea ground exercises or naval maneuvers by North and South Korea, brings with it the implicit risk of escalation. A stray shell or a rogue patrol boat could set off a major confrontation. Its establishment traces back to the Korean War in

¹ Joseph S. Bermudez Jr., "The Yonpyong-do Incident, Nov. 23, 2010," *38 North* (Jan. 11, 2011), <http://38north.org/2011/01/the-yeonpyeong-island-incident/>, 6.

² "Marines recount NKs deadly shelling of Yeonpyeong," *Korea Times* (Dec. 15, 2010), http://www.koreatimes.co.kr/www/news/nation/2010/12/113_78045.html.

³ "The Yonpyong-do Incident, November 23, 2010", 6.

1953 and a subsequent armistice agreement between the two Koreas, and to this day remains a contentious topic of dispute. There are many proposals for resolving the NLL issue, some of which include redrawing the line by an international tribunal,⁴ creation of a West Sea peace regime,⁵ and even a full peace treaty formally ending the war. However, any permanent solution will require a delicate balance of time, bilateral agreement, and international oversight, likely including China and the United States given the unique armistice status on the peninsula. Until tension levels decrease between the two Koreas, a change to the NLL is infeasible⁶ and elaborate engagement or containment strategies are non-starters. The risk of engagement and escalation near the NLL will be reduced and a foundation conducive to a permanent solution will be established by identifying and prioritizing the following short term actions:

- action officer level communication;
- the creation of a coordination agency;
- combined stability activities in the vicinity of the NLL

Focusing on short-term actions toward stability and tension reduction will create favorable conditions for a lasting bilateral agreement to the NLL dispute. Our analysis begins with a historical overview of the origins and causes of the dispute, followed by a synopsis of the major engagements occurring in the area. We then expand on our short-term actions and analyze their effectiveness, consider obstacles to implementation, and offer realistic solutions to overcome those obstacles. Ultimately, our approach to

⁴ Terence Roehrig, "North Korea and the Northern Limit Line," *North Korean Review* 5, no. 1 (2009): 8-22, doi: 10.3172/NKR.5.1.8.

⁵ John Barry Kotch and Michael Abbey, "Ending Naval Clashes on the Northern Limit Line and the Quest for a West Sea Peace Regime," *Asian Perspective* 27, no. 2 (2003): 175-204, <http://www.asianperspective.org/articles/v27n2-f.pdf>

⁶ Roehrig, "Northern Limit Line," 8-9.

addressing this complex problem should be agreeable to both hawks and doves in North Korean policy.

Origin of the NLL

With the signing of the armistice to the Korean War, the land boundary agreement became the military demarcation line (MDL) near the 38th parallel, buffered by a 2.5 mile-wide heavily mined and guarded demilitarized zone (DMZ). The seaward extension of this line to the west remains contentious. Negotiations leading to the armistice failed to establish a formal sea MDL agreement due to divergent views over the nautical mile limit for territorial waters. The armistice did specify that the five northwest islands (NWI) of Paengyongdo, Taechongdo, Sochongdo, Yonpyongdo, and Udo, located in close proximity to North Korea's Ongjin Peninsula, would remain under the control of the United Nations Command (UNC). The UNC Commander, in an effort to prevent alliance forces from sailing too far north and reigniting conflict, established the NLL as the northern maritime boundary, taking into account the mid-channel distances of the five islands and Ongjin.⁷ From the time of establishment until 1973, the NLL served its purpose (for the most part) and North Korea's silence signaled consent to South Korea and the UNC. Unfortunately, this did not reflect continued stability in the region.⁸

The Dispute

North Korea's dispute of the NLL began in 1973 at the 346th UNC Military Armistice Commission meeting. Then the North's delegate argued that the five islands were in

⁷ This historical narrative is based on the accounts by Terence Roehrig, John Barry Kotch, and Michael Abbey footnotes 1 and 2. In addition, the following source was also used: Moo Bong Ryoo, "The Korean Armistice and the Islands" (research project, U.S. Army War College, 2009), 1-30, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA500904>

⁸ For more information see Stephan Haggard, "The Northern Limit Line Controversy: New Historical Documents," *Peterson Institute for International Economics: North Korea: Witness to Transformation* (May 28, 2012), <http://www.piie.com/blogs/nk/?p=6113>.

