

## **DPRK-ROK MARITIME BOUNDARY IN THE YELLOW (WEST) SEA: FROM THE SOURCE OF CONFLICTS TO THE ZONE OF COOPERATION**

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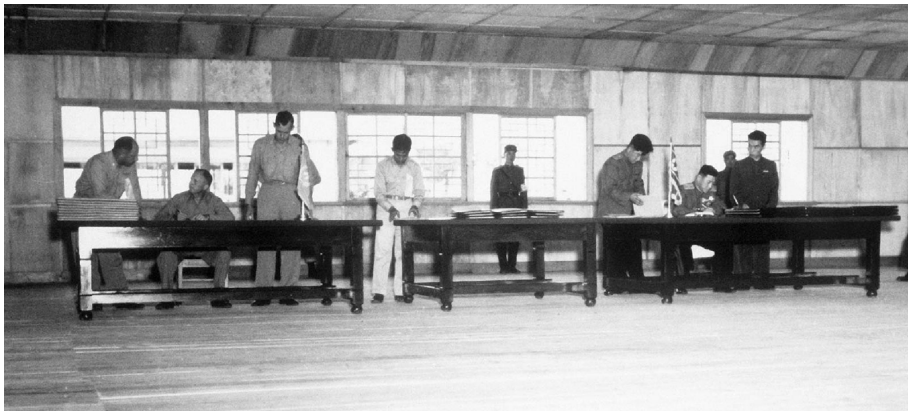
*Northern Limit Line in the Yellow Sea, initially drawn as a line for preventing conflicts between DPRK and ROK now turned into source of conflicts. NLL was drawn unilaterally, was not legally provided and even breaches UNCLOS. Controversial status of NLL causes conflicts and military clashes in disputed waters, followed by military buildup by both countries. In order to prevent the area from becoming another "hot spot" urgent measures are needed. Considering current relations between DPRK and ROK, the issue cannot be settled at once. The only possible way to solve the problem is the negotiation process between two countries aimed to improving relations between them and reviving peaceful projects and agreements reached in 2007. As the problem of maritime boundary between DPRK and ROK is closely connected with security of the whole Northeast Asian region, all countries neighboring both Koreas should also contribute to solving problem.*

**Keywords:** Northern Limit Line, Choseon West Sea Military Demarcation Line, Yellow Sea, DPRK, ROK, Korean Peninsula, Northeast Asia, UNCLOS, Armistice Agreement, disputed waters.

The situation on the Korean Peninsula and in Northeast Asia remains unstable and tense for years. The main factors, aggravating situation are: increased U.S. military presence in the region, USA – ROK regular large-scale military exercises and the geopolitical importance of the region conditioning conflict of major powers interests. In addition to these factors, the security of the region is threatened by the inconsistency of maritime boundary between DPRK and ROK, that results in periodical clashes in the Yellow (or West) Sea.

### ***Northern Limit Line***

Currently the line of military control in the Yellow Sea acts as de-facto maritime boundary between DPRK and ROK. When representatives of North Korea and the United Nations Command (UNC) signed Armistice Agreement in 1953, they also established Military Demarcation Line (MDL) as a land border but could not agree on a maritime demarcation line in the Yellow Sea where a lot of islands are situated [1]. On August 30, 1953, UNC commander General Mark Clark unilaterally drew Northern Limit Line (NLL) in the Yellow Sea between the “five islands in the West Sea [including Yeonpyeong Island – *A.B.*] and the Korean west coast” as a military control line in the West Sea. Later North Korean officials were formally notified of the NLL as a *fait accompli*. It is still unclear when North Korea was really informed of drawing NLL. In any case DPRK did not recognize UNC version of maritime border, though followed it for a long time.



*Figure 1. UN delegate Lieut. Gen. William K. Harrison, Jr. (seated left), and Korean People's Army and Chinese People's Volunteers delegate Gen. Nam Il (seated right) signing the Korean War armistice agreement at P'anmunjŏm, Korea, July 27, 1953. Source: <http://www.britanica.com/media/full/160426>*

The first formal protest of the NLL and the question of five islands in the West Sea were addressed by North Korea representatives no earlier than the December 1, 1973. DPRK proposed its own version of maritime boundary. The proposal was not taken into account and the border remained controversial. In 1977-1978 both Korean states adopted on the basis of international maritime law unilateral legislative

acts establishing economic zones and the 12-mile territorial waters, which further complicated the situation with the NLL. With both Korea following the 12 nautical-mile rule the islands can be included into the territory of DPRK. Otherwise it would breach the Armistice Agreement if the NLL violate the North's adjacent sea surface.

