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Misunderstandings about a delimitation agreement and implications

- Because the January working meetings did not make any progress, some have come to the misunderstanding that both countries have stated that no further working meetings will be necessary in 2015.
- » And a few commentators have remarked that South Korea and China may be reluctant to move further with the negotiation process for fear of exacerbating tensions between them.
- » Another misunderstanding is that agreement has been blocked by China’s refusal to accept the median line principle.
- » This is fundamental to the South Korean stance, given the illegal Chinese fishing activities in the West Sea and a series of physical conflicts between the Korean coast guard and trespassing Chinese fishing vessels in 2008, 2011, 2013 and 2014.
- » Some have also seen the unilateral inclusion of the Jeodo area in China’s air defense identification zone, in November 2013, as a response to the current situation in which no delimitation has been agreed, but this is not true.
- In practice, reaching an agreement on delimitation would be good for South Korea since a clear maritime border would allow the country to exercise stricter jurisdiction over its waters.
- » This might, however, result in increased illegal fishing activities because Chinese vessels would likely cross into the newly established EEZ of South Korea to fish without permission, whereas at present they can fish legally in the Provisional Measure Zone.
- Whenever South Korea and China come to an agreement on delimitation, there will be important implications for the various other countries with which China has outstanding territorial disputes, including Japan, ASEAN members, such as the Philippines and Vietnam.

The road ahead

- South Korea and China must take the opportunity to secure a definitive delimitation of their maritime boundary; their strategic cooperative partnership is in good order and China is currently taking a somewhat more flexible stance on the ECS and the SCS, so an agreement on boundaries will serve as a useful model for regional maritime cooperation.
- Thus far, maritime issues between South Korea and China have generally been seen in a negative light, and have tended to hamper the improvement of bilateral relations.
- Now is the time to overcome such sea blindness, and the working meetings will produce a balance sheet which should convince the two leaders to act wisely in facilitating a political settlement of this matter.
- Eventually, these boundary delimitation should come to be seen as a mutual advantageous resolution which can drive the progress of bilateral relations into the future: these working meetings are laying the foundations of a peaceful West Sea for many generations to come.

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2015 Working Meeting between South Korea
and China on Maritime Boundary Delimitation:
Will it Impair or Improve Relations?

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Suggestions

South Korea has to be more active than China

- Historically, the West Sea has been more frequently of importance to South Korea. It has been the avenue of connection with China, which itself has paid more attention to Southeast Asia and the Indian Ocean. The Chinese government acknowledges that the illegal fishing issue in the West Sea should be resolved through joint efforts, even before the delimitation issue has been completely resolved, and has shown itself ready to move actively toward possible solutions.
- Only through the provisions of UNCLOS is there any chance of agreeing an equitable delimitation in the semi-enclosed West Sea, so South Korea needs to speak up loudly for the principles of the law, which China is inclined to neglect.

Conflict must be resolved through cooperation

- The causes of any conceivable maritime differences between the two countries is unrelated to the national sovereignty and core interests upon which China puts such emphasis. However, those issues which are contentious, including fisheries, the environment, scientific research, and resource development need to be resolved in such a way as to secure the long-term interests of both countries
- The working level meeting really must prioritize cooperation to prevent reckless conflicts.

The negotiation should not involve any third parties

- The working level talks on delimitation must not be allowed to disrupt the bilateral relationship between China and South Korea. And it would be equally unfortunate if the West Sea came to be seen as the dividing line between a continental alliance and a maritime alliance, which must inevitably result in a geopolitical confrontation.

The working meeting must leave the final decision to the politicians

- Both presidents have identified maritime affairs as the key to their national security and diplomatic agendas. These leaders cannot ignore the importance of the process to delimit their maritime boundaries, which should be obvious, whatever other political calculations may prevail.

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2015, an important year

- Leaving the legacies of the Cold War and other difficulties behind them, South Korea and China are building up their successful strategic cooperative partnership, moving forward toward through the development of new economic exchanges and diplomatic cooperation between the two countries, and this process is expected to gain momentum during 2015.
- 2015 is the third year since President Park of South Korea and President Xi of China came into office, and also the first year they have begun to implement the many declarations and promises which they have made within the context of the strategic cooperative partnership. The two nations share a common cultural heritage, and their governments should take this opportunity to leverage their partnership to enhance their economies and to improve their people’ s quality of life, especially for the younger generation.
- At a summit held in July 2014, the two leaders agreed to launch a working–level group on maritime boundary delimitation. The first meeting took place on January 29, 2015, and addressed issues of Exclusive Economic Zones (EEZs) and continental shelves in the West Sea (aka the Yellow Sea), which has an area of about 380,000 km2. The following preliminary declarations were made:
 - » Both parties agree mutually that they will conform to international law and to the United Nations Convention on the Law of the Sea (UNCLOS).
 - » China upholds the principle of equity, having regard to the relevant geographic and geological and fisheries factors.
 - » South Korea aims to reach an equitable solution which complies with the UNCLOS by establishing an appropriate median line through the waters southwest of the Korean peninsula.
- It is greatly to be hoped that the 2015 maritime boundary delimitation meeting between South Korea and China will not impair the future of bilateral relations, but rather will improve their prospects.

