

REGIONAL FOCUS & CONTROVERSIES

Illegal Chinese Fishing in the Yellow Sea: A Korean Officer's Perspective

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The problem of illegal Chinese fishing and Chinese fishermen's violent resistance to Korean law enforcement in the Yellow Sea have been a long-standing point at issue between Korea and China. It is not merely a problem of illegal fishing in Korean waters; this conflict could disrupt the integrity of the Exclusive Economic Zone and even undermine the friendly relations between the two countries. This article is to analyze the current status of the illegal Chinese fishing in the Yellow Sea and to provide a perspective on legal questions concerning the Korea-China Fishery Agreement to govern the fishery issue. This article suggests challenges ahead to solve the illegal fishing problem by examining factors causing the problem. It also provides a political perspective on the illegal fishing problem, which has become a highly newsworthy issue between Korea and China.

Keywords

Illegal Chinese Fishing, Korea-China Fishery Agreement, Korea Coast Guard, Yellow Sea

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1. Introduction

The illegal Chinese fishing and violent resistance against law enforcement have been a nagging issue between China and Korea since the early 2000s. Such an ever-worsening illegality has turned this maritime area into the “sea of unlawfulness.” Everyday hundreds of Chinese vessels are fishing illegally in the Korea’s Exclusive Economic Zone (“EEZ”) or in its territorial waters. Chasing, fleeing, and violent clashes between illegally operating Chinese fishermen and the Korean law enforcement officers have been common in the troubled waters.

Such large scale illegal fishing and violent clashes against law enforcement operations are quite unique in the world. The problem has reached a critical state with a tragic incident occurring on December 12, 2011 when a Korea Coast Guard (“KCG”) officer was fatally stabbed during a crackdown by the captain of a Chinese vessel fishing illegally.¹ A number of initiatives have been taken at the government level to solve this problem. Despite the efforts by both China and Korea, the problem of illegal fishing in the Yellow Sea has not been settled, but, in fact, poses a threat to undermine their friendly relations.

This article is thus to analyze the current status of the illegal Chinese fishing in the Yellow Sea under international law and to introduce the ways to unravel this problem. This article is composed of five parts including Introduction and Conclusion. Part two, while examining the development of illegal Chinese fishing in the Yellow Sea, will analyze the legal options to prevent and combat illegal fishing there and put forward some legal challenges to be addressed in the Korea-China Fishery Agreement. Part three will explain the current situation of the illegal Chinese Fishing in the Yellow Sea. Part four will discuss the international legal issues of the illegal fishing. The diplomatic environment between Korea and China around illegal fishing will be also dealt with in this part.

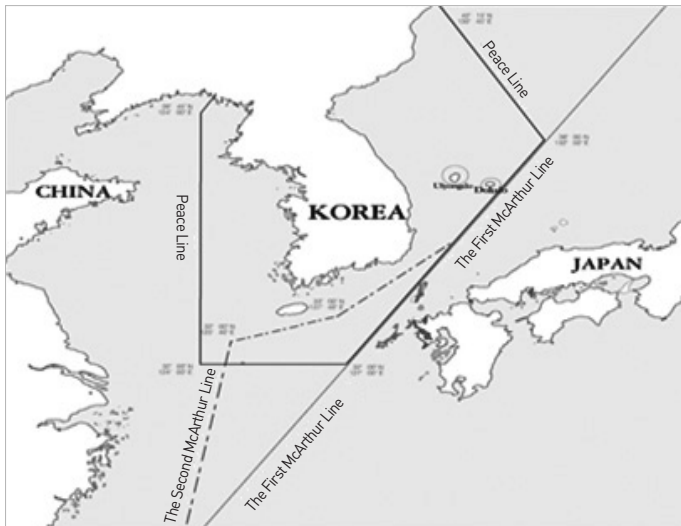
2. Development of the Fishery Regime in the Yellow Sea

A. Overview of the Fishery Agreements in Northeast Asia

Fishery disputes have been a long-held critical issue among Northeast Asian countries