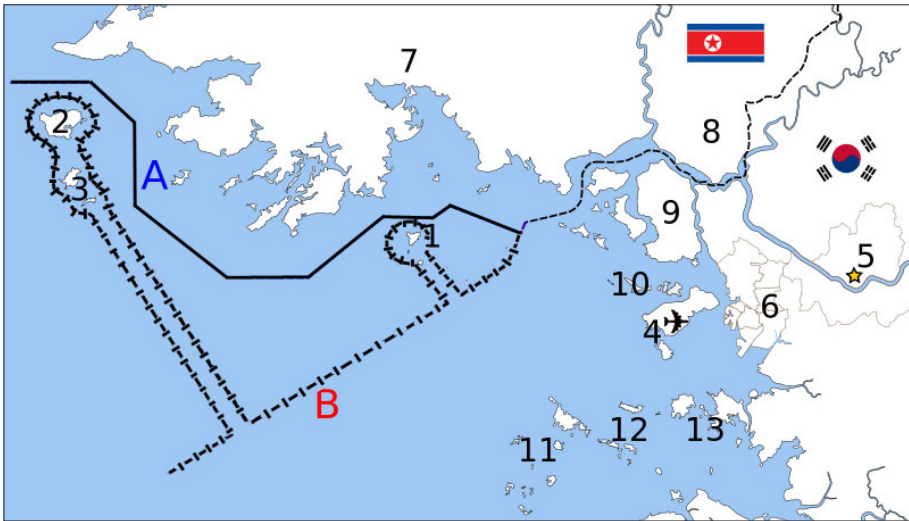


Figure 2. The disputed maritime border between North and South Korea in the Yellow (West) Sea:

A: United Nations Command-created Northern Limit Line, 1953

B: North Korea-declared "Inter-Korean MDL", 1999

1–Yeonpyeong Island, 2–Baengnyeong Island, 3–Daecheong Island

Source: [http://en.wikipedia.org/wiki/Northern\\_Limit\\_Line](http://en.wikipedia.org/wiki/Northern_Limit_Line)

DPRK proposed the Choseon West Sea Military Demarcation Line (MDL) in 1999, more southerly and approximately equidistant from the two countries coasts. Moreover, DPRK identified a zone of military protection (coinciding with economic zone in the Yellow Sea). If inter-Korean maritime border in the Yellow Sea was carried forward to the south, it would pass along the 38th degree of north latitude and thus become the logical extension of the land military demarcation line separating Korean peninsula into two parts. In order not to isolate Yeonpyeong and Baekryeong islands, the DPRK pronouncement provided 2 nm-wide corridors for transit to and from these ROK islands. As for ownership of these islands, DPRK never put it into question. ROK and USA refused to acknowledge the DPRK's new line [10]. Nevertheless, ROK admits that the NLL cannot determine south-north

boundary correctly and it was drawn not fair to DPRK. The line is not legal international maritime boundary and two Koreas are considering cross-border disputes in the Yellow Sea as a purely domestic political issue. There was no agreement or approval on the NLL between the South and North. The official stance of the UNC is that the NLL is not the maritime MDL.

North Korea's position on the border issue remains unchanged for many years. NLL is not officially recognized by its government. This position has been confirmed by the spokesman for the Policy Department of the National Defense Commission of the DPRK in October 2012. The spokesman stressed in his statement that: "Only maritime Military Demarcation Line set by the DPRK, not NLL, will remain in the West Sea till the country is reunified" [11]. This statement followed a demonstrative visit of ROK former president Lee Myung Bak to Yeonpyeong Island located in the Yellow Sea.

### ***The conflict potential***

The conflict potential of Northern Limit Line / WSMDL is determined by the following factors: disputed status of the border, economic importance of the adjusting waters and geographical position of 5 islands belonging to ROK.

**Disputed status.** Though NLL was drawn up not as the maritime MDL, just in order to prevent South Korean security patrol vessels from crossing the North's waters, it was rather useful as a line of military control. Nevertheless, it cannot be considered legitimate as it was not stated by the Armistice Agreement. No agreement on the West Sea NLL was signed between the South and North, and UNC which drew up the NLL did not notify the North of its intention. Officially UNC agree that NLL is not maritime MDL. The Armistice Agreement stated that the five islands of the West Sea were the territory of South Korea without the maritime MDL[1]. But as for maritime MDL, no subsequent agreement has been concluded regarding it. It was just stated that territorial waters, namely adjacent sea surface, should be respected. But there is another controversy. NLL denies North Korea access to adjacent sea areas. Each territorial sea is the own domain of its country and both Koreas accept 12 nautical-mile rule. Based on this, the status of the five islands in the

West Sea (to say nothing about territorial seas around them and North Korea) becomes disputed. Given the 12 nautical-mile rule, these islands can be included into the North's territory under the international law of the sea [12]. The current situation when Northern Limit Line violates the North's adjacent sea surface breaches Armistice Agreement.