DPRK territorial waters, and travel to these islands would require the North's consent.⁹ This claim appears to acknowledge the NLL for the first time in a formal setting. Since this time, North Korea has promulgated its own boundaries: a 200-mile exclusive economic zone on June 21, 1977, a 50-mile military boundary zone on Aug. 1, 1977, and the Chosun West Sea Demarcation Line (CWSDL) in 1999 after clashes between the North and South's navies.¹⁰ Although both Koreas are signatories to the 1982 UN Convention on the Law of the Sea (UNCLOS, though it has not been ratified by North Korea),¹¹ essentially every line they have established, or insisted is correct, is subject to dispute under international law. South Korea established the NLL when three nautical miles (nm) from shore was the standard; because that standard has now shifted to 12 nm with the introduction of UNCLOS, a present day NLL would be drawn farther south. For North Korea, both the Exclusive Economic Zone and military boundary zones are unacceptable under the UNCLOS; the former because it does not conform to the length and configuration requirements of UNCLOS and the latter because a country cannot simply declare a zone of that size off-limits.¹² Further complicating matters is the 1992 Basic Agreement signed by the two Koreas, particularly Article 11 which states "The South-North demarcation line and areas for non-aggression shall be identical with the Military Demarcation Line specified in the Military Armistice Agreement of July 27, 1953 and the **areas that have been under the jurisdiction of each side until the present time**"¹³ (emphasis added). In addition, Article 10 of the "Protocol on the Implementation and

⁹ Roehrig, "Northern Limit Line," 8-22.

¹⁰ Jon M. Van Dyke, "North-East Asian Seas - Conflicts, Accomplishments and the Role of the United States," *The International Journal of Marine and Coastal Law* 17, no. 3 (2002), 404-407. A copy of the Decree establishing the EEZ can be found at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PRK_1977_Decree.pdf.

¹¹ John Barry Kotch and Michael Abbey, "Ending Naval Clashes on the Northern Limit Line and the Quest for a West Sea Peace Regime," *Asian Perspective* 27, no. 2 (2003), 179.

¹² Jon M. Van Dyke, Mark J. Valencia, and Jenny Miller Garmendia, "The North/South Korea Boundary Dispute in the Yellow (West) Sea," *Marine Policy*, no. 27 (2003), 153.

¹³ "Agreement on Reconciliation, Non-aggression and Exchanges And Cooperation Between the South and the North," (Dec. 13, 1991), <http://www.nautilus.org/publications/books/dprkbb/agreements/CanKor-VTK-1991-12-13-agreement-on-reconciliation-non-aggression-exchanges.pdf>.

Observance of Chapter II, Nonaggression, of the Basic Agreement” states that, “Until the decision on the maritime demarcation line is final, the nonaggression areas of the sea shall be those that have been followed by each side until the present time.”¹⁴ The South Koreans have argued that this was tacit acceptance of the NLL by the North Koreans, who have vehemently denied such a claim.

North Korea on the other hand maintains a simple argument: the NLL is illegal because the UNC Commander unilaterally drew it without its notification or concurrence. From its perspective, the NLL was unfairly drawn as it angles northwest from the land MDL reducing DPRK territorial waters.¹⁵ Naturally, South Korea’s pro-NLL interpretation of the last clause of Article 11 is not shared by North Korea. Increasing the complexity of the matter, the North acknowledges the NWIs belong to South Korea but claims the surrounding territorial waters granted by international law.¹⁶ Claims of acquiescence are refuted and backed up by repeated engagements near the NWIs as well as incursions south of the NLL. North Korea also asserts that the current international law standard of 12 nm for coastal waters would place its sea territory well south of the NLL,¹⁷ and has even created a version of the boundary, the aforementioned CWSDL. This line reflects the current NLL redrawn farther south, closer in line with the MDL extended in a southwest direction. Despite such actions, South Korea continues to operate according to the disputed NLL and North Korea so far has elected not to enforce its CWSDL.¹⁸

The North’s version of the NLL depicts a significant southward shift. Its desire to move the NLL boundary farther south stems from a variety of sources. The highly prized

¹⁴ Tae-seo Kim, "An Unexpected Exchange: North Korea's NLL Provocation," *East Asian Review* 11, no. 4 (Winter 1999). See also Van Dyke, Valencia, and Garmendia, "The North/South Korea Boundary Dispute in the Yellow (West) Sea.", 149.

¹⁵ Jon M. Van Dyke, Mark J. Valencia, and Jenny Miller Garmendia, "The North/South Korea Boundary Dispute in the Yellow (West) Sea," *Marine Policy* 27 (2003): 143-158, doi: 10.1016/S0308-597X(02)00088-X.

¹⁶ Kotch and Abbey, "West Sea Peace Regime," 183-184.

¹⁷ Ryoo, "Korean Armistice and the Islands," 11-12.

