

# KOREAN DISPUTE OVER THE NORTHERN LIMIT LINE: SECURITY, ECONOMICS, OR INTERNATIONAL LAW?

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## I. INTRODUCTION<sup>1</sup>

On July 27, 1953, North Korea, the United States, and China signed the armistice agreement that brought the hostilities of the Korean War to an end. The armistice was not a peace treaty and only instituted a cease fire to end the fighting. South Korea chose not to sign the agreement because President Syngman RHEE wished to continue the war until the peninsula was reunited under his rule. One of the tasks of the armistice negotiators was to establish a formal boundary between South Korea [Republic of Korea-ROK] and North Korea [Democratic People's Republic of Korea-DPRK]. After much effort and difficult negotiations, the parties to the armistice settled on a Military Demarcation Line (MDL) for the land border but failed to agree on maritime borders for either the West Sea (Yellow Sea) or the East Sea (Sea of Japan). Eventually, the United Nations Command (UNC) unilaterally declared a maritime border in the West Sea known as the Northern Limit Line (NLL) to separate the opposing naval forces and avoid any maritime clashes. The NLL has remained a source of contention, and in the years since, has been punctuated by periodic flare ups, as occurred in 1999 and 2002 when ROK and DPRK naval forces clashed in the West Sea. Efforts since that time to resolve the dispute have made little progress. Though receiving relatively minor press coverage, the dispute over the NLL could be one of the most serious flashpoints for conflict between North and South Korea. However, settling the issue is complex with economic, political, legal, and security dimensions.

The dispute over the NLL also helps provide some insight into the continuing theoretical debate over the future of East Asia. Those who study the region have been engaged in a vigorous discussion over whether the years ahead will be filled with conflict and

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geo-political rivalry or characterized more by cooperation and the growth of institutions to manage problems. On one side are the realists who have argued that the future of the region will be plagued by discord as the power configuration in the region changes. States will view their relationships, and the competition for power, as a zero-sum game that will require states to constrain and confront challengers. They are pessimistic about East Asia's future and maintain that the region is headed for conflict. China is likely to rise as a regional and perhaps global power that will seek to alter the status quo. Others in the region, including the United States, will attempt to balance Chinese power through alliances and an arms race. In addition, a resurgent Japan is likely to rearm, either in response to China's rise or because of its own ambitions to be a major player in the region. Lacking the institutional bases of Europe, such as NATO and the European Union (EU), East Asia is headed for a future mired in confrontation and war.<sup>2</sup>

On the other hand, liberal internationalists maintain that growing economic ties, along with the maturing of an institutional framework that includes the Association of Southeast Asian Nations (ASEAN), the Asia-Pacific Economic Cooperation forum (APEC), the East Asian Summit (EAS), and the possibility of a permanent, East Asian security forum growing out of the Six Party Talks, will provide the foundation for a relatively peaceful Asia. There will certainly be disputes, rivalries, and the potential for conflict. Yet, given what is at stake in trade and foreign investment, there is simply too much to lose to allow tension and antagonism to escalate to armed conflict. Moreover, China has already demonstrated that it

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2. See Kent Calder, "China and Japan's Simmering Rivalry," *Foreign Affairs* 85, no. 2 (March/April 2006), pp. 129-139; Richard K. Betts, "Wealth, Power, and Instability: East Asia and the United States after the Cold War," *International Security* 18, no. 3 (Winter 1993/94), pp. 34-77; Aaron L. Friedberg, "Ripe for Rivalry: Prospects for Peace in a Multipolar Asia," *International Security* 18, no. 3 (Winter 1993/94), pp. 5-33; John J. Mearsheimer, "China's Unpeaceful Rise," *Current History* 105, no. 690 (April 2006), pp. 160-162; Denny Roy, "The China Threat Issue: Major Arguments," *Asian Survey* 36, no. 8 (August 1996), pp. 758-771; Robert S. Ross, "Beijing as a Conservative Power," *Foreign Affairs* 76, no. 2 (March/April 1997), pp. 33-44; David Shambaugh, "Containment or Engagement of China: Calculating Beijing's Responses," *International Security* 21, no. 2 (Autumn 1996), pp. 180-209; Aaron L. Friedberg, "The Future of U.S.-China Relations: Is Conflict Inevitable?," *International Security* 30, no. 2 (October 2005), pp. 7-45; Gerald Segal, "East Asia and the Constraint of China," *International Security* 20, no. 4 (Spring 1996), pp. 107-135; Kenneth B. Pyle, *Japan Rising: The Resurgence of Japanese Power and Purpose* (New York: Public Affairs, 2007); and Richard J. Samuels, *Securing Japan: Tokyo's Grand Strategy and the Future of East Asia* (Ithaca, NY: Cornell University Press, 2007).

is willing to play largely by existing international rules and does not seek to overturn the status quo as it had in its revolutionary days.<sup>3</sup>

Others argue that the region is too complex for one paradigm to dominate and will need both realist and liberal internationalist theories to help explain East Asia's future.<sup>4</sup> They maintain that China will indeed rise, but that most in East Asia will accommodate that ascent by reverting to the regional hierarchy of the past. Thus, East Asia need not follow the path of power politics that many predict. Instead, a dominant China that does not have revisionist intentions can bring order and stability to the region without challenging the U.S. global position. In the past, Chinese regional hegemony maintained order in the region and can do so again to the benefit of all. Thus, international relations theory does not sufficiently fit the East Asia case.<sup>5</sup>

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3. See Robert O. Keohane and Joseph S. Nye, *Power and Interdependence*, 3rd ed. (New York: Longman, 2000); Andrew Moravcsik, *Liberal International Relations Theory: A Social Scientific Assessment* (Cambridge, MA: Harvard University Press, 2001); Colin Dueck, "Hegemony on the Cheap: Liberal Internationalism from Wilson to Bush," *World Policy Journal* XX, no. 4 (Winter 2003/04), pp. 1-11; David Baldwin (ed.), *Neorealism and Neoliberalism: The Contemporary Debate* (New York: Columbia University Press, 1993); Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984); Douglas C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990); Daniel Deudney and G. John Ikenberry, "The Nature and Sources of Liberal International Order," *Review of International Studies* 25, no. 2 (April 1999), pp. 179-196; Amitav Acharya, "Regional Institutions and Asian Security Order," in Muthiah Alagappa (ed.) *Asian Security Practice: Material and Ideational Influences* (Stanford, CA: Stanford University Press, 1998), pp. 210-240; Robert S. Ross, "The Geography of the Peace: East Asia in the Twenty-First Century," *International Security* 23, no. 4 (Spring 1999), pp. 81-118; Robert O. Keohane, "International Institutions: Two Approaches," *International Studies Quarterly* 32, no. 4 (December 1988), pp. 379-396; G. John Ikenberry, "Why Export Democracy?" *Wilson Quarterly* (Spring 1999), pp. 56-65; Stanley Michalak, "Post-Democratic Cosmopolitans: The Second Wave of Liberal Internationalism," *Orbis* 48, no. 4 (Autumn 2004), pp. 593-607.

4. For arguments that Asia's future is a combination of the various theories, see David Shambaugh, "Asia in Transition: The Evolving Regional Order," *Current History* (April 2006), pp. 153-159; Benjamin E. Goldsmith, "A Liberal Peace in Asia?" *Journal of Peace Research* 44, no. 1 (January 2007), pp. 5-27; Peter J. Katzenstein and Nobuo Okawara, "Japan, Asian-Pacific Security, and the Case for Analytic Eclecticism," *International Security* 26, no. 3 (Winter 2002), pp. 153-185; and Avery Goldstein, "Power Transitions, Institutions, and China's Rise in East Asia," *Journal of Strategic Studies* 30, no. 4/5 (August 2007), pp. 639-657.

5. See David C. Kang, *China Rising: Peace, Power, and Order in East Asia* (New York: Columbia University Press, 2007) and "Getting Asia Wrong: the Need for New Analytical Frameworks," *International Security* 27, no. 4 (Spring 2003), pp. 57-85; Henry R. Nau, "Identity and the Balance of Power in Asia" in G. John Ikenberry and Michael Mastanduno (eds.) *International Relations Theory and the Asia-Pacific* (New York: Co-

The future of East Asia is uncertain and there is evidence to support the predictions of all of these theories. Asia is in the process of great change, but much is also remaining the same.<sup>6</sup> This monograph will argue that while trade and economic ties provide strong evidence for a liberal-international future for Asia, the dispute over the Northern Limit Line points to the continuing importance of geopolitical considerations and the dangers of state-to-state conflict posited by realism. While the debate over the future of Asia will continue, even if liberal-internationalism becomes the dominant theoretical explanation, flash points such as the NLL will continue to make realism relevant. Moreover, it will require vigilance among the players in the region to ensure that disputes such as the NLL do not escalate and engulf East Asia in a larger conflict.

Concerning resolution of the NLL dispute, this monograph maintains it is unlikely that this dispute will be settled anytime soon, short of an overall peace agreement and drastic improvement in inter-Korean relations. If the issue ever went before an international tribunal for mediation or adjudication, many elements of international law support a decision that would change the line in North Korea's favor moving the NLL south of its current location but not fully complying with the DPRK's wishes. However, South Korea is unlikely to allow the issue before an international tribunal or permit any redrawing of the line so long as North Korea remains a threat to its security. The line will change through a negotiated solution that can only happen when both Koreas are sufficiently confident of the security situation in the region. While North Korea must continue to demonstrate that it does not accept the line and has not acquiesced to the NLL as the West Sea maritime boundary, it must do so in a way that is not provocative and does not increase tension in the region.

In the end, it is likely that the issue will only be solved as part of a larger peace settlement that formally ends the Korean War and dramatically reduces tension between the two Koreas. The NLL was drawn as a war-time boundary that remains tied to the security

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lumbia University Press, 2003), pp. 213-241; Thomas U. Berger, "Power and Purpose in Pacific East Asia: A Constructivist Interpretation," in G. John Ikenberry and Michael Mastanduno (eds) *International Relations Theory and the Asia-Pacific* (New York: Columbia University Press, 2003), pp. 387-419.

6. For a discussion of these various factors that are changing or staying the same, see Terence Roehrig, "A Changing Paradigm of U.S.-East Asian Relations: Strategic and Economic Perspectives," *International Journal of Korean Studies* XI, no. 1 (Spring/Summer 2007), pp. 31-67.

concerns of North and South Korea. The most likely and best outcome in the short term is managing the dispute to avoid armed conflict along with the initiation of small confidence building measures such as a joint fishing zone and other economic development projects that could pave the way for a broader settlement. However, even small steps will require North Korea to make progress in denuclearization and to provide some indication it is willing to reduce South Korea's security concerns.

The remainder of this monograph will examine the history of the dispute, the economic and security interests at stake, the positions of North and South Korea along with other important players, and conclude with possible solutions to the dispute.

## II. HISTORY OF THE NORTHERN LIMIT LINE

The Northern Limit Line (NLL) has its origins in the negotiations to end the Korean War and the need to draw land and sea boundaries to separate the opposing forces. Delegates at the armistice talks agreed to the MDL that defined the land border between the two Koreas, a line that approximates the old border of the 38th parallel but is north of that line in the east and south of the 38th parallel in the west. In addition, the armistice states "that all islands lying to the north and west of the provincial boundary line between Hwanghae-do and Kyonggi-do"<sup>7</sup> will be under North Korean control but granted the UNC - retains control over five small islands – (Korean word for island is *do*) Woo-do, Yeonpyeong-do, Socheong-do, Daechong-do, and Baengnyeong-do – that lie off the coast of North Korea.<sup>8</sup> These islands were singled out because they were under UNC control at the time of the negotiations. However, negotiators could not settle the problem of establishing a maritime boundary in the West Sea, due in part to disagreements over the extent of the territorial sea. North Korea proposed a 12 nautical mile (nm)<sup>9</sup> limit while the UNC insisted on 2 nm.<sup>10</sup> Thus, there is no mention of maritime boundaries in the armistice.

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7. Hwanghae-do (North Korea) and Kyonggi-do (South Korea) are the two provinces that are adjacent to each other across the DMZ on the West Sea.

8. *Korean War Armistice Agreement*, Article II, 13 (b). The full text of the agreement is available at <http://www.state.gov/t/ac/rls/or/2004/31006.htm> (accessed April 4, 2008).

9. One nautical mile is equal to 1.852 kilometers or 1.1508 miles.

10. Jung-Gun Kim, "Reflections on the Attitude of North Korea toward the Law of the Sea Treaty (UNCLOS III)," in Choon-ho Park and Jae Kyu Park, *The Law of the*

Another complicating factor was South Korean President Syngman RHEE. At the close of the war, Rhee was quite displeased that the United States was willing to end the conflict without the reunification of the Koreas under ROK control.<sup>11</sup> He made it clear that he opposed the armistice and might continue hostilities should an opportunity arise.<sup>12</sup> As a result, South Korea refused to sign the armistice leaving the United States, China, and North Korea as the signatories to the agreement. To address the concern that Rhee might take advantage of an uncertain sea border, UNC authorities promulgated a maritime extension of the MDL in the West Sea on August 30, 1953. Called the Northern Limit Line, the boundary was an effort to prevent ROK and UNC forces, along with South Korean fishing boats, from crossing into North Korean waters. Without this line, UNC officials feared that continued North-South clashes would be likely.<sup>13</sup>

The line was drawn mid-channel between the five ROK islands and North Korea's Ongjin Peninsula. For North Korea, the NLL prevents direct access to the West Sea, especially problematic for its major port at Haeju, requiring a longer trip around the northernmost island of Baengnyeong-do before entering the West Sea. The UNC also set a maritime boundary in the East Sea (Sea of Japan) that extended 218 nm out to sea and, as opposed to the NLL, was an extension of the MDL, roughly equidistant from the coastlines of the two Koreas.<sup>14</sup>

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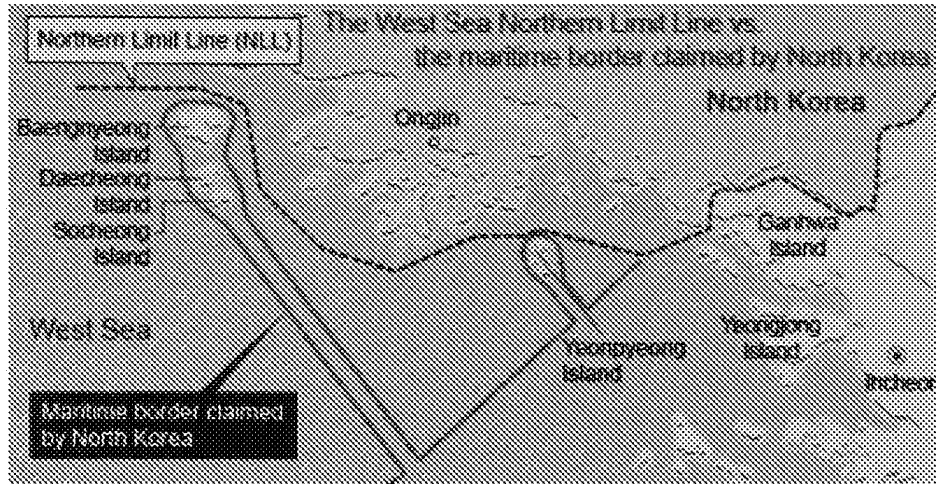
*Sea: Problems from the East Asian Perspective* (Honolulu: Law of the Sea Institute, University of Hawaii, 1987), p. 213.

11. Kang Man-gil, *A History of Contemporary Korea* (Kent, UK: Global Oriental 2005), p. 191 and Andrew C. Nahm, *Korea: Tradition & Transformation* (Elizabeth, NJ: Hollynym, 1988), pp. 431-432.

12. Rhee's stubborn behavior and provocative rhetoric disturbed U.S. officials to the point that they prepared contingency plans code named "Operation Everready" to oust him in case he became too great a liability. See U.S. Department of State, "Memorandum by the Director of the Executive Secretariat to the Secretary of State," October 28, 1953, *Foreign Relations of the United States, 1952-1954*, XV, part 2, (Washington DC: Government Printing Office, 1984), pp. 1569-1570.

13. Park Hee Kwon, *The Law of the Sea and Northeast Asia: A Challenge for Cooperation* (The Hague: Kluwer Law International, 2000), p. 108.

