



# The Politics of Implementing the Korean Comprehensive Military Agreement in the Maritime Domain

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North and South Korean defense leaders set lofty goals for reducing tension in multiple arenas via the 2018 Agreement on the Implementation of the Historic Panmunjom Declaration in the Military Domain (also known as the Comprehensive Military Agreement, or CMA). The agreement included some specific steps in the maritime domain. Article 3 reaffirms general-level talks that took place in 2004 on the “prevention of accidental naval clashes in the West Sea,” which focused on control of naval and civilian vessels, the sharing of information to mitigate conflict at sea, and the elimination of propaganda activities along the Military Demarcation Line (MDL) areas.<sup>1</sup>

During the first year of implementing the CMA, warmer inter-Korean relations, enhanced by the unprecedented summitry between President Donald Trump and Kim Jong-un, reduced tensions and opened lines of communication over the maritime issues, including steps to demilitarize the coasts along the disputed waters. The two Koreas instituted a short-lived ban on live-fire drills, covering coastal artillery batteries, and created no-fly zones extending 20 kilometers (km) from the MDL in the Yellow Sea

(known as the West Sea in Korea) and 40 km in the Sea of Japan (known as the East Sea in Korea).<sup>2</sup>

However, North Korea’s interest in economic concessions and security guarantees over participation in trust-building activities has reduced the efficacy of inter-Korean confidence-building measures. Meanwhile, South Korea’s trust-building projects with the North at times can be dominated by its domestic partisan politics, which diverge sharply on strategies vis-à-vis North Korean engagement. These challenging domestic and geopolitical environments have overshadowed the smaller projects and contributed to systematic distrust between the two countries.

To better understand the prospects and limits of confidence building in the maritime domain, this essay examines the politics of maritime trust building through the lens of two nontraditional areas: peaceful joint-use projects and treatment of cross-border migration.

<sup>2</sup> Ankit Panda, “Koreas Successfully Implement September 2018 Comprehensive Military Agreement,” *Diplomat*, November 2, 2018, <https://thediplomat.com/2018/11/koreas-successfully-implement-september-2018-comprehensive-military-agreement>.

<sup>1</sup> Ministry of Unification (South Korea), “Results of the Summary Briefing on the 2nd Inter-Korean General-Level Military Talks,” June 9, 2004, [https://unikorea.go.kr/eng\\_unikorea/news/releases/%3Bjsessionid=CzUpQYRHhtX8pA6tUik4Sk+.unikorea11?boardId=bbs\\_0000000000000034&mode=view&cntId=31442&category=&pageIdx=40](https://unikorea.go.kr/eng_unikorea/news/releases/%3Bjsessionid=CzUpQYRHhtX8pA6tUik4Sk+.unikorea11?boardId=bbs_0000000000000034&mode=view&cntId=31442&category=&pageIdx=40).

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## Shared Use of Maritime Peace Zones

The goal of the CMA in the maritime domain was to demilitarize and depoliticize a highly contentious area that has been the site of regular violent incidents. The border zones in the West Sea have been the site of regular low-level skirmishes, relatively predictable artillery drills, and notable high-risk provocations between the two Koreas, particularly since the final years of Kim Jong-il's rule. Since coming to power in 2011, Kim Jong-un has built up military capabilities in the region based on North Korea's claims that the current maritime border is illegitimate. In 2015, North Korea installed five long-range 122-mm artillery positions as well as one command tower and three barracks on Gal Island, a tiny island uninhabited prior to military use located a mere 4.5 km from Yeonpyeong Island.<sup>3</sup> These new weapons systems continue North Korea's notorious habit of shooting live-fire rounds into the contested waters to coincide with joint military drills between the United States and Republic of Korea (ROK) and other important events in a show of force or repudiation. North Korea has placed troops on Hambak Island since 2017, though no coastal guns have been confirmed there. It also maintains an artillery system at Changrin Island near the Northern Limit Line. North Korea conducted artillery drills there as recently as 2019, and as of March 2021, the United States and South Korea suspect that Pyongyang is installing rocket launches on the island (which may violate the CMA).<sup>4</sup>

The 2018 CMA went further in establishing maritime confidence-building measures than previous inter-Korean agreements in the 2000s by including provisions for a "maritime peace zone," joint fishing zones, and an inter-Korean joint patrol measure against illegal fishing activities (targeting Chinese vessels entering Korean waters) in these newly

protected shared zones. The idea of an inter-Korean peace zone would have been the first step toward depoliticizing the maritime domain in the West Sea near the Korean coast.

