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行政院公告「中華民國第一批專屬經濟海域暫定執法線」之意涵淺析

A Brief Implication Analysis of
"the Provisional Jurisdictional
Line of R.O.C.'s First Batch of
Exclusive Economic Zone"
Promulgated by the Executive Yuan



壹、前言

今 (94) 年 6 月 20 日海軍諾克斯級巡防艦「鳳陽艦」搭載國防部長李傑與立法院長王金平，出海執行護漁任務，其視察地點接近政府公告的「專屬經濟海域暫定執法線」邊緣，引起國內對「暫定執法線」之劃定、法律效果及海域執法機關—海巡署應如何執法等議題，有各種不同的聲音。

筆者爰蒐集內政部當初劃定暫定執法線之緣起、協商情形、核定經過及俟後周邊海域肇生之護漁爭議、海巡署海域執法所面臨問題等提出個人淺見，希望拋磚引玉引起共鳴，使這條海域執法線能更透明或凸顯其存在之價值。

貳、暫定執法線劃定緣起及核定內容

一、緣起：

「1982 年聯合國海洋法公約」於 1994 年 11 月 16 日正式生效後，各沿海國即積極主張擁有 200 浬之專屬經濟區之主權權利（指自然資源之探勘、開發、養護與管理）及其他管轄權利，公海範圍因之日益縮減，復因 92 年 2 月間，我國漁民在東海作業遭日方驅離，憤而揚言不惜自力救濟，內政部為解決我國與鄰國，特別是與日本，重疊海域內我國漁民捕魚權利之問題，乃邀請國內海洋法學界專家學者及部會機關代表開會研議，是否公告我國專屬經濟海域外界線。經 92 年 3 月 7 日、5 月 2 日及 7 月 11 日三次會商，研擬完成「中華民國第一批專屬經濟海域暫定執法線（以下簡稱暫定執法線）」草案。

二、核定內容：

「暫定執法線」草案於 92 年 9 月 30 日由內政部函報行政院，經審查，行政院於同年 11 月 7 日核復，內容略以：

(一) 所報「中華民國第一批專屬經濟海域暫定執法線」草案，原則同意，至有關巴丹群島，有領土歸屬爭議部分，請儘速研析釐清，並將研析結果報院。

Part 1 Foreword

On June 20, 2005, the Navy's Knox-class frigate "Fengyang warship" carried Defense Minister LI JIE and the Speaker of Legislative Yuan WANG JIN PING to carry out the mission of protecting fisheries; their inspection site was near the verge of "the provisional jurisdictional line of exclusive economic zone" promulgated by the government. This event led to various notions at home of how the provisional jurisdictional line was delimited, what its legal effects and how the law enforcement authority—the Coast Guard Administration enforces the law.

The author of this paper collected data concerning the origin of how the Ministry of Interior Affairs delimited the provisional jurisdictional line at the outset, the negotiation details, the approval process, the follow-up fishery protection disputes brought about in peripheral waters, and the issues faced by the Coast Guard Administration when it enforce law on the waters. The following comments on these issues the author's personal views aimed at throwing out a minnow to catch a whale, thus making this water jurisdictional line more transparent or highlighting the value of its entity.

Part 2 The origin of how the provisional jurisdictional line was delimited and the approved contents

I. Origin:

Right after "United Nations Convention on the Law of the Sea of 10 December 1982" formally entered into force on November 16, 1994, each oceanic coastal state began to actively lay claim to the sovereignty of 200-nautical-mile exclusive economic zone (referring to the exploration, development, maintenance, and management of natural resources) and other jurisdictions. Therefore, the scope of high seas became increasingly narrower; in February, 2003, Taiwan fishermen operating in the East China Sea were dispelled by Japan's coast guard. Taiwan fishermen were very angry and threatened that they would not hesitate to have the act of self. To resolve the disputes over Taiwan fishermen's fishing rights in the overlap waters with neighboring countries, especially with Japan, the Ministry of Interior Affairs invited domestic academics and experts in sea laws and representatives from the ministries concerned to discuss whether the outside line of our exclusive economic zone shall be promulgated or not. After three times of consultation respectively on March 7, May 2 and July 11, 2003, the draft of "the provisional jurisdictional line of R.O.C.'s first batch of exclusive economic zone" (hereafter briefly called the provisional jurisdictional line) was consummated.