14. Taewoo Kim, "Perceptions of North Korea and Polarization of ROK Society," in Donald W. Boose, Jr., Balbina Y. Hwang, Patrick Morgan, and Andrew Scobell, (eds.), *Recalibrating the U.S.-ROK Alliance* (Carlisle, PA: Strategic Studies Institute, 2003), p. 154, note #15.

*Figure 1*

In 1955, North Korea proclaimed a territorial sea that extended 12 nm.<sup>15</sup> The recognized standard at the time was 3 nm but 12 nm was later codified in the United Nations Convention on the Law of the Sea (UNCLOS).<sup>16</sup> Within the territorial sea, states enjoy full sovereignty over these waters, except for allowing foreign vessels the right of innocent passage. States also control the airspace above along with the bed and subsoil of this area.<sup>17</sup> The 12 nm territorial sea easily includes within North Korean territorial waters all five of the islands designated by the armistice as UNC controlled territory. Yet, there appears to be no mention of the islands or of DPRK's position with respect to the NLL in its territorial sea declaration, even though the declaration would have been a perfect opportunity to address these two issues. This omission may be due in part to KIM Il-sung's distraction with domestic politics after the war. The Korean War was clearly a disaster for North Korea. Despite success

15. North Korea never publicly released the documents that make this claim, but two Soviet sources verify the claim. Some also express concern that North Korea's territorial sea is drawn from baselines that are not entirely clear or in accordance with international law. Jin-Hyun Paik, "Some Legal Issues Relating to Maritime Jurisdictions of North Korea," in John P. Craven, Jan Schneider, and Carol Stimson (eds.), *The International Implications of Extended Maritime Jurisdiction in the Pacific* (Honolulu: Law of the Sea Institute, University of Hawaii, 1987), pp. 94-96.

16. See R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd ed (Manchester UK: Juris Publishing, 1999).

17. *UNCLOS*, Section 1, Article 2, p. 27, available at [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf), accessed August 6, 2008.



in the early months, at the end of the war, the DPRK was in ruins and only Chinese intervention had saved the regime from annihilation. After the war, Kim faced an internal struggle for power as political opponents seized the opportunity to oust him after leading the country into the Korean War disaster. Kim eventually subdued his rivals but it was, no doubt, a serious distraction from other state business.<sup>18</sup>

In 1968, South Korea delineated a red limit line, five kilometers from the NLL to create a maritime zone, comparable to the Demilitarized Zone (DMZ), where no fishing was allowed. This would prevent South Korean fishermen from approaching the NLL and thereby protect them from detention by North Korean authorities. However, fish and prized blue crab caught in these waters do not respect boundaries and fishermen often crossed the NLL in pursuit of their catch.<sup>19</sup> Additionally, the designation of the red limit line may also have been linked to a significant increase in North Korean infiltration along the DMZ. In 1967, incidents of North Korean infiltration increased to over 550 from 66 the previous year and according to a 1967 UNC report, 224 North Korean infiltrators were killed that year during missions in the South. These incidents reached a peak in 1968 at 629 with the climax occurring in November 1968 when 120 North Korean commandos infiltrated along South Korea's east coast. In 1969, these incidents decreased to 111 but were still large in comparison to 1966 numbers.<sup>20</sup> The declaration of a five kilometer red limit line created a buffer zone along the NLL that made it easier for the ROK Navy to patrol, and determine friend from foe to thwart efforts to infiltrate from the sea.

Though this point remains a subject for debate, for 20 years, North Korea appeared to lodge no formal complaints, challenge the legitimacy of the NLL, or make any statements regarding the status of the five off-shore islands that remained under UNC/South Ko-

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18. For a more detailed examination of Kim Il-sung and this period, see Dae-sook Suh, *Kim Il Sung: The North Korean Leader* (NY: Columbia University Press, 1995) and Andrei Lankov, *From Stalin to Kim Il Sung: The Formation of North Korea, 1945-1960* (Piscataway, NJ: Rutgers University Press, 2002).

19. Donald Macintyre, "Guns and Crustaceans," *Time On-line*, July 15, 2002, available at <http://www.time.com/time/magazine/article/0,9171,501020722-320797,00.html>, accessed June 11, 2008.

20. *American Foreign Policy Current Documents*, 1967, 788-790 and Byung Chul Koh, "Unification Policy and North-South Relations," in Robert A. Scalapino and Jun-Yop Kim (eds.), *North Korea Today: Strategic and Domestic Issues* (Berkeley: Institute of East Asian Studies, University of California, 1983), p. 277.

rean control. This changed on December 1, 1973 at the 346th Military Armistice Commission meeting when North Korean Major General KIM Pung-sop declared that the five UNC/ROK islands were in North Korean territorial waters and that transit to and from these islands would require prior notification along with Pyongyang's permission.<sup>21</sup> This appears to be the first formal and public challenge of the arrangements dictated by the NLL. However, the declaration raised two important questions. First, did the requirement to obtain permission constitute a blockade of the islands? Article II, clause 15 of the armistice states explicitly that naval forces "shall not engage in blockade of any kind in Korea."<sup>22</sup> Second, North Korea did not challenge ROK sovereignty over the islands. As ROK territory, the islands were also entitled to a territorial sea, though not a full 12 nm since this would overlap with North Korean claims. Was Pyongyang's declaration suggesting this was not the case? In any event, South Korea rejected the demand and continued regular ferry service between the islands and the ROK mainland, accompanied by South Korean naval escorts. North Korea refrained from making any effort to enforce its claim.

In 1977, North Korea announced two additional zones that had an impact on the NLL. One was a 200 nm Economic Exclusion Zone (EEZ) and the other was a unique 50 nm Military Boundary Zone. In the East Sea region, the 200 nm zone is indeed 200 nm but in the West Sea where North Korea has overlapping claims with China, the economic zone extends the same 50 nm as the military boundary zone.<sup>23</sup> Of interest here is the North Korean rationale for creating the military boundary zone. According to the DPRK announcement, the purpose is:

to reliably safeguard the economic sea zone of the Democratic People's Republic of Korea and firmly defends [sic] militarily the national interests and sovereignty of the country. . . .

In the military boundary (on the sea, in the sea and in the sky) acts of foreigners, foreign military vessels and foreign

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21. See J.R.V. Prescott, *Maritime Jurisdiction in East Asian Seas*, Occasional Paper no. 4 (Honolulu: East-West Environment and Policy Institute, 1987), pp. 48-49, and Jung-Gun Kim, "Reflections on the Attitude of North Korea Toward the Law of the Sea Treaty (UNCLOS III)," pp. 219-223.

22. U.S. Department of State, "Text of the Korean War Armistice Agreement," July 27, 1953, available at <http://www.state.gov/t/ac/rls/or/2004/31006.htm>, accessed April 4, 2008.

23. Prescott, *Maritime Jurisdiction in East Asian Seas*, p. 20.

military planes are prohibited and civilian ships and civilian planes (excluding fishing boats) are allowed to navigate or fly only with appropriate prior agreement or approval.

In the military boundary (on the sea, in the sea and in the sky) civilian vessels and civilian planes shall not conduct acts for military purposes or acts infringing upon the economic interests.<sup>24</sup>

Full implementation of these "exclusive jurisdiction" measures would not be in keeping with accepted norms of maritime transit and international law.<sup>25</sup> In addition, it would raise the same questions noted earlier regarding the South Korean islands which would clearly be within the 50 nm military boundary zone. The announcement made no specific reference to the NLL but the establishment of this zone would have the effect of negating the NLL. Again, South Korea continued to conduct its affairs as usual, and North Korea did not attempt to force the issue. South Korea, Japan, and the United States have refused to recognize the maritime military boundary.

Given that a technical state of war exists on the peninsula and relations were tense between the two Koreas, was North Korea justified in establishing a military boundary zone? According to Choon-Ho PARK, "the tenseness of the situation alone would not suffice to support the legality of the North Korean claim. International law has not entertained the concept of sea defense zone, largely on the grounds of its vagueness and susceptibility to abuse. The argument for a maritime security zone based on tension would be further weakened should either side, or both, be found partly or wholly answerable for perpetuating the tension," a condition that certainly applied to the Korean Peninsula, given North Korea's numerous infiltrations and provocative behavior.<sup>26</sup>

For the next 20 years or so, circumstances surrounding the NLL were relatively quiet. To be sure, however, hostility between the two Koreas remained as both sides increased their military capabilities and continued to watch each other warily across the DMZ

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24. *Korean Central News Agency*, August 1, 1977 as quoted in Choon-Ho Park, "The 50-Mile Military Boundary Zone of North Korea," *American Journal of International Law* 72, no. 4 (October 1978), p. 866.

25. See UNCLOS, Articles 58 and 87.

26. Choon-Ho Park, "The 50-Mile Military Boundary Zone of North Korea," *American Journal of International Law* 72, no. 4 (October 1978), p. 874.

and NLL. By the late 1980s, attention in Korean security matters was dominated by fears of a possible North Korean nuclear weapons program. In July 1994, long time DPRK leader KIM Il-sung passed away at the age of 82 and was succeeded by his son KIM Jong-il who had waited in the wings for close to 20 years as his father's designated successor. In October 1994, the United States and North Korea concluded the Agreed Framework that attempted to put a halt to Pyongyang's nuclear ambitions. Tension on the Korean Peninsula appeared to be easing as the 90s progressed, though not without some periodic spikes over implementing the Agreed Framework and the 1998 North Korean ballistic missile test. However, after more than 20 years, the NLL leapt onto the front pages in a dramatic way on June 15, 1999, reminding all of the danger this disputed boundary posed as a potential flashpoint for conflict in the region.

#### **A. Clash along the NLL: June 15, 1999**

The clash that erupted between ROK and DPRK naval vessels on June 15th was actually the culmination of a nine-day war of nerves that began on the morning of June 7th when close to 20 North Korean fishing boats accompanied by six Korean People's Navy (KPN) patrol boats crossed the NLL around the island of Yeonpyeong. Upon detection, ROK ships moved to interdict the DPRK flotilla using standard countermeasures such as hailing the ships by voice and with radio, using sirens, signal flags, and quick maneuvers while encircling the encroaching vessels in an effort to halt their progress. In the past, North Korean ships turned around when confronted with these measures but, this time, they became more brazen requiring ROK ships to use a "collide-and-push" maneuver in an effort to bump and ram DPRK vessels into returning north.<sup>27</sup> Some North Korean ships were damaged and all eventually returned across the NLL. South Korean President KIM Dae-jung issued strict orders that ROK ships were not to open fire on DPRK vessels unless fired upon first.<sup>28</sup>

For several more days, North Korea continued to cross the NLL and South Korea responded with its "collide-and-push" maneuvers, with tension increasing each day. On June 11th, Pyongy-

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27. Nicholas D. Kristof, "North and South Korea Boats Confront Each Other in a Standoff," *New York Times*, June 10, 1999.

28. Donald P. Gregg, "Two Years of the Sunshine Policy and Its Future Prospects," *Korea Society Quarterly* (Spring 2000), p. 4.

ang demanded that South Korea withdraw its ships from the NLL and apologize to the North for trespassing on in its territorial waters. In a government statement, Pyongyang warned “the South Korean war hawks for illegally infiltrating their warships deep into the north side’s territorial waters off the west coast in an unbroken chain. Their ceaseless military provocations clearly show how desperate the South Korean war hawks are becoming in their efforts to find an excuse for unleashing a new war at the beck and call of the U.S.” Should South Korea continue its illegal incursions, the DPRK would “return fire for fire and mercilessly punish the provocateurs.”<sup>29</sup>

South Korea did not comply with the North’s demands and the provocations continued for the next few days. Each time, North Korean vessels returned across the NLL without serious incident when confronted by the ROK Navy. However, in the morning hours of June 15, over a dozen DPRK fishing boats crossed the NLL followed soon after by several KPN patrol boats. In the process of ROK efforts to push and turn DPRK vessels away, a North Korean torpedo boat opened fire with its 25 mm guns, perhaps in a fit of panic. South Korean ships returned fire and badly damaged several North Korean boats hitting them with rounds from 40 mm guns and 76 mm cannons. After a 10 minute exchange, DPRK naval ships and fishing boats withdrew and soon after, two of the DPRK naval vessels sank.<sup>30</sup> South Korean naval forces suffered only minor casualties and little damage to their boats. Later, the United States sent the Aegis-class cruiser *Vincennes*, the guided missile destroyer *Mobil Bay*, and EA-6 reconnaissance aircraft to the area to help stabilize the situation.<sup>31</sup>

The 1999 naval clash, the first major military confrontation since the end of the Korean War, was a serious blow to North Korean pride and a shock regarding the relative strength of its navy in relation to the South. In particular, DPRK Navy officials were very surprised by the accuracy and targeting systems of ROK ships.<sup>32</sup> Citing ROKN sources, one press report indicated “the reason be-

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29. “S. Korean war hawks’ provocative moves,” *Korean Central News Agency*, June 11, 1999, available at [www.kcna.co.jp](http://www.kcna.co.jp), accessed May 12, 2008.

30. Joseph S. Bermudez, Jr., *The Armed Forces of North Korea* (New York: IB Tauris, 2001), p. 93.

31. Sheryl WuDunn, “2 Koreas’ Navy Vessels Circle Cautiously; U.S. Sends Ships,” *New York Times*, June 18, 1999.

32. I am grateful to RADM(retired) You Byoung Ho, former 1st Fleet Commander, ROK Navy for this point.

hind the victory was simple: South Korean combat ships, even the smaller ones, are armed with weaponry capable of automatically targeting the enemy with their integrated radar. For its part, the North has to manually aim and fire during combat.”<sup>33</sup> In 2008, a ROK Navy official exclaimed “since the 1999 Yellow Sea skirmish, the North’s Navy has been afraid of us.”<sup>34</sup> In the end, reports indicated that close to 30 North Korean sailors were killed and two boats were sunk while four were badly damaged.<sup>35</sup>

Pyongyang’s intentions regarding the 1999 clash are uncertain, particularly whether the attack was preplanned or accidental. Though precise intentions are unclear, North Korea certainly appeared more willing to push its efforts in challenging the NLL and was confident it would prevail in whatever would transpire.<sup>36</sup> Captain SHIN Han-woo, a spokesman for the ROK National Defense Ministry speculated, “we don’t know North Korea’s intentions in detail. The fact that North Korean fishermen are catching crabs in the buffer zone reflects the severity of the economic situation in the north.”<sup>37</sup> Given the extended nature of the several day maritime shoving match, it is unlikely it was the result of poor judgment by local military officers. One U.S. official familiar with intelligence gathering for the event noted that “there was plenty of time for North Korea’s military leadership to tell them to back off. But clearly they wanted to send a message that they were not about to back down.”<sup>38</sup>

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33. Kim Min-seok and Ser Myo-ja, “South Korean Navy dominating But the North Holds extensive lead in submarines,” *JoongAng Daily*, May 13, 2008, available at <http://joongangdaily.joins.com/article/view.asp?aid=2889732>, accessed June 13, 2008.

34. Ibid.

35. Brad Glosserman, “Crab Wars: Calming the Waters in the Yellow Sea,” *Asia Times Online*, June 14, 2003, available at <http://www.atimes.com/atimes/Korea/EF14Dg03.html>, accessed September 29, 2008.

36. Kim Tae-seo maintains the clash was largely an “intentional provocation” based on two reasons. North Korean fishing boats often crossed the NLL in the past but quickly returned when intercepted by ROK patrol boats. However, this time, “they stayed on, with full knowledge that it would lead to a confrontation.” In addition, he notes that though the confrontation began at 9:28 am on June 15th, at 9:15 am, North Korean delegation chief, Lt General Lee Chan-bok informed South Korean officials at a general-level officers meeting that South Korea had begun hostilities, something he could have known only if he had advance knowledge of the impending clash. See Kim Tae-seo, “An Unexpected Exchange: North Korea’s NLL Provocation,” *East Asian Review* 11, no. 3 (Winter 1999), pp. 21-38.

37. Nicholas D. Kristof, “North and South Korea Boats Confront Each Other in a Standoff,” *New York Times*, June 10, 1999.