¹ See Myung-kyoon Kim, *One Coast Guard Officer Killed in Raid on Illegal Chinese Fishing*, KOREA TIMES, Dec. 12, 2011, available at http://www.koreatimes.co.kr/www/news/special/2011/12/117_100587.html (last visited on Oct. 21, 2012.)

since medieval times mainly because they share the narrow semi-closed seas. In the mid-20th century, Northeast Asian countries were influenced by the global trend of coastal States seeking to extend their maritime jurisdiction up to 200nm. Korea took the initiative with the “Presidential Proclamation of Sovereignty over the Adjacent Sea” delineating the so-called Peace Line,² which extended its fishery jurisdiction over a zone approximately 20 to 200nm from the coast.³



Source: CHI YOUNG PAK, 10 INTERNATIONAL STRAITS OF THE WORLD: THE KOREAN STRAITS 18 (1988).

The primary purpose of the Peace Line was to protect marine resources in the Korean coastal waters from the over-exploitation of fishery resources by the Japanese fishing fleets,⁴ equipped with advanced fishing gears and technologies. It was a new maritime

² Suk-kyoon Kim, *Understanding Maritime Disputes in Northeast Asia: Issue and Nature*, 23 INT. J. MARINE COASTAL L. 242 (2008). In January 1952, South Korea unilaterally issued the “Republic of Korea Presidential Proclamation of Sovereignty Over Adjacent Seas,” called the ‘Peace Line’ (also known as the “Syngman Rhee Line,” because it was proclaimed by then South Korean President Syngman Rhee) to defend sovereignty over the adjacent continental shelf and seas, and to protect natural resources. The demarcation line connects straight lines along the coast of the Korean Peninsula all the way from the east coast to the west coast. For details on the Peace Line, see Chi-young Pak, *International Straits of the World*, 10 THE KOREAN STRAITS 16-19 (1988), available at http://books.google.co.kr/books?id=tP8gDMZRzZAC&printsec=frontcover&hl=ko&source=gbs_atb#v=onepage&q&f=false (last visited on Oct. 21, 2012).

³ HEE-KWON PARK, *THE LAW OF THE SEA AND NORTHEAST ASIA: A CHALLENGE FOR COOPERATION* 57 (2000).

⁴ CHOONHO PARK, *EAST SEA AND THE LAW OF THE SEA* 65 (1982). The declaration was supplemented by the Fishery Resources Law of 1954, whereby fishing within the delimited zone was placed under regulation by the Korean government. All Japanese fishing vessels found operating within the Line were seized by Korean coastal patrols, their catch confiscated, and the crew jailed after trial under Korean law.

borderline in this area after the 1945 MacArthur Line,⁵ which was abolished by the 1952 San Francisco Peace Treaty.⁶ The Peace Line effectively regulated the Japanese fishery activities close to the east coast of Korea and helped avoid fishery conflicts caused by the seizure of hundreds of Japanese fishing vessels and fishermen annually.⁷ This fishery system was replaced by the official fishery agreement between Korea and Japan in 1965, followed by a new fishery agreement in 1998.⁸ Korea concluded fishery agreements with Russia in 1991 and China in 2000.⁹ China also signed a fishery agreement with Japan in 1955, which was finally revised in 1997,¹⁰ and then with North Korea allegedly.¹¹ Meanwhile, Japan made the same kind of agreement with the former Soviet Union and North Korea in 1977.¹² The Russo-Japanese Fishery Agreement was revised in 1998. The salient feature of the fishery agreements is that, except the one between North Korea and Russia, they are provisional arrangements to regulate fishery activities and to protect fishery resources in a cooperative manner, pending the issues of maritime boundary delimitation.¹³

⁵ The MacArthur Line was a fishery restriction line imposed by Commander MacArthur of the Allied Forces in Japan. It was issued in September 1945 upon the surrender of Japan as a scheme to restrict the overexploitation of fishery resources and bring order to the Pacific. In accordance with the Line, Japanese were restricted to fish in adjacent waters of its territory. Although the Korean government was not a party to the Line, it took it as an opportunity to protect fishery resources by seizing Japanese fishing vessels crossing the western limit of the Line in the East Sea.