II. The approved contents :

The draft of "the provisional jurisdictional line" was submitted by the Ministry of Interior Affairs to the Executive Yuan on September 30, 2003. After review, the Executive Yuan replied on November 7 in the same year, briefly as follows:

(1) The submitted draft of "the provisional jurisdictional line" was approved in principle. As to the territorial disputes relevant to Bartan Islands, it's requested that an analysis and clarification shall be made as soon as possible, and the findings shall be submitted to Executive Yuan.

- (二) 本案係將執法暫定線標示於公務船舶航海圖表，作為海域執法依據，並有助於我國政府現階段推動對外談判與確保漁民權益之相關措施，但非我國政府對於專屬經濟海域外界線與漁權之終局主張範圍，未來尚需進一步與他國進行交涉談判，內政部、外交部、農委會等相關機關於有必要就本案對外說明時，宜掌握此一原則。
- (三) 本案宜請農委會選擇適當時機，對於漁民妥為宣導說明，並強調政府遵守國際法，確保漁民合法權益之堅定立場。

參、第一批專屬經濟海域暫定執法線之外部界線

一、第一批暫定執法線（如圖）各點之座標如下：

- (一) 北緯29度18分，東經126度00分。
- (二) 北緯25度40分，東經126度00分。
- (三) 北緯24度46分，東經122度30分。
- (四) 北緯24度00分，東經122度30分。
- (五) 北緯24度00分，東經123度10分。
- (六) 北緯23度38分，東經123度10分。
- (七) 北緯23度38分，東經125度07分。
- (八) 北緯20度00分，東經125度07分。

二、按「暫定執法線」範圍，其北界向西延伸線因未註明端點，而南界亦未向西劃界，為便海巡署基層同仁執行，海巡署爰與內政部協調訂定南、北界端點，研議點如下：

- (一) 北界向西延伸點位置為北緯 29 度 18 分、東經 122 度 43 分，即中國大陸兩兄弟嶼及漁山列島基點間之領海基線向外延伸 12 浬，亦即暫定執法線北界向西延伸至與中共領海外界線交點處。
- (二) 南界仍以前簽奉核定執行之北緯 20 度以北、東經 119 度至 125 度 7 分與菲律賓重疊之專屬經濟海域，但不含北緯 21 度 19 分以南、東經 121 度 18 分至 122 度 23 分巴丹群島周邊海域之範圍，換言之，南界中段避讓菲律賓主張之巴丹

- (II) This draft shall be used as the basis for the law enforcement in waters, so the provisional jurisdictional line shall be marked in the General Chart of Coast for public duty ships. It's also helpful to the related measures currently taken by our government to promote our negotiations with other countries and to ensure our fishermen's interests. However, the coverage defined by this draft is not our government's final asserted scope of exclusive economic zone outside line and fishery rights, which still needs further negotiation with other countries in the future. If it's necessary for related government agencies like the Ministry of Interior Affairs, the Ministry of Foreign Affairs, and Council of Agricultural to explain this case to the public, this principle shall be used.
- (III) The Council of Agriculture should choose an appropriate occasion to explain this draft to our fishermen and emphasize to them that this government's firm position to observe international laws and ensure our fishermen's lawful right and interests.

Part 3 The exterior demarcation of the provisional jurisdictional line of the first batch exclusive economic zone

I. The key point coordinates of the first batch provisional jurisdictional line as follows:

- (I) latitudes 29 degrees 18 minutes, longitude 126 degrees 00 minutes.
- (II) latitudes 25 degrees 40 minutes, longitude 126 degrees 00 minutes.
- (III) latitudes 24 degrees 46 minutes, longitude 122 degrees 30 minutes.
- (IV) latitudes 24 degrees 00 minutes, longitude 122 degrees 30 minutes.
- (V) latitudes 24 degrees 00 minutes, longitude 123 degrees 10 minutes.
- (VI) latitudes 23 degrees 38 minutes, longitude 123 degrees 10 minutes.
- (VII) latitudes 23 degrees 38 minutes, longitude 125 degrees 07 minutes.
- (VIII) latitudes 20 degrees 00 minutes, longitude 125 degrees 07 minutes.