38. David E. Sanger, “Korean Clash May Ruin U.S. Reconciliation Bid,” *New York Times*, June 17, 1999.

North Korean officials were shocked by the defeat and quickly sacked the commander of the West Sea Fleet, Vice Admiral KIM Yun-shim, improved naval training and coastal defense exercises, and shifted coastal artillery and missile units to this area.<sup>39</sup> However, North Korean officials accused the South of starting the conflict maintaining that, "The South Koreans must immediately apologize for the serious consequences of their armed provocations. They must not run amok, clearly mindful that if military provocations are continued they will meet a thousandfold retaliatory blow."<sup>40</sup> The skirmish also complicated South Korean President KIM Dae-jung's efforts to promote relations through his "Sunshine Policy" of greater economic and political engagement with the North. U.S. efforts to improve relations with North Korea through a plan developed by former defense secretary William Perry were also complicated by the engagement.<sup>41</sup>

Following the clash and several rounds of talks, on September 2, 1999, the Korean People's Army General Staff in a special communiqué again denounced the NLL and declared the line void. However, this time the communiqué also proposed an alternative in an explicit and public repudiation of the maritime border. The DPRK proposal drew a line roughly equidistant from the two coasts proposing the extension of the provincial boundary line between Hwanghae-do and Kyonggi-do and stating that it would use military force to defend it.<sup>42</sup> A *Korea Central News Agency (KCNA)* article, the following day, maintained that after several rounds of talks between North Korea and UNC/South Korea to find an alternative, the United States continued to insist on the NLL. The article reports:

The "Northern Limit Line" is an illegal line that the U.S. forces side [sic] unilaterally set deep inside the DPRK territorial waters, disregarding the KAA [Korean Armistice Agreement] and the international law. The U.S. forces

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39. Bermudez, Jr., p. 93.

40. Sheryl WuDunn, "Korean Fight At Sea Evolves Into Exchange of Charges," *New York Times*, June 16, 1999.

41. Sheryl WuDunn, "Korean Fight At Sea Evolves Into Exchange of Charges," *New York Times*, June 16, 1999, and David E. Sanger, "Korean Clash May Ruin U.S. Reconciliation Bid," *New York Times*, June 17, 1999.

42. *Rodong Shimun*, September 3, 1999 as quoted by Hy-Sang Lee, *North Korea: A Strange Socialist Fortress* (Westport, CN: Greenwood, 2001), p. 191. Also see 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, no. 2 (2003), pp. 144-145.

side's insistence on the "line" was a grave encroachment upon the DPRK's sovereignty and, after all, the meetings produced no results. Thus, the KPA side could not but take its unilateral option. The DPRK will exercise its right to defend the waters under its military control.<sup>43</sup>

The new line (see figure 1) allowed for two corridors, 2 nm wide each from South Korea's five islands in this region, for transit of commercial vessels. Straying outside these designated corridors would violate North Korean sovereignty and provide it the justification to defend its waters. Despite the DPRK's announcement, however, South Korea, the United States, and Japan stated that they would not recognize the DPRK's NLL.<sup>44</sup>

After the 1999 clash, violations of the NLL continued but at significantly lower levels. From 50 incidents in 1998 and 70 in 1999, the numbers dropped to 15 in 2000.<sup>45</sup> According to a report by the South Korean Defense Ministry, from 2001 to 2006, North Korea violated the NLL 135 times, 65 by DPRK patrol ships and 37 by fishing boats. By September 2007, the North had violated the maritime border 21 times.<sup>46</sup>

***North Korea Violations of the Northern Limit Line:  
2001-September 2007***

Year	Number of Violations
2001	20
2002	19
2003	21
2004	19
2005	14
2006	21
as of September 2007	21

Source: ROK Ministry of Defense, available at <http://english.chosun.com/w21data/html/news/200710/200710150025.html>

43. "Defunct 'Northern Limit Line,'" *KCNA*, September 3, 1999, available at [www.kcna.co.jp](http://www.kcna.co.jp), accessed July 11, 2008.

44. Kim Charn-kiu, "Northern Limit Line Is Part of the Armistice System," *Korea Focus* 7, no. 4 (July-August 1999), pp. 103-104.

45. Van Dyke, et al., p. 145.

46. "N. Korea Violated NLL 135 Times Since 2001," *Chosun Ilbo On-line*, October 15, 2007, available at <http://english.chosun.com/w21data/html/news/200710/200710150025.html>, accessed March 3, 2008.



North Korean authorities sometimes argue the reason for crossing the NLL is due to illegal Chinese fishing. In 2002, ROK Lieutenant General CHA Yong-ku, Deputy Defense Minister for Policy, referring to an incident in November when a DPRK patrol boat crossed the NLL, noted “Chinese fishing ships have been entering North Korean waters every day. It’s almost an inevitable situation in the course of chasing the Chinese ships that they [North Korean vessels] would cross our line.”<sup>47</sup>

However, the frequency of violations by DPRK naval vessels raises other concerns. According to BAEK Seung-joo, Chief Researcher with the North Korean Studies Division for the Korean Institute for Defense Analysis, NLL crossings by DPRK fishing boats “can be understood as the pursuit of economic purposes. But patrol ships’ violations are an obvious sign that North Korea has no intention to respect the NLL.”<sup>48</sup> Despite the decrease in NLL crossings after the 1999 clash, tension along the NLL maritime border continued and flared again in June 2002. Once more, the immediate spark was the height of fishing season in the area but the issues ran deeper and would lead to a second armed clash in the West Sea in three years.

#### **B. Clash along the NLL: June 29, 2002**

On the morning of June 29, 2002, DPRK and ROK ships fought again along the NLL. The confrontation occurred shortly before 10:00 am, a few hours before South Korea’s World Cup soccer match against Turkey for third place, part of an amazing run by the ROK team in the competition it hosted jointly with Japan. Two North Korean patrol boats crossed the NLL seven minutes apart but at different points along the line. As opposed to many earlier crossings of the NLL, the KPN ships were not accompanying DPRK fishing boats or apprehending illegal foreign fishing vessels. Four ROKN ships (PKMs: Patrol Killer Medium ROK Navy speed boats) were sent to intercept the vessels and had split up in twos to meet the DPRK ships that were approximately seven nm apart. The ROK patrol boats attempted the usual methods –verbal warnings, signals, and sirens— to turn the ships around but to no

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47. Don Kirk, “South Korea Navy first warning shot at North,” *International Herald Tribune*, November 21, 2002, available at [http://www.iht.com/articles/2002/11/21/a5\\_23.php](http://www.iht.com/articles/2002/11/21/a5_23.php), accessed April 18, 2008.

48. “N. Korea Violated NLL 135 Times Since 2001,” *Chosun Ilbo On-line*, October 15, 2007, available at <http://english.chosun.com/w21data/html/news/200710/200710150025.html>, accessed March 3, 2008.

avail. At approximately 500 yards, one of the North Korean ships opened fire and hit the steering room and engine room of one of the ROK ships, killing the ship's commanding officer and four South Korean sailors and Marines while wounding 19 personnel.<sup>49</sup> All of the ROK casualties were sustained on this one vessel. The ROK ship was badly disabled and sunk while being towed back to port. The ROK ships returned fire and crippled a DPRK ship that was later seen to be on fire while it was towed back to its base. The exchange lasted around 20 minutes before DPRK ships headed north, and the ROKN did not pursue. Though North Korean statements only admitted to taking casualties, most estimates place its losses at approximately 30 sailors killed.<sup>50</sup>

Once again, the question of North Korean intent was uncertain. Many wondered if North Korean actions were the result of an overzealous commander, an operation emanating largely from hardliners in the military, or whether the action was planned and approved at the highest levels, namely by KIM Jong-il. The ROK military was convinced that the DPRK's challenge in the West Sea had the support of KIM Jong-il.<sup>51</sup> Some have also speculated that the attack was revenge for the 1999 engagement. Bruce Bechtol, Jr. makes the argument that as opposed to many earlier violations of the NLL, this instance was likely intentional as North Korean ships had rehearsed the tactic of sending two ships across the line simultaneously at different locations in an effort to divide ROK vessels responding to the provocation. He also maintains that DPRK warships in the area did not mobilize in response to the clash. Moreover, North Korean maneuvers during the clash were difficult and could not have been performed successfully without prior planning and training. Furthermore, North Korean shots were directly aimed at the wheelhouse and engine room for maximum effect, also an indication of prior planning. Lastly, as where North Korean ships normally returned across the NLL once warned, these did not. All of these elements, according to Bechtol, indicate that North Ko-

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49. Don Kirk, "North and South Korea Trade Charges Over Naval Clash," *New York Times*, June 30, 2002, available at <http://query.nytimes.com/gst/fullpage.html?res=9406E4DB1E3EF933A05755C0A9649C8B63>, accessed September 13, 2008.

50. Aidan Foster-Carter "No-penalty Shootout," *Asia Times Online*, July 3, 2002, available at <http://www.atimes.com/atimes/Korea/DG03Dg01.html>, accessed March 3, 2008.

51. Don Kirk, "Legality of UN-drawn line is at issue: Two Koreas defiant in Yellow Sea dispute," *International Herald Tribune*, July 11, 2002, available at [http://www.ihf.com/articles/2002/07/11/korea\\_ed3\\_\\_2.php](http://www.ihf.com/articles/2002/07/11/korea_ed3__2.php), accessed May 14, 2008.

rea's actions were intentional and planned.<sup>52</sup> CHOI Jin Wook, a Senior Analyst at the Korea Institute of National Unification, an organization affiliated with the ROK Unification Ministry argued

there are some hawkish people inside North Korea who wanted to ruin the World Cup. They saw everyone in the world was looking at South Korea during the World Cup. Somebody in North Korea was opposed to Kim Jong-il's decision [to authorize the broadcast of several of the soccer matches] and hostile to any gesture toward the South or the United States. It is very much a calculated plan.<sup>53</sup>

Soon after the clash, accusations of responsibility began to fly. South Korean authorities reported that the DPRK vessels had violated the NLL, crossed into ROK waters, and opened fire. ROK President KIM Dae-jung denounced the attack as "armed provocations by the North Korean Navy's patrol ships" and "a clear violation" of the armistice though he also called for calm.<sup>54</sup> North Korea responded with its usual vitriol noting these events were "due to reckless armed provocations by South Korean naval vessels in the West Sea." Furthermore, any effort by ROK authorities to deny that they started the clash was "media misinformation" and "a bid to launch noisy false propaganda."<sup>55</sup> North Korea also believed it knew the reason for ROK actions. Citing the World Cup Soccer competition, a report from North Korea's state controlled media argued:

the serious military provocation made by the South Korean military authorities is aimed to orchestrate a shocking incident at a time when the World Cup is going on and shift the blame for it onto the DPRK in a bid to chill the desire for inter-Korean reconciliation and reunification growing strong among the South Korean people and impair the international prestige of the DPRK.<sup>56</sup>

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52. Bruce E. Bechtol, Jr., *Red Rogue: The Persistent Challenge of North Korea* (Washington, DC: Potomac Books, 2007), pp. 72-75.

53. Don Kirk, "North and South Korea Trade Charges Over Naval Clash," *New York Times*, June 30, 2002, available at <http://query.nytimes.com/gst/fullpage.html?res=9406E4DB1E3EF933A05755C0A9649C8B63>, accessed September 13, 2008.

54. Don Kirk, "Legality of UN-drawn line is at issue: Two Koreas defiant in Yellow Sea dispute," *International Herald Tribune*, July 11, 2002, available at [http://www.iht.com/articles/2002/07/11/korea\\_ed3\\_2.php](http://www.iht.com/articles/2002/07/11/korea_ed3_2.php), accessed May 14, 2008.

55. "S. Korean military to blame for armed clash in West Sea," *Korean Central News Agency*, June 30, 2002, available at <http://www.kcna.co.jp> (accessed April 4, 2008).

56. Ibid.

North Korean officials also insisted that South Korea obtain its permission to salvage the ship that was sunk in the clash claiming it went down in their territorial waters based on their revised NLL. However, Seoul responded that the ship went down well south of the current NLL and it does not need Pyongyang's permission. Concerning any future clashes, one ROK spokesman noted, "we are definitely ready to defend the line. If another North Korean ship comes down south of the line, we'll show them."<sup>57</sup> President KIM Dae-jung's "Sunshine Policy" also endured heavy criticism – for all of the political engagement and economic aid provided by Seoul, the North had a strange way of showing its appreciation. Numerous demonstrations in South Korea called for ending aid and a tougher policy for dealing with the North. ROK Defense Minister KIM Dong-shin also received extensive criticism for the losses inflicted on the ROKN in the engagement and was dismissed in a cabinet reshuffle.<sup>58</sup>

In the weeks that followed, North Korean statements alternated between blistering criticism of South Korea and the United States for causing the clash and more conciliatory statements that called for North-South dialogue. On July 25th, North Korea offered what the KIM Dae-jung administration took as an apology with Pyongyang stating:

[We] regret the armed clash incident that accidentally took place in the West Sea [Yellow Sea] sometime ago and think both parties of the North and South need to exert concerted efforts to prevent the recurrence of such an incident in the future. We recognize that it would not only be commensurate with the common interests of the nation but with the basic spirit of the 15 June Joint Declaration [June 2000 Summit Agreement] . . . to put North-South relations back to their original state by giving attention to today's North-South relations and resuming authorities' talks that had come to a halt as soon as possible, and to

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57. Don Kirk, "Legality of UN-drawn line is at issue: Two Koreas defiant in Yellow Sea dispute," *International Herald Tribune*, July 11, 2002, available at [http://www.iht.com/articles/2002/07/11/korea\\_ed3\\_2.php](http://www.iht.com/articles/2002/07/11/korea_ed3_2.php), accessed July 14, 2008.

58. Donald Macintyre, "Guns and Crustaceans," *TIME*, July 15, 2002, available at <http://www.time.com/time/magazine/article/0,9171,320797,00.html>, accessed September 29, 2008.

take positive measures aimed at promoting reconciliation, unity, and cooperation.<sup>59</sup>

ROK President Kim had demanded an act of contrition and most were surprised to receive even this limited acknowledgement given within hours of his demand. A spokesman for President Kim exclaimed, "It is very unexpected. I don't think they've ever done such a thing before."<sup>60</sup> Deputy Unification Minister, KIM Hyung-ki stated "North Korea has expressed a desire to end the uneasiness. We are highly evaluating that. Because of the expression of regret, we take it as an apology."<sup>61</sup> The ruling Millennium Democratic Party noted that while the statement "fell short of our demands, we accept the North's proposal for talks in consideration of present and future South-North relations."<sup>62</sup> However conservatives and many in the military were unimpressed with the level of North Korean contrition. South Korea's Defense Minister LEE Jun lamented that the statement was "not sufficient for us to accept the deaths of our sailors."<sup>63</sup> A South Korean officer who wished to remain anonymous maintained "they didn't say 'sorry.' They didn't say who's responsible."<sup>64</sup> Some speculate the "apology" came just prior to August 8th National Assembly elections in an effort to bolster the position of KIM Dae-jung's Millennium Democratic Party and his "Sunshine Policy" in the face of criticism from the conservative and more hardline Grand National Party (GNP). North Korea's behavior and lack of apology were expected to bolster criticism of President Kim's "Sunshine Policy" and increase the GNP's chances in the upcoming election.

In response to the 2002 attack, in June 2007, the ROK Navy launched a new high-speed patrol boat for duty in the NLL area. The ship, the first of the PKX class of high-speed boats, is a 440-ton vessel equipped with 76 mm and 40 mm guns along with advanced radar systems. The ship will replace the old 150-ton *Chamsuri*

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59. "North Korea's message of 'regret'," *BBC*, July 25, 2002, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/2151010.stm>, accessed July 14, 2008.

60. Don Kirk, "North Korea Regrets Naval Clash With Seoul and Seeks Talks," *New York Times*, July 26, 2002, available at <http://query.nytimes.com/gst/fullpage.html?res=9403EFD61138F935A15754C0A9649C8B63>, accessed July 14, 2008.

61. Don Kirk, "Defense chief calls the North's message of regret insufficient: Seoul vows to increase strength in Yellow Sea," *International Herald Tribune*, July 27, 2002, available at [http://www.iht.com/articles/2002/07/27/t1\\_136.php](http://www.iht.com/articles/2002/07/27/t1_136.php), accessed May 16, 2008.