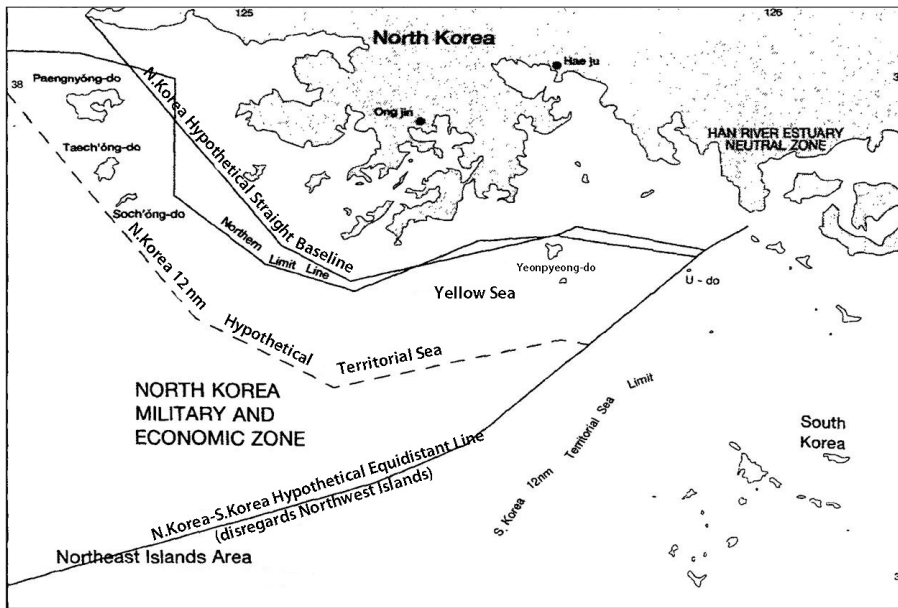


Figure 3. A US Government map showing where a North Korean 12 nautical mile Territorial Waters limit would be, when disregarding the north west UN Command islands, compared to the UN Command created Northern Limit Line. Source: <http://118.129.184.33/pub/docu/kr/AM/06/AM062001B01/IMAGE/AM06-2001-B01-0210-01.jpg>

There is also similar maritime boundary in the East Sea (Sea of Japan). It is vague, horizontally extended from the Military Demarcation Line on land. It was not as widely publicized as the Northern Limit Line in the West Sea, but the North mentioned it several times at the Military Armistice Commission (MAC) unlike the NLL in the West Sea case. With no objection from the South, the Northern Limit Line in the East Sea has maintained its current situation. However, it is de facto groundless, without agreement in the Inter-Korean Basic Agreement and its affiliated Agreement.

### **Economic importance.**

When Pyongyang first urged to revise the boundary in the area in December 1973, it pursued economic interests as well as the disputed area is rich in fish resources, especially blue crab that migrates through this area. The disputed waters are also important for regional commerce, especially for North Korea. With NLL in its current condition, North Korean merchant ships must take a circuitous route north of Baekryeong Island before entering the West Sea. It adds extra miles and increases fuel costs thus making every trip more expensive.

According to the ROK Joint Chiefs of Staff 16 cases of intersection of the NLL by North Korean border patrols or fishing vessels were recorded from January 1 to November 15, 2011. There were 28, 24, 50 and 95 cases in 2007, 2008, 2009 and 2010 respectively.

Typically, fishing boats cross NLL accidentally, since there are no identifying marks and buoys. For comparison: the military demarcation line across the Korean peninsula along the 38th parallel is marked up with 1292 black-and-yellow striped poles, and there are North and South boundary lines - 3-meter high barbed-wire fences along the borders of the DMZ. It should be noted that given the conflict potential of the area ROK and DPRK fishing vessels are usually accompanied by the patrol ships, which sometimes become involved into conflicts.