II. According to coverage of the provisional jurisdictional line, the line extending from the north boundary to the west is not noted with an end point; and neither is the south boundary to the west. To make it easier for the coast guard offices to carry out their duty, the Coast Guard Administration coordinated with the Ministry of Interior Affairs to stipulate the end points of the south and north boundary as follows:

- (I) The extending point from the north boundary to the west sits at latitudes 29 degrees 18 minutes, longitude 122 degree 43 minutes; namely 12 nautical miles extending outward from Mainland China's territorial sea base line between the base points--Lian Hsiungdi Islets and Yu-shan archipelago. Put it in other way, it's the intersection point formed by the westward extension of the provisional jurisdictional line's north boundary to the exterior demarcation of Mainland China's territorial sea.
- (II) The south boundary is still demarcated as the previously approved exclusive economic zone overlapping Philippines'-an area from latitudes 20 degrees northward and between longitudes 119 degrees and longitudes 125 degrees 7 minutes, but it does not contain Bartan Islands' peripheral waters from latitudes 21 degrees 19 minutes to the south and between longitudes 121 degrees 18 minutes and longitudes 122 degrees 23 minutes. In other words, the middle section of our south boundary dodges

群島周邊海域。

以上兩處之端點或南界中段之避讓均係在未進行與相關鄰國海域劃界之前，我國「執行管轄權」不在鄰國所主張領海主權範圍內行使之「禮讓」。

肆、海巡署在專屬經濟海域暫定執法線之處理原則及勤務作法

一、處理作法：

(一) 大陸漁船：

依「台灣地區與大陸地區人民關係條例」規定之禁止、限制水域規範，採驅離或扣留其船舶、物品及留置人員；於限制水域外之我國專屬經濟海域內撈捕，擬維持現有作法，採「共管共用」原則。

(二) 外籍漁船：

1. 非與我重疊海域國家：

應依「中華民國專屬經濟海域及大陸礁層法」第 16 條規定，得進行緊追、登臨、檢查；必要時，得強制驅離、或逮捕其人員，或扣留其船舶航空器、設備、物品等，並提起司法程序。

2. 與我主張海域重疊國家：

於專屬經濟海域分界線尚未協議劃定前，採「共管共用」原則，並依對等立場視對方執法機關對我漁船（民）之執行措施，採取相對回應作為。

二、勤務原則：

(一) 92 年規劃之勤務作法：每年 11 月東北季風興起至次年 4 月 1 日東北季風結束止，北方、南方及東部海域勤務調整，規劃為每旬一航次，未來視天候、漁汛期、中共禁漁期等因素檢討修正。

(二) 94 年修正之勤務作法：北方（含東方）及南方海域每月至襖兩航次，每年 6 至 8 月漁汛期或特殊事件發生時，依需要增加勤務密度。

伍、暫定執法線之法律意涵

一、是權宜規定也是法律主張

依內政部當初規劃「暫定執法線」之時

Bartan Islands' peripheral waters claimed by Philippines.

The dodging of the above 2 end points or the south boundary middle section is actually a "polite concession" made by our government not to exercise jurisdiction in the waters claimed by neighboring countries before our negotiation with related neighboring countries for the demarcation of territorial waters.

Part 4 The Coast Guard Administration's case-handling principles and duty-performing practice for the provisional jurisdictional line of the exclusive economic zone

I. Case-handling principles:

(I) China Mainland fishing boats:

In accordance with "The Statute Governing the Relations Between the People of the Taiwan Area and the China Mainland Area", China Mainland fishing boats entering or operating in the prohibited and restricted waters stipulated by the statute shall be dispelled or the boats, goods and crew shall be detained; but those outside the restricted water to fish inside our exclusive economic zone shall be treated per the existing practice-- the principle of "joint management and use".

(II) Foreign fishing boats:

a. from countries that have no overlap waters with us:

As stipulated in Article 16 of "Law on the Exclusive Economic Zone and the Continental Shelf of the Republic of China", the authorities of national defense, police, customs or other authorized agencies of the Republic of China may engage in hot pursuit, boarding, and inspection. When necessary, the aforementioned authorities may expel or arrest the suspected person, or detain the vessels, aircraft, equipment, or other articles belonging to the suspected person, and institute legal proceedings.

b. from countries that have overlap waters with us:

The principle of "joint management and use" shall be adopted before the demarcation of exclusive economic zone is negotiated. Fishing boats from countries that have overlap waters with us shall be handled in a corresponding way their law enforcement agency handles our fishing boats.

II. Duty-performing practice:

(I) The duty-performing practice planned in 2003: From November-the beginning of northeast monsoon to April 1 next year-the ending of northeast monsoon, the duty adjustment for the northern, southern and eastern waters was planned as one voyage per 10 days and revised depending on the weather, fishing season, and Mainland China's no fishing period in the later months.

(II) The duty-performing practice amended in 2005: For the northern (including the eastern) and southern waters, at least two voyages per month. During the fishing season from June to August or when special incidents occur, the duty density shall be increased.