62. *Ibid.*

63. *Ibid.*

64. *Ibid.*

model ships. The new ship is named *YOON Young-ha* after one of the officers killed in the 2002 clash who was the commander of one of the ROK boats sunk that day. The new vessel was placed under the command of Lieutenant Commander AHN Ji-young who was hailed a hero after the 1999 skirmish.<sup>65</sup> The ROKN also deployed other larger patrol boats with bigger caliber guns to the West Sea.

### III. WHAT IS AT STAKE OVER THE NLL?

The dispute over the West Sea maritime boundary is a contentious issue that impacts important economic and security issues, and the stakes are high for both sides. Four issues form the core of what is at stake over the NLL: fishing; commerce and West Sea access; sovereignty; and security.

#### A. Fishing

First, the region is a valuable fishing resource for many species. In particular, every spring [April through June] the region is a gold mine for the blue crabs that migrate through this area. Thus, it is no coincidence that the two major naval clashes occurred in June, the height of the blue crab season. The blue crabs are a prized catch and require fishing boats to move as the crabs swim across the region complicating efforts to keep fishing boats behind borders. Fishing is the main industry in the area and in 2001, North Korea exported \$7.8 million worth of crabs to China and similar levels to Japan.<sup>66</sup> These are important sources of hard currency for the DPRK economy that has been in trouble for years.

Preservation of the NLL continues to be complicated by the presence of Chinese fishing vessels in the region. Chinese boats often fish in these waters illegally as the profits can be considerable.<sup>67</sup> North Korean efforts to patrol their side of the NLL often

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65. "Navy launches high-speed patrol boat," *JoongAng Daily*, June 29, 2007, available at <http://joongangdaily.joins.com/article/view.asp?aid=2877409>, accessed May 16, 2008.

66. Brad Glosserman, "Crab Wars: Calming the Waters in the Yellow Sea," *Asia Times Online*, June 14, 2003, available at <http://www.atimes.com/atimes/Korea/EF14Dg03.html>, accessed July 14, 2008.

67. "Jeju Police Seize More Chinese Fishing Boats," *Chosun Ilbo*, August 15, 2005, available at <http://english.chosun.com/w21data/html/news/200508/200508150015.html>, accessed September 4, 2008, "N.K. Patrol Boat Crosses West Sea NLL, Seizes Chinese Fishing Boat," *Chosun Ilbo*, August 21, 2005, available at <http://english.chosun.com/w21data/html/news/200508/200508210022.html>, and "Chinese Crab Fishing Boats Crowd Korean Waters," *Chosun Ilbo*, May 27, 2008, available at <http://English.chosun.com/w21data/html/news/200805/200805270028.html>, accessed May 28, 2008.

result in the “hot pursuit” of illegal Chinese vessels across the line. South Korean patrol craft warn DPRK naval vessels to return to their side of the line but sometimes pursuits continue after the warning. On occasion, DPRK ships have been seen towing Chinese fishing vessels back across the NLL. Chinese fishermen pay the North Korean government for permission to fish in DPRK waters. However, in doing so, the Chinese ships sometimes cross the NLL, often using a technique called pair trawling where two boats tow a cone-shaped fishing net that drags the bottom and pulls in all kinds of aquatic life. According to the UN Food and Agriculture Organization, pair trawling allows the two ships to use a larger net or to use less horsepower and energy to pull a smaller net. In addition, the noise of the two vessels tends to drive marine life toward the net and thereby increases the size of the catch. However, negative aspects of this technique include a large collection of aquatic life that are discarded including undersize fish along with non-marketable or non-target marine life.<sup>68</sup> In many areas of the world, including South Korea, this type of fishing is illegal. In one recent example reported in the South Korean press, close to 100 Chinese fishing boats were lined up off Yeonpyeong-do when suddenly, two of the boats, likely pulling a pair trawl net, darted south across the NLL. Before South Korean authorities could respond, the ships returned across the boundary. According to one ROK Navy official, “Maritime police stop the Chinese boats and fine them, but it’s not easy to crack down because they usually take us by surprise by remaining on the North Korean side mostly and suddenly swooping down.”<sup>69</sup> Given the wealth of the fishing grounds and the profits from the catch, it is a difficult area to manage.

## **B. Commerce and Access to the West Sea**

The NLL also has an important impact on regional economics that hinders inter-Korean trade and DPRK access to the West Sea. The West Sea region is a vital area for North-South economic cooperation with over 90 percent of their trade moving between Incheon in the South and the DPRK port of Nampo.<sup>70</sup> Commercial shipping

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68. See “Bottom Pair Trawls,” available at <http://www.fao.org/fishery/fishtech/1002>, accessed May 29, 2008/

69. “Chinese Crab Fishing Boats Crowd Korean Waters,” *Chosun Ilbo*, May 27, 2008, available at <http://English.chosun.com/w21data/html/news/200805/200805270028.html>, accessed May 28, 2008.

70. John Olsen, Mike Vannoni, and Jenny Koelm, “Maritime Cooperation for the Koreas,” Cooperative Monitoring Center, Sandia National Laboratories, SAND 2003-

from both Koreas is prohibited from crossing the NLL. For North Korea, this requires their merchant vessels to take an extended route north beyond Baengnyeong-do, the northernmost island, before North Korean ships can enter the West Sea and international waters for the remainder of their journey. This detour adds many extra miles on to the trip and extra fuel cost, an expense that continues to climb with hikes in global oil prices. In addition, the NLL blocks sea lanes from the North Korean port of Haeju and the Gaeseong Industrial Complex to Seoul and Incheon. For both North and South Korea, the NLL inhibits the potential for cheaper, sea-born trade between the two. In August 2005, South Korea allowed North Korean vessels to travel through the Jeju Strait at the southern tip of the peninsula for the first time since the Korean War. This measure allowed North Korea a much shorter route to Japan and other destinations to the east. Changes to the NLL would have a similar impact on shipping.

### C. Sovereignty

Third, for both Koreas, the NLL raises important issues of sovereignty. Control of these waters is crucial to both Seoul and Pyongyang with important economic, political, and security implications. Though the line was initially drawn to restrain South Korea, it now clearly disadvantages the North. However, Seoul has been determined to keep the line the way it is and maintain sovereignty over the region so long as the overall relationship between North and South Korea remains relatively tense. However, the issue of sovereignty is a complicated issue in this instance. Both Koreas maintain that their division is temporary and in the 1992 North-South Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation, both parties recognized “that their relationship, not being a relationship as between states, is a special one constituted temporarily in the process of unification.”<sup>71</sup> Article 3 of the South Korean Constitution maintains that “the territory of the Republic of Korea shall consist of the Korean peninsula and its

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1834P, 2003, 2, available at <http://www.cmc.sandia.gov/cmc-papers/sand2003-1843p.pdf>, accessed July 3, 2008.

71. “Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation between South and North Korea,” Effective February 19, 1992, available at <http://www.international.ucla.edu/eas/documents/korea-agreement.htm>, accessed April 11, 2008.



adjacent islands.”<sup>72</sup> Thus, it is not clear whether this is truly a boundary dispute between sovereign states or a temporary demarcation that was drawn largely as a military necessity.

#### D. Security

The final concern is security.<sup>73</sup> The North Korean city of Haeju and the Ongjin Peninsula contain several important DPRK naval installations. Moving the NLL south would allow North Korean warships to patrol closer to Seoul and the Han River estuary which leads to the South Korean capital, and Incheon. This in turn reduces warning time for a DPRK attack and brings Pyongyang’s Special Forces, one of the strengths of its military, nearer to South Korean territory. Over the years, North Korean incursions by Special Operations Forces delivered by ship or submarine have been a serious problem. A ROK scholar argued, “if the NLL ceased to exist, the five islands along this border in the West Sea would be in no man’s land, and there would be no effective way to keep North Korean espionage vessels from infiltrating into the South.”<sup>74</sup> A 2007 editorial in the conservative *Dong-A Ilbo* argued that for the North, the NLL dispute was never about fishing:

The North never mentioned fishing when it encroached upon the NLL, which is off-limits for North Korean fishermen. The North is neither stupid nor reckless enough to violate the NLL in order to secure more of the blue crab market. . . . From the North Korean military point of view, the NLL is a means and process to achieving something, not the purpose itself. Once it has its way in the NLL matter, it will demand the South to remove military posts in

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72. Constitution, Republic of Korea, available at <http://www.helplinelaw.com/law/constitution/south%20korea/skorea01.php>, accessed September 17, 2008.

73. In criticizing the ROK Unification Ministry, Professor of Law, JHE Seong-ho from Chung-Ang University in South Korea maintained the Ministry was “insisting on an economic approach to what is a security issue. The right direction for the North Korea policy is to induce reform and the opening of the North through exchanges and cooperation, while reinforcing the territorial identity and security.” JHE Seong-ho, “Change to Survive,” *JoongAng Daily*, January 8, 2008, available at <http://joonggangdaily.joins.com/article/view.asp?aid=2884809>, accessed July 9, 2008.

74. Kim Charn-kiu, “Northern Limit Line Is Part of the Armistice System,” *Korea Focus* 7, no. 4 (July-August 1999), p. 103.

the area while working out ways to secure this strategic area.<sup>75</sup>

Concerning South Korea's security interests in the NLL, the editorial continues:

The NLL is a military demarcation line that divides five islands, the Ongjin Peninsula, and an artillery range; therefore, the primary goal of the NLL is to protect the five islands in the West Sea. If the South Korean government gives in to the North's demand of changing the NLL, the five islands will be reduced to indefensible, isolated islands.<sup>76</sup>

Until relations improve between North and South, authorities in Seoul are likely to see any southward adjustment to the NLL as an increased security risk. Conversely, North Korean officials have their own security concerns and are anxious to have South Korean patrol boats farther from their shore. Adjusting the NLL farther south would give the DPRK a larger sea buffer from ROKN patrols and intelligence gathering activities.

The clashes of 1999 and 2002 amplified the concerns both sides had for what was at stake with the NLL and generated a broader discussion about possible ways to solve the problem. The NLL became a major issue on the North-South agenda with the announcement of a pending summit meeting between KIM Jong-il and ROK President ROH Moo-hyun in 2007. This was only the second meeting of South Korean leaders since the division of the peninsula after World War II. The groundbreaking first meeting occurred in June 2000 between KIM Jong-il and KIM Dae-jung in Pyongyang. The historic summit produced a significant reduction in North-South tensions and generated hope that peace and reunification were not far in the future. However, the summit agreement was relatively short on substance and was soon overshadowed by a second nuclear crisis. The summit agreement did call for KIM Jong-il to make a reciprocal visit to Seoul "at an appropriate time" but that did not occur.<sup>77</sup> Despite criticism for going to Pyongyang again, ROH Moo-hyun decided to make the trip regardless where even before

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75. "Giving In on Northern Limit Line Will Threaten West Sea Security," *Dong-A Ilbo*, October 23, 2007, available at <http://english.donga.com/srv/service.php3?biid=2007102345508>, accessed July 3, 2008.

76. Ibid.

77. See "South-North Joint Declaration," June 15, 2000 available at [http://www.usip.org/library/pa/n\\_skorea/n\\_skorea06152000.html](http://www.usip.org/library/pa/n_skorea/n_skorea06152000.html), accessed September 29, 2008.

he left, rumors of the NLL as a topic of discussion began to stir the pot in South Korean domestic politics.

#### IV. OCTOBER 2007 SUMMIT

In early August 2007, South Korean officials announced that President ROH Moo-hyun would travel to Pyongyang for a summit meeting to be held August 28-30. Though many in the international community welcomed the possibility of improved North-South relations and further lessening of North Korea's isolation, conservatives in South Korea saw the trip largely as an election ploy aimed at improving the chances of the president's party to defeat the opposition Grand National Party (GNP) candidate in the December presidential election.<sup>78</sup> An editorial in the *Dong A Ilbo* argued:

a summit in the run-up for the presidential election will give rise to all kinds of political controversies. The ruling camp already says that it would benefit from keeping the summit just prior to the election. Under these circumstances, it is only natural for the Grand National Party to sound a cautious note. It would be easier for the North to influence the South's presidential election if the summit is held at that time. Worse yet, the election campaign could focus on the big controversy over the summit.<sup>79</sup>

Roh's popularity had been slipping and the GNP candidate was likely to win the election. Despite the criticism, Roh pushed forward though the meeting was later rescheduled for October due to extensive flooding in the North.

The meeting was controversial before the leaders even met. For the past few years, military officials from the North and South had been meeting to discuss a variety of security issues to ease tension and to support inter-Korean economic development projects. In March 2006, generals from both sides held military-to-military talks for the first time in two years to address various issues concerning the connection of a railroad and highways between North and South Korea to facilitate economic cooperation, especially the

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78. Donald Kirk, "'Third Man' overshadows Korea Election," *Asia Times Online*, August 22, 2007, available at <http://www.atimes.com/atimes/Korea/IH22Dg01.html>, accessed August 26, 2008.

79. "Inter-Korean Summit Should Be Delayed to the Next Administration," *Dong A Ilbo*, August 20, 2007, available at [http://english.donga.com/srv/service.php3?biid=2007082060938&path\\_dir=20070820](http://english.donga.com/srv/service.php3?biid=2007082060938&path_dir=20070820), accessed August 26, 2008.

Gaesong Industrial Complex, establishment of a joint fishing zone, prevention of naval clashes in the West Sea, and the prohibition of illegal Chinese fishing. Throughout these meetings, the North was determined to have the NLL revised, however, the distance between the positions of Seoul and Pyongyang made negotiations difficult. Though the NLL issue made little progress, efforts were made to move other issues forward but North Korea continued to raise the NLL at meetings. Notably, at a May 2007 General Officers' meeting held between two-star generals to discuss the reconnection of the inter-Korean railroad, North Korea's head delegate quipped, "Isn't a Navy official included in your delegation? I would like to clearly tell you that we never stressed that only the railway issue will be discussed at this time. We came to today's talks for the issue of preventing naval clashes in the West Sea and realizing a joint fishing area."<sup>80</sup> However, again, both sides were unable to reach an agreement.

In the weeks prior to the October summit meeting, discussion began to surface in the ROK press that one of the items on the summit agenda might be a reconsideration of the NLL. Even if not on the formal agenda, North Korea was expected to raise the issue as it had done in past inter-Korean meetings and many wondered how President Roh would respond. Unification Minister LEE Jae-joung, a strong proponent of engagement with the North indicated that President Roh might even raise the issue himself during the summit. In remarks before the National Assembly, Minister Lee declared "I don't think that the NLL is basically a territorial concept, but a security concept to prevent military clashes. Now we need a concrete measure to prevent clashes in the West Sea."<sup>81</sup> However, Defense Minister KIM Jang-soo countered a few days later when appearing before a legislative committee that he would protect the NLL as the maritime boundary and that this issue should not be on the summit agenda before it was addressed at the ministerial level. In a growing tussle between the Unification Ministry and the Ministry of Defense, Defense Minister Kim argued the

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80. Ministry of Defense, Republic of Korea, "Two Koreas Resume Military Talks," May 8, 2007, available at <http://www.mnd.go.kr/>, accessed July 15, 2008.

81. Jung Sung-ki, "Will Leaders Agree on Tension-Reduction Plan?" *Korea Times*, August 13, 2007, available at [http://www.koreatimes.co.kr/www/news/special/2008/05/180\\_8269.html](http://www.koreatimes.co.kr/www/news/special/2008/05/180_8269.html), accessed May 17, 2008.

issue was too complex and technical to be a summit agenda item.<sup>82</sup> A retired ROK general who asked for anonymity responded to the possibility of revisions of the NLL noting, “accepting the North’s demand on the NLL is nonsense. Do we have to move down the Military Demarcation Line to the south if the North demands it?”<sup>83</sup> BAEK Seung-joo, a Senior Researcher at the Korea Institute for Defense Analyses, a state-funded institution also noted “North Korea will aim to get the upper hand in the summit by proposing sensitive issues that can divide opinions of South Koreans. I believe there is a high possibility that the NLL issue could be discussed during a second inter-Korean defense ministers’ meeting after a broad agreement between the leaders.”<sup>84</sup> In the end, the Ministry of Defense position prevailed and ROK officials decided to leave the issue off the agenda. Should North Korea raise the matter at the summit, it would be referred to meetings between the defense ministers.