Islands position. So-called “five northern islands” belonging to ROK stand apart as they are located far to the north-west of the Yellow Sea. By its location, they are divided into two groups: Baekryeongdo/Daecheongdo/Socheongdo and Daeyeonpyeongdo/Soyeonpyeongdo. For simplicity sometimes they speak about Baekryeong and Yeonpyeong islands, although the latter is a group of islands composed of two big and several small islands. These “northern islands” are special because they are much closer to DPRK than to ROK. They are located about 80 km (Yeonpyeongdo) and 140 km (Baekryeongdo) west of Incheon Bay and 10-15 km south of the coast of DPRK Hwanghae Province. It makes “northern islands” a kind of South Korean enclaves in DPRK. In a view of the relations between two countries it causes the tension and increases possibility of conflict. On the one hand, the islands are extremely vulnerable because of their isolation from the mainland and extreme proximity to the DPRK. That is why ROK keeps numerous troops on these islands for defense in the case of potential conflict.

On the other hand, North Korea feels not very comfortable having enemy islands in its rear. The current NLL allows ROK warships to sail very close to the North Korean shore and its military bases in the region. This explains the care with which North Korea has strengthened its coast facing South Korean island.

### **Military conflicts**

NLL remains a constant source of military conflicts and armed clashes between patrol boats of two Koreas. Until mid-1970s, the question of the disputed border and coastal waters did not become a source of conflict, but in the late 90s, (when South Korean President Kim Dae-jung declared the “sunshine policy” of strengthening cooperation between the two countries) collisions in the area of maritime border began to occur. A series of clashes between North and South Korean vessels took place in the Yellow Sea near the Northern Limit Line in June of 1999. The first serious conflict occurred in June of 2002. It led to the deaths of South Korean and North Korean sailors and the sinking of a South Korean vessel. Another major armed conflict took place in the Yellow Sea in November of 2009 when naval vessels from the two Koreas exchanged fire in the area of the NLL off Daecheong island causing serious damage to DPRK patrol boat. The sinking of the ROK’s 1,200-ton corvette Cheonan on March 26, 2010 is also often referred to as “border incident” [3; 5; 7; 13; see also 14]. It was sunk near Baengnyeongdo, 18-square-mile South Korean island situated less than 10 miles from the North Korean coast in the Yellow Sea. Nevertheless, the attacker was not identified [6], so the case with Cheonan should not be directly connected to the DPRK – ROK maritime border issue. As for the 2002 and 2009 conflicts the reason for both of them was unresolved problem of the maritime border between North and South in the Yellow Sea. In each case sailors of both countries - DPRK and ROK - believed that they were in their own territorial waters, and perceived appearance of the enemy as an invasion and trespassing.

Two Koreas tried to resolve the issue peacefully and proposed a number of measures since the beginning of 90s till the Lee Myung-bak administration coming to power in 2008. In 2007 DPRK Leader Kim Jong Il and ROK President Roh Moo Hyun even agreed to create a “special peace and cooperation zone in the West Sea” to promote creation of a joint fishing zone and maritime peace zone as well as

establishment of a special economic zone [2]. At the same time it was planned to gradually reduce South Korean military presence in the islands. This idea could really become a step towards the final solution of the problem of NLL and “northern islands”. However, these plans were not implemented due to both sides’ different views on the range and standard of the common fishery zone. When following South Korean President Lee Myung-bak came to power, inter-Korean relations deteriorated and a number of conflicts occurred in disputed area, largely due to the Lee’s rigid policy towards DPRK.

Tensions in the region are likely to grow further. After simplification of the rules of engagement and deployment of high-tech weapons on the islands conflict potential increased. The unsettled border and periodic tensions increases make DPRK and ROK to keep significant naval forces in the waters of the Gulf of Kanhvaman. Immediately after the incident in June 29, 2002 South Korean leadership decided to implement additional measures to enhance combat readiness of naval forces. In order to control the surface and underwater spaces in the coastal waters of Yellow Sea patrol aircrafts have started regular overflights to monitor the areas bordering with DPRK. DPRK also carried out a number of measures to improve combat readiness. Military clashes in the West Sea have occurred twice since the launch of the Lee administration. One of them, Yeongpyeongdo conflict, resulted from the gunnery exercise of the South near the NLL, which caused the North to consider it a military threat and to shell the island [4; 8; 9]. In 2009 DPRK Navy in the area was presented by small anti-submarine ships and 40 combat crafts and ROK Navy – by 3 frigates, 5 corvettes and 22 crafts. After the Yeongpyeongdo incident in 2010, ROK pushed ahead additional fortification of the islands and deployed K-9 self-propelled artillery, surface-to-air “Cheon-ma” missiles and GPS-guided “Spike” missiles, with the follow-up measures such as forming the Northwest Islands Defense Command. Minister of National Defense Kim Kwan-jin repeatedly made provocative remarks about striking even supporting base in case the North triggered any conflict.