⁶ MIN-GYO KOO, *ISLAND DISPUTES AND MARITIME REGIME BUILDING IN EAST ASIA: BETWEEN A ROCK AND A HARD PLACE* 70 (2009).

⁷ CHOON-HO PARK, *supra* note 4, at 65. There had been seizures of Japanese fishing vessels by China since 1948, by Korea since 1947, and Russia since 1946, when they were found violating the MacArthur Line or the territorial sea of the coastal States. Between 1947 and 1964 Korea seized 3,929 Japanese fishermen and 327 vessels. China seized 227 Japanese vessels, including 31 by the Nationalist regime during 1948-1949, and by Russia of 1,114 vessels up to 1964.

⁸ Joon-suk Kang, *The United Nation Convention on the Law of the Sea and Fishery Relations between Korea, Japan and China*, 27 MAR. POL'Y 116-119 (2003).

⁹ *Id.* at 119-120.

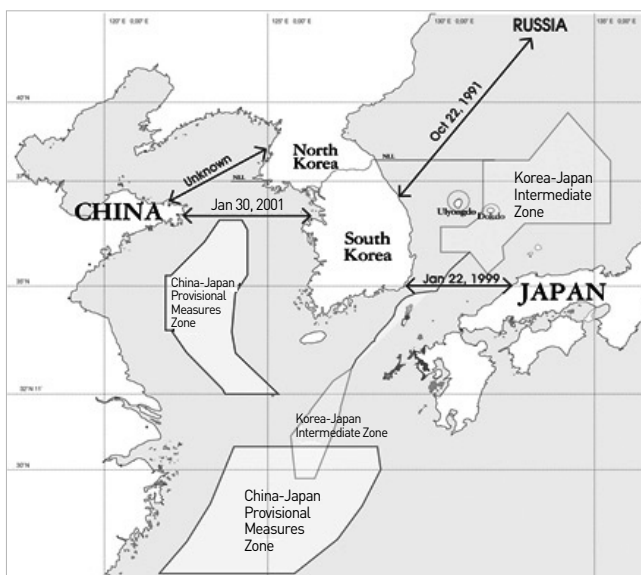
¹⁰ *Id.* at 121-122.

¹¹ According to officials from the Ministry of Foreign Affairs & the Ministry of Agriculture and Fisheries of Korea, North Korea and the P.R.C do not have any fishery agreement to regulate fishery activities. It is known that Chinese fisheries in North Korean waters are managed by contracts in the private sector.

¹² See Implication of Coastal Jurisdiction for the Management and Development of World Fisheries the Northwest Pacific Region in CHOON-HO PARK, *MANAGEMENT OF WORLD FISHERIES: IMPLICATION OF EXTENDED COASTAL STATES JURISDICTION* 174-184 (1984), available at <http://books.google.co.kr/books?id=30-nTT5nOcC&printsec=frontcover&hl=ko#v=onepage&q&f=false> (last visited on Oct. 22, 2012).

¹³ Suk-kyoon Kim, *supra* note 2, at 243.

Map 1: Fishery Agreements in Northeast Asia



Source: Seong-geol Hong, et al., *Fisheries Cooperation and Maritime Delimitation Issue between North Korea and Its Neighboring Countries*, 16 OCEAN POL'Y RES. 200/ Figure 1 (2001).

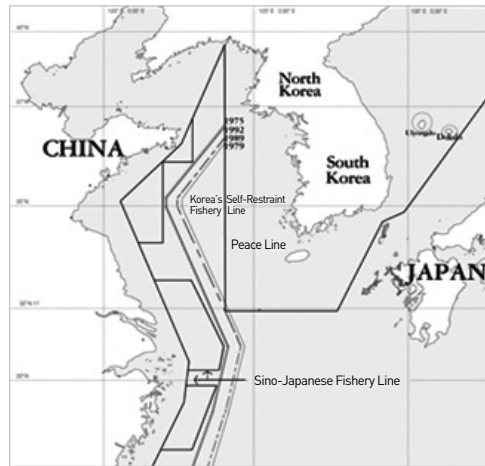
After ratification of the UN Convention on the Law of the Sea, which granted the right for coastal States to declare up to 200 nm of the EEZ, Northeast Asian countries are required to take initiative for bilateral fishery agreements.