Demarcating shared space for civilian use is not new. Former South Korean presidents on both sides of the political spectrum have each focused on the ecologically pristine but mine-riddled demilitarized zone (DMZ) as the site for "peace park" initiatives. The Roh Tae-woo administration even proposed a DMZ "reunification peace city," suggesting spaces for separated family meetings and an inter-Korean union organization.<sup>5</sup> Besides their symbolic value, the proposed plans for "peaceful shared spaces" have emphasized cooperative efforts such as demining, ecological conservation, economic development, and tourism activities, but these initiatives inevitably have been overrun by security and political limitations.

The last time North Korea agreed to a maritime peace zone was during the progressive Roh Moo-hyun administration (2003–8) through the 2007 agreement with North Korea (the October 4th Declaration), which contained a maritime peace zone and joint fishing zones. However, such projects require substantial and sustained political will, which is difficult to muster given how polarizing engagement with North Korea is in South Korea's political environment. With the clock running out on Roh's single five-year presidential term, the entire October 4th Declaration was scrapped and the incoming Lee Myung-bak administration emphasized a more "reciprocal" approach that Pyongyang ultimately met with skepticism.

The 2018 CMA, by contrast, was signed earlier in the Moon administration—and during a period of warmer U.S. diplomacy toward North Korea—allowing time for initial steps in the cooperative project. The shared space focused on the Han River Estuary, which runs near Seoul to the open sea, as the first step for a

<sup>3</sup> "North Korea Chronology 2015," Social Science Research Council, Northeast Asia Cooperative Security Project, <http://webarchive.ssrc.org/NK/NKCHRON%202015.pdf>.

<sup>4</sup> Grace Oh, "S. Korea, U.S. Closely Watching N. Korea amid Signs Rocket Launchers Being Deployed to Border Islet," Yonhap, March 23, 2021, <https://en.yna.co.kr/view/AEN20210323005351325>.

<sup>5</sup> Baek Sang-kyeong. "Moon Jae-in DMZ-pyeonghwajidaewa Pak Geun-hye DMZ-pyeonghwagongwon: Gat-eun jeongwa dareum jeom" [Moon Jae-in's DMZ Peace Zone and Park Geun-hye's DMZ Peace Park: Similarities and Differences], Ray the P (Maekyung Media Group), September 27, 2019, <https://raythep.mk.co.kr/newsView.php?cc=18000001&no=20423>.

civilian shared-use space under Article 4. The 1953 armistice initially slated the estuary for civilian use, but the Military Armistice Commission agreed three months later to control entry under police permission. The estuary has been further troubled by Chinese fishermen stealing resources from the controlled area. The risk of conflict between military patrol ships on either side with these illegal fishing vessels makes the area a hotbed for unpredictable confrontation. In an effort to build cooperative lanes of navigation and reduce miscommunication, beginning in November 2018 a two-month joint effort, comprising ten North Korean and ten South Korean surveyors, charted the waterway along the western inter-Korean border. By mapping the estuary, both sides aimed to jointly use the river for tourism as well as marine ecosystem and fishery resources conservation.<sup>6</sup>

The ROK Ministry of Oceans and Fisheries produced the map based on the joint survey information, which was then shared with the North via a working-level military meeting at the Joint Security Area in January 2019. The ROK Ministry of National Defense stated that military officials from both Koreas reached an agreement during working-level talks on practical issues related to freedom of navigation in the Han River Estuary.<sup>7</sup> Yet after the two sides agreed to open the estuary to civilian ships by April 2019, by March those plans had been put on hold as North Korea retreated inward, unresponsive to Seoul's requests for follow-on military talks.