After several days of talks, on October 4, the leaders signed the “Declaration on the Advancement of South-North Korean Relations, Peace, and Prosperity” with the goal to “closely work together to put an end to military hostilities, mitigate tensions and guarantee peace on the Korean Peninsula.”<sup>85</sup> Neither side specifically raised the issue of the NLL but the declaration addressed some of the relevant issues by agreeing 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 zone 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.<sup>86</sup>

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82. “Defense Minister Stands Up for Northern Limit Line,” *Chosun Ilbo*, August 22, 2007, available at <http://english.chosun.com/w21data/html/news/200708/200708220025.html>, accessed March 26, 2008.

83. Jung Sung-ki, “Will Leaders Agree on Tension-Reduction Plan?” *Korea Times*, August 13, 2007, available at [http://www.koreatimes.co.kr/www/news/special/2008/05/180\\_8269.html](http://www.koreatimes.co.kr/www/news/special/2008/05/180_8269.html), accessed May 17, 2008.

84. *Ibid.*

85. “Declaration on the Advancement of South-North Korean Relations, Peace and Prosperity,” Ministry of Unification, South Korea, October 4, 2007, available at [http://www.unikorea.go.kr/english/EPA/EPA0101R.jsp?main\\_uid=2181](http://www.unikorea.go.kr/english/EPA/EPA0101R.jsp?main_uid=2181), accessed May 11, 2008.

86. *Ibid.*

The summit agreement opened the possibility of settling some of the issues surrounding the NLL but many details remained to be worked out. It would not be long before the efforts to implement the October summit agreement reached an impasse.

## V. EFFORTS TO IMPLEMENT THE OCTOBER 2007 AGREEMENT

After the meeting, the debate in South Korea over the NLL continued. In remarks to a group of legislators soon after the summit, President ROH Moo-hyun remarked that the line was not a border but rather “a limit line for our naval operations. Some people are calling it a ‘border’ these days. This is a concept that misleads people.”<sup>87</sup> He continued noting “under our Constitution, the territory of North Korea belongs to South Korea. In this context, calling a line in our territory a border confuses me. We need to admit that the NLL was drawn unilaterally by (the United States and South Korea) with no bilateral agreement reached. Our basic policy is to deal with the issue based on the 1992 Basic Accord.”<sup>88</sup> The Basic Accord, formally known as the “Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation Between South and North Korea,” was signed on December 13, 1991 and went into effect February 1992 includes an addendum (Article 10 of the Implementation Protocol) that reads “the two Koreas shall continue discussions on the maritime nonaggression line” and “the current nonaggression zone will be acknowledged until a new nonaggression line is drawn with a bilateral agreement.”<sup>89</sup> However, opposition GNP Chair KANG Jae-sup was quick to call the comments “shocking” and that President Roh “needs to change his perspective.”<sup>90</sup>

A Gallup Korea poll indicated a majority of the Korean public agreed with President Roh’s critics. Indeed, 59% of Koreans surveyed disagreed with his position that the NLL is not a territorial line while only 32.1% supported that view.<sup>91</sup> President Roh, in recognition of the emotional nature of the issue, stated that a change

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87. “Northern Limit Line not a Border: Roh,” *Chosun Ilbo*, October 12, 2007, available at <http://english.chosun.com/w21data/html/news/200710/200710120012.html>, accessed March 26, 2008.

88. Ibid.

89. Ibid.

90. Ibid.

91. Hong Young-rim, “Most People Do Not Sympathize with Roh’s Remark on NLL,” *Chosun Ilbo*, October 17, 2007.

to the NLL “would cause no immediate emergency to South Korea or threaten national security. But South Koreans don’t emotionally tolerate any concession to North Korea.”<sup>92</sup> Roh believed that the NLL was imposed on both Koreas and did not conform to the normal standards of international law. However, he lamented:

if I’d agreed to redraw and move the NLL southwards at the summit, placards saying, ‘Lefty, Pro-Pyongyang President ROH Moo-hyun, Go Back to the North and Live There,’ would be hanging in [the truce village of] Panmunjeom. People say that South Korean soldiers sacrificed their lives to defend the NLL in armed clashes with North Korean vessels that crossed the line. The claim makes sense. But on the other hand, innocent lives were sacrificed due to the line. If the two Koreas had reached agreement on the line, the South Korean sailors wouldn’t have died.<sup>93</sup>

North Korea also joined the fray. Soon after the summit in what many believed was posturing to improve its bargaining position prior to a series of implementation meetings, North Korea turned up its rhetoric accusing the ROK Navy of sending dozens of warships across the maritime border. Citing a report by the Navy Command of the Korean People’s Army, *KCNA* noted South Korea keeps “perpetrating such very dangerous and grave military provocations as infiltrating warships into the territorial waters of the north side in the West Sea of Korea” in an effort to “defend the northern limit line.” Given the summit agreement, “the South Korean military authorities are sadly mistaken if they think they can ‘defend’ the illegal ‘NLL’ in such manner now.” Moreover, “their behavior is an unpardonable and undisguised provocation,” and “the South Korean military authorities had better stop acting rashly.”<sup>94</sup>

After the October 2007 summit, the two Koreas held a series of meetings to implement the various portions of the agreement including meetings between the respective defense ministers and mili-

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92. “Roh Dismisses Furor Over De Facto Sea Border,” *Chosun Ilbo Online*, November 2, 2007, available at <http://english.chosun.com/w21data/html/news/200711/200711020024.html>, accessed April 7, 2008.

93. *Ibid.*

94. “KPA Will Never Remain Onlooker to Military Provocations of S. Korean Warships,” *Korean Central News Agency*, October 22, 2007, available at [www.kcna.co.jp](http://www.kcna.co.jp), accessed April 15, 2008.

tary heads. The first occurred from November 14-16, 2007 and involved Prime Ministers KIM Yong-il for the North and HAN Duck-soo for the South. This was the first round of prime ministerial meetings in 15 years and each delegation came to the meeting with different priorities. Despite an ambitious agenda, however, the two sides achieved only minor progress. Regarding the peace zone and joint fishing area, negotiators could not agree on the specifics, particularly the location and size of the joint fishing zone but did form a special committee to continue working on the matter. South Korea's position was grounded in the concept of "same distance, same size," where the joint fishing area is of equal area and depth on both sides of NLL (see Figure 2). For example, a hypothetical zone would need to be the same 5 nm deep by 20 nm wide on both sides. This would mean that both sides would only be able to traverse the same 5 nm into each other's waters. However, North Korea insisted that the "same distance" principle was not practical given the irregular movements of the fish and crab populations. In response, South Korea indicated it may be willing to accept a "same size" approach. For example, the area in North Korea could be 4 nm deep by 25 nm wide while in South Korean waters the area could be 5 nm deep and 20 nm wide so that both areas cover the same 100 nm<sup>2</sup>. However, adopting this position could move the fishing zone farther south, a move opposed by the ROK military. Some in the ROK government have indicated that the "same size" principle is also problematic given the smaller area of territorial sea on North Korea's side of the line. Thus, there was some speculation that ROK officials might be more flexible on the specific dimensions of the joint fishing zone.<sup>95</sup>

In the end, negotiators could only agree to meet at a later date in December 2007 to resume discussions on the fishing zone.<sup>96</sup> Negotiators also agreed to continue work on establishing a special economic zone in Haeju and to begin work on dredging the Han River estuary that is shared by both North and South Korea. Finally, North Korea agreed to reopen railway service for cargo deliv-

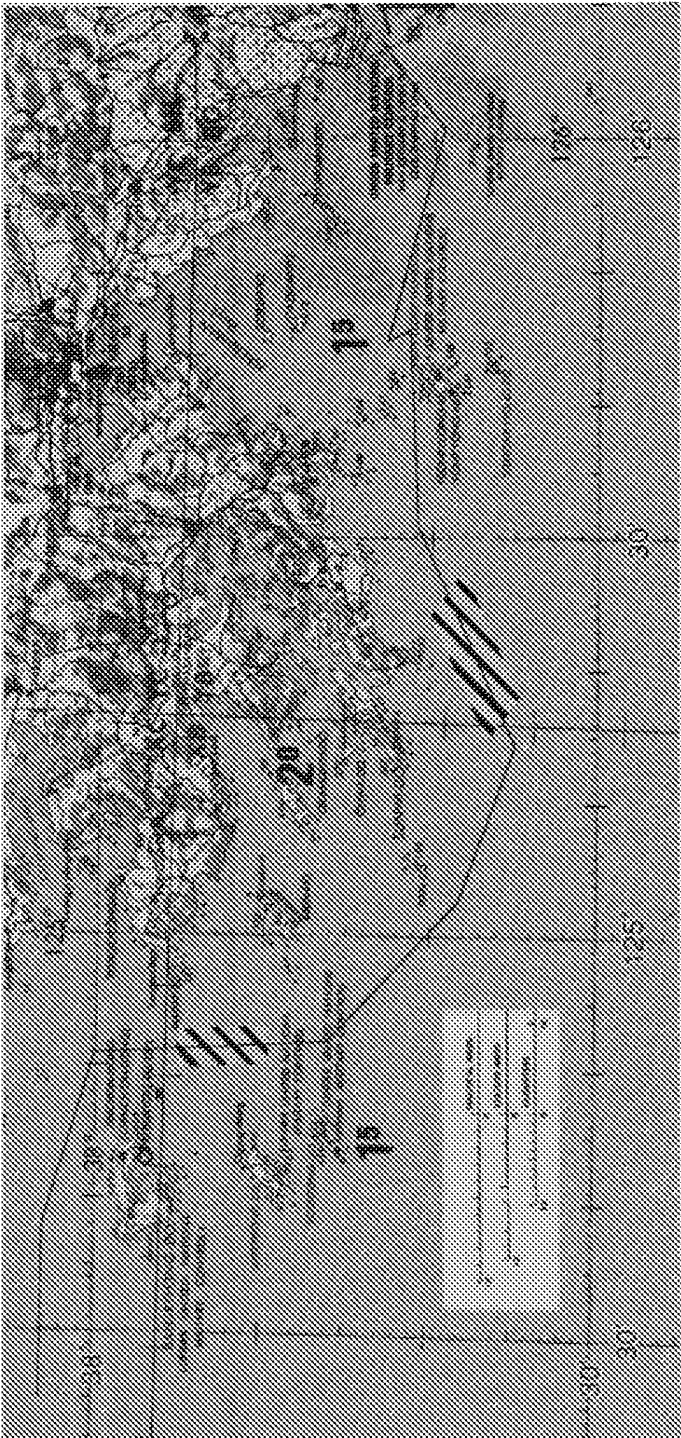
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95. "S. Korea 'Wavering' Over Joint Fishing Zone, *Chosun Ilbo*, November 13, 2007, available at <http://english.chosun.com/w21data/html/news/200711/200711130015.html>, accessed July 3, 2008.

96. "Agreement at the First South-North Prime Ministerial Talks on Implementing the Declaration on the Advancement of South-North Relations, Peace and Prosperity," available at <http://www.unikorea.go.kr/english/EPA/EPA0101R.jsp>, accessed May 15, 2008.



Figure 2.



Source: Sandia Lab Report

eries between Munsan in the south to Bongdong in the north.<sup>97</sup> Shipping cargo by rail allows South Korea to make direct connections with the Siberian and Chinese rail system and therefore drastically cuts costs incurred from using sea routes.

In late November 2007, Korean Defense Ministers met for the first time in seven years, and only for the second time in history, to again tackle the details necessary to implement the October 2007 Summit Agreement.<sup>98</sup> South Korea was represented by Defense Minister KIM Jang-soo who had become famous during the summit for not bowing and only shaking hands when meeting KIM Jong-il, unlike the South Korean Unification Minister Lee and the other South Korean delegates who bowed deeply. The ROK press dubbed the South Korean Defense Minister "Up-right Jang-soo."<sup>99</sup> North Korea was represented by Army Lt. General KIM Il-chol. The meeting was designed to ease border tension and address security issues that would be necessary to implement the economic cooperation projects in the agreement. South Korean officials also indicated beforehand that they would refrain from raising the issue of the NLL and focus instead on economic and implementation issues. Both sides were hopeful with Lt. General Kim noting before the meeting that a divided Korea "is a very important issue and is the matter that we have to resolve within our generation without further delay. I hope we will do something that goes down in history by advancing the [sic] unification."<sup>100</sup> KIM Jang-soo responded "I think if we map out a stepping stone, the era that we want to have will come at an early date."<sup>101</sup> Many were hopeful the meeting would produce some important breakthroughs, but this was not to be the case.

At the three day of meetings, South Korea again proposed a joint fishing zone to straddle the current NLL and consist of equally sized areas on both sides of the line. However, North Korea repeated its demand for a redrawing of the current NLL and its claim to a 12-mile territorial waters zone. DPRK negotiators also coun-

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97. Ibid.

98. The first meeting occurred in September 2000 in the wake of the historic North-South Summit in June 2000 between KIM Jong-il and KIM Dae-jung in Pyongyang.

99. "Defense-minded Lee visits ministry," *JoongAng Daily*, January 12, 2008, available at <http://joongangdaily.joins.com/article/view.asp?aid=2885021>, accessed June 12, 2008.

100. "Both Koreas differ on sea border," *International Herald Tribune*, November 27, 2007, available at <http://www.iht.com/articles/2007/11/27/asia/korea.php>, accessed May 17, 2008.

101. Ibid.

tered that the proposed joint fishing area be four zones located between the current NLL, and the maritime boundary North Korea claimed in 1999. The DPRK delegates reiterated their position that the West Sea region should be a "peace zone."<sup>102</sup> Finally, negotiators hoped to finalize security details to open regular train service between the two Koreas that was scheduled to begin in December 2007. Despite these efforts little was accomplished during the meetings in relation to the NLL and the joint fishing zone.

The Defense Minister meetings were followed soon after by three days of high-level military talks, the 7th such round, in another attempt to make progress in implementing the October 2007 summit. Army Major General LEE Hong-kee led the ROK delegation that met in Panmunjeom while the North's representatives were led by Army Major General KIM Yong-chul. Both sides again addressed the joint fishing area with the North restating its earlier proposal of four joint fishing areas south of the current NLL. A scuffle broke out on the first day when a North Korean officer tried to project a map of North Korea's proposal for the joint fishing zone. A ROK officer stormed to the front of the room and unplugged the projector to prevent the DPRK officer from showing the map. ROK authorities expressed concern that a public display of the map could be used by Pyongyang for propaganda purposes.<sup>103</sup> South Korea countered once more that it favored a much smaller area on a trial basis that straddled the NLL. ROK officials feared that DPRK demands to have the zone south of the NLL were part of a plan to nullify the UNC-drawn line.<sup>104</sup> The talks did settle some issues concerning the Gaeseong Industrial Complex and the Mount Geumgang tourism project but negotiators failed to issue a joint statement or press release regarding the results of the meetings.

A few days later, officials from both Koreas met again, this time in Gaeseong in another effort to break the deadlock. No progress was made on the West Sea joint fishing zone but negotiators

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102. "Korean Defense Ministers Clash Over Sea Border," *Chosun Ilbo*, November 28, 2007, available at <http://english.chosun.com/w21data/html/news/200711/200711280014.html>, accessed May 17, 2008.

103. "Shoving, shouting mar military talks," *JoongAng Daily*, December 14, 2007, available at <http://joongangdaily.joins.com/article/view.asp?aid=2883906>, accessed June 12, 2008.

