

Reviewing the Evidence of DPRK Culpability for the Cheonan Warship Incident

By [Mark E. Caprio](#)

Region: [Asia](#)

Global Research, November 27, 2010

[The Asia-Pacific Journal, 30-4-10, July 26, 2010.](#) 27 November 2010

The five-page “Investigative Result on the Sinking of ROKS Cheonan” (hereafter “Investigative Result”) released by the Joint Investigative Group¹ on May 20, just over two months after the sinking of the Republic of Korea (ROK or South Korea) warship Cheonan that killed 46 sailors, minced few words in blaming the Democratic People’s Republic of Korea (DPRK or North Korea) for the catastrophe. “The Cheonan was sunk as the result of an underwater explosion caused by a torpedo made in North Korea. The evidence points overwhelmingly to the conclusion that the torpedo was fired by a North Korea submarine. There is no other plausible explanation,”² the report stated. Soon after, the ROK, backed by the United States and Japan, along with a number of Western states including England, France, and Australia, condemned the attack and vowed “stern action,” appealing to the United Nations Security Council to impose stronger sanctions on its northern neighbor. The United States and the ROK also announced plans to conduct joint military drills in the West Sea to deter further DPRK aggression. The DPRK, denying involvement and offering to send its own fact-finding team to participate in the investigation, was rebuffed by the ROK. It then repeated its 1994 threat to turn Seoul into a “sea of fire” should the ROK penalize it over the incident. Russia and China, among the few states that have not signaled acceptance of the conclusions drawn by the Investigative Result, urged restraint and further investigation. Russia initiated its own private investigation and found (but has not yet published) results contrary to those of the Investigative Result.³ China, countering U.S.-ROK plans to hold military drills, on June 20 began its own six-day live ammunition drill in the East China Sea.

Mainstream media coverage of responses to the findings has, with rare exceptions, reiterated the findings of the ROK report, not only in the United States and South Korea but throughout Europe and the Anglophone world as well. These analyses typically accept at face value the report’s findings of DPRK guilt—the “overwhelming” evidence of the torpedo’s DPRK manufacture and markings, two DPRK submarines out to sea at the time of the Cheonan’s sinking, and the absence of submarines from neighboring countries in the area at the time of the sinking.



The stern of the Cheonan lifted from the water

The few critical analyses, published for the most part in blogs and alternative news websites, by contrast, have raised questions about the evidence and conclusions presented by the investigative team. A July 23, 2010 *Los Angeles Times* report was the first to appear in a major American paper to present the evidence calling into question the findings of the Investigative Report.⁴ Some analysts proposed alternative “plausible explanation[s],” such as the Cheonan having drawn friendly fire, been hit by an exploding mine, or run aground. A third stream of analysis attempts to navigate between the two sides by examining shortcomings in the investigative process and questioning whether the Investigative Result meets claims of impartiality and objectivity. Finally, a fourth stream, while acknowledging the possibility that the DPRK did sink the Cheonan, places the incident in the historical context of similar incidents that have claimed lives from both sides of the demilitarized zone. Clear from these discussions is that reasonable doubt exists over the Investigative Result’s conclusion that a DPRK torpedo sunk the Cheonan. Further investigation involving a broader range of participants situated in a fuller context of war and conflict on the Korean peninsula is required to determine the cause of the tragedy that took the lives of 46 ROK sailors.

The DPRK: Guilty as Charged

Those supporting the Investigative Result’s findings devote themselves to explaining DPRK reasons for the attack and advise strong measures in response, rarely evaluating the evidence of DPRK culpability. They strongly criticize China for not condemning the DPRK’s “heinous act”, in the words of Heritage Foundation analyst Bruce Klinger. Georgetown University professor Victor Cha, while noting that relations between the DPRK and ROK have historically been anything but tranquil, calls the Cheonan incident “the most significant attack on the ROK military since the Korean War, violating the 1953 armistice.” He lists as possible DPRK motivations for the torpedo attack the following: “disproportionate retaliation” for a November 2009 ROK attack on a DPRK ship, a “coercive” diplomacy ploy to