Part 5 The legal implications of the provisional jurisdictional line

I. Expedient regulations but also legal claims

According to the time and space background, professional considerations, and concepts manifested in the later related documents, the

空背景與專業考量及嗣後相關文件所呈現之理念而論，暫定執法線之規定主要有以下三項目的：

- (一) 維護國家主權權利：藉由「暫定執法線」之劃定，向國民表示，政府宣示擁有釣魚台及其周邊海域之決心，另要求公務船舶必須之執法範圍，以確保及維護國家主權權利之行使。
- (二) 給漁民一個安全捕魚範圍：鑑於日本持續強調擁有釣魚台主權之訴求及積極執法手段，及避免我國漁民在該海域捕魚作業遭受日方驅趕或不平等之對待，爰劃定「暫定執法線」，期望我國漁船均能於暫定執法線內作業，俾利保障漁民權益。
- (三) 便於執法：「暫定執法線」之劃定，對公務船舶而言，即為執法之重要依據，執行機關據此執法，名正言順，故海巡署一再強調暫定執法線內護漁之決心，這也是劃定暫定執法線最重要之意涵。

由上述三項目的觀之，「暫定執法線」雖是權宜規定，確是不折不扣之法律主張。

二、不能作為未來海域劃界之依據

「暫定執法線」是行政命令，不具法律效果，未來仍有必要依據我國專屬經濟海域及大陸礁層法之授權，正式公告 200 浬專屬經濟海域外界線。因此，現階段暫定執法線只能當作執法之依據，或與日本、菲律賓等專屬經濟海域重疊國家談判之參考，並不能作為未來海域劃界之依據。

三、暫定執法線之劃定，仍有法律實踐之實義

按暫定執法線依行政院之核復函，雖強調僅標示於公務船舶航海圖表上，作為海域執法依據。但我國海巡署及漁業署等公務船舶自 92 年 11 月行政院核定該線後，已依「暫定執法線」執行相關護漁作為，台日第 15 次漁業談判，我方代表更明確地向日方代表提出「暫定執法線」之界限，因此，若日本並無進一步抗議此線之作爲，依國際法相關規則，或可被視為日方對該線的默認接受。

major purposes of stipulating the provisional jurisdictional line are 3 items as follows:

- (I) Maintaining national sovereignty: By the demarcation of " the provisional jurisdictional line ", the government publicized its resolve to own Senkaku Islands and the peripheral waters and will regularly tasks public duty ships to exercise jurisdiction in the designated waters so as to ensure and maintain the exercise of national sovereignty.
- (II) Giving our fishermen a safe fishery scope: Owing to standing accentuation in Japan's own claims and aggressive jurisdiction resort in the disputes over Senkaku Islands, and to prevent our fishermen from being dispelled or treated unequally in the said waters, the demarcation of " the provisional jurisdictional line " can guide our fishing boats to fish inside the provisional jurisdictional line and help safeguard their rights and benefits.
- (III) Exercising jurisdiction in an easier way: To our public duty ships, the demarcation of "the provisional jurisdictional line" is the important basis for the law enforcement. Only if the name given is correct can what is said be justified, so the Coast Guard Administration repeatedly stresses its resolve to protect the fisheries within the provisional jurisdictional line. This is also the most important implication of demarcating the provisional jurisdictional line.

In terms of the above-mentioned purposes, though "the provisional jurisdictional line" is an expedient stipulation, it's indeed a legal claim.

II. It can't be used to serve as the basis for the future delimitation of waters

"The provisional jurisdictional line" is an Executiveorder without legal effects. In the future, it's still necessary to make an official declaration of our 200 nautical mile exclusive economic zone in accordance with the authorization of Law on the Exclusive Economic Zone and the Continental Shelf of the Republic of China. Thereupon, currently the provisional jurisdictional line can only be regarded as the basis for the law enforcement or serve as the reference for our negotiations with those countries like Japan and Philippines that have overlap exclusive economic zone with us. It can't be used to serve as the basis for the future delimitation of waters.