The Moon administration remains committed to laying the groundwork for shared use of the Han River Estuary in line with the CMA. It has pursued unilateral ecological surveys as recently as October 2020, even as the cooperative project stalled. As it stands, the map-making project is the sole cooperative activity in the maritime domain.

## The Politics of Irregular Maritime Migration

Several incidents of irregular maritime migration from the past two years provide insight into the North-South relationship. Globally, irregular maritime migration is a notoriously complex phenomenon, the regulation and protection of which intersect with international law, national security, and human rights. North Korea has consistently demanded repatriation of its citizens regardless of the circumstances, and the leadership uses returned citizens to demonstrate its strength via execution for betrayal or public testimony of recommitted allegiance.<sup>8</sup>

North Korean fishermen often drift into South Korean waters by mistake and ask to return to the North. However, the past few years have seen a handful of fishermen seeking asylum. In South Korea, these high-profile cases of North Korean migration invoke suspicion surrounding defection, human rights, and security. Examples include the cases of four fishermen (two of whom sought asylum) returned to North Korea in June 2019 and two more again in November 2019.<sup>9</sup> In February 2021, a North Korean wearing a wet suit evaded South Korean detection and swam across the eastern sea border. (As of publication, the ROK government has yet to decide his status, but it seems he seeks to defect.) ROK law generally follows the principle of non-refoulement, a human rights practice that requires that countries not repatriate a person who would likely face "irreparable harm" upon return,<sup>10</sup> but the state retains the right to reject claims based on national security concerns about potential North Korean spies.

The decision to return the fishermen to North Korea faced a backlash from human rights groups, lawyers,

<sup>8</sup> Brian Gleason, "Double Defectors: Signifiers of Pyongyang's Strategic Shift," SinoNK, December 6, 2012, <https://sinonk.com/2012/12/06/double-defectors-signifiers-of-pyongyangs-strategic-shift>.

<sup>9</sup> William Gallo, "Deportation of North Koreans Suspected in 16 Deaths Raises Questions in South," Voice of America, November 8, 2019, <https://www.voanews.com/east-asia-pacific/deportation-north-koreans-suspected-16-deaths-raises-questions-south>.

<sup>10</sup> Office of the High Commissioner, "The Principle of Non-refoulement under International Human Rights Law," <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

<sup>6</sup> Yael Teff-Seker et al., "Do Alternative Dispute Resolution (ADR) and Track Two Processes Support Transboundary Marine Conservation? Lessons from Six Case Studies of Maritime Disputes," *Frontiers in Marine Science*, November 30, 2020, <https://doi.org/10.3389/fmars.2020.593265>.

<sup>7</sup> Noh Ji-won, "S. Korea Shares Nautical Charts of Han River Estuary with N. Korea," *Hankyoreh*, January 31, 2019, [http://english.hani.co.kr/arti/english\\_edition/e\\_national/880735.html](http://english.hani.co.kr/arti/english_edition/e_national/880735.html).

and other defectors as well as from South Korean conservatives, who touted the decision as placating the North in an effort to persuade the Kim regime to return to talks.<sup>11</sup> The ROK Ministry of National Defense has taken heat for its handling of these border crossings. Broadly, South Koreans worried about surveillance capabilities, particularly in the June case where the vessel stayed in port for over two days before the authorities found the fishermen, and only then when one came ashore. Concerns became so prominent that both the prime minister and minister of defense offered official apologies to the Korean people for the failure of the security and surveillance network and launched a special investigation into the matter.<sup>12</sup>

The two governments grappled with another incident of alleged migration via sea in September 2020, when North Korean forces shot and burned the body of a South Korean fisheries official who had disappeared from his regular patrol near a border island. The North Koreans burned the inspector's body in accordance with their strict Covid-19 procedures. Moon demanded an apology from Pyongyang and ramped up defensive measures at sea. While Kim Jong-un apologized the following day for the "unfortunate" killing, soon thereafter he used the incident to justify further militarization of the maritime border. North Korean state media quickly laid blame on the South for not controlling its citizens in such a sensitive zone.<sup>13</sup>

