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I. Introduction

East Asia's maritime issues have evolved within a number of contexts including international politics, economics, and law. Specifically, they form a multi-layered structure of issues involving territorial sovereignty, resource development, delimitation of maritime boundaries, and protection of the environment. The danger of conflict escalation at sea has grown particularly large over the past couple of years and there seems to be no end in sight to the tensions, arising from maritime disputes in the region. A characteristic shared by recent maritime disputes in the region is that they have all occurred simultaneously, and behind this phenomenon is the shifting regional balance of power (Park 1983; Kim 2004; Emmers 2009; Koo 2009; Van Dyke 2009).

From more general and normative perspectives, East Asian maritime disputes have been inextricably inter-related with the issue of boundary delimitation concerning territorial waters, exclusive economic zones (EEZ), and continental shelves stipulated in the United Nations Convention on the Law of the Sea (UNCLOS). The UNCLOS regime can be defined as a set of "implicit and explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge" (Krasner 1982: 186). The global UNCLOS regime needs to be supplemented by regional institutions. Yet from a comparative regional perspective, East Asia has the most pronounced 'institutional gap' in maritime issue areas.

This chapter is structured as follows:

First, this chapter critically reviews the evolution of East Asian maritime disputes with



a focus on the three bones of contention: (1) contested sovereignty over offshore islands; (2) overlapping claims to EEZ and continental shelf boundaries; and (3) resource development, particularly since the UNCLOS came into force in 1994. South Korea's positions on these thorny issues are reviewed accordingly.

Second, this chapter systematically analyzes the new maritime rivalry between the U.S. and China and its implications for international and regional maritime regimes as well as South Korea's middle power diplomacy. In the past, East Asia's maritime disputes tended to occur sporadically. Recently, however, they seem to be occurring at the same time. At the center of this phenomenon is rising Sino-U.S. competition over the sea. As history before has shown, and the present continues to show, the future will also prove that the state that dominates the world will also dominate the sea. This observation neatly summarizes the nature of the current Sino-U.S. maritime rivalry. The volatile nature of East Asian maritime disputes puts a lot of constraints on South Korea's room for diplomatic maneuver.

Third, this chapter explores the road to regime-based multilateral resolutions of East Asian maritime disputes. To build a new regional maritime order, the parties involved must decide to what extent their new institutional efforts will be nested within the global UNCLOS regime. Then, the issues of territorial sovereignty, maritime boundaries, and resource development should be tackled multilaterally rather than bilaterally. In maritime East Asia, no regime-based resolutions can be established without the cooperation and concessions of all the parties concerned. This study examines the conditions under which, and the ways in which, South Korea can draw many players in the region into regime-based multilateralism, toward which foreign leaders seem to have an ambivalent, if not hostile, attitude at the moment.

II. Three Bones of Maritime Contention

The three most prominent bones of contention at sea include contested sovereignty over offshore islands, overlapping claims to EEZ and continental shelf boundaries, and resource development. A confluence of these issues has caused and escalated the latest maritime confrontations between China and its neighbors, including the U.S. The continued tensions reflect the limitations of global and regional maritime regimes.



1. Sovereignty Disputes

Sovereignty disputes raise questions of national identity and pride, thereby feeding territorial nationalism. The territories in dispute need not cover the entire soil of a particular state, as in the cases of the two Chinas and the two Koreas, in order to seriously strain interstate relationships. Even small, barely habitable offshore islands can serve as the most persistent and explosive bone of contention. Examples of unresolved island disputes include competing sovereignty claims to the Dokdo/Takeshima Islands in the East Sea, the Senkaku/Diaoyu Islands in the East China Sea, the Northern Territories/Kurile Islands in the Northwest Pacific Ocean, the Islands of Sipadan, Sebatik, and Ligitan in the Celebes Sea, and the Paracel and Spratly Islands in the South China Sea.

Most notably, China and Japan have forged closer economic ties since their diplomatic rapprochement in 1972 and a pragmatic consideration of national interests would suggest more cooperative behavior. Yet the reality in the East China Sea does not bode well for a joint effort by these two neighbors to promote mutual cooperation, as the Senkaku/Diaoyu dispute continues to serve as a persistent and explosive bilateral irritant (Koo 2009: chapter 5). The diplomatic spat in fall 2010 due to the Chinese fishing trawler incident near the disputed islands proved the point that any mishandling of maritime issues can hijack the subtle balance of power and interests in the region (Pilling 2010). As Japan lost its upper hand to China, Tokyo has accelerated its shift toward the right. This shift is currently being manifested in the build-up of its military and pursuit of the right of collective self-defense. In a vicious action-reaction cycle, China began to frequently send surveillance vessels to the nearby sea areas and conduct military training, which in turn has led Japan to tighten its security in the area. Thus, tensions in the area still persist (Koo 2013).