force the ROK into negotiations to “extract aid and assistance,” “swaggering” to demonstrate DPRK naval capacities, and a manifestation of DPRK internal political turmoil. Cha outlines economic, military, and political penalties the ROK should impose on the DPRK and suggests ways for the ROK to present this latest example of “DPRK misbehavior” to the UN Security Council, while noting the potential of a Chinese veto. He accuses China of acting as the DPRK’s “defense lawyer” and brands its “behavior regarding the Cheonan” as “clumsy, weak, and anachronistic.”⁵ Long-time North Korean analyst Scott Snyder sees the incident as a potential “turning point” for South Korea in its attempt to pursue an “unprecedented effort to hold North Korea accountable for its actions.” He further suggests that China rethink its “business-as-usual” policy as the DPRK’s “enabler and protector.”⁶

Bruce Klingner, Senior Research Fellow for Northeast Asia at the Heritage Foundation, also embraced the conclusions presented in the Investigative Result, writing: “Now that North Korea’s culpability for this heinous act of aggression has been proven, South Korea and the United States must respond resolutely by imposing a comprehensive package of unilateral and multilateral actions.” Klingner lists possible responses: tightening economic loopholes that allow the DPRK to receive financial assistance from abroad (notably Japan’s Korean population); terminating South Korean joint business ventures with the north, notably the Kaesŏng Project; enhanced defense through joint US-ROK anti-submarine exercises in the Yellow Sea; and sinking any DPRK ship detected south of the Northern Limit Line (the maritime division between the ROK and DPRK imposed by the United Nations one month after the armistice was signed to end the Korean War fighting). Klingner also urges the United States to return the DPRK to the list of state supporters of terrorism. Like Cha, Klingner stresses the importance of securing China’s support for punishing the DPRK. If China decides to “prop up Pyongyang,” he writes, it will “hinder the effectiveness of international sanctions by providing economic benefits to North Korea outside of the conditionality of the Six Party Talks.”⁷

Cha and Klingner come from the rightwing of the US foreign policy establishment. Nevertheless, their views closely match the official statements about the Cheonan Incident voiced by the ROK, U.S., and Japanese governments. With the partial exception of the ROK, the mainstream media in these countries have done little to examine, still less challenge, the Investigative Results. As with other past episodes of alleged DPRK misbehavior, governments and media alike readily accept ROK assertions of DPRK culpability. The Obama administration quickly dispatched Secretary of State Hillary Clinton to the region to discuss the situation with her Japanese and South Korean counterparts and to persuade China to not oppose the three-nation campaign to reprimand and punish the DPRK at the UN Security Council. Clinton forcefully demonstrated US support for the Investigative Result. During her brief stop in Tokyo on May 21, she charged that “The torpedo that sunk the Cheonan . . . was fired by a North Korean submarine.” Calling this “an unacceptable provocation by North Korea, [to which] the international community has a responsibility and a duty to respond,” she demanded that the DPRK “halt its provocations, end its policy of threats and belligerence toward its neighbors, and take steps now to fulfill its denuclearization commitments and comply with international law.”⁸ The Secretary of State repeated these warnings during a second trip in July, this time with Secretary of Defense Robert Gates, as they toured the DMZ.



Secretary of State Hilary Clinton and Secretary of Defense Robert Gates at the DMZ, with a DPRK guard observing through the window (From "U.S. to add to Sanctions on N. Korea" July 22, 2010, *New York Times*)

The first political victim in the wake of the Investigative Result may have been Japanese Prime Minister Hatoyama Yukio. Hatoyama was forced to resign because of an inability to fulfill a 2008 political campaign pledge to relocate the U.S. Marine military base in Futenma out of Okinawa. But Hatoyama's difficulties were exacerbated by the Cheonan incident, which led the prime minister to sacrifice his pledge to Okinawa and instead to stress support for the Marine's presence in Japan and voice concerns about DPRK threats to regional security. The prime minister's apologies to Okinawa Governor Nakaima Hirokazu for his failure over Futenma carried numerous references to the confrontation between the two Koreas over the Cheonan. Resignation followed soon after.