¹⁸ Roehrig, "Northern Limit Line," 10-11.

blue crab found in the vicinity of the NWIs provides a lucrative catch opportunity for fishermen from both sides, and the short harvesting window from May to July each year increases competition. Many of the incursions south of the NLL involved North Korean fishing vessels under escort by their navy patrol ships. Shortened travel time for North Korean commercial ships headed south reduces fuel and time consumption. Currently, North Korean ships must take a longer, indirect route that circles north around Paengyongdo Island before turning back into international waters to continue sailing south. Given South Korea's clear economic superiority, North Korea stands to gain much more in a downward NLL shift, particularly involving the port of Haeju for commerce. Most importantly, the current NLL sets the maritime border within three to six nm of the North's coastline, allowing South Korean navy patrols to edge very close. This, in conjunction with possession of the NWIs, provides South Korea with a battle space advantage. During the Korean War, the NWIs were used to stage special operations forces and conduct intelligence gathering missions. Their close proximity to the North Korean coastline allowed such assets to be effectively employed during the war, and military planners are likely aware of this fact. An NLL that shifted south would be advantageous to North Korea.

Outside Interest

The United States has direct interest given that the UNC Commander is a US general, but does not wish to sidestep Seoul's authority and advocate a course of action. It views the matter largely as South Korea's prerogative.¹⁹ China also favors a non-confrontational

¹⁹ Ibid., 43.

solution given its rise as a global economic powerhouse and manufacturing hub.²⁰ Any confrontation over the NLL would hurt regional stability and adversely affect China. The many parties with links to the NLL dispute consider it to be a bilateral issue between the two Koreas and ultimately up to them to resolve.²¹ However, given that any significant change to the NLL would affect the strategic interests and the political-military postures of the many parties involved, the US and China would try to influence the outcome if a solution presented itself.

Incidents

Though the region is no stranger to contentious maritime disputes, what sets the NLL apart is the level of violence reached in the past decade. Since 1999, 53 North Korean military personnel have been killed and 95 military personnel wounded, while in the South, 54 military personnel have been killed (the majority in the *Cheonan* sinking) and 99 military personnel wounded. Furthermore, two South Korean civilians were killed and three injured during the Yeonpyeong Island shelling. It is worth briefly discussing each of the major events (sans the previously discussed Yeonpyeong Island shelling) of the past decade-plus to get a sense of how the conflict escalated.

- **1999: First Battle of Yeonpyeong Island**

It began when South Korean naval vessels attempted to turn several North Korean patrol boats around after they crossed the NLL. One of the North's patrol boats opened fire, setting off a ten-minute exchange in which two of the North's boats were sunk.²² The

²⁰ Ibid., 43.

²¹ Terence Roehrig, "The Northern Limit Line: The Disputed Maritime Boundary Between North and South Korea," *NCNK Issue Brief* (September 2011), http://www.ncnk.org/resources/publications/NCNK_Issue_Brief_NLL_September_2011.pdf.

²² Terence Roehrig, "Korean Dispute over the Northern Limit Line: Security, Economics, or International Law?," *Maryland Series in Contemporary Asian Studies* 2008, no. 3 (2008), 12-15.

Sunshine Policy took a major hit, as people began to wonder if the policy was encouraging better behavior by the North.²³

- **2002: Second Battle of Yeonpyeong Island**

As in the previous engagement, North Korean patrol ships crossed the NLL and engaged South Korean patrol craft that attempted to turn them back. After 20 minutes of fighting the North Korean vessels fled back across the NLL. This clash resulted in 30 casualties on the North's side, though it is unclear how many were killed and how many wounded, and five South Korean sailors killed and 27 wounded. Evidence suggests that the order for the patrol ships to attack may have come from the top echelons of the North Korean leadership.²⁴

- **2009: Battle of Taechong Island**

This battle also revolved around a North Korean patrol ship advancing past the NLL and ignoring a South Korean patrol ship's warnings to turn around.²⁵ In this case, the South Korean patrol ship fired warning shots at the North Korean boat, which promptly returned fire. Six South Korean naval vessels fired 4,950 rounds – nearly 100 times the number fired by the North Korean vessel. The captain of the North's naval vessel was killed during the battle, and the ship limped back to port.

- **2010: Sinking of the Cheonan**

The deadliest and most controversial incident around the NLL occurred on March 26, when the South Korean corvette *Cheonan* was struck by an underwater explosion.²⁶ Of the 102 crew members on board, 46 perished and one died in salvage. Immediate suspicion

²³ Ibid.

²⁴ Bruce E. Jr. Bechtol, "The Northern Limit Line Incident of 2002: Motivations and Implications," *Pacific Focus* 19, no. 2 (Fall 2004), 249.

²⁵ "North Korea: The Risks of War in the Yellow Sea," *International Crisis Group* (Dec. 23, 2010), <http://www.crisisgroup.org/~media/Files/asia/north-east-asia/198%20North%20Korea%20---%20The%20Risks%20of%20War%20in%20the%20Yellow%20Sea.ashx>, 16-18.