104. "Koreas postpone further discussions on joint fishing area," *Dynamic Korea*, December 14, 2007, available at [www.korea.net/news/Issues/issueDetailView.asp?board\\_no=18682&menu\\_code=A](http://www.korea.net/news/Issues/issueDetailView.asp?board_no=18682&menu_code=A), accessed May 17, 2008.

did agree on a plan to establish a joint fishing zone in the East Sea with fishing to begin in 2008. According to a statement from the ROK Unification Ministry, many details remained unsettled including where the exact zone would be but both sides did agree that South Korea could pay for its share of the catch on the North Korean side through goods, not cash. The two sides also agreed to set up a joint fishing research and storage center.<sup>105</sup>

Finally, from December 28-29, 2007, ROK and DPRK officials held the first meeting of the Committee for the Promotion of the Special Peace and Cooperation Zone in the West Sea as outlined in the November Prime Minister's meeting. This gathering also accomplished little but did reaffirm previous positions to "promote the construction of the Haeju Special Economic Zone," "jointly develop and utilize Haeju port," "conduct joint fishing as soon as a joint fishing zone and peace zone is designated at the Inter-Korean General-level Military Talks," and "jointly utilize the Han River Estuary." The committee agreed to reconvene sometime in the first half of 2008 but has yet to meet.<sup>106</sup>

Since these meetings in mid-December 2007, there have been no formal contacts between Seoul and Pyongyang over the NLL. While many applauded the 2nd Summit Agreement as making some progress, it was also clear that President Roh would not be in office long enough to implement the measures as South Koreans headed to the polls on December 19, 2007 to select a new president. In November 2007, in a sign of what was to come, the Roh administration presented a report on the principles and objectives for inter-Korean relations from 2008 to 2012 to the National Assembly Committee on Unification, Foreign Affairs, and Trade. All of the opposition Grand National Party committee members boycotted the meeting to protest what they saw as President Roh's efforts to cement his North Korea program before leaving office.<sup>107</sup> The new President LEE Myung-bak, from the conservative Grand National Party was inaugurated February 25, 2008 and signaled a shift in

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105. "Two Koreas move closer to setting up joint fishing area in East Sea, statement says," *Dynamic Korea*, December 14, 2007, available at [www.korea.net/news/Issues/issueDetailView.asp?board\\_no=18682&menu\\_code=A](http://www.korea.net/news/Issues/issueDetailView.asp?board_no=18682&menu_code=A), accessed May 17, 2008.

106. "Agreement at the First Meeting of the Committee for the Promotion of the Special Peace and Cooperation Zone in the West Sea," December 28-29, 2007, available at <http://www.unikorea.go.kr/english/EPA/EPA010R.jsp>, accessed May 12, 2008

107. See "Outgoing Gov't Projects Grand N. Korean Program," *Chosun Ilbo*, November 23, 2007, available at <http://english.chosun.com/w21data/html/news/200711/200711230008.html>, accessed May 31, 2008.

South Korea's policy toward the North. In his inauguration speech, President Lee noted that "unification of the two Koreas is the long-cherished desire of the 70 million Korean people. Inter-Korean relations must now become more productive than they are now. Our attitude will be pragmatic, not ideological." Moreover, "once North Korea abandons its nuclear program and chooses the path to openness, we can expect to see a new horizon in inter-Korean cooperation."<sup>108</sup> South Korea would no longer provide aid and other concessions without a greater degree of reciprocity from the North. At the moment, the issue is stalled with little likelihood of progress in the near future. The Lee administration's more hard line policy followed by constant DPRK invective heaped on the new ROK president makes it unlikely there will be progress on the joint fishing zone or any of the other measures contained in the October 2007 Summit Agreement any time soon.

## VI. POSITIONS OF THE KEY PLAYERS

### A. North Korea

North Korea's current position on the NLL is crystal clear. Following the June 2002 clash, the KCNA proclaimed "it is well known to the world that the 'northern boundary line' . . . is a bogus line unilaterally and illegally drawn by [the UNC] in the 1950s and our side, therefore, has never recognized it."<sup>109</sup> North Korean statements have also pointed to aspects of international law that contradict the NLL to support its calls for a revision of the line. Pyongyang has not challenged Seoul's sovereignty over the five islands designated in the armistice but has made it clear that it believes these possessions lay squarely within the DPRK's territorial waters. Though relatively quiet on the issue for the first 20 years of the NLL's existence, in 1973, North Korea began extensive efforts, intentional or otherwise, such as statements, NLL crossings, and armed clashes along the NLL, to challenge the legitimacy of the boundary.

The one element of Pyongyang's past actions regarding the NLL that is open to debate is the issue of North Korea's acquiescence to the NLL after the line's demarcation in September 1953 and the role this plays in establishing customary international law.

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108. Lee Myung-bak, "Inaugural Address," February 25, 2008, available at [www.korea.net](http://www.korea.net), accessed September 17, 2008.

109. "S. Korean military to blame for armed clash in West Sea," *Korean Central News Agency*, June 30, 2002, available at [www.kcna.co.jp](http://www.kcna.co.jp), accessed May 3, 2008.

Though North Korea now vehemently denies the legality of the NLL, it is not clear this has always been the case with some room to argue that for the first 20 years of the line's existence, North Korea said and did little to refute the validity of the line. This is an important issue because of the international legal concepts of customary law and "acquiescence" whereby states refrain from protecting or exerting a given right. Churchill and Lowe define customary law as "international custom, as evidenced by a practice generally accepted as law."<sup>110</sup> To become customary international law, a practice must be largely accepted, though not universally adopted by states, and be an issue appropriate for legal regulation that is consistent with international law. This concept is often applied to large, multinational treaties and obligations that are certainly binding on those who sign and ratify the agreements. However, customary law also maintains that "if there is a sufficiently general acceptance of treaty rules by non-Parties, . . . those rules may become binding as a matter of customary law."<sup>111</sup> Overtime, a state's acquiescence to an issue can be deemed to form a component of customary international law.

While states are generally bound by customary law, they do have the right to demonstrate they do not consent to the measure and are not acquiescing to the law. Thus, according to Churchill and Lowe,

if a state persistently objects to an emerging rule of customary law, as a matter of strict law it will not be bound by that rule. The objection must be persistent: States will not be permitted to acquiesce in rules of law and later claim exemption from them at will. . . . Thus, even if a general practice has generated a rule of customary law, which is in principle binding upon all States, particular States may be able to claim the status of persistent objectors, with the result that they will not be bound by the rule.<sup>112</sup>

As a result, so long as a state consistently registers its objections to a rule of customary law, it is not bound by that law, though over

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110. R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd ed. (Manchester, UK: Manchester University Press, 1999), p. 7.

111. Ibid., p. 8. See also Maurice Mendelson, "The International Court of Justice and the sources of international Law," in Vaughan Lowe and Malgosia Fitzmaurice (eds.), *Fifty Years of the International Court of Justice*: (Cambridge, UK: Cambridge University Press, 1996), pp. 63-89.

112. Churchill and Lowe, *The Law of the Sea*, 3rd, p. 8.

time, it may become difficult for states to oppose the overwhelming acceptance of a particular rule. Inaction gives tacit consent to the matter in question and failure to respond implies that one is relinquishing any right to challenge an issue or decision. Thus, even though a state may not be able to alter circumstances, it might choose to send an annual letter of protest to demonstrate that it has not acquiesced to the situation.

It is not clear whether North Korea's actions, or lack thereof, from 1953 to 1973 constitute acquiescence to the UNC-designated NLL, or whether the DPRK may, after twenty years, still challenge the existing NLL. In fact, North Korea's continued violations of the NLL, and the 1999 and 2002 naval clashes may have been an effort to challenge the NLL, and its insistence that a joint fishing area not straddle the current line is also an attempt to refrain from any recognition of the NLL that would support an accusation of acquiescence.

## **B. South Korea**

South Korea's current position is that the NLL is the defacto maritime boundary between the two Koreas and a legitimate line drawn by the UNC at the end of Korean War hostilities. The NLL is crucial for ROK security and the line, along with the islands that are safe-guarded by the line, must be protected. In March 2008, General KIM Tae-young in testimony to the National Assembly for his confirmation as chairman of the Joint Chiefs of Staff declared the Northern Limit Line "should be defended under any circumstance. It is a quasi-border, part of the nation's territorial sovereignty."<sup>113</sup> With more responsible behavior and effort on North Korea's part to reduce tensions and show some flexibility, South Korean leaders might be more willing to compromise on the issue as well. Given North Korea's previous behavior and the state of North-South relations, most ROK leaders believe it is too dangerous to shift the line south.

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113. "Designated Military Chief Backs Northern Limit Line," *Chosun Ilbo Online*, March 27, 2008, available at <http://english.chosun.com/w21data/html/news/200803/200803270010.html>, accessed April 14, 2008. In his testimony, General Kim also angered North Korea by stating the ROK would attack DPRK nuclear facilities preemptively if they became a threat noting, "we would identify possible locations of nuclear weapons and make a precise attack in advance. Our goal is to prevent North Korea's nuclear weapons from exploding in our territory." "North's nukes on attack radar," *JoongAng Daily*, March 27, 2008, available at <http://joongangdaily.joins.com/article/view.asp?aid=2887918>, accessed June 12, 2008.

South Korean officials also argue that North Korea has given several indications that it has in fact accepted the NLL as the border. As noted earlier, many argue that for 20 years, 1953 to 1973, North Korea said nothing about the NLL, implying its acquiescence of the line. More recently, proponents for maintaining the NLL point to North Korea's signature on the 1992 Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation between South and North Korea. In Article 10, both sides agreed to "resolve peacefully, through dialogue and negotiation, any differences of views and disputes arising between them." Referring specifically to boundaries, Article 11 notes "the South-North demarcation line and the areas for nonaggression shall be identical with the Military Demarcation Line provided in the Military Armistice Agreement of July 27, 1953, and the areas that each side has exercised jurisdiction over until the present time."<sup>114</sup> The last clause, defenders of the NLL maintain, is the crucial component here as it implies North Korean acceptance of the boundaries already drawn including the NLL. As a result, KIM Charn-kiu, Professor of Law, Emeritus at Kyunghee University argues

the NLL is considered part and parcel of the armistice system, having the same force and effect as the Armistice Agreement. North Korea acquiesced in the creation of the NLL and tacitly respected the line for 20 years, effectively rendering it a customary law. International law allows for general, local and bilateral customary laws. Under these definitions, the NLL has thus become a bilateral customary law.<sup>115</sup>

If there was some question about ROK policy and willingness to renegotiate the NLL during the ROH Moo-hyun administration, since the start of LEE Myung-bak's tenure, ROK policy has been clear: there will be no renegotiation of the NLL under the current circumstances. Anger and suspicion toward the North remains strong in some quarters, particularly on the island of Baengnyeong, one of the five UNC islands.<sup>116</sup> According to one resident, "here,

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114. "Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation Between South and North Korea," Ministry of Unification, available at <http://www.unikorea.go.kr/eg/index.htm>, accessed April 11, 2008.

115. Kim Charn-kiu, "Northern Limit Line Is Part of the Armistice System," *Korea Focus* 7, no. 4 (July-August 1999), p. 104. See also Park Hee Kwon, *The Law of the Sea and Northeast Asia*, p. 108.

116. A recent press report noted that Baengnyeong-do would be a quick participant in the outbreak of North-South hostilities. DPRK planes would be there in less than



you will find some of South Korea's staunchest anti-Communists. When we were schoolchildren, we burned KIM Il-sung in effigy. We composed anti-Communist slogans. Our favorite was, 'The best way to treat a Communist and a rabid dog is with a club.'<sup>117</sup> Regarding any North Korean claims in the region, an elderly resident of the island quipped, "Let them come. I will rush out even if I have to fight with a poker."<sup>118</sup>

President Lee has been willing to pursue the idea of a West Sea Peace Zone that includes the designation of a joint fishing zone, development of the Haeju Economic Zone, and cooperation on the Han River estuary project. Indeed, South Korea has much to gain from some of these ventures. Creating better maritime commercial and communication links between Haeju and Gaesong in the North and Seoul and Incheon in the South would be a great benefit to the South Korean economy by reducing transportation costs between these areas. Bruce Cumings maintains the importance of these arrangements:

is to link the populous, productive, highly centralized city-state called Seoul and the hugely successful new airport at Incheon, with the growing export zone in Gaeseong, the nearby port of Haeju and the Ongjin Peninsula, and the historically wealthy Hwanghae region. Before Korea's division this region to the west between Pyongyang and Seoul was the most dynamic economic area of northern Korea.<sup>119</sup>

Cooperation on utilizing the Han River estuary would allow other economic benefits. The Han estuary is a shared waterway that is badly in need of dredging. South Korea has done this work on the portion of the waterway it controls but needs North Korean approval to finish the job. No doubt, South Korea would need to

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four minutes along with 360 combat ships that include 13 submarines. These forces would be met by The Black Dragons, South Korea's Sixth Marine Brigade, some 4,000 troops stationed there who would defend the island and commence a bombardment of the DPRK coast with prepositioned tanks and shore batteries. Choe Sang-Hun, "Mistrust and Hostility Between Two Koreas Shapes Life on an Island," *New York Times*, October 1, 2008.

117. Choe Sang-Hun, "Off the Korean peninsula, fisherman on the front lines," *International Herald Tribune*, January 29, 2008, available at <http://www.iht.com/articles/2008/01/29/asia/korea.php>, accessed May 15, 2008.

118. Ibid.

119. Bruce Cumings, "Reconnecting Sinews of N.E. Asian Political Economy," *Korea Policy Review* 3, no. 11 (November 2007), p. 41.

finance and perform the work on the North's side but opening the estuary would increase maritime access for both South and North Korea. Moreover, the sand and gravel that would result from the dredging would be a valuable resource for construction projects.<sup>120</sup> Thus, reducing tension and establishing these joint economic ventures would be beneficial to the South Korean economy. CHO Han-bum, Director of the ROK Unification Academic Information Center noted "The development of the Yellow Sea to help make Korea a logistics hub in Northeast Asia has been seriously undermined due to the continuing military tension there, despite the area's great potential given China's economic growth."<sup>121</sup> However, President Lee has indicated that he will move more slowly than the previous administration and will expect some reciprocal signals from the North to demonstrate its sincerity in moving forward with these projects. Given the level of invective emanating from Pyongyang toward President Lee, Seoul has not seen the signs it is looking for. Progress on the denuclearization front is also important and recent actions by the DPRK, including turning over 18,000 pages of documents relating to its plutonium program along with a report of its nuclear activities are an important start. However, the Six Party process has stalled and with questions regarding Kim Jong-il's health and who is actually in power in the DPRK, the future is uncertain.

### C. United States

Though the United States is a major participant for many issues concerning Korean security, Washington has maintained a low profile on the NLL believing it is a Korean dispute to solve.<sup>122</sup> U.S. officials have not taken a strong position on the issue but are concerned that clashes along the NLL could escalate to a broader Korean conflict and endanger regional security. In addition, though the NLL is not formally part of the armistice agreement, the NLL was drawn by the UNC, an organization that is still lead by a U.S. four-star general who also serves as the commander of U.S. Forces Korea, currently General Walter Sharp. A few weeks before the

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120. I am grateful to RADM(retired) You Byoung Ho, former 1st Fleet Commander, ROK Navy for this point.

121. Song Sang-ho, "Timely Summit Enables Two Koreas to Play a Key Role in Peace Efforts," *Korea Policy Review* 3, no. 11 (November 2007), p. 15.

122. 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), p. 183.

October 2007 summit, a South Korean press report cited one ROK government source who said, “as far as I know, the UNC maintains that Korea needs its consent if we are to seek a change” and another who noted “at present, Korea and the U.S. are exchanging opinions on the NLL. My understanding is that the UNC is as adamant that it should be the body to make any decision on the NLL by itself.”<sup>123</sup> Technically, the UNC has ultimate responsibility for security along the MDL and NLL until a permanent peace treaty is concluded. However, it is likely to be a passive player in the dispute and will accept whatever solution the two Koreas devise. U.S. authorities have not formally called for negotiations on the NLL and do not wish to pressure Seoul to do so. Washington does not wish to undercut South Korea’s position or be pulled into a bilateral negotiation with the North that could hurt its relationship with the South. However, informally, U.S. officials would favor an agreement that helps to promote greater peace and stability in the region while avoiding the deadly clashes of 1999 and 2002. Yet, in the end, the United States views this largely as a Korean problem to settle.