B. Fishery Regime in the Yellow Sea

There was no regulatory fishery arrangement in the Yellow Sea until 1998 when Korea and China signed the first Fishery Agreement. Before then, the 1975 Sino-Japan Fishery Agreement regulated the fishery relations of the two countries in the Yellow Sea and the East China Sea. The Korean government unilaterally made a self-restraint fishery line of 30 nautical miles east of the Chinese fishery zone in the East China Sea under the China-Japan Fishery Agreement (See Map 2). At that time, Korean fishing vessels were forbidden from crossing the line.¹⁴

¹⁴ JONG-HWA CHOI, DEVELOPMENT OF KOREA-P.R.C FISHERY RELATIONS AND ESTABLISHMENT OF MUTUAL FISHERIES COOPERATION SYSTEM (한-중어업관계의 전개와 협력체제구축에 관한 연구) (available only in Korean) 21 (2002), available at <http://report.ndsl.kr/repDetail.do?cn=TRKO200300002628> (last visited on Oct. 21, 2012).

Map 2: Korea's Self-Restraint Fishery Line in the East China Sea & China's Fishery Zone



Source: Jong-hwa Choi, *supra* note 14.

The self-restraint fishery line was adjusted back and forth in accordance with the revisions of the Sino-Japanese Fishery Agreements in 1979 and 1989. The growing need for expanded Korean fishery zones contributed to this adjustment. Finally in June 1992, the self-restraint line was settled as identical to the Sino-Japan fishery line.¹⁵ The self-restraint line was faithfully observed by Korean fishermen; due to this, during the six years, from 1992 to 1997, only 14 Korean fishing vessels were seized by China.¹⁶

Conversely, Chinese fishermen continued to violate the fishery line. The current illegal fishing originated from China's open-door policy in the late 1970s.¹⁷ At that time, Chinese fishing vessels, which had mostly operated in the offshore coastal waters of their territories, expanded their fishing activities into Korean waters. In December 1989, accordingly, the National Federation of Fisheries Cooperatives of Korea and the Yellow and East Sea Fisheries Association of China signed a non-governmental agreement, covering such humanitarian activities as assistance to persons and vessels in distress, the safety of fishing operation, and response to accidents at sea.¹⁸

Along with a growing concern about the depletion of marine resources by the Chinese fishing activities in the Korean territorial waters, the ratification of the United

¹⁵ YOUNG-KOO KIM, KOREA AND INTERNATIONAL LAW OF THE SEA (한국과 바다의 국제법) (available only in Korean) 461-462 (2004).

¹⁶ *Id.*

¹⁷ *Id.* at 460-462.

¹⁸ JONG-HWA CHOI, MODERN INTERNATIONAL LAW OF THE SEA (현대국제해양법) (available only in Korean) 354 (4th ed. 2004).

Nations Convention on the Law of the Sea (“UNCLOS”) and the subsequent declarations of EEZs, both Korea and China started negotiations for a formal bilateral fishery agreement. In 1996, Korea and China held separate talks on the EEZ delimitation and fishery. The negotiation process was, however, very complicated mainly due to the different positions on the principles of international law such as the criteria of the boundary delimitation.¹⁹ Like the 1997 Sino-Japanese Fisheries Agreement, eventually, Korea and China adopted a practical way out: they initiated a fisheries agreement, pending the sensitive issue of the EEZ delimitation.

C. The Korea-China Fishery Agreement and Its Legal Questions

After seven years’ of prolonged negotiations, the Korea-China Fishery Agreement was signed in Beijing in August 2000.²⁰ Table 1 below shows the important provisions of the Agreement.