²⁶ Ibid., 22-26. The facts surrounding the *Cheonan* sinking are handled in-depth in this report.

was cast on the North, with most members of the Lee Myung Bak government believing it was a North Korean torpedo. A subsequent investigation by an international team concluded the same, although the North has strongly denied any responsibility.

Short term efforts for long term solutions

Short term efforts prioritize tasks that will generate immediate stability returns. Thus far, activity near the NLL has been reactive for South Korea: North Korea violates the boundary and the South applies its rules of engagement to counter them. Fortunately, these engagements have not spiraled out of control into large-scale military escalation involving ground forces. Assuming the North is committed to a peaceful resolution to the NLL dispute, a three-phase approach can be taken to mitigate engagement risk by facilitating communication, establishing a command and control mechanism, and conducting combined stability activities in the vicinity of the NLL and NWIs. These steps will hedge the immediate risk while providing a solid foundation for maximizing success for a long-term solution.

Phase 1: Facilitating Communication

Effective communication at the military to military action officer level²⁷ is the single most critical factor in reducing the risk of engagement as it eliminates ambiguity and uncertainty at the point of origin. Individual ships from both North and South Korea must be able to communicate with their respective headquarters but also between each other to relay intentions. This occurs during engagements, but in the absence of such engagements ship-to-ship direct communication is doubtful given the strict rules of contact

²⁷ This level refers to the individual commanders in charge of ships or vessels that have the authority to engage.

that are in place at Panmunjom.²⁸ A hypersensitive North Korean response to South Korea's military drills is another potential flashpoint.²⁹ Establishing a sea-based checkpoint communication system between North and South Korean navy ships that patrol near the NLL will allow for routine non-engagement communications. This system relies on buoys as anchored checkpoints allowing each side to be aware of the other's general patrol activities, with the objective being transparent communications that reduce misinterpretation.³⁰ In addition, a similar system of guard and observation posts in Panmunjom, the land-based MDL truce village, maintains military situational awareness for both sides. To facilitate this type of communication a series of buoys can be anchored at key coordinate points along the NLL. Given that the NLL is the topic of dispute, the locations of these buoys could be adjusted slightly south; regardless, the purpose of these buoys is *not* for NLL identification but for a neutral ship-to-ship contact location. Both South and North Korean Navy commands responsible for the region would authorize their ships to conduct systematic contact, both visual and audio,³¹ and each would simultaneously track where these buoys are located. Contact could occur once or twice per day or shift between each side's respective patrols, with the key being a systematic audio and visual communication check that is performed in the absence of engagement. As long as there is a desire for a peaceful resolution to the NLL, each side gains visibility on the other's patrols, creates a daily action officer level line of communication, and ultimately

²⁸ Panmunjom, known as "Truce Village" within the Joint Security Area (JSA) is a UNC facility where North and South Korean forces as well as UNC personnel occupy opposite sides and are within close proximity of each other. Direct communication outside of armistice commission channels is prohibited.

²⁹ Dongmin Lee, "Yeongpyeong: Dealing with North Korea," *RSIS Commentaries* 163 (2010), <http://www.rsis.edu.sg/publications/Perspective/RSIS1632010.pdf>.

³⁰ Daniel Pinkston with the International Crisis Group recommended such a measure between ships to help signal their intent. See "North Korea: The Risks of War in the Yellow Sea." International Crisis Group (Dec. 23, 2010). <http://www.crisisgroup.org/~media/Files/asia/north-east-asia/198%20North%20Korea%20---%20The%20Risks%20of%20War%20in%20the%20Yellow%20Sea.ashx>.

³¹ Audio communication could come in the form of the ship's loudspeaker or radio transmission.

reduces the risk of miscommunication as the cause for detrimental engagement. It would take just a matter of weeks to implement such a maritime checkpoint system.

This phase presents two key challenges to overcome. First, both the North and South Korean governments need to allow their respective navy commands responsible for the NLL region to communicate, as this forms the essence of peaceful engagement. Second, determining the neutral ship-to-ship contact location could pose problems as the NLL itself is the focus of contention. For communication to occur, the leadership of both countries must first agree to authorize their respective military echelons to establish contact. Diplomatic envoys would initiate administration-level talks from both sides with follow-through actions pushed down to military channels. To ensure clarity and accountability, both North and South Korean military commands could implement specific rules of engagement for communication such as scripted messages upon checkpoint contact. A joint communiqué could then be released from the two countries reflecting this new communication initiative and should capture the desire to reduce friction, ambiguity, and future incidents along the NLL. Additionally for South Korea, close coordination with US Forces Korea would be required throughout the initiation and implementation process. As this phase constitutes military communication during armistice conditions, involvement of the UNC Military Armistice Commission must be taken into account during both planning and implementation efforts.