Equally divisive are matters in the South China Sea, where China's growing assertiveness provokes not only its Southeast Asian neighbors but also the U.S. The Southeast Asian countries' increasing economic dependence on China, on the one hand, has mitigated the political and diplomatic tensions. On the other hand, however, now that restraint such as the strategic control of the Cold War era no longer exists, China has declared its intent to become a maritime power and is seeking to pursue a bold maritime policy to maximize its own interests without being too concerned about how it would be viewed by its neighbors (Koo 2009: chapter 6). Renewed tensions in this area—especially the Paracel Islands between China and Japan and the Scarborough Shoal between the Philippines and China—illustrate the point (Castro 2013; Ng 2014). Judging from the current circumstances, as China flexes its muscles directly and indirectly, the U.S. and the Southeast Asian neighbors are highly likely to take the measures to maintain the balance of power against China's gradually looming threats.



2. Boundary Delimitation

Turning to the second parallel, the already complex maritime space has become much more complicated as the claimant countries began ratifying the UNCLOS in the mid-1990s. The major innovation in the UNCLOS was the creation of EEZ, which combines sovereign rights to the continental shelf with sovereign rights over the water column beyond the territorial sea. It resulted from a compromise between those who wanted more control over offshore areas and those who wanted to retain as large an area as possible as high seas (Kim 2004).

Along with the widespread adoption of the UNCLOS, East Asian coastal states recognized that disputes that had once been limited to the sovereignty of disputed islands now included overlapping maritime jurisdictional claims over EEZs and continental shelves. In addition, the adoption of straight, rather than normal, baselines for territorial seas and other maritime zones has made the already daunting task of delimiting maritime boundaries much more difficult. The letter, if not the spirit, of the UNCLOS provisions for straight baselines is ambiguous at best. This ambiguity has in turn encouraged many coastal states to adopt straight baselines, even where the basic conditions are not met.

On top of this, there has been a constant tension between the ‘equidistance’ approach and the ‘equitable’ principle in the history of the law of the sea. The UNCLOS chose to avoid any clear reference to either principle, thus providing insufficient guidance for delimiting maritime boundaries.¹ Boundary delimitation disputes may become as intractable as sovereignty disputes, because state elites are equally constrained by domestic players who hold veto power if elites chose to pursue cooperative approaches to solving these issues.

For instance, China and Japan differ fundamentally on basic principles of boundary delimitation. Although there is no explicit mention of the Japanese median line concept in the UNCLOS, International Court of Justice delimitation decisions increasingly favor an equidistance line based on ‘relevant factors’ such as the comparative lengths of the coastlines. In contrast, China points to the 1969 North Sea case, which argued that length of coastline and continental shelf, are the most important factors in delimitation. Thus, in the Chinese view, delimitation should consider factors such as the length of the Chinese coastline and the natural prolongation of the continental shelf. China indeed views Japan’s median line as against the spirit of the UNCLOS because it was not only declared unilaterally but also divides the East China Sea in half (Donaldson 2005; Koo 2009: chapter 7).²

3. Sovereign Rights Disputes

Finally, the existence of islands in the disputed areas complicates not only the task of delimit-



ing maritime boundaries but also the issue of marine resource development. The energy-hungry coastal states all eye the high potential for oil and gas deposits near disputed islands. They also rely on contested offshore areas to provide a large portion of their marine diets. It is notable that East Asian countries have been able, albeit only occasionally, to cooperate on jurisdictional issues as well as joint development of resources by overcoming nationalist pressures. Yet the danger of conflict escalation looms particularly large during a global shortage of energy and marine resources (Koo 2009: chapters 1 and 2).

The rising tension between China and Japan illustrates this point. As popular sentiments between China and Japan have become more hostile, mutual grievances have been aired not only with regard to the disputed islands, but also against the exercise of sovereign rights in EEZs and continental shelves including China's unilateral development of the Chunxiao gas field. Many analysts agree that the September 2010 trawler incident was not an isolated irritant given China's more provocative and overconfident efforts to secure its maritime interests. The incident took place against the background of Japan's thinning patience and growing anxiety regarding China's suspicious activities near the Chunxiao field in violation of the spirit, if not the letter, of the 2008 agreement, which now looks in jeopardy.