#### **D. China**

Despite China’s proximity and involvement with other Korean matters, particularly chief sponsor of the Six Party Talks, Beijing has had relatively little to say about the matter. China, most likely has sympathy for North Korea and its position, and Beijing’s paramount goal is for the dispute to be resolved peacefully without disrupting regional stability. Chinese leaders are more concerned with resolving its own disputes with the two Koreas regarding overlapping claims to the continental shelf and the Exclusive Economic Zone (EEZ) in the West Sea (Yellow Sea) where important oil drilling issues are at stake. The issue flared up in August 2008 over the island known in Korea as Ieo-do when it surfaced that China’s National Marine Data and Information Service claimed the island was Chinese territory. The island is closer to South Korea than China but the two countries have agreed to deal with the matter as an EEZ issue rather than as a territorial concern. Despite having more than a dozen rounds of talks, Seoul and Beijing have not been

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123. “S. Korea ‘Taps UN command on Sea Border’” *Chosun Ilbo*, September 13, 2007, available at <http://english.chosun.com/w21data/html/news/200709/200709130011.html>, accessed July 3, 2008.

able to resolve the EEZ dispute but ROK officials maintain the island is clearly within their zone.<sup>124</sup>

## VII. SCENARIOS TO SETTLE THE DISPUTE

In contemplating possible scenarios that could bring an end to the dispute, four are possible, though the likelihood of them occurring varies greatly. The four possible scenarios are the following: 1) a military confrontation where North Korea attempts to settle the boundary dispute through the use of force; 2) formal adjudication by an international tribunal; 3) a negotiated solution that could be a grand bargain that includes a formal peace treaty along with an agreement to redraw the NLL or a separate, stand-alone agreement that redraws the NLL; and 4) a redrawing of the NLL only after a long series of confidence building measures and a significant reduction in tension between the two Koreas.

### A. Military Force

Given North Korea's willingness and perhaps, advanced planning, to initiate naval confrontations in 1999 and 2002, some might suggest that North Korea would be willing to provoke a confrontation or attempt to force a new NLL through military means. To fully explore this possibility, let us turn to an assessment of the naval forces balance in the region.

The North Korean Navy or Korean People's Navy (KPN) is a brown water navy devoted largely to coastal patrol and defense of its territorial waters.<sup>125</sup> The KPN is also equipped to conduct mine laying and mine sweeping operations, protect coastal shipping and fishing operations, and support North Korean army operations, particularly the insertion of Special Forces. The KPN consists of a West Sea and East Sea fleet with total combined personnel of 46,000 and 8 principal combat vessels, over 335 patrol/coastal ships,

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124. Jung Ha-won, "Another territorial dispute for Seoul?" *JoongAng Daily*, August 9, 2008, available at <http://joongangdaily.joins.com/article/view.asp?aid=2893451>, accessed August 14, 2008.

125. Much of the information in the paragraphs to follow was obtained from *The Military Balance 2007* (London: International Institute of Strategic Studies, 2007), Bermudez, Jr., *The Armed Forces of North Korea*, Library of Congress report, FAS, and "North Korea Primer," National Defense University, November 2005, available at <http://merln.ndu.edu/merln/mipal/reports/NorthKoreaPrimer03Nov05.doc>, accessed June 7, 2008.

and 63 submarines.<sup>126</sup> Its largest surface ships consist of three frigates, five corvettes, and 16 guided missile boats. With the exception of its submarine force, the total number of combat ships in the KPN has remained relatively steady at around 840, making it one of the largest navies in the world. However, the numbers are offset by liabilities in other areas, including the age and outdated technology of DPRK ships.

The West Sea fleet is headquartered in Nampo with major bases in Pipagot and Sagon and consists of six squadrons with approximately 300-360 vessels. Most of its vessels are small and capable of operating only approximately 50 nm from the coast. As a result, the KPN has limited capability for sea control, denial, and anti-submarine operations. However, the guided missile boats and submarines could be a serious threat and are capable of blocking sea lanes. North Korea has one of world's largest submarine forces but many are old, mostly World War II-design diesel powered boats. A large portion of the KPN submarine force consists of mini-subs and coastal submarines which limit their capabilities but also make them difficult to detect. The large number of small, high speed patrol boats does give the KPN some advantages in surprise. Finally, North Korean Samlet and Silkworm batteries stationed on shore support the KPN with good ground-to-sea missile capability.

Overall, and similar to the constraints on DPRK's air and ground forces, the KPN could sustain serious combat power in the first 30 to 90 days of a conflict. However, it suffers from the same problems in fuel shortages, spare parts shortages, and other support and logistical deficiencies that would hamper other parts of the DPRK military in an extended conflict. These problems have also hurt training cycles and operational readiness. In addition, the KPN has limited nighttime and foul weather capability, problems with early warning systems and intelligence, and is limited in its air defense capabilities. As a result, combined ROK/U.S. naval forces and airpower would quickly render the KPN surface fleet relatively insignificant.

In contrast, the ROK Navy (ROKN) is smaller but composed of more modern and capable ships. While South Korea has significant brown water capabilities, Seoul is also in the process of a major naval modernization and expansion program that will provide it with blue water forces to patrol beyond its coastal seas. The

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126. These numbers do not include mine warfare and mine countermeasure craft along with amphibious and logistics/support ships.

ROKN's primary purpose had been to protect territorial waters and deter North Korea but South Korea has started to see the importance of a broader, regional role for its navy that will require development of a blue water capability. Begun in 2001 with President KIM Dae-jung's announcement to create a "strategic mobile fleet," South Korea has continued to devote a significant amount of resources to developing this capability by 2020.<sup>127</sup> The ROK Navy has approximately 63,000 personnel which includes a contingent of 25,000 Marines<sup>128</sup> and is divided into three fleets —First (East), Second (West), and Third (South)— with 43 principal combat vessels, 20 tactical submarines, and 75 patrol/coastal combat ships.<sup>129</sup> Given South Korea's geography and naval capabilities, the ROKN is able to move ships between the fleets if required to do so in a crisis more easily than North Korea. Also, while the DPRK outnumbered the South in smaller patrol craft, Seoul has a clear advantage in larger, more capable vessels, not only in numbers but also in technology. The most advanced ship in the South Korean Navy is the Aegis-class destroyer, *King Sejong the Great*, commissioned in 2007. The ship is a 7,600 ton KDX-III that has the latest technology including SPY-1D radar that can track close to 900 targets and engage 17 of them simultaneously, advanced missile and torpedo launching systems, and an anti-missile and anti-airplane defense system that is more advanced than the Phalanx Close-In Weapons System. According to PARK Chang-kwon, an analyst at the Korea Institute for Defense Analyses, in the past:

the Navy's role and missions have been restricted to coastal waters. But the Aegis ship will make the Korean Navy outright dominant over the North Korean Navy and enable it to effectively cope with regional disputes at the same time. Securing a fleet of Aegis ships will enable the nation to protect our people and maritime interests on our own. Most of all, the KDX-III's advanced anti-ballistic

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127. ROK defense increases for 2004, 2005, and 2006 were 8.6, 10, and 9.8 percent respectively with 2006 spending at \$23.75 billion. See *Military Balance* 2007, p. 339. See also Han Yong-sup, "Analyzing South Korea's Defense Reform 2020," *Korean Journal of Defense Analysis* XVIII, no. 1 (Spring 2006), pp. 111-134.

128. The North Korean military does not have a separate Marine Corps.

129. *Military Balance* 2007, p. 360. As noted earlier, these numbers do not include mine warfare and mine countermeasures, amphibious, and logistics/support ships.

missile system will safeguard South Korea from the North's missile threat.<sup>130</sup>

South Korea is now the 5th country in the world that has deployed an Aegis-class ship following the United States, Japan, Spain, and Norway. Seoul intends to build two more KDX-III ships by 2012 and has received government approval to build an additional three more, bringing the total to six Aegis-class destroyers. In addition to the KDX-III, South Korea has also built two other types of smaller destroyers: three 3,000 ton KDX-I light destroyers, and six 4,300 ton KDX-II stealth destroyers. All of these are vastly superior to North Korea's largest ship, a 1,600 ton Soho-class frigate. South Korea also has 75 170-ton fast attack patrol boats (PKM) and in June 2007, launched a new PKX class high-speed patrol boat specifically for duty in this region. The ROKN is also building SM-6 missiles for intercepting ballistic missiles and two large Dokdo-class amphibious assault ships.<sup>131</sup> Finally, South Korea intends to add six new frigates to the fleet by 2015 to replace the older ones.

The chief weakness of the ROKN is its submarine fleet with only 20 boats. ROKN submarines are not advanced design but have proven relatively capable during operations. According to a press report, during the 1998 Rim of the Pacific Exercise (RIMPAC), a South Korean submarine sank 13 ships during the simulation, a surprise to many of the participants.<sup>132</sup> In another exercise in 2004, a *Jang Bogo* submarine sank the US aircraft carrier *John C. Stennis* and an Aegis-class ship that was protecting it.<sup>133</sup> The ROKN recently launched its third 214-class submarine with

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130. Jung Sung-ki, "South Korea's Navy Cruises Toward Oceangoing Force," *Korea Times*, May 28, 2007, available at [www.koreatimes.co.kr/www/news/special/2007/05/180\\_3687.html](http://www.koreatimes.co.kr/www/news/special/2007/05/180_3687.html), accessed June 16, 2008.

131. See Jung Sung-ki, "South Korea's Navy Cruises Toward Oceangoing Force," *Korea Times*, May 28, 2007, available at [www.koreatimes.co.kr/www/news/special/2007/05/180\\_3687.html](http://www.koreatimes.co.kr/www/news/special/2007/05/180_3687.html), accessed June 16, 2008, *Military Balance 2007*, and Kim Min-seok and Ser Myo-ja, "South Korean Navy dominating: But the North Holds extensive lead in submarines," *JoongAng Daily*, May 13, 2008, available at <http://joongangdaily.joins.com/article/view.asp?aid=2889732>, accessed June 13, 2008.

132. RIMPAC 2008 was held from June 29 through July 31 and included forces from Australia, Canada, Chile, Japan, the Netherlands, Peru, South Korea, Singapore, the United Kingdom, and the United States.

133. Ser Myo-ja, "South Korean Navy dominating: But the North Holds extensive lead in submarines," *JoongAng Daily*, May 13, 2008, available at <http://joongangdaily.joins.com/article/view.asp?aid=2889732>, accessed June 13, 2008.

plans to build six more of these along with nine larger boats by 2021.<sup>134</sup>

In addition to its own capabilities, South Korea maintains an alliance with the United States which has its own formidable naval capabilities that it could bring to bear should North Korea choose to use force. In the region, the United States maintains the U.S. Pacific Command (PACOM) that is home to 300,000 military personnel stationed in forward locations in East Asia and bases in the United States. Among the units that make up this command are the 25th Infantry Division (Hawaii and Washington), the Third (California) and Seventh (Japan) Naval Fleets, Marine Expeditionary Force I (California) and III (Japan), and the Fifth (Japan) Seventh (South Korea), Eleventh (Alaska), and Thirteenth (Guam) Air Forces.<sup>135</sup> These units continue to play an important role in maintaining regional stability and could be brought to bear in a conflict over the NLL. While South Korea is unlikely to need U.S. help in quelling a North Korean assault to its claims on the NLL, these forces help deter North Korea from making an attempt.

Thus, it is very unlikely that North Korea could use force to impose an alteration of the NLL. According to one source “the KPN is judged to have a limited capability to guard DPRK territorial waters (12 nm) and inserting Specials Forces into the ROK during peacetime. It is unable to enforce the DPRK’s claimed 200 n mile exclusive economic zone.”<sup>136</sup> The balance of naval forces in the West Sea is decidedly in favor of South Korea and the DPRK is unlikely to go this route to alter the NLL.

## **B. Formal adjudication**

Another possible scenario would have the dispute formally adjudicated or mediated by an international tribunal such as the International Court of Justice (ICJ). While the NLL was drawn chiefly out of military necessity, revising the maritime boundary today would draw upon many additional years of international law and custom, along with the UN Convention on the Law of the Sea (UNCLOS), which was adopted in 1982. Both Koreas have signed the convention –South Korea on March 14, 1983) and North Korea on

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134. “Navy launches third 214-class modern sub,” *Korea Herald*, June 10, 2008, available ????, accessed ???.

135. U.S. Pacific Command, <http://www.pacom.mil/about/pacom.shtml> (accessed May 25, 2007).

136. “North Korea Primer,” National Defense University, November 2005.



December 10, 1982)—but only the South (January 29, 1996) has ratified UNCLOS.<sup>137</sup> This section will assess the important dimensions of international law and the UNCLOS that would factor into any formal legal process to revise the NLL.<sup>138</sup>

An important guiding principle in determining maritime boundaries is the concept of equidistance whereby adjoining states draw a median line that is approximately the same distance from the adjoining coastlines. Article 15 of UNCLOS, *Delimitation of the Territorial Sea Between States with Opposite or Adjacent Coasts*, and Article 12 of the same convention, *Territorial Sea and Contiguous Zone*, use almost identical wording to note that:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.<sup>139</sup>

Redrawing the NLL would also entail some accommodation for the EEZ. This issue is guided by Article 74 of UNCLOS, *Delimitation of the exclusive Economic Zone Between States with Opposite or Adjacent Coasts*, that calls for states to conclude “an equitable solution” when reaching an agreement on how to divide the EEZ.<sup>140</sup> The maritime border for the East Sea employs equidistance in drawing that border for the two Koreas and on a few occasions during UNCLOS meetings, North Korean delegates spoke to the importance of equidistance in the agreement.<sup>141</sup> Despite this norm, Van Dyke, et. al point out that “the equidistance approach can be used as an aid to analysis, but it is not to be used as a binding or

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137. United Nations, Oceans and Law of the Sea, “Current Status – Convention on the Law of the Sea,” available at [http://www.un.org/Depts/los/reference\\_files/status2008.pdf](http://www.un.org/Depts/los/reference_files/status2008.pdf), accessed July 3, 2008.

138. The majority of the discussion to follow borrows extensively from an excellent piece by Jon M. Van Dyke, Mark J. Valencia, and Jenny Miller Garmendia, “The North/South Boundary Dispute in the Yellow (West) Sea,” *Marine Policy* 27 (2003): 143-158.

139. See UNCLOS, Article 15 available at [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf), 30, accessed July 8, 2008 and United Nations, Convention on the Territorial Sea and Contiguous Zone, 1958, pp. 4-5, available at [http://untreaty.un.org/ilc/texts/instruments/english/conventions/8\\_1\\_1958\\_territorial\\_sea.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_territorial_sea.pdf), accessed July 8, 2008.

140. See UNCLOS, Article 74 available at *ibid*.

141. Alex G. Oude Elferink, *The Law of Maritime Boundary Delimitation: A Case Study of the Russian Federation* (Boston: Martinus Nijhoff Publishers, 1994), pp. 314-15.

mandatory principle.” Citing three examples, the Libya/Malta case, Gulf of Maine Case, and Jan Mayen Case, they note that “the Court has made it clear in all these cases that the equidistance line is *not* mandatory or binding.”<sup>142</sup> Thus, other factors, such as the proportion of coastline possessed by the contending states, can be considered to adjust a line based solely on equidistance. In the case of the Koreas, the length of the coastlines is similar: North Korea with 2,495 kilometers and South Korea with 2,413 kilometers.<sup>143</sup>

Second, any effort to adjudicate a revised NLL is complicated by South Korea’s possession of the five islands off the coast of North Korea. Ownership of the five islands is designated in the armistice agreement and has never been disputed by North Korea. However, all of the islands lie within North Korea’s claimed 12 nm territorial sea boundary. In 1973 when first raising formal objections to the line, North Korean representatives stated that these islands were, in fact, in DPRK territorial seas and ships traveling to and from the islands would require DPRK permission.<sup>144</sup> This provision would not be in keeping with international law. As ROK territory, these islands generate their own claims to territorial waters and an EEZ. Thus, if the line were redrawn and these islands fell within North Korean territorial waters, provisions will need to be made for ROK access to and from these islands as well as determination regarding the fate of overlapping maritime zones. For South Korea, these islands are an important security matter and are home to thousands of its citizens. While the islands would likely be allowed some measure of their own maritime zones, it would not be a full 12 nm and would not be allowed to completely cutoff of North Korea’s access to the West Sea as the current NLL does. As Van Dyke et al. note, “islands can generate maritime zones, but they do not generate full zones when they are competing directly against continental land areas or substantially larger islands. This conclusion has been reached consistently by the Court and arbitral tribunals.”<sup>145</sup> Moreover, “with regard to small islands, tribunals have not given them full power to generate maritime zones if the outcome of such generation would be to limit the zones created by

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142. Van Dyke et al., p. 150.

143. Jung-Gun Kim “Reflections on the Attitude of North Korea Toward the Law of the Sea Treaty (UNCLOS III), p. 213.

144. See Prescott, *Maritime Jurisdiction in East Asian Seas*, p. 49, and Jung-Gun Kim, “Reflections on the Attitude of North Korea Toward the Law of the Sea Treaty (UNCLOS III),” pp 219-223.

