

Holding Korea Line Seen Against Law Still U.S. Policy

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By Daniel Ten Kate and Peter S. Green

(Adds U.S. troops to join drill in eighth paragraph.)

Dec. 17 (Bloomberg) -- The sea border that has become the main battleground between North and South Korea 57 years after it was imposed by a U.S. general has been called legally indefensible by American officials for more than three decades.

Then-Secretary of State Henry Kissinger wrote in a 1975 classified cable that the unilaterally drawn Northern Limit Line was "clearly contrary to international law." Two years before, the American ambassador said in another cable that many nations would view South Korea and its U.S. ally as "in the wrong" if clashes occurred in disputed areas along the boundary.

The border was drawn by Army General Mark Clark and his aides in 1953 to stop South Korea from disrupting the fragile armistice he oversaw at the end of the Korean War, according to Narushige Michishita, an associate professor at the National Graduate Institute for Policy Studies in Tokyo. Now, the U.S. must stand by the line to contain North Korea, said Michael J. Green, a security adviser to President George W. Bush.

Moving the boundary further from North Korea's coast would make it easier for the regime "to smuggle out military equipment and drugs, and smuggle in things that are part of their nuke program," said Green, who now heads the Japan Program at the Center for Strategic and International Studies in Washington. "Nothing good comes from it."

Green said the border was a “gray area” used to justify confrontations such as last month’s shelling of South Korea’s Yeonpyeong Island. The South is committed to defending the boundary, and in November last year fired on North Korean ships that crossed the line. South Korea blamed the North for torpedoing one of its warships, the Cheonan, near the disputed waters in March.

‘Uncontrolled Escalation’

The standoff sets the stage for further clashes that might draw the U.S., which is committed by treaty to defend the South. The stakes have been raised as Kim Jong Il’s regime has tested nuclear weapons and deployed hundreds of missiles and artillery pieces within reach of Seoul.

North Korea today warned the South to cancel an artillery drill on Yeonpyeong that may start as soon as tomorrow, and warned that its retaliation will be “more serious” than last time, according to the official Korean Central News Agency. North Korea said it had warned the South Korean military before the Nov. 23 shelling not to go ahead with drills.

South Korea’s military pledged on Dec. 9 to “totally crush” the North in the event of a repeat of the barrage, which killed four people. About 20 U.S. military personnel will take part in the exercise, a South Korean Defense Ministry official said, declining to be identified because of government policy.

“The situation is near a point where South Korea is going to strike out at North Korea, where we could see an uncontrolled escalation,” Army General Burwell B. Bell III, commander of U.S. forces in Korea from 2006 through 2008, said in an interview.

‘Test Alliance’

Bell said North Korean leaders want a treaty guaranteeing survival as an independent state and “will test the alliance between South Korea and the U.S. whenever they need concessions.” He agreed with Green that it wouldn’t be wise to renegotiate the border “in the hopes that North Korea will become benevolent.”

State Department spokesman P.J. Crowley referred questions about the current American view of the line’s justification to the U.S. military in South Korea. Colonel Jonathan Withington, a spokesman for the U.S.-led United Nations Command in Seoul, said the NLL should not be renegotiated.

‘Military Control’

“The Northern Limit Line is a military control measure in place to prevent armed conflict,” Withington, also a spokesman for the U.S. forces in South Korea, said in an e-mailed response when asked about North Korean incursions. “Any hostile acts, such as the North Korea sinking of the Cheonan and the attack on Yeonpyeong Island, which are both south of the NLL, are clearly serious violations of the armistice agreement.”

The line snakes around the Ongjin peninsula, creating a buffer for five island groups that South Korea kept under the armistice that ended the 1950-1953 Korean War, in which U.S.-led forces fought under a UN mandate against North Korean and Chinese troops. The agreement doesn't mention a sea border, which isn't on UN maps drawn up at the time.

The 3-nautical mile (3.5-statute mile) territorial limit used to devise the line was standard then. Today almost all countries, including both Koreas, use a 12-mile rule, and the islands are within 12 miles of the North Korean mainland. The furthest is about 100 miles (160 kilometers) from the closest major South Korean port at Incheon.

“If it ever went to arbitration, the decision would likely move the line further south,” said Mark J. Valencia, a maritime lawyer and senior research fellow with the National Bureau of Asian Research, who has written extensively on the dispute.

‘Lighted Fuse’

In June 1953, a month before the war ended, South Korean President Syngman Rhee -- described by Clark in his 1954 memoir “From the Danube to the Yalu” as “a lighted fuse sputtering towards the powder barrel” -- said he wouldn't cooperate with a truce, Central Intelligence Agency memos show. While the South wanted to fight on, Clark was under orders to find what President Dwight D. Eisenhower called an “honorable peace” as support for the war at home faded.

“There was concern over President Rhee and what he might do,” said Larry Nicksch, a former Asian affairs specialist at the U.S. Congress's research arm. “There was a lot of concern he might try to open hostilities again.”

So Clark and his aides drew the line to restrain Rhee and prevent clashes, said Michishita, author of the 2010 book “North Korea's Military-Diplomatic Campaigns, 1966-2008.” “North Korea was not notified of the line,” he said.

Tested Border

North Korea, after spending two decades rebuilding its forces, sent vessels across the border 43 times between October and November 1973, sparking confrontations, according to the South Korean Navy's website. At a meeting with the UN Command, the North's claim that it was operating within its own waters because the NLL was invalid was rejected.

Kissinger and other U.S. diplomats privately raised questions about the legality of the sea border and South Korea's policing of it in cables that have been declassified and are available to the public.

"The ROK and the U.S. might appear in the eyes of a significant number of other countries to be in the wrong" if an incident occurred in disputed areas, U.S. Ambassador Francis Underhill wrote in a Dec. 18, 1973, cable to Washington, using the acronym for Republic of Korea.

South Korea "is wrong in assuming we will join in attempt to impose NLL" on North Korea, said a Dec. 22, 1973, "Joint State-Defense Message" to the U.S. Embassy in Seoul.

'Unilaterally Established'

The line "was unilaterally established and not accepted by NK," Kissinger wrote in a confidential February 1975 cable. "Insofar as it purports unilaterally to divide international waters, it is clearly contrary to international law."

Kissinger's office did not respond to an e-mail and phone call seeking comment.

In the most recent confrontation, North Korea justified its Nov. 23 artillery bombardment as retaliation for South Korea firing shells into sea that the North claims as its own.

"Yeonpyeong is located deep inside the territorial waters" of North Korea, KCNA said in a Nov. 24 dispatch.

Two days later, President Barack Obama said the U.S. stood "shoulder to shoulder" with the South and condemned the "unprovoked" attack. The U.S. has about 28,500 troops in South Korea, which is still technically at war with the North.

South Korean President Lee Myung Bak said last week the islands will be turned into fortresses and reversed predecessor Roh Moo Hyun's plan to reduce troop numbers there.

"South of the NLL is water under our jurisdiction," Kim Min Seok, a Ministry of National Defense spokesman in Seoul, said last week. A 2009 statement on the ministry website says the line "is

the practical maritime border that our military has protected for years. We will protect it without fail.”

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