In sharp contrast to its challenger position in the East China Sea, China has aggressively arrested fishermen from its Southeast Asian neighbors for their allegedly illegal fishing activities near the disputed islands in the South China Sea. The Philippines and Vietnam have been the principal targets in recent years.

Since 2009 China has challenged the Philippines' claim to the fisheries by relying on growing naval prowess backed by coercive diplomacy. In spring 2012, this challenge led to a tense two-month standoff between Philippine and Chinese civilian vessels in the Scarborough Shoal.³ To compensate for its disadvantages in military power, the Philippines filed a statement of claim against China in the Arbitral Tribunal of the UNCLOS in January 2013, challenging China's 'excessive' claim to the South China Sea—especially, the nine-dashed line that covers nearly the entire resource-rich waters (Castro 2013).

Much to Vietnam's dismay, a drilling rig owned by the China National Offshore Oil Corporation (CNOOC) was set up near the disputed Paracel Islands in May-June 2014. This led to a series of anti-China protests and violent riots across Vietnam. Although China stopped exploration work more than a month ahead of schedule, observers believe that China will probably come back to the area because signs of oil and gas were found. Despite the rising number of complaints by its neighbors, China has also been constructing artificial islands in the Spratly chain to cement its claims (Ng 2014; Tiezzi 2014a).



III. South Korea's Positions on Key Maritime Issues

1. Sovereignty Disputes

The territorial question between South Korea and Japan emerged and escalated into a crisis in the first half of the 1950s, when South Korea reestablished its de facto control over Dokdo. In the first half of the 1960s, the island question continued to serve as one of the most intractable bilateral problems, threatening to wreck the conclusion of the normalization treaty in its final stage of negotiations. After a relatively calm interlude, the sovereignty question flared up again in 1996 when the two neighbors demonstrated unusually hard line territorial and maritime policies. In 2004-05, the island question proved itself again capable of immediately straining the bilateral relationship, as demonstrated by the controversies over South Korea's Dokdo postage stamps and Japan's designation of 'Takeshima Day.' Grave bilateral tensions surfaced again after the former President Lee Myung-bak visited Dokdo in August 2012. Relations have recently been aggravated as the Japanese government sent vice-ministerial-level officials to the Takeshima Day ceremony hosted by the Shimane Prefecture two years in a row in 2013 and 2014 (Koo 2009: chapter 4; Koo 2013). There seems to be no diplomatic room for South Korea to play a more proactive role vis-à-vis sovereignty issues as long as politicians on both sides remain captured by ultra-nationalist sentiments.

2. Boundary Delimitation

South Korea's Territorial Sea Act of 1977 adopted straight baselines as well as normal baselines for measuring the breadth of its territorial sea. With regard to the validity of the straight baselines of South Korea, none of its neighbors have challenged them except for the area between the mainland Korea and Jeju Island, which lies between the Korea Strait and the northern East China Sea (Park 1983: 139-142). In August 1996, the South Korean government promulgated the Exclusive Economic Zone Act in accordance with the UNCLOS.⁴

There is no prominent dispute over islands between South Korea and China. However, it has not been easy at all for the two neighbors to agree on each other's valid base points as there are several problematic islets and submerged features situated far from the shores. As both South Korea and China proclaimed EEZs and the continental shelf in the Yellow Sea and in the East China Sea where the width between the nearest coasts of the two countries is less than 400 nautical miles (nm), the need for delimitation of EEZ boundaries has arisen. In 1996, the two parties launched bilateral negotiations for delimiting their EEZs and continental shelves. And the negotiation is yet to be completed. They have not narrowed down their



differences over the principle of delimitation. South Korea insists upon the ‘equidistance-relevant circumstances’ principles for the boundaries in the Yellow Sea, whereas China argues for the application of ‘equitable’ principles.⁵ More specifically, the South Korean government has proposed that an equidistance line should be drawn first in the Yellow Sea and then adjustment and modification should be followed where appropriate. Yet China has refused such a proposal, arguing that the first step in delimiting maritime jurisdiction is to list and balance all the relevant factors and then the next step of drawing the boundaries is to be followed (Kim 2004: 206).

In the meantime, the delimitation of maritime zones between South Korea and Japan has revolved around two separate areas: the East China Sea with hydrocarbon potentials and the East Sea/Sea of Japan with thorny fishing and territorial issues. In 1974, South Korea and Japan signed an agreement concerning the establishment of a boundary in the northern part of the continental shelf adjacent to the two parties. They thus agreed on the delimitation in the western channel of Korea Strait/Tsushima Channel, i.e., the north of the East China Sea, and the south of the East Sea/Sea of Japan on the basis of the equidistant line. In the meantime, the boundary line leaves vast areas of the East Sea/Sea of Japan undelimited. The Dokdo issue is the main reason for the incomplete delimitation (Park 1983: 131-133; Kim 2004: 190-192).