Determining the placement of buoys for the ship-to-ship contact points, should North Korea oppose placement along the contested NLL boundary, is solved by placing them slightly south. As the purpose of these buoys is not NLL identification, placing the buoys between the current NLL and the sea extension of the land MDL could present a workable location close enough in South Korea's territorial waters to persuade North

Korea to participate without compromising the South's security posture. Indeed, it is not as if the North hasn't violated the current boundary, and with the multiple layers of oversight and visibility that would be in place during such North-South checkpoint contacts, it is unlikely that the North would decide to go further.

Phase 2: Establishing a Command and Control Mechanism

Both North and South Korean governments must give a commensurate level of priority and resources to the importance of the NLL dispute. The road to peaceful resolution should include all aspects of government and not simply the military forces of each side. Propositions for projects such as a maritime peace zone or marine protected areas,³² as discussed in the next section, are well-intended and hold promise but lack a dedicated command and control mechanism to oversee these activities. This mechanism would need to assert greater authority and cross interagency borders than one that is simply a maritime resource management agency or military-centric command.³³ With the North's continued agreement to a peaceful NLL resolution and successful phase one operations, South Korea should establish a civilian-run West Sea Operations Center (WSOC). A senior government civilian, ideally a minister-level officer from the Ministry of Defense (MOD) or Foreign Affairs and Trade (MOFAT), would direct the WSOC and a number of staffers. The WSOC would have within its organizational structure representatives from each ministry or agency with an interest in the NLL in terms of security, economy, or scientific research. South Korean military forces responsible for the NLL and NWIs would be placed under the operational control of the WSOC for unity of command with the MOD

³² Van Dyke, Valencia, and Garmendia, "The North/South Korea Boundary Dispute in the Yellow (West) Sea," 154-157.

³³ Kotch and Abbey, "Ending Naval Clashes on the Northern Limit Line and the Quest for a West Sea Peace Regime," 200-201.

representative serving as the military commander³⁴ but subordinate to the WSOC director. Should a crisis situation arise, the WSOC would also be able to activate a direct line to the Blue House situation room. The Ministry for Food, Agriculture, Forestry, and Fisheries (MFAFF) representative would serve an important role as planner, resource coordinator, and overseer of fishing operations. The Ministry of Education, Science, and Technology (MEST) could spearhead ecological research initiatives, while the MOFAT representative would serve as the primary negotiator on NLL and NWI issues and concerns with North Korea. An ideal location for WSOC headquarters, Ganghwa County Island, is in close proximity to the dispute location. Daily duties at first would include unilateral monitoring of checkpoint buoys, coordination of naval patrols, and tracking of transport and fishing vessels through the area.

Once South Korea establishes the WSOC, North Korea should set up a similar organization to parallel and liaise with its South Korean counterpart. The WSOC should be the ROK's lead government organization on all NLL and NWI matters. Given that the US prefers to take a supporting role and would consider an NLL solution agreeable by both,³⁵ the WSOC should convince the North that it is the mechanism to provide a peaceful solution to the dispute. Additionally, the WSOC can serve as a stable, nonpartisan entity during political leadership change in South Korea, providing continuity during administration changeovers. Organizational dynamics and personnel changes would have some directional effect, but the overarching mission of peaceful NLL resolution vested in the WSOC would continue to be the driving force. Differing policies and attitudes toward

³⁴ This individual would ideally be a South Korean Navy Flag Officer that supervises primarily naval assets.

³⁵ Roehrig, "Korean Dispute over the Northern Limit Line: Security, Economics, or International Law?," 42-43.

North Korea during the Roh Moo Hyun and Lee Myung Bak administrations³⁶ likely contributed to certain NLL and NWI provocations. At a minimum, North Korea's sensitivity heightened with the uncertainty involved with a new South Korean leader. For all the reasons that the WSOC would benefit the North, the same would equally apply to the South.

Upon North Korean establishment of a WSOC equivalent, bilateral monitoring and tracking of South and North Korean civilian and military vessels could take place. Communication lines between each operations center, along with a shared information feed where each side inputs their assets in real time, provides mutual visibility and a common operating picture. From this foundation, friendly escorts of fishing vessels from both Koreas, especially during blue crab season could easily be coordinated, facilitating economic cooperation. Therefore, each side would establish an operations center capability directly missioned to peacefully supervise and resolve the NLL dispute with the appropriate civilian officials, creating a community that minimizes conflict for the benefit of shared interests.³⁷

This phase offers more of a bureaucratic challenge rather than phase one's strategic level communication authorization and agreement on buoy location. Overcoming phase one's challenges requires cooperation with, and agreement by, North Korea. However, ensuring that the WSOC and its equivalent in the North are promptly established, continue to exist, are effective, and are managed by the right individuals is an internal challenge for both countries. North Korea's version of this problem is a bit easier, as high-level North Korean policymakers should be able to direct implementation and compliance according to

³⁶ Bruce E. Jr. Bechtol, "The Cheonan Incident and North Korea's Northern Limit Line Strategy," *Center for Defense Studies* (May 25, 2010), <http://www.defensestudies.org/cds/the-cheonan-incident-and-north-koreas-northern-limit-line-strategy/>.