Former Prime Minister Hatoyama Yukio's reception in Okinawa (May 5, 2010)

In the ROK, the Cheonan incident may have had the unintended political effect of persuading some voters to back opposition candidates in local elections that took place shortly after the sinking. President Lee Myung-bak's tough DPRK policy in the first two years of his administration, presented as an alternative to the "soft policy" preferred by his two predecessors, appears to have been viewed with suspicion by a large segment of voters. Though other issues played a role in the election (such as environmental concerns over a large-scale river diversion project and government attacks on internet-related civil liberties), some apparently regarded policy toward the DPRK as overly harsh and hence dangerous. The election setback may also reflect significant public skepticism of the Investigative Results, doubts that one prominent South Korean NGO summed up in a letter to the UN Security Council.⁹ Skepticism was strong enough to delay passage of a resolution in the ROK National Assembly condemning the DPRK for sinking the Cheonan. The resolution passed, but over the opposition of 70 legislators.¹⁰

If the Investigative Result's supporters detected any flaws in the report's conclusions—and their writings suggest that they did not—the reputation of the DPRK as a malevolent dictatorship encouraged them to overlook these shortcomings. The ROK government associated the ship's sinking with previous alleged or actual DPRK terrorist or belligerent acts directed against the ROK. Rumors circulated that Kim Jong Il himself had personally ordered the operation.¹¹

The DPRK guilty finding may indeed prove to be correct. However, the evidence presented to date appears far short of demonstrating culpability beyond a reasonable doubt. Even if the evidence proves to be sound, its supporters have failed to contextualize a DPRK attack on an ROK naval vessel. This would necessitate far more than spelling out the context of "disproportionate retaliation" for an ROK attack of November 2009, as offered by Victor Cha. It would be necessary to locate a DPRK attack in the context of the partition and war that

solidified the division that laid the foundation for repeated threats and conflict over the two Koreas' postwar history. These problems are exacerbated by the longstanding conflict between the two Koreas, but they are equally the product of policies pursued by other states that have influenced Korean peninsula affairs over the past six decades, notably the United States, Russia and China. The very fact that there are two Koreas, which provides the foundation for ongoing conflict, is a product of the U.S. and Soviet "liberation" of Korea from Japan's colonial rule, actions that the two superpowers followed by organizing occupations that divided the Korean peninsula at the 38th parallel.

Lingering Questions

The most rigorous critics have challenged the accuracy of the Investigative Result. They argue that not only is the evidence produced of questionable validity, the report leaves out important information which, if presented, would suggest plausible alternative explanations for the sinking. The critics directly examine the evidence in the report and speculate on the omissions. One South Korean NGO, the People's Solidarity for Participatory Democracy (PSPD), raised a number of cogent questions about the absence of certain kinds of physical and medical evidence that should be present if a torpedo explosion sunk the ship.¹² Likewise, two scholars, the physicist Seunghun Lee and the political scientist J. J. Suh, subjected the Investigation Result used to determine DPRK guilt to rigorous analysis. They concluded that the report failed to satisfactorily establish that it was an outside explosion that sunk the Cheonan, that there existed a causal link between the Cheonan's sinking and the torpedo, and that the torpedo was indeed of DPRK origin. Regarding this last point, Lee and Suh questioned how the Hangul writing (*1bŏn*), which the report touted as "critical evidence" to demonstrate the torpedo as having come from a DPRK ship, could have remained so legible after the explosion. They also note that, even if the writing was authentic, it hardly serves as sufficient evidence for establishing culpability since Koreans from the north and the south can equally write *1bŏn*.¹³ Scott Creighton, another critic of the report, suggested that the torpedo that allegedly sank the Cheonan appears to be less than a "perfect match" to the schematics of the DPRK torpedo that the ROK government put on display at its May 20 press conference. He suggests the torpedo might be of German make.¹⁴ Following his report, the ROK military admitted to a "mix up" that resulted in displaying the wrong torpedo diagram at the May 20 press conference.¹⁵

Others have proposed alternative scenarios. Shin Sang-Chui, a former officer in the ROK navy, proposed prior to the completion of the Investigative Result that the accident occurred after colliding with an American ship. Shin had been placed on the JIG committee by the opposition party.¹⁶ Investigative journalist Tanaka Sakai, while cautioning that his is but one theory for an event that "remains an enigma," suggests that the Cheonan could have been sunk by a torpedo, whether from a DPRK submarine or by friendly fire. It could also have been sunk by an underwater mine. Tanaka speculates that friendly fire sank the Cheonan, with the deadly torpedo perhaps fired by an American nuclear submarine during an accidental exchange in the course of an ongoing US-ROK joint military exercise.¹⁷



Foal Eagle exercise



Map of Paekryong Island (in red) and vicinity (From Tanaka, "Who sank the South Korean Warship Cheonan?")