3. Sovereign Rights Disputes

As noted above, South Korea and Japan agreed on a joint development zone (JDZ) in the northern continental shelf of the East China Sea. Since 1974, South Korea has asked Japan to jointly explore hydrocarbon potentials in this area only to no avail. It is believed that Japan would wait until 2024 when the joint development agreement will expire because it believes that the current agreement favors South Korea. To make matters more complicated, Japan submitted a formal report on June 6, 2008 to the United Nations Commission on the Limits of the Continental Shelf (UNCLCS) claiming its continental shelf in the East China Sea that overlaps with the joint development zone with South Korea. In response, South Korea also submitted a formal report on December 26, 2012, to the UNCLCS claiming its continental shelf in the East China Sea that extends as far as the Okinawa Trough.⁶ Therefore, it is unlikely that the two neighbors will implement the JDZ agreement any time soon.

The fishing issues in the East Sea/Sea of Japan have been much more complicated than the joint development in the East China Sea. The 1965 fishery agreement between South Korea and Japan defined 3 nautical miles territorial waters around the Dokdo Islands, the 12 nautical miles exclusive fishing zone, and jointly controlled waters. In the 1970s, however, the



new global trend towards *mare clausum* outdated the practice under the 1965 fishery agreement that allowed foreign fishing immediately outside a coastal country's 12 nautical miles exclusive fishing zone (Park 1983: 146-147; Kim 2007: 62).⁷

In August 1996, the two states opened negotiations aimed at drawing EEZ delimitation lines, but the negotiation process was rocky at best. Because the existing maritime regime in the East Sea/Sea of Japan favored her, South Korea had no intention of replacing the 1965 fishery agreement. Japanese officials proposed separating EEZ delimitation from the revision of the fishery agreement in order to promptly conclude the latter. Also, they suggested setting up a temporary joint fishing zone around Dokdo and shelving the sensitive problem of delimiting each other's EEZs around the islands. After hard negotiations, the two parties reached a new fishery agreement in September 1998 on the basis of modified 35 nautical miles exclusive fishing zones of each country and the establishment of joint fishing zones outside the exclusive fishing zones. An important consideration in shaping the joint fishing zones was the equitable principle. Yet a more important implication of establishing a joint fishing zone in the East Sea/Sea of Japan is whether this provisional arrangement can be considered as a precedent where Dokdo is not used as a base point for either party (Kim 2004:251-257).

In the meantime, South Korea and China agreed to bring a new fishery agreement into force in June 2001. It shares some key properties with the new South Korea-Japan fishery agreement: (1) both agreements are consistent with the exclusive fishing regime as defined by the UNCLOS; and (2) both are provisional fishery agreements pending the ultimate delimitation of EEZ and continental shelf boundaries. There is no EEZ boundary drawn between South Korea and China and joint fishing zones were established (Kim 2004:266-267).

IV. New Sino-U.S. Rivalry as a Constraint on South Korea's Middle Power Diplomacy

During the Cold War and the post-Cold War years, maritime order in East Asia had been maintained by U.S. hegemony. However, in the transition period, regional maritime order is growing ever more unstable due to the constantly changing geo-political and geo-economic conditions. At the center of the structural shift lies a rising China that is increasingly becoming a significant maritime power. What makes the matter even more complicated is America's recent change of attitude from being passive to showing active intent to re-engage itself in the maritime issue area.



Maritime East Asia has become a much more volatile place as a result of its fluid geopolitics and geo-economics, at the center of which are a rising and more assertive China and a reengaging but ambivalent U.S. In the post-Cold War era, many would agree that two major trends have opened a new horizon of regional peace and security. The first trend has been associated with the overall reconfiguration of the Asian regional system from the Cold War's (quasi-) bipolar confrontation to unipolar American dominance. Many experts agree that the U.S. Cold War military structure still dominates in matters of regional security. The second and more important feature of the post-Cold War Asian order is the rise of China. To many observers, China's economic and military might has already established bipolarity within the region. Although not all draw worst-case scenarios, a good deal of uncertainty about the ways in which a more capable China would project its power has alarmed its neighbors, including the U.S., and prompted them to scramble to balance against China (Pempel 2010).

In the new millennium, China has transformed itself from a land-based power, centered on a vast ground force, to a maritime one capable of mounting operations beyond its maritime borders. China aims to be capable of pushing America's carrier groups beyond what it calls the 'first island chain,' sealing off the Yellow Sea, East China Sea, and South China Sea inside an arc ranging from the Aleutians in the north to Borneo in the south. It is projected that China will become the world's largest military spender in about 20 years or so (The Economist 2012a).