³⁷ Van Dyke, Valencia, and Garmendia, "The North/South Korea Boundary Dispute in the Yellow (West) Sea.", 154

the joint communiqué. Thus, so long as the regime does not collapse and those policymakers continue to endorse their WSOC-equivalent, North Korea's bureaucratic problems are largely non-existent. For South Korea, given the frequent engagement policy changes between presidents, enacting a law through the National Assembly that outlines specific roles, duties, organizations, and sustainment of the WSOC by statute is a starting point. Even with a law governing the WSOC it is not immune to changes in North Korean policy with containment, engagement, and varying combinations of the two. Ideally, the WSOC should be the mechanism for progress on the NLL issue to reach a lasting solution. However, regardless of an administration's policy toward North Korea, the WSOC concept will significantly reduce tension, and if properly embraced by both North and South Korea, eliminate conflicts on the West Sea.

Phase 3: Combined Stability Activities

The first two phases establish an action-officer level communications system and a larger, organization-based control mechanism. With both operation centers installed and communicating on a regular basis, the third step ventures into collaborative activities between the two Koreas. We now focus on two key areas of combined patrols and combined commerce.

Combined patrols would involve naval ships from the two Koreas initially patrolling the NLL or the buoys as a reference line. The method of patrolling – whether South Korea leads with North Korea following or parallel sailing along a predetermined route – would be left to the ship commanders, drawing upon and incorporating the communication benefits developed during phase one. Escorts of each side's fishing vessels to and from respective territorial waters, especially those rich in fish and crab, are increased as

cooperation grows and the continued desire for peaceful resolution remains a common goal. This transition, from combined NLL patrolling to escorting within respective territorial waters, would indicate a strong desire by North Korea for continued peaceful resolution. To acknowledge rationale and visual understanding of each side's boundary claims, patrolling at first the NLL and gradually shifting to the CWSDL in a combined patrol context, is necessary. Conducting combined patrols along this boundary reflects the consideration to North Korea's proposed CWSDL, increasing trust. Additionally, combined navy patrols could also defend the westernmost sea boundary from illegal entry of Chinese fishing vessels and conduct maritime search and rescue. These activities strengthen bilateral trust while protecting and facilitating mutually beneficial economic interests.

With the success of combined patrols, a reaffirmation to the Basic Agreement and the armistice along with a designation of and commitment to a "no-fire zone" could be established between the NLL and CWSDL.³⁸ Given that each side is distinctly aware of NLL and CWSDL boundaries as a result of combined patrolling, adhering to this restraint should not pose problems or confusions as both sides have "walked the line."

In addition, the gradual steps taken to build community in phases one and two provide a solid foundation for combined commerce. Plans for maritime peace parks and maritime peace zones can be pursued in a more stable and community-oriented environment. Combined research activities over ecological preserves and wildlife protection³⁹ on the NWIs by South and North Korean research groups (as well as academia) could yield interesting results. Cooperative efforts in aquaculture and fisheries, including South

³⁸ "South Korea: The Shifting Sands of Security Policy," *International Crisis Group* (Dec. 1, 2011), <http://www.crisisgroup.org/~media/Files/asia/north-east-asia/B130%20South%20Korea%20-%20The%20Shifting%20Sands%20of%20Security%20Policy.pdf>, 9.

³⁹ *Ibid.*, 10.

Korean private investment and opening the North's port of Haeju to international shipping could be pursued. Given the stability mechanisms in place, the international community would be much more likely to use the port given that the maritime tension between the two Koreas is largely reduced. At the same time, success could reignite Roh Moo Hyun's vision of linking this port with the Kaesong Industrial Complex (KIC) energizing North Korea's economy.⁴⁰ The most critical element is a stable infrastructure in which all of these efforts could be pursued, with the benefit of a coordination mechanism to oversee not only the startup but the implementation and execution of these initiatives. With phases one and two complete, phase three could be initiated in less than a year.