Table 1: Important Provisions of the Korea-China Fishery Agreement

Articles	Content
Articles 2 & 3	Each contracting party shall permit the nationals and fishing vessels of the other contracting party to fish within its own EEZ. Each contracting party shall determine every year the operational conditions for the nationals and fishing vessels of the other party, including the species to harvest, quotas of catch, fishing period and zones.
Article 5(2) & (3)	The seized or detained vessels and their crews shall be promptly released upon the posting of appropriate bond or other security. Each contracting party shall immediately notify the other party of any action taken and of any imposed punishment.
Article 7	The Provisional Measures Zone and the Transitional Zones are established in the overlapping boundary claim zones of China and Korea (See Map 1). The Provisional Measures Zone (PMZ), a polygon-shaped and located in between the EEZs of the two countries, is a co-management zone of marine resources as well as a provisional arrangement, pending the final delimitation of the maritime boundary. In the PMZ, situated between on

¹⁹ HEEKWON PARK, *supra* note 3. Korea argues that the maritime boundary with China should be drawn by the method of median line. On the other hand, China claims for the principle of natural prolongation of land territory and equitable solution.

²⁰ Entered into force on June 30, 2001. See the Korea-China Fishery Agreement, S.Korea-P.R.C., Aug. 3, 2000, available at http://www.mofat.go.kr/incboard/faimsif/treaty_popup.jsp?ITEM_ID=A66776D9510913AF4925693400048369&ITEM_PARENT_ID=6BFD37BF0EF4146449256932000A2D46 (available only in Korean) (last visited on Oct. 22, 2012).

	<p>the parallel of 37°00 N and its southern limit on the parallel of 32°11 N, the principle of flag state is applied to the jurisdiction of law enforcement. Thus, China and Korea are allowed to exercise the jurisdiction of law enforcement over only their own nationals and fishing vessels respectively. China and Japan also take conservation measures of marine living resources, subject to the decisions of the China-Korea Joint Fishery Committee. For the nationals and vessels of the other party, they can exercise law enforcement in a limited extent, when they find the other nation's fishing vessel violating the decisions made by the Committee.</p>
Article 8	<p>The Transitional Zones, designed as a buffer zone, with the width of 20-30 miles, are incorporated into the two countries' EEZs after a 4 year-joint management period. In the Transitional Zones, which are somewhere between the PMZ and the EEZ in terms of the fishery resource management method, the nationals and fishing vessels of the contracting party are allowed to fish under the joint surveillance of the contracting parties.</p>
Article 13	<p>The China-Korea Joint Fishery Committee is established to facilitate the implementation of the Agreement. The Committee is responsible for carrying out the following functions: (1) 'consultation and recommendation' on matters relating to; the species allowed to harvest and quotas of catch; maintenance of an order of fishing operations; matters on the status and conservation of marine resources; matters on fisheries cooperation between both states (2) 'recommendation' on matters relating to the amendment of the annexes, when it deems necessary (3) 'consultation and decision' on matters relating to the Provisional Measures Zones and the Transitional Zones.</p>
Article 14	<p>Nothing in the Agreement shall be deemed to prejudice the position of the contracting party concerning the law of the sea issues. The provision makes it clear that the scope of the Agreement relates to only fishery matters of the two countries, not affecting the two countries' positions on some impeding maritime issues such as straight baseline, the delimitation of EEZ and continental shelf.</p>

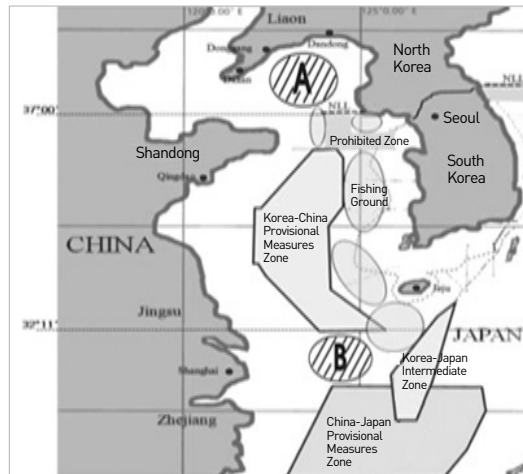
Source: Ministry of Foreign Affairs and Trade ("MOFAT") of Korea, *available at*, <http://www.mofat.go.kr>
(Compiled by the author).

Despite the broad coverage of fishery matters between the two countries, the Korea-China Fishery Agreement includes the following few setbacks:

First, there is a legal