China has made no secret of its intention to challenge the way things are done in maritime East Asia. It has made it very clear in island and maritime disputes that 'sovereignty belongs to China.' It is a message to its neighbors that China will not yield or compromise when it comes to territorial sovereignty. Such an unreserved expression of Chinese nationalism is deep-rooted in 'the hundred years of national humiliation.' China's navy seems to be well prepared to go beyond its traditional role of coastal defense and engage in far-sea defense to protect its economic and strategic interests.⁸

To be sure, China's aggressive entrance into East Asian waters was an extended invitation to the U.S. to do the same. The thrust of the U.S. Pivot to Asia has been on its military dimension. While the Obama administration has endeavored to project the 'rebalance' to Asia as a "whole of government" endeavor, it is the 'maritime pivot' that has received the lion's share of official attention. This is partly the result of a perception of America's ineffectiveness in dealing with Chinese aggression in East Asian seas (Muni and Chadha 2014: 50).

China thinks that active intervention by the U.S. has been behind the intensified maritime disputes, and is responding rather sensitively. Thus, China's adoption of hard-line policy in a series of recent disputes can be interpreted as its rejection of the U.S.' pivot to Asia and containment strategy against China. China believes that Japan is using the recent U.S.-China



frictions to attract the U.S. into the East China Sea disputes. Also, China thinks that the Obama administration's active intervention in the South China Sea reflects America's fear of decline; a fear manifested in the process of containing China's rise and re-engaging in East Asia (Koo 2013).

However, China is caught in a dilemma in which its sensitive and strong opposition against the U.S. engagement would invite even greater scope of the U.S.' engagement. China's stringent responses to prevent U.S. intervention would call for its counterparts in the disputes—Japan, Vietnam, and the Philippines—to form a tighter alliance with the U.S. Therefore, China is also making conciliatory gestures. For example, at the Foreign Ministers' Meeting of the 18th ASEAN Regional Forum (ARF) in Bali, Indonesia in 2011, China, against expectations, expressed a shift in its position as it announced "the importance of navigational freedom and safety in the South China Sea is self-evident... all countries both inside and outside the region should benefit from it." At the China-ASEAN Foreign Ministers' Meeting, China adopted the Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC) that was concluded in 2002, thus, easing its position over the disputed area (Koo 2010, 2013).

As noted above, China's renewed assertiveness has given the U.S. an opportunity to reassert itself in a region where its eclipse by China had been considered inevitable. In the wake of the escalating feud between China and Japan over the Senkaku/Diaoyu Islands and despite China's 'deep dissatisfaction' with America's intervention, the U.S. has reaffirmed that the disputed islands fall under a treaty that enables the superpower to protect Japan's security interests.⁹ In a similar vein, Vietnam has a rapidly warming rapport with the U.S. in large part because its arch-enemy, China, makes broad territorial claims in the South China Sea. Hanoi's strategy has been to try to internationalize the dispute by bringing in other players for multilateral negotiations. Partly in response to Hanoi's diplomatic effort, Washington has repeatedly stressed that it remains neutral on which regional countries have stronger territorial claims to the Paracel and Spratly Islands, but that it would step into tangled disputes between China and its smaller Southeast Asian neighbors over the islands in order to preserve its freedom of navigation (Gaouette 2010; Landler 2010).

A new rivalry between the U.S. and China over the Seas of East Asia is directly linked to the controversy concerning international law about the types of military activities a third party could undertake in the EEZ of a coastal state. As it was seen in the mid-air collision between a U.S. Navy EP-3 surveillance plane and a Chinese F-8 fighter jet in 2001, and the 2009 incident where China provoked the U.S. naval surveillance ship *Impeccable*, the Chinese government's response to U.S. military activities conducted over what China claims is its EEZ could drive the two major powers towards a critical confrontation.



The UNCLOS stipulates that a state that has jurisdiction over the EEZ has full control over all living and non-living resources and the right to restrict scientific research by another state. However, the U.S. claims that it has the right to conduct research activities in the EEZs of other countries according to the principle of freedom of navigation under the UNCLOS. China, of course, refutes the claim, having designated such activities as ‘marine scientific research’ and asserting that such research requires the consent of the coastal state to which the EEZ belongs. China’s assertion, however, is out of line with the arbitrary investigation and surveillance activities that it conducts within the EEZs of Japan and Vietnam. Thus, this issue is highly controversial (Koo 2010).¹⁰

V. Moving Beyond Bilateralism and Prospects for Regional Multilateralism

In the area of maritime jurisdiction and boundary delimitation, unilateral approaches might have become more feasible with the incorporation of vast new areas within national control. In reality, a geographically focused regional approach has been adopted widely, albeit unevenly, and such a trend seems to accelerate as states have expanded their maritime jurisdiction for the past decades.