An obvious outcome and subsequent challenge would be to have North and South naval patrols operating in greater proximity to one another, which could be interpreted as risky. However, visible presence serves as a strong deterrent (as evident along the DMZ), and given the pretext that both sides desire a peaceful resolution to the NLL, keeping forces in close proximity would deter rather than promote aggression. Mutual visibility both tactically at sea and operationally through the WSOC would reduce misconstrued or misinterpreted intent, while routine communication checks without incident would bolster confidence. Keeping forces away from the NLL would increase the risk of miscommunication or rogue action by eliminating routine communication while allowing suspicion to grow with the lack of visibility over a large sector of sea. The NLL is not a boundary that requires sector defense from an *external* threat but rather an *internal* threat existing between the two sides. In a dispersed area, an aggressive North Korean intrusion into southern waters could theoretically occur for some time before South Korean naval patrols could detect and respond, at which time both entities could arguably escalate to

⁴⁰ Ibid., 11.

higher degree of threat perception. Unlike land boundaries that are clearly marked, sea boundaries are much harder to distinguish. To further mitigate any chance of confusion, designated navy patrols can be used by both sides with special markings identifying the vessels. Specially selected and trained crew, at least in part for South Korea, would also provide a quality cadre for assignment to this important mission. Overall, keeping forces near a defined sea boundary under the auspices of a peaceful resolution supervised by the WSOC will work to greatly mitigate hostile engagements.

Alternatives

There are other solutions to the thorny NLL problem, including international arbitration and an immediate negotiated settlement leading to a “peace zone.” These solutions are not poor solutions, but they are not appropriate given the lack of stability along the NLL. We find it likely that both arbitration and an immediate peace zone may actually increase regional tensions if they were implemented at this time.

International Arbitration

Van Dyke, et al. note that the ICJ has successfully handled numerous maritime disputes relevant to this case; particularly notable are the France / Great Britain Channel dispute, the Libya / Malta case, the Gulf of Maine case between the US and Canada, and the Jan Mayen case between Norway and Denmark.⁴¹ The authors find some patterns within these cases applicable to the NLL dispute. First, the ICJ has often found that islands only have a limited effect when determining the appropriate maritime boundary. Second, the boundary must be equitable, or fair to both sides given the unique circumstances of the situation.

⁴¹ "The North/South Korea Boundary Dispute in the Yellow (West) Sea," 150-151.

This would seem to work in North Korea's favor, except that the ICJ also takes into consideration the "vital security interests of each nation" when deciding these cases.⁴² If the case were to go before the ICJ, North Korea has done itself no favors given its history of aggression toward the south.

However, the chances of this case ever going before the ICJ are unlikely because both parties must agree to ICJ arbitration. North Korea has taken an aggressive approach precisely because the chances of the case going before the ICJ (or any third-party arbiter) are slim. As the International Crisis Group points out, "neither Seoul nor Pyongyang view inter-Korean disputes as 'international' since Korean division is supposed to be a temporary condition."⁴³ Even if North Korea was to request that the ICJ decide the case, South Korea would be opposed on economic and security grounds. Fishing groups would oppose the move because it could hurt their revenue stream, and Seoul would not want to risk worsening its security environment. Even if both countries accept mediation, there is no guarantee that either side would uphold the judgment. This is especially important because neither side would be likely to come away from ICJ mediation getting everything it wanted.⁴⁴ Paradoxically, this could lead to even more tension. South Korea would face heavy domestic pressure to ignore the ruling, while North Korea would push the limits of the ruling, potentially igniting a major conflict.

Negotiations

Negotiations between the two countries regarding the NLL began in December 2000, following the historic bilateral summit held in June 2000 between Kim Dae Jung and Kim

⁴² Ibid., 153.

⁴³ "North Korea: The Risks of War in the Yellow Sea", 3.

⁴⁴ "The North/South Korea Boundary Dispute in the Yellow (West) Sea," 153.

Jong Il.⁴⁵ The most recent meeting, in January 2008, dealt with the Peace and Cooperation Zone in the West Sea proposed by Roh Moo Hyun at his summit meeting with Kim Jong Il in October 2007. While a number of agreements were reached, these were vague on specifics.⁴⁶

While both sides understood progress was unlikely as the Lee Myung Bak administration came to power, there is the question of whether a “peace zone” would be feasible if the two Koreas were to resume negotiations. The summit between Roh and Kim obliquely touched on the issue of the NLL by proposing to create a special peace and cooperation zone in the West Sea.⁴⁷ The idea never got much farther, falling victim to disagreement over the exact dimensions of a joint fishing zone; South Korea wanted it to be equal on both sides of the NLL, while the North insisted that it be further south.⁴⁸ There was also widespread opposition from conservatives and military officers.⁴⁹ This disagreement prevented a more detailed sketch of how the peace zone would operate from being revealed. The major problem is how the “peace zone” would be enforced. It is likely that both sides would want to regulate how much fishing could be done – would Coast Guard units from each side be allowed in? If so, it is logical to worry that today’s problem would arise again, to say nothing of what would happen if North Korea tried something truly provocative, such as sending a submarine into the zone or threatening to cut off South Korean access.

⁴⁵ Martyn de Bruyn and Sangmin Bae, "An Institutional Approach to Peace and Prosperity: Towards a Korean Fisheries Community," in *Towards a Northeast Asian Security Community? Implications for Korea's Growth and Economic Development*, ed. Werner Pascha and Bernhard Seliger (Berlin: Springer, 2011), 252.

⁴⁶ "Agreement at the First Meeting of the Committee for the Promotion of the Special Peace and Cooperation Zone in the West Sea," *Ministry of Unification* (Jan. 2, 2008), http://eng.unikorea.go.kr/CmsWeb/viewPage.req?idx=PG0000000586&boardDataId=BD0000218605&CP0000000002_BO0000000102_Action=boardView&CP0000000002_BO0000000102_ViewName=board/english/BoardView&curNum=1.

⁴⁷ Roehrig, "Korean Dispute over the Northern Limit Line: Security, Economics, or International Law?," 29. The full proposal was to create a “special peace and cooperation zone in the West Sea encompassing Haeju and [its] vicinity in a bid to proactively push ahead with the creation of a joint fishing and maritime peace zone, establishment of a special economic zone, utilization of Haeju harbor, passage of civilian vessels via direct routes in Haeju and the joint use of the Han River estuary.”

⁴⁸ *Ibid.*, 32.

⁴⁹ Donald Kirk, "Koreas have something to cheer about," *Asia Times* (Oct. 6, 2007), <http://www.atimes.com/atimes/Korea/IJ06Dg01.html>.

A Partner for Peace

Our solution is predicated on the North Koreans being a willing partner for peace. Given their track record, any sign that the North Koreans are deliberately undermining the process at any of the outlined stages could derail the plan. The most likely problems would stem from North Korean fishermen or military vessels venturing further than laid out above. In this case, South Korean authorities would have to reevaluate and determine if the plan should be scrapped entirely or delayed, depending on the severity of the North's transgression. Simply put, the engagement measures laid out cannot be implemented without a good faith effort on both sides. Given North Korean behavior when it comes to agreements, the South will have to keep a close watch as the situation unfolds.

Although North Korean behavior is impossible to predict, reducing the incentive to resort to deliberate NLL violations either by North Korean military or civilians holds promise. In all previous incidents, confrontations occurred in an adversarial context where effective communication, particularly at the action officer level, was lacking. Our recommendations implement tactical and operational level control measures that are visible, routinely utilized, and work to reduce deliberate aggression, achieving a steady balance. Knowing that such measures are in place reduces desire for a North Korean naval patrol or fishing boat to cross into Southern maritime territory. Should such an attempt occur, escalation of force is not automatic; rather, direct communication to determine the cause of incursion is the response. Ultimately, if the North Korean desire is to stretch the limits of tolerance to our solution, then not only ours, but many conciliatory or engagement-driven approaches only delay inevitable failure.

Conclusion: Toward a Future Bilateral Solution

Resolving the NLL dispute is a daunting task. Our approach is a way to gradually improve communications, build mutual trust, and pursue mutually beneficial activities. These efforts hedge immediate engagement and escalation risk while shaping the conditions to facilitate a future bilateral solution to the NLL. To achieve such an end state, several years of executing our approach would be required before a permanent solution is reached. Our approach is unconventional in that it places two military forces technically at war in close proximity. However, North Korea has little incentive to turn hostile during such operations, as there exists little opportunity for surprise attacks or silent infiltrations. Furthermore, with the level of monitoring and full visibility by both sides during checkpoint communications, our three-phase approach essentially creates a flexible tripwire that either side can decide to trigger, but only with the adversary immediately adjacent, which provides nearly zero incentive. This approach can appeal to the “hawks” that make North Korean policy because it provides accountability and visibility in a contested and conflict-ridden area; as the old adage goes, “keep your friends close but your enemies closer.” At the same time, “doves” will view this approach as conciliatory engagement through the creation of joint monitoring centers, advocating economic growth for North Korea, and maintaining an open line of communication beginning with where the trouble is from the start.

A final bilateral solution endorsed by regional stakeholders could be part of a transition from armistice to a peace treaty, either by redrawing the NLL to a mutually agreed upon boundary, maintaining the current NLL, or eliminating the NLL under the auspices of a maritime peace zone. A shift south of the NLL would mean North Korea’s territorial waters would extend farther and closer to the South’s coastal line. Should the North’s

posture turn hostile, this proximity would place South Korea at a military disadvantage. Maintaining the NLL would be to North Korea's disadvantage, but it is possible that the sense of community and mutual economic gains achieved during the three phases should be enough to convince the North to accept the current NLL. The South's WSOC and North Korea's equivalent would continue to operate under current conditions while their negotiating representatives plan a long-term solution. As this process continues, stability and security is maintained for both Koreas and the risk of engagement escalation greatly reduced.

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