Like the Investigative Result's claim of involvement by one of two DPRK submarines simply on the basis that they were away from their homeport, Tanaka's contention of possible U.S. nuclear submarine's involvement is speculative. His essay was, however, one of the first to provide the critical information that the Key Resolve/Foal Eagle war game exercises between the U.S. and ROK had been extended and were being held in the area of the ROK warship's sinking, a point omitted from the ROK's Investigative Result.¹⁸

A second critical piece of information included in the Tanaka report, as well as by Kim Myong Chol,¹⁹ but in few (if any) of the major news outlets, is the precise location of the Cheonan incident.

Maps showing the location of the Cheonan incident, near Paekryong [Baengnyeong] Island, just south of the maritime extension of the demilitarized zone, are particularly important given DPRK contesting of ROK claim to the waters surrounding this island.²⁰ The five-page Investigative Result did not include a map or provide the precise coordinates of the Cheonan at the time of sinking. Nor did it state whether the Cheonan was in DPRK, ROK, or neutral waters at the time of the alleged torpedo explosion. Including this information would make plain the obvious risks the ROK military takes any time it dispatches a ship to this contested and therefore dangerous area, all the more so during a US-ROK joint military exercise.



Northern Limit Line

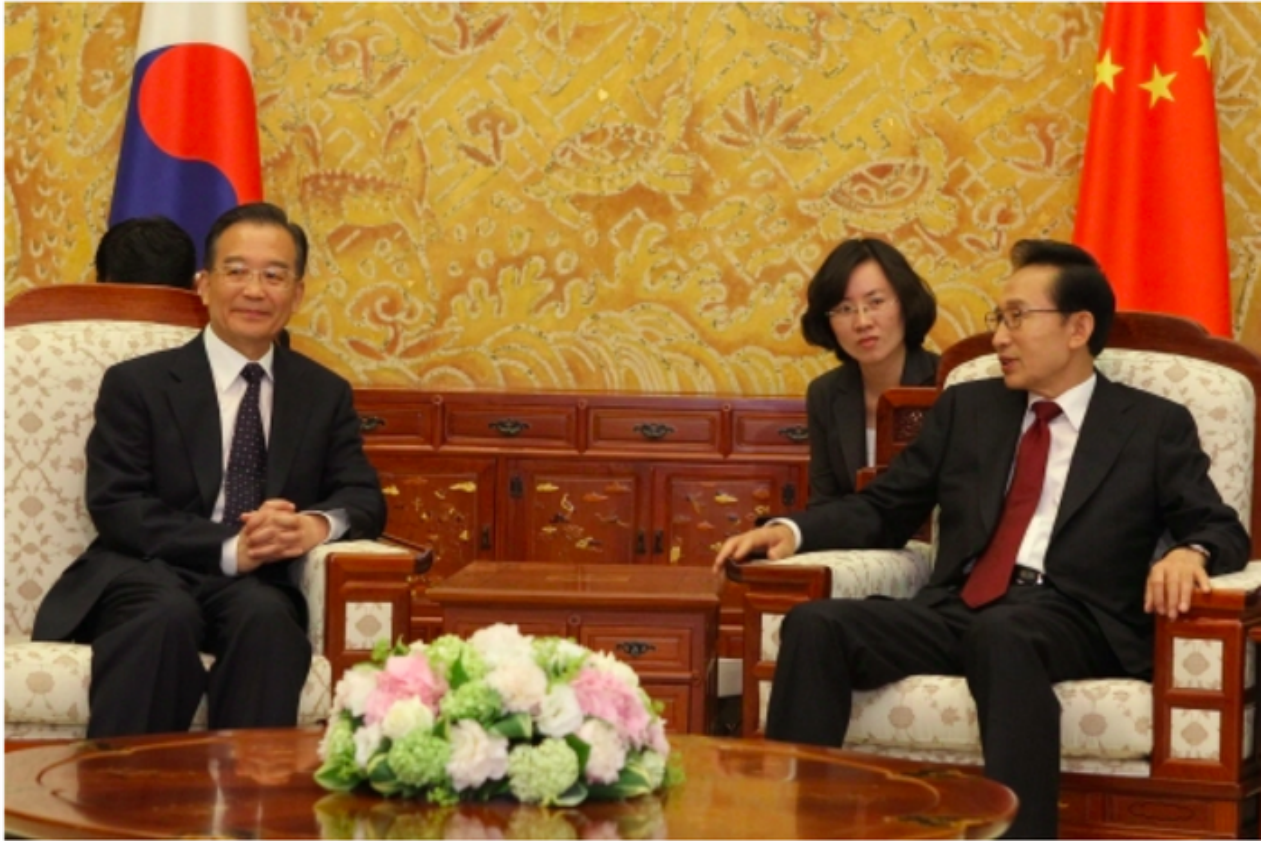
The Investigative Result eliminated competitive explanations by narrowing the field of potential aggressors to the DPRK. It "confirmed that [two] submarines and a mother ship... left a North Korean naval base...and returned to port 2-3 days after the attack," and that "all submarines from neighboring countries were either in or near their respective home bases at the time of the incident." The inclusion of "neighboring" in the report no doubt aimed to eliminate the possibility of Russian or Chinese involvement. Since its publication, however,