As Saunders (2001: 4) notes, it is likely that states are turning to the region because many ocean resources are inherently transboundary in nature, and that not all of these are functionally manageable at a global level. To be sure, the global level serves an indispensable function in creating blueprints for action, and in defining general principles, but in many cases it requires gigantic collective energy to smoothly run global multilateral institutions. Such difficulty is the most evident in the case of ambitious, multisectoral law-making efforts such as the UNCLOS. In response to this problem, the region can play an important mediating role between broadly defined global regimes and narrowly implemented national responses.¹¹ The creation or expansion of regional institutions itself would also be an expensive experiment requiring significant amounts of energy and time from individual member states. Therefore, the relationship between the UNCLOS and regional maritime institutions would better be a nested one rather than horizontal or overlapping.

Regional maritime regime building has been successful in Europe as seen in reasonably successful and comprehensive multilateral institutions for the Baltic, the North, and the Mediterranean Sea.¹² In sharp contrast, no comprehensive, multilateral maritime regime has been initiated in East Asian Seas. Compared to Europe, the process of regional maritime di-



alogue in East Asia is indeed very young.

In East Asia, the delimitation of maritime space has evolved as a bilateral bargaining game since the adoption of UNCLOS in 1982. The fishery relationship has served as a catalyst in fostering regional cooperation in maritime East Asia. It is remarkable that, at a time before the legal regime of maritime zones was established, many East Asian countries were able to reach an agreement on fishery management in the 1950s and 1960s. Yet an uncoordinated web of bilateral agreements on fisheries cooperation can adversely affect third parties and, more broadly, the region as a whole. For instance, as the joint fishing zone agreed between Japan and China overlaps with the one between South Korea and Japan in the East China Sea, the need arises to address this problem not only at the bilateral level but also at the trilateral one. At the same time, a regional fishing organization is needed to regulate over-fishing, a problem that has plagued the region over the past decades.

The delimitation of EEZ and the continental shelf boundaries is much more complicated than fisheries negotiations. Krasner (1982: 195-204) highlights five causal variables to explain the development of regimes: (1) egoistic self-interest; (2) political power; (3) norms and principles; (4) habit and custom; and (5) knowledge. Not all of these conditions are currently present in maritime East Asia. Building a sustainable maritime order may thus be easier said than done. However, it does no harm to the legitimacy of seeking regime-based multilateralism (Aggarwal 1998; Pempel 2010).

Seeking a multilateral solution does not mean third party arbitration by the International Court of Justice or the International Tribunal for the Law of the Sea. Instead, such a solution requires multilateral regionalism; what former U.S. Secretary of State Hillary Clinton described as “a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion.” It was in this context that the Obama administration has pointed to opening multilateral meetings as a way of tackling East Asia’s maritime disputes.

No regime-based multilateral solution can be found without the cooperation and concessions of China, the common denominator of many maritime disputes. China, however, has insisted on bilateral negotiations to resolve these disputes. China is waging a type of diplomatic offensive in which it uses all possible channels to actively assert its position of “resolution through dialogues with the claimants, and non-intervention by the U.S” so as to prevent the tensions over the maritime disputes from rising to surface. However, resolution either by the unilateral efforts of a single state or bilateral efforts is nearly impossible because the maritime issues of East Asia are complexly interwoven.

Establishing an effective regional maritime order could not be done without the full engagement of all parties involved: the U.S., China, Japan, South Korea, and ASEAN. As for China, it has successfully avoided appearing too dominant or assertive for the past decade.



Yet it still has to make additional efforts to alleviate the concerns of its neighbors with respect to its irredentist ambition. As for Japan, it simply lacks the political will and credibility to serve as a leading goose in forming a multilateral maritime regime. South Korea (and ASEAN countries as well) could assume a key role, perhaps by offering a bridge role between the two regional giants. In East Asia, the perfect storm of opportunity for more effective regional cooperation in East Asian Seas may have not arrived yet, but winds of consensus are slowly but steadily blowing in the direction of the promotion of stronger regional maritime cooperation, which is vital to the common prosperity of the region.