Significance of the West Sea (Yellow Sea)

- This body of water, which lies between China and South Korea, is of particular historical import for the Chinese as the site of their defeat at the Battle of Yalu River, in 1894 during the First Sino–Japanese War.
- The West Sea is within the first island chain of maritime defense which China claims as a core interest. There are no outstanding territorial disputes, such as those of the East China Sea (ECS) and South China Sea (SCS), but the maritime boundary is yet to be delimited, as the 200–mile EEZs of China and South Korea overlap.
- Both countries have agreed to treat the Ieodo Ocean Research Station, established by South Korea, as an issue of maritime boundaries rather than as a territorial dispute. They have also agreed to create the South Korea–China Provisional Measure Zone at the overlap of their EEZs, since the maritime boundary has yet to be delimited, and also the South Korea–China Joint Fisheries Committee, in order to sustain a relatively stable order in the region.
- » Though Ieodo is within the overlapping sea over which both countries exercise practical maritime jurisdiction, it is closer to South Korea than China geographically and is included in the Korean EEZ and continental shelf; though China also claims it as part of its EEZ and continental shelf. Delimitation of the sea boundary will naturally resolve the matter.

- » Regarding the legality of the Ieodo Ocean Research Station, China cites Section 3, Article 74 and Section 3, Article 83 of the UNCLOS to argue that South Korea’ s Ieodo Ocean Research Station “jeopardizes or hampers the reaching of the final agreement” between the states concerned. However, such an argument is not convincing, as no physical damage is being inflicted, unlike in the case between Suriname and Guyana which was decided in 2007.
- » Chinese fishing vessels can freely engage in fishing under the control of the Chinese government, as the waters around Ieodo are within the current fishing zones specified by the South Korea–China Fishery Agreement, not the waters covered by the Fishery Agreement among South Korea, China and Japan. In practice, few Korean fishing vessels take part in fishing activities near Ieodo since it is a long way from the Korean mainland.
- » It is rather unlikely that the waters around Ieodo will fall on the Chinese side of the median line, no matter how this line is drawn during ongoing negotiations.
- » Since the Ieodo Ocean Research Center is not and will not cause repeated or permanent physical and environmental damage to the surrounding maritime environment, it does not violate any international law, in particular the UNCLOS.
- Illegal fishing by Chinese vessels cannot be regarded as a misdeed by one party, but rather should be seen as a bilateral issue resulting from pollution in the West Sea, the depletion of fishery resources, and structural problems within the fisheries industry. Nevertheless, it is welcome that the Chinese government is starting to deploy more resources to address this problem.
- Naval skirmishes between South and North Korea have occurred in the West Sea near the Northern Limit Line, adjacent to Chinese territory. There are also regular bilateral joint naval exercises conducted by the Korean and US Navies, to which China is very sensitive, since China’ s major cities, including Beijing, and military installations are concentrated in this area.
- The West Sea is also geostrategically vital: for the US in trying to defend against the Chinese missiles, for Japan in countering the rise of China, for Taiwan in its struggle to maintain its independence, and for ASEAN countries as central to their advance into East Asia and the Indian Ocean - the so–called 21st century Maritime Silk Road.

Purpose and prospects for an agreement on delimitation

- Since the UNCLOS took effect for Korea and China as of 1996, it has been clear that applying it to the long semi–enclosed seas of East Asia would be impractical. In response, the nations of the region have revised their national laws, and there are also significant issues outstanding from before the modern period. Coming to an agreement on delimitation therefore presents considerable difficulties.
- China is interested to reach an agreement on maritime boundary delimitation in the Yellow Sea because this area is the starting point for its first island chain of defense, as well as being central to President Xi’ s vision of the 21st century Maritime Silk Road. Politically it represents the implementation of a “harmonious sea” between China and its neighbors.
- » China’ s only successful agreement on maritime boundary delimitation concerns the Gulf of Tonkin, with Vietnam. For the last 15 years there have been no more successes, and China is therefore keen to reach agreement with South Korea.
- South Korea sees a delimitation agreement for the West Sea as a catalyst to encourage further development and to strengthen its strategic cooperative partnership with China; an agreement might also usefully influence South Korea’ s maritime boundary delimitation negotiations with Japan.

South Korea and China are building up their successful strategic cooperative partnership, moving forward toward through the development of new economic exchanges and diplomatic cooperation between the two countries, and this process is expected to gain momentum during 2015.

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