other reports have noted that ships belonging to non-neighbors were in the area at the time of the Cheonan's sinking, information only recently acknowledged by official U.S. sources.²¹ According to one report,

there were 13 Korean and US up-to-date [modern?] ships at the West Sea near the scene. They were conducting a joint military drill [Foal Eagle] at that time. Among those 13 ships are Cheonan, a warship to detect and fight with the submarines, torpedoes, airplanes, and missiles, and another warship Aegis specialized in dealing with submarines.²²

Had the Investigative Result included this information, it would have led to other follow-up questions, including one asked by several independent analysts: "Why couldn't any of the super modern ships detect the attack of the North Korean submarines or torpedo?"²³ Suspicions would also have been raised over the source of the torpedo that the ROK government exhibited, as well as over the possibility that the Cheonan was sunk by a torpedo, mine or another of the weapons that litter the seabed in this sensitive area following years of war exercises. This evidence lends itself to alternative explanations, including the possibility that the ship drew friendly fire, hit an exploding mine, or ran aground prior to splitting.

Russia and China, both of whom remain noncommittal on whether the evidence proves DPRK guilt, have called for restraint by both sides to allow for a thorough investigation to determine the exact cause of the ship's sinking. Russia from the beginning was "unconvinced by the evidence,"²⁴ and its independent investigation allegedly failed to demonstrate that the Cheonan was sunk by a DPRK torpedo. China, which hosted DPRK Premier Kim Jong Il in the days following the Cheonan incident, vowed not to protect "whoever sank the warship." But it refrained from condemning the DPRK until an "objective and fair" investigation was completed, thus suggesting indirectly that it found the Investigative Result at best inconclusive.²⁵ Beijing University professor Zhu Feng revealed in a recent interview with the *Korea Times* that the majority of Chinese officials and intellectuals believe the Investigative Result's findings "do not hold water." Zhu noted further that the ROK government's reaction to the incident was "very emotional." China regards the Cheonan incident as one of many conflicts that have erupted over the past sixty-five years of division and war, rather than as an "unprovoked attack" as described by the U.S. and ROK. The issue at hand, Zhu suggested, is how best to "leave the scene behind" and move on.²⁶



ROK President Lee Myungbak and Chinese Prime Minister Wen Jiabao conferring in May 2010. (The Hankyoreh, May 29, 2010)