VI. Policy Implications for South Korea's Middle Power Diplomacy

Amidst the newly emerging dynamics and challenges, South Korea should assume the role of a safety mechanism between the U.S., China and Japan. It would not be wise for South Korea to depend excessively on the U.S. in the face of China's rapid expansion of power so as to keep the balance between the two superpowers. Neither should South Korea be absorbed into China's orbit. At the same time, South Korea needs to have a stronger voice in maritime issues. Instead of finding itself in the midst of an exorbitant arms race, South Korea would need to strengthen its roles and capacity as a bearer of regime—because even though establishing a new maritime order which includes issues of maritime territory, resource development and boundary delimitation boils down to a highly refined political activity, it also consists of an immensely normative activity which should cover legal and fair foundations acceptable to all parties concerned. South Korea's middle power diplomacy at sea should be something more than simple national egoism.

In this regard, President Park Geun-hye's Northeast Asian Peace and Cooperation Initiative (NAPCI) can serve as a useful platform. The NAPCI is an extension of her trustpolitik that pursues comprehensive indirect cooperation in the region. The initiative still lacks detailed action plans in order for South Korea to become a maritime middle pivot and might potentially conflict with America's pivot to Asia because its success depends on how to effectively accommodate China. However, it offers South Korea an important trust-building mechanism through agenda-setting in maritime disputes.

In seeking to establish a sustainable maritime order in East Asia, the issues of territorial sovereignty, delimitation of the EEZ and continental shelf, resource development and protection of maritime environment should each be approached separately. Then, based on cooper-



ation built in dealing with each issue, a multilateral consensus or a meta-regime should be created to deal with overall maritime issues within the region. In contrast to ‘hegemonic states’ such as the U.S., China, and Japan, South Korea as a ‘value state’ should, and can, propose a roadmap for a new regional maritime order, which can be summarized as follows (Koo 2009: chapter 7).

First, the regime should include a declaration of ‘standstill’ in the currently ongoing island disputes. This is a very basic measure taken to prevent any threats or interruptions from further aggravating the disputes during the transition period until the final agreement is reached. Parties concerned must put an end to citing new historical and legal evidence to claim their territorial sovereignty over the disputed islands. South Korea should convince its neighbors that regional maritime cooperation should not be hijacked by ultranationalists and opportunistic politicians. Of course, the standstill declaration cannot solve the sovereignty issue or the maritime delimitation issue, but it can certainly dampen the tensions in the disputed areas. Reduced political tensions and accumulated experiences of cooperation could eventually provide the cornerstone for resolving the broader issues.

Second, delimitation of the EEZ and continental shelf is more than the simple bilateral negotiation games. In addressing East Asian maritime disputes, signing a multilateral agreement similar to the 2002 DOC concluded between China and the ASEAN states can be a first step toward enhancing multilateral understanding while maintaining the status quo at the same time.¹³ Unlike bilateralism, multilateral approaches can help policymakers overcome the potentially zero-sum nature of sovereignty and sovereign rights issues by allowing the balance of interests among multiple participants, if not maximizing the utility of individual actors at the expense of others. Multilateralism can also increase the reputational costs of norm violations.

Third, the next step would be to work out an agreement on the principles regarding the base points and the baselines through multilateral negotiations. And then, the parties must work on the delimitation principles. The bottom line is that both the equitable solution and median line principles would create a zero-sum game, particularly between China and Japan. Therefore, it would be more desirable to apply the ‘equidistance-relevant-circumstances’ principle as proposed by South Korea. This idea suggests first drawing a tentative equidistance line and then making adjustments about the details where necessary. This principle can become a universally accepted delimitation standard in the East Asian region.

Fourth, parties concerned can proceed to fixing the tentative boundaries and zones beginning with relatively less contentious areas. The tentative boundaries and zones can be adjusted and revised in consideration of ‘historic title or other special circumstances’ through additional negotiations. In consideration of the sensitive political and social environment in



the region, issues such as territorial waters and jurisdiction, joint development of natural resources and environmental protection would need to be governed in a loose form of agreement based on existing mechanisms such as provisional measures related to fisheries. For instance, South Korea has proposed a multilateral regime to govern fisheries and environment issues in the region. ■



Endnotes

¹ For instance, UNCLOS Article 15 specifies that in the absence of “historic title or other special circumstances,” a maritime boundary between adjacent states will follow “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.” However, this equidistance principle only applies to the delimitation of the 12 nautical miles territorial sea. The equidistance line is not referred to at all in either Article 74 or 83, which defines delimitation of the EEZ and continental shelf, respectively. Instead, they simply state that delimitation “shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”

² In effect, the median line presented the most significant barrier to concluding the Consensus on Resource Development reached in June 2008 between China and Japan. Neither party could agree on where to locate the joint development zone. From the Chinese perspective, it needed to be located beyond the median line, in the area of overlap. From the Japanese perspective, the zone should bisect the median line, since it represented the equidistance point between the two coastlines. In the end, China agreed to a zone that includes space on the Chinese side of the median line. While there is no doubt that this was integral to concluding the agreement, this concession drew severe criticism from hardliners within China and explains Beijing’s ambivalence in implementing the agreement (Koo 2013).