III. The demarcation of the provisional jurisdictional line still has the substantial meaning of legal fulfillment

According to the above-mentioned ExecutiveYuan reply, it only stresses that this draft shall be used as the basis for our law enforcement in waters, so the provisional jurisdictional line shall be marked in the General Chart of Coast for public duty ships, but our public duty ships dispatched by the Coast Guard Administration and the Fishery Administration have performed related fishery protection tasks per "the provisional jurisdictional line" ever since its approval by the ExecutiveYuan in November, 2003. Besides, at the 15th fishery negotiation between Taiwan and Japan, our representatives more expressly brought up "the provisional jurisdictional line" to their Japanese counterparts and Japan did not lodge any further objection to this line. Per relevant international norms, this can be deemed as Japan's tacit recognition of the line.

四、暫定執法線是公務船舶執法依據但不是限制

在海巡署海洋事務研究委員會第5次會議中，曾有委員提出，海巡署海域執法之界線為何？許署長曾表示，海巡署對公務船舶海上執法之要求，原則上以不進入鄰國12浬（領海）內為限。換言之，以不侵害鄰國主權範圍即可。故「暫定執法線」應是我國海域執法之依據，但卻不應該是限制條件。

五、解決爭議仍要回歸談判

目前我方提出之「暫定執法線」係採「衡平原則」劃定，係在考量島嶼大小、人口多寡、區域範圍等不同因素主觀認知予以劃定，與日方採「等距離中間線」的劃定原則有相當之差距；另外，台日雙方均認定釣魚台列嶼為己國所有，故而形成「暫定執法線」最關鍵的爭議根源，因此，筆者認為，要解決爭議仍要回歸談判，而談判前我方應就相關主張積極研議，並就法理、事實、歷史上等可探究事由，邀集相關學者專家審慎評估海域劃界之各種策略，同時加強我國執法管轄權之實踐，以充實我國主張之強度。

陸、結論

就海巡署而言，公告「暫定執法線」之意涵，在於法律執行之意義與價值，「暫定執法線」不但律定了公務船舶執法之範圍，另一方面透過農委會漁業署向漁民廣為宣傳，事實上等於是向漁民宣示，在這範圍內捕魚活動原則上是安全的，是可受保障的。然「暫定執法線」自公布至解密以來，各界瞭解不多，待研議事項如「巴丹群島領土歸屬爭議」等亦未再繼續研究。故在海域劃定就海巡署而言，外交談判尚無定論之前，未來海巡署仍將依循行政院公告之「暫定執法線」，繼續執行海域巡防任務，直至台日或台菲雙方海域劃界有明確終局為止。

（本文作者任職於海巡署企劃處）

IV. The provisional jurisdictional line is the law enforcement basis but not a restriction for the public duty ships

At the 5th meeting of the Ocean Business Research Committee, the Coast Guard Administration, one of the members questioned what the scope for the law enforcement in waters is. Minister Syu once requested that our public duty ships in principle should not enter neighboring countries' 12 nautical mile territorial sea. In other words, it's proper to enforce the laws in waters as long as we do not aggrieve other country's sovereignty. Therefore, the provisional jurisdictional line is the law enforcement basis but not a restriction for the public duty ships.

V. The resolution of disputes still takes negotiations

"The provisional jurisdictional line" currently brought up by our side was determined by the "balance principle". Different factors like the size of islands and population or the scope of area were taken into account through subjective recognition to determine the line. This is quite different from the "median line principle" adopted by Japan. In addition, both parties all recognize Senkaku islands belongs to them; hence "the provisional jurisdictional line" becomes the most pivotal root of disputes. Therefore, this author thinks that to resolve the disputes still takes negotiations. To solidify the intensity of our claim in future negotiations with Japan, we shall invite related academics and experts to evaluate a variety of strategies for the demarcation of waters in terms of the law principle, truth, and history and strengthen in the meantime the fulfillment of our jurisdiction before we go to the negotiation table.

Part 6 Conclusion

For the Coast Guard Administration, the implications of promulgating "the provisional jurisdictional line" lie in the meaning and value of enforcing the law. "The provisional jurisdictional line" not only stipulates the scope of public duty ships' law enforcement but also gives our fishermen a guarantee via the publicity made by the Council of Agriculture that it is safe to fish within the line. However, the public's understanding of "the provisional jurisdictional line" has been quite limited ever since its promulgation and declassification, and pending issues, such as "the territorial disputes over Bartan Islands", are not yet further studied. Therefore, the Coast Guard Administration should continue to perform tasks of sea patrol per "the provisional jurisdictional line" promulgated by the Executive Yuan until the diplomatic negotiations reach a final conclusion, i.e. the bilateral demarcation of territorial waters between Taiwan and Japan or between Taiwan and Philippines has a definite endgame.

(The author serves at the Department of Planning, the Coast Guard Administration.)