ROK also installed on Baekryeong and Yeonpyeong islands 130-mm multiple launch rocket systems (MLRS) “Kuryong”, focusing on the territory of the DPRK, in 2011. Each of the unit is equipped with 36 rails for launching rockets with range of 23 to 36 km.



DPRK in turn deployed “ground-to-ship” missiles in addition to available coastal artillery. Artillery units, especially those on the Mu and Jangjae Islands, were inspected by Kim Jong Un, leader of DPRK, which emphasizes their significant role in a possible future conflict.

**Ways of solution:**

Thus, a kind of “small arms race” is taking place in waters of the Yellow Sea, directly adjacent to the Korean Peninsula, which can make the area another “hot spot” and the source of widespread conflict.

Negotiation process that would equally take into account the interests of both sides seems to be the most appropriate way to address the problem. Previously conducted negotiations on the joint exploitation of marine resources of the Yellow Sea did not bring significant results. There also was no progress in activities aimed to create atmosphere of trust and thus reduce the likelihood of future conflict (usage of common radio frequencies, improvement of marine vessels notification procedures, emergency communication system). Experience shows that DPRK can only discuss issues of economic cooperation, not security problems. It is natural with the view of current inter-Korean relations.

As part of the negotiation process, all parties involved should give priority to solving problem of NLL as a potential hot spot, important for the security of the region. It should be understood that NLL was efficient as a line of military control only. Now, with two Koreas being independent countries (not as two parts of the temporarily divided country), NLL cannot be viewed as an adequate maritime boundary. Taking into account that DPRK and ROK failed to demarcate mutual maritime border, both countries should refer to the International Court in Hague or another judicial authority, perhaps under the auspices of the United Nations Convention on Law of the Sea (UNCLOS).

The problem of maritime boundary between DPRK and ROK is closely connected with security of the whole Northeast Asian region. Thus all countries neighboring both Koreas should also contribute to solving problem. Third parties – main regional actors – could promote peaceful settlement of the issue. For example, governments of China and Russia could influence the situation, calling on interested parties in the public and confidential form to stop the artillery live-fire exercises in the disputed waters of the Yellow Sea. They could also call on DPRK to observe obligations under the UN Charter, Armistice Agreement of

1953 and the provisions of the Inter-Korean Agreement of 1992. China and Russia could persuade North Korea to ratify UNCLOS, and both DPRK and ROK - to agree on settlement of the dispute in international courts for the demarcation of inter-Korean maritime border in the Yellow Sea. But the main problem is that both countries seem not to perceive conflicts in the Yellow Sea as serious threat to regional security unlike growing U.S. military presence.

As for USA, its government could bring clarity to the issue of NLL, hinting Seoul that the latter is not a maritime boundary, and that both parties need to seek a peaceful settlement of the dispute in accordance with international law. USA could guarantee ROK security just reassuring their faithful alliance commitments and stressing that possible attacks from the North will meet adequate reaction. Nevertheless, the United States in the nearest future will not be interested in regional stability. On the contrary, the conflicts arising from unsettled NLL issue serve as an additional reason to increase U.S. military presence in the region under the pretext of protecting allies.

As for the direct participant of the conflict, ROK, for the peaceful solution of the problem it should first stop military actions and such plans as further deployment of high-tech weaponry on the islands of the Yellow Sea (while USA should stop developing invasion plans in the event of armed conflict), as all these actions may cause an asymmetric threat from North Korea. Instead, ROK should develop communication network and early warning system between North and South. In other words, ROK should better work on prevention of armed conflicts than to prepare for these conflicts.

It is unlikely that ROK will be ready to agree with DPRK and shift the line to the south because if it did, the “northern islands” would become more vulnerable. Nevertheless, a new president came to power in ROK intending to improve relations with DPRK, so there is a chance for both countries to settle some issues bilaterally. They could build on the successful dialog results reached by DPRK Leader Kim Jong Il and ROK President Roh Moo Hyun in 2007 and revive peaceful solutions such as projects of creation of joint fishing and development zone in the area, peaceful eco-park and so on. It could make maritime boundary between DPRK and ROK, which is now a source of conflicts, into a zone of cooperation.

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