Reportedly, Kim has directed the General Staff Department to place units patrolling the MDL on both the east and west coasts on "top combat posture," an order similar to that issued by Kim Yo-jong after the inter-Korean liaison office was demolished in June 2020. The South Korean government concluded that

the ROK Ministry of Oceans and Fisheries official intended to defect to North Korea based on a variety of indicators, including the tidal currents, low chance of falling from the ship, and intelligence suggesting that North Korea had information on the individual.<sup>14</sup> The official's family has challenged the claim, and the UN High Commissioner for Human Rights called for an independent investigation based on the domestic and international politics influencing the treatment of the official.<sup>15</sup>

## Conclusion

North Korea has mostly focused on economic concessions, with the ultimate goal of sanctions relief. Pyongyang clearly believes that diplomacy broke down soon after the 2019 summit in Hanoi, and it has returned to a more hawkish posture toward both the United States and its southern brother, culminating in the demolition of the inter-Korean liaison office in June 2020. Kim Jong-un's court politics and shows of force play a role in North Korea's borderland brinkmanship as well. As a result, investing in the CMA maritime measure has become a low priority.

South of the DMZ, there remains a strong public thirst for a change in North-South relations, but this desire is tempered with a general sense of pragmatism and suspicion. The ruling progressives have followed President Moon's broad plans for engagement by seeking to cultivate multiple points of contact with the North. However, South Korean conservatives fear that Moon has made too many concessions to North Korea without preconditions for the dismantlement of its nuclear program. Nonetheless, the ROK leadership faces consistent public pressure to improve relations with the North. This is suggested by public approval for the Panmunjom Declaration, the

<sup>11</sup> "Kim Jong-un mosiryeo talbuk eo-min 2myeong jaemollo bachyeottna" [Were the Two North Koreans Brought as a Sacrifice to Kim Jong-un?], *Chosun Ilbo*, November 23, 2019, [https://www.chosun.com/site/data/html\\_dir/2019/11/22/2019112203017.html](https://www.chosun.com/site/data/html_dir/2019/11/22/2019112203017.html).

<sup>12</sup> Choe Sang-Hun, "South Korea Apologizes after North Korean Fishing Boat Arrives at Port Undetected," *New York Times*, June 20, 2019, <https://www.nytimes.com/2019/06/20/world/asia/south-korea-north-fishing-boat.html>.

<sup>13</sup> "S. Korean Authorities Warned Against Intrusion," Korean Central News Agency, September 27, 2020, <https://kcnawatch.org/newstream/1601183042-21901927/s-korean-authorities-warned-against-intrusion>.

<sup>14</sup> "South Korea Claims Slain Official Tried to Defect to North Korea," Al Jazeera, September 29, 2020, <https://www.aljazeera.com/news/2020/9/29/south-korea-says-slain-official-tried-to-defect-to-north-korea>.

<sup>15</sup> Sangmi Cha, "U.N. Calls for Impartial Probe into South Korean Man Killed by North Korea," Reuters, October 6, 2020, <https://www.reuters.com/article/us-northkorea-southkorea-shooting/u-n-calls-for-impartial-probe-into-south-korean-man-killed-by-north-korea-idUSKBN26R0TP>.

inter-Korean agreement reached in April 2018. A week after it was signed, an astounding 88% of South Koreans approved of the agreement, even though only 58% thought Pyongyang would abide by its terms, according to a Gallup Korea poll.<sup>16</sup>

While South Korea has focused on meeting smaller benchmarks, North Korea has aimed for extracting economic concessions and security guarantees rather than enhancing communication. This means that

important lower-level issues such as designating and maintaining spaces for civilian use and protecting or regulating migrants—a particularly tricky task given the policies of each country—have fallen short of serving as confidence-building measures. Instead, geopolitical events and domestic politics have bred distrust and undermined any sincere working-level efforts. ∞

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<sup>16</sup> “Daeili opinieon jae305ho (2018nyeon 5weol 1ju): Daetongnyeong chweim Inyeon bunyabyeol pyeongga, nambukjeongsanghwedam” [Daily Opinion No. 305 (Week 1 of May 2018): Evaluation of President’s First Year in Office, Inter-Korean Summit], Gallup Korea, May 3, 2018, <https://www.gallup.co.kr/gallupdb/reportContent.asp?seqNo=925>.

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