³ The Scarborough Shoal standoff began when a Philippine Air Force (PAF) reconnaissance plane spotted eight Chinese fishing boats around the shoal. On the morning of 10 April, the Philippine Navy reported that large amounts of illegally collected corals, giant clams, and live sharks were found inside the compartments of the first Chinese fishing vessel that they investigated. But then, two Chinese marine surveillance vessels positioned themselves between the arresting Philippine warship and the Chinese fishing vessels, effectively preventing the Philippine ship from arresting the Chinese fishermen (Castro 2013).

⁴ The 1996 Act provides “the EEZ boundary shall be established by agreement with the relevant States on the basis of international law.” However, Article 5(2) of the Act indicates that the South Korean government would use a ‘median line’ as a geographical limit in exercising its sovereign rights in the absence of delimitation agreed on with its neighbors. It is not clear whether and to what extent a unilateral median line pending an ultimate delimitation of the EEZ or continental shelf boundary is consistent with the UNCLOS provision of Article 74(3), which remains silent in this regard (Kim 2004: 171-176).



⁵ From South Korea's standpoint, the Chinese argument would seem a tactic for delaying the ultimate delimitation of EEZ and continental shelf in the Yellow Sea and thus for maintaining its own nationals' sometimes predatory fishing practices as long as possible. Interestingly, China does not always stick to the equitable principles, as illustrated by its adoption of equidistance lines for delimitation in the Bay of Korea with North Korea and in the Gulf of Tonkin with Vietnam. Ironically, South Korea would still have some difficulty in consistently endorsing the equidistance principle because it might undermine its national interest in the East China Sea where it competes for maritime jurisdiction with China and Japan (Park 1983: 114-116; Kim 2004: 208).

⁶ See http://www.un.org/depts/los/clcs_new/commission_submissions.htm.

⁷ As of 1965, few distant water fishermen of South Korea were technically capable of operating within the coastal and offshore waters of Japan, but in the 1970s the South Korean fishing vessels became much more active in the waters off the Japanese coast with improved power and fishing equipment.

⁸ After years of denials, China launched an aircraft carrier in 2012. China is also developing a sophisticated submarine fleet that could be used to prevent foreign naval vessels from entering its strategic waters if a conflict took place in the region. Reportedly, the Chinese navy gets more than one-third of the overall Chinese military budget, reflecting the priority Beijing currently places on the navy as a backbone of national security (The Economist 2012b).

⁹ U.S. officials have repeatedly said: "America has a treaty obligation to defend Japan...Although the U.S. takes no position on who has sovereignty over the Senkakus, America's guarantee covers them." (The Economist 2013).

¹⁰ It was around this time that the Hainan People's Congress of China approved the revised regulations that allow the provincial authorities to seize foreign ships and its personnel conducting 'illegal' activities in the province's waters. The new regulations came into force in 2013 and authorize public security units to legally board, inspect, detain, expel, and force the offending vessels to change or reverse course. China's Foreign Ministry, in efforts to stop the revised regulations from creating diplomatic turmoil with its neighbors, announced that China attaches a strong importance to the belief, "all countries have freedom of navigation in the South China Sea in accordance with international law." However, the Hainan province's establishment of legal grounds to enforce actions against foreign vessels has led to rising tensions in the South China Sea (Fravel 2013).



¹¹ In the UNCLOS, the call for regionalization of various functions is clearly expressed in Article 123: “States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate regional organization: (a) to coordinate the management, conservation, exploration, and exploitation of the living resources of the sea; (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to coordinate their scientific research policies and undertake where appropriate joint programs of scientific research in the area; (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.”

¹² For background analysis and proposals for cooperation in European Seas, see United Nations Environment Program (1978), Andersen and Flostad (1988), Andresen (1989), Auer (1992), and Ijlstra (1992).

¹³ Recently, there has been some positive progress between China and ASEAN toward a Code of Conduct (COC) agreement to seek “gradual progress and consensus through consultations,” though no deadlines or details about the joint working group that will carry out the task are not available as of yet (Pal 2013; Tiezzi 2014b).



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