For a Broader Investigation and Appropriate Contextualization

Since the Cheonan sank on March 26, 2010 the ROK government has conducted an international campaign to rally support against the DPRK over its participation in what Donald Kirk has called the ROK's 9/11. The multi-national team gathered to investigate the incident assembled experts from five countries—the United States, Australia, United Kingdom, Sweden, and South Korea.²⁷ President Lee Myung-bak traveled to Singapore to give a keynote address at the Asian Security Summit, in which he sought support for stiffer international sanctions against the DPRK.²⁸ Lee gained the sympathies of the Group of Eight countries who, as a body, supported the Investigative Result and called for “appropriate measures to be taken against those responsible.”²⁹ His administration appealed to the United Nations Security Council for some form of punishment but eventually had to settle for a Security Council presidential statement that did not specifically assign blame to the DPRK. Lee's defense minister declared anyone attempting to pose a counter argument, that the DPRK did not sink the Cheonan, guilty of “cyber terrorism.”³⁰ This remark was perhaps aimed at the PSPD, the NGO which had urged the UN Security Council to make a “fair and reasonable decision considering all the grounds.” The PSPD letter drew heavy criticism, particularly from ROK Prime Minister Chung Un-chan, who appealed for the “whole country to show a single, unified stance” in the face of this tragedy.³¹

Challenges to the Investigative Result's findings have succeeded in injecting doubt into its primary argument of DPRK culpability. These do not, indeed can not, necessarily add up to proof that the DPRK did not sink the Cheonan. Determining that the torpedo differs from that generally used by the DPRK does not rule out the possibility that it was indeed fired

from a DPRK submarine. These challenges do, however, indicate the urgent necessity for further investigation by a broad range of experts to establish the truth behind the Cheonan's tragic fate. Such an investigation must, of course, aim to uncover the facts, rather than attempt to establish DPRK blame, as appears to have been the primary objective in the ROK's May 20 Investigation Result. It is unacceptable to hold the DPRK guilty, as did the head of the Washington, D.C.-based Asian Studies at the Institute of Foreign Policy Analysis, James Schoff, on the basis of the view that "[the incident] is consistent with North Korea's behavior in the past. It fits the goal of the conservatives [within the government], which is to try to raise awareness of a security threat."³² A comprehensive investigation, in addition to establishing the facts of the sinking and the place of the incident in the long history of ROK-DPRK incidents, might also recommend ways to reduce the chances of future crises in the West Sea and in other areas of contention between the two Koreas.

Korean War specialist Bruce Cumings suggests a context for a more comprehensive investigation. After noting the rather high probability that a DPRK submarine did indeed fire the deadly torpedo, he describes the incident as "just another tragedy laid at the door of a division of Korea." He continues:

And this particular incident is just ripped out of context, the context of a continuing war that has never ended. Just an armistice holds the peace. But in the case of this particular incident, which happened very close to the North Korean border, we've had incidents like this... with large loss of life, going back more than ten years. In 1999, a North Korean ship went down with thirty sailors lost and maybe seventy wounded.... And last November a North Korean ship went down in flames.... This is a no man's land, or waters, off the west coast of Korea that both North and South claim.³³

Why, one might ask, has this particular incident drawn so much more attention than those that sank DPRK ships? Why, despite the series of fatal incidents occurring in this hotly contested area, has there been so little discussion about resolving the disputed maritime line of separation?

Confrontational conditions have existed along the Korean peninsula since its division at the end of World War II in 1945. The exceptionally aggressive attitude taken by the present ROK regime increases the potential for more tragic incidents—planned or accidental—between the two Koreas, which may also pull in allies on both sides. The US-ROK refusal to participate in negotiations until Pyongyang apologizes for an incident it insists it did not commit, and their decision to pressure the DPRK by holding massive new joint war exercises and by inflicting still more economic sanctions, demonstrates macho but also greatly increases the possibility of more Cheonan-like incidents, and in the gravest scenario a second Korean War. The cause of the ROK warship's sinking, whether hit by a DPRK torpedo, friendly fire, or as a result of other factors, runs deeper than the events that occurred on March 26, 2010. It is but the latest in a series of tragic events that mark the 65-year history of war, division and unresolved ideological and military battles. This places responsibility for this incident—regardless of its immediate cause—in a much broader perspective than simply DPRK misbehavior. Investigation into the Cheonan incident thus must address the event as a piece of this history, while remembering that, like other events of this history, the decisions made will impact future inter-Korean and great power relations.

Mark E. Caprio is a professor of history at Rikkyo University in Tokyo and a Japan Focus

associate. He is the author of [Japanese Assimilation Policy in Colonial Korea, 1910-1945](#). He can be reached at caprio@rikko.ac.jp. He wrote this article for The Asia-Pacific Journal.

The original source of this article is [The Asia-Pacific Journal, 30-4-10, July 26, 2010](#).
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