145. Van Dyke, et al., 152.

adjacent or opposite continental land masses or larger islands. Tiny islets are frequently ignored altogether.”<sup>146</sup> One possible settlement would be for the two Koreas to arrive at a negotiated limit to their territorial sea. Such negotiations would have to recognize the claims of South Korea’s islands as well as the claims of North Korea’s mainland. However, given the current state of this issue and North-South relations, these would likely be contentious negotiations and progress would be very difficult.

Third, another important dimension to a court ruling would include what Van Dyke, et al. refer to as “the principle of non-encroachment.”<sup>147</sup> Article 7(6) of the UNCLOS, states that “the system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.”<sup>148</sup> Later, UNCLOS makes a similar reference to states that are archipelagos, such as Indonesia, noting they may not “cut off from the high seas or the exclusive economic zone the territorial sea of another State.”<sup>149</sup> This is clearly an issue for North Korea because even if allowances are made for South Korea’s island possessions in the region, the current NLL cuts off North Korean access to a portion of its 12 nm territorial waters, the EEZ, and access to the West Sea which causes DPRK vessels to take a lengthy and costly route to the north. However, North Korea is not entitled to an automatic 12 nm territorial sea limit when it conflicts with other state claims as the ROK islands do.

Fourth, the Courts also consider any important security interests that are at stake for those involved in the dispute. This is a crucial consideration for both Koreas. Since the Korean War ended with an armistice and not a peace treaty, the peninsula technically remains in a state of war. Moreover, there have been significant security “incidents” in the past 20 years —1996 and 1998 DPRK submarine incursions, 1999 and 2002 West Sea naval clashes, missile tests, and tension over North Korea’s nuclear weapons ambitions—

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146. Ibid.

147. See also the rulings in *Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen case (Den. v. Nor.)*, 1993 I.C.J. 38 and *Delimitation of the Maritime Area Between Canada and France (St. Pierre and Miquelon)*, 31 I.L.M 1149 (1992) as cited in Van Dyke, et al., 151.

148. UNCLOS, Article 7 (6), p. 28, available at [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf), accessed July 5, 2008.

149. UNCLOS, Part IV, Article 47 (5), p. 40, available at [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf), accessed July 7, 2008.

that periodically remind all participants of the security concerns that remain. Given the proximity of major population centers and naval bases, the location of the NLL has important security implications. Though many of the geographic and legal factors are in Pyongyang's favor for moving the line further south, its sometimes threatening behavior would likely weigh heavily in Seoul's behalf if the matter went before an international tribunal.

Finally, Van dyke, et al, note that recent decisions by the ICJ indicate that rulings usually give both parties some of what they want.

Although the Court has attempted to articulate consistent governing principles, its approach to each dispute submitted to it has, in fact, been more akin to the approach of an arbitrator than that of a judge. Instead of applying principles uniformly without regard to the result they produce, the Court has tried to find a solution that gives each competing country some of what it has sought and that each country can live with. . . . Perhaps such an approach is inevitable, and even desirable, given that the goal of a maritime boundary delimitation is to reach an "equitable solution."<sup>150</sup>

One of the chief problems here is that since North Korea does not accept the NLL as currently drawn, it must regularly challenge the legitimacy of the line to demonstrate it is not acquiescing to the maritime boundary. However, if Pyongyang chooses to do so by crossing the line with war ships or taking other provocative actions, it raises fears in the South about Pyongyang's intent and degrades the necessary confidence in security and stability to implement other possible measures that would improve cross-border trust. North Korea needs to consider other methods such as protests through diplomatic channels or regular statements similar to Japan's annual protest note to South Korea regarding Dokdo/Takeshima as a less threatening way to demonstrate its non-acceptance of the NLL.

Despite these dimensions of international law that would likely have an impact on rendering a judgment, it is a moot point since South Korea is unlikely to agree to any process of this sort. In addition, ROK authorities are well aware that any ruling would likely not go fully in their favor providing for at least some adjustment of

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150. Van Dyke, et al., 152.

the NLL as it now stands. North Korea may be equally unwilling to adjudicate the dispute since a decision that fully supports their current position for a new NLL is also unlikely to be the result. Although it is difficult to predict the Court's final decision it would probably be a compromise between the current positions of the two Koreas and neither party will be completely happy with it.

### C. Negotiated Solutions

Since adjudication and the use of force are unlikely, another possibility may be a negotiated solution of some kind.<sup>151</sup> As is often the case in disputes of this sort, only a negotiated solution is likely to produce a long-lasting settlement that is followed by both sides. One possibility is that the NLL is part of a grand bargain that addresses many issues including a formal peace treaty between the two Koreas, economic and political cooperation, security guarantees, and resolution of the NLL. Given the security concerns, any effort to revise the NLL prior to a formal peace treaty and grand bargain that settles a multitude of issues may be a "bridge too far." Without a significant change in the security context, it will be impossible to address the NLL. Since Seoul and Pyongyang are a long way from any grand bargain, this route is unlikely to bring a settlement to the NLL dispute any time soon.

Another possibility to settle the dispute is to remove this issue from the plethora of other concerns—North Korean denuclearization, reunification, formal peace treaty—regarding inter-Korean relations and focus solely on addressing the NLL. A grand bargain includes too many issues and achieving progress on them all is extremely difficult. If both Koreas are determined to solve the NLL as a stand-alone issue, it would free the dispute from the many concerns in other areas and might act as a model for resolving the other conflicts that complicate inter-Korean relations.

Unfortunately, arriving at a negotiated settlement also appears to be an insurmountable task. The positions currently taken by both sides are far apart and there is little reason that either side will moderate those positions any time soon. As was evident when President Roh made mild overtures to compromise on South Korea's position, the domestic political price was high and would likely remain so for any future ROK president so long as North Korea

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151. For detailed discussion of these issues see Kotch and Abbey, "Ending Naval Clashes on the Northern Limit Line and the Quest for a West Sea Peace Regime," pp. 175-204.

does not offer some corresponding gesture or demonstrate that it too is willing to soften its position. Moreover, the level of trust between the two governments is very low providing a poor foundation to explore a negotiated settlement. Efforts undertaken during the last few months of 2007 produced little progress and that was with the ROH Moo-hyun administration that was rooted in the "Sunshine Policy." Future negotiations on the NLL seem unlikely to achieve any better results. Thus, there may be only one final, long-term route to address the NLL dispute.

#### **D. Confidence Building Measures (CBMs)**

At the moment, the only scenario that may be viable, though still difficult, is to recognize that given the current relationship between the two Koreas, a negotiated settlement on the NLL is next to impossible. The positions of both sides are too far apart and the security concerns too great to allow for such a significant alteration of the status quo, regardless of the path taken. Thus, the current situation along the NLL will continue for some time and will require both sides to carefully manage their maritime relationship in the region. In the meantime, the only feasible route is to pursue confidence building measures, some small steps that may reduce tension, and create the conditions for the two sides to one day, address the larger underlying issues of the NLL. A 2003 study by Sandia National Laboratories and the Korea Institute for Defense Analyses proposed several possible measures for moving in this direction.<sup>152</sup>

First, North and South Korea could cooperate on Joint Search and Rescue Operations in the area. Cooperation would include setting maritime zones of responsibility, establishing communication protocols, developing procedures to enter the other state's waters for a rescue operation, and joint training. With success in these ventures, Seoul and Pyongyang could expand their cooperation to include emergency response situations such as typhoons or oil spills. South Korea could also help Pyongyang acquire the necessary equipment to more fully participate in clean-up efforts. North Ko-

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152. Michael Vannoni, John Olsen, Jenny Koelm, Adriane Littlefield (Sandia National Laboratories) and Kim Tae-woo, Shin Sung-tack, Kim Myong-jin, and Kim Sang-beom (Korea Institute for Defense Analyses), "Inter-Korean Military Confidence Building After 2003," Cooperative Monitoring Center, Sandia National Laboratories, August 2003, pp. 60-64, SAND2003-2892, available at <http://www.cmc.sandia.gov/cmc-papers/sand2003-2892.pdf>, accessed July 2, 2008.

rea could also be invited to observe and possibly join other regional maritime safety organizations.

Second, both Koreas could cooperate on measures to avoid future maritime clashes as occurred in 1999 and 2002. These efforts could include declarations to abide by the Convention on the International Regulations for Preventing Collisions at Sea and the International Code of Signals when visual contact is made. To further cement these procedures, North and South Korea could work to develop a formal agreement similar to the Prevention of Incidents on the High Seas that was signed by the United States and the Soviet Union in 1972. An agreement of this sort would establish protocols and procedures for communication between the two navies and help to manage these types of events.

Third, given the economic dimensions of the NLL dispute, Seoul and Pyongyang could designate special north-south sea routes to facilitate commerce, particularly between Haeju/Gaesong and Seoul/Incheon areas. This measure could be expanded into a joint fishing zone, similar to the one that was recently on the table in November/December 2007. The joint zone could entail several zones that are 3 nm on both sides of the NLL. Another possibility is that since DPRK vessels are prevented from fishing south of the NLL and ROK ships are not allowed north of the South Korean "red line" located 5.6 nm south of the NLL, the joint fishing area could be between these two areas and would open previously closed regions for both sides. In addition to a joint fishing area, the report also proposes a broader "North-South Joint Fishing Venture."<sup>153</sup> This could include a joint fish processing facility, a distribution system through South Korea to route the processed catch to local and international markets that would broaden DPRK access that is currently limited to largely Chinese markets. The proposals could also include a Joint Fishing Commission to monitor and manage the marine resources in the area. Though the Sandia report predates the October 2007 summit, other measures similar to these could include establishing elements of the West Sea "Peace Zone" that are detailed in the agreement.<sup>154</sup>

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153. Vannoni, et. al, pp. 112-113.

154. In September 2008, the ROK Unification Ministry reported that the cost of the special peace and cooperation zone in the West Sea would be a little over \$1 million and the total cost of all programs in the October 2007 would cost South Korea \$12.7 billion. "Inter-Korean Projects 'to Cost W14 Trillion'," *Chosun Ilbo*, September 19, 2008, available at <http://english.chosun.com/w21data/html/news/200809/200809190005.html>, accessed September 20, 2008.

Fourth, illegal fishing in the area, particularly by Chinese ships, along with drug smuggling and piracy are serious problems. Both Koreas could cooperate regarding detection of these activities, communication and coordination in the apprehension, arrest, and extradition of violators, and agreements and procedures for hot pursuit across the NLL. In 2004, Seoul and Pyongyang did reach an agreement on controlling illegal fishing from other countries but have yet to implement the measure.

Fifth, Seoul and Pyongyang could work to improve the capability of the naval hotline, particularly so that it would link the naval commanders in the West Sea region. Also possible would be the prohibition of all naval exercises within 10 nm of the NLL.

Finally, the report calls for reducing amphibious assault capability and eliminating small submarines from the naval forces of both Koreas since these capabilities are viewed as threatening and offensive by both sides.

All of these potential confidence building measures are part of a Sandia report that deals with overall military CBMs, but could be used to lessen security concerns in the West Sea region, particularly regarding the submarines that have a dangerous infiltration capability. However, even these smaller steps will require political will and effort to make them work. If both sides are not committed to making progress, reducing tension, and avoiding provocative actions, even these small attempts will fail.

### **VIII. THE NORTHERN LIMIT LINE, INTERNATIONAL RELATIONS THEORY AND THE FUTURE OF EAST ASIA**

What does the dispute over the NLL tell us about international relations theory and the future of East Asia? As noted at the start of this monograph, a debate rages over the correct theoretical framework to explain the region and the likelihood of conflict in the future. Realism maintains East Asia's future will resemble a zero-sum competition that will be plagued by conflict and great power wars based on a shifting power configuration—the rise of China, declining U.S. hegemony, Japan's response—and the plethora of potential flashpoints, including territory/island disputes, resource competition, Taiwan, and North Korea, to name a few. Liberal internationalism is more sanguine. It sees the future as more of a positive-sum game where states will see that cooperation can help them all achieve some measure of their interests. There will certainly be a multitude of potential conflicts in the years ahead



but extensive economic ties and a growing institutional framework will help to encourage states to settle their differences short of resorting to the use of force because it is in their interest to do so. Finally, others argue that neither of these will fully explain East Asia's future as states in the region have accommodated China's rise, seeing it as an opportunity and a return to the old order of China as the regional hegemon.

Making judgments on international relations theory from the Korea case is difficult – it is a unique case of adversaries, divided after World War II, with North Korea remaining one of the most isolated and oppressive regimes in the world. However, the dispute over the NLL does offer some theoretical insight.

The NLL dispute demonstrates that realism still has importance in understanding state-to-state relations in East Asia. When states believe their core security and economic interests are at stake, they are unlikely to compromise easily on them and will utilize their power to protect those interests. As a bilateral dispute between two adversaries with little trust in each other, the situation has largely been viewed by both Koreas in zero-sum terms that have made it very difficult for them to even talk about the problem. Barring any major shift in North-South relations, the NLL dispute is likely to stay this way.

However, the NLL dispute and inter-Korean relations in general are part of a larger regional security environment with more powerful players such as China, the United States, and Japan. So long as the NLL issue remains relatively calm and does not threaten regional peace and stability, the dispute will remain a Korean affair and retain its realist characteristics. If the dispute were to blow up, literally, and become a broader regional conflagration that threatens stability and the interests of Beijing, Washington, and Tokyo, the context of the NLL dispute will change dramatically. The dispute over the NLL will no longer be solely a bilateral affair and will now become a security problem with a broader set of players, including the regional powers, and a different set of interests. These new entrants now affected by the dispute will see the conflict differently. In the Cold War days, the regional powers would have lined up behind their allies and have a typical Cold War confrontation. But now, the region is different.

The major powers will not view the struggle as zero-sum but rather a positive-sum situation where they all have a shared interest in containing and then solving the dispute to avoid disrupting regional stability and trade flows. If the two Koreas should come to

blows beyond a brief naval clash, the regional powers may exert greater effort, perhaps through the Six Party process, to end the conflict and seek to achieve a more long lasting settlement. For these states, the Korea-specific security concerns are far outweighed by the greater shared economic interests a Korean conflict would disturb. Thus, the NLL dispute shows that the theories of international relations may be operating differently for different tiers within a regional or the international system. Smaller states may be allowed to have a realist, zero-sum confrontation so long as they remain relative subdued or contained, and do not threaten the interests of the larger powers. However, for the big-power states with overlapping trade and institutional arrangements, the positive-sum approach of liberal-internationalism may intervene should the conflict escalate.

## IX. CONCLUSION

The dispute over the NLL is unlikely to end anytime in the near future. South Korea is in a position to keep the NLL in its favor; it has the military and economic power to secure its interests and has the inertia of the status quo on its side. In addition, North Korea's fairly regular provocative actions and abrasive rhetoric do little to generate international sympathy or confidence within South Korea for Seoul to be forthcoming with compromise proposals. North Korea has a legitimate complaint and it is likely that an international tribunal would rule, in some measure, in the North's favor, though it might not receive a new NLL that is consistent with the one it drew after the clash in 1999. However, the issue will probably never go to a court and any change will have to come about through a negotiated settlement. South Korea will not budge without some willingness on the North's part to moderate its position and rhetoric on the NLL and other issues.

For the North to seek change to the NLL it must continue to challenge the line but through diplomatic channels to demonstrate it has not acquiesced to the boundary. It must do so in a way that is persistent but avoids threatening and provocative actions. Sending its warships across the NLL and risking repeats of the 1999 and 2002 clashes are not productive and help feed the international image of the DPRK as a brazen and irrational regime, making it all the more difficult for Seoul to alter its position.

The current demarcation of the NLL is likely to remain for some time, barring any major warming of inter-Korean relations. As a result, the more both sides can attempt to establish confidence

building measures, the more likely some of the tension and mistrust can be diminished. However, the NLL is just one issue that is part of a larger inter-Korean context and progress on the NLL will not occur without progress on other fronts within North-South relations. Barring progress on these issues, it will be important that the two Koreas manage their maritime relations carefully and avoid clashes that have the danger of provoking a broader conflict. The costs for peace and stability in the region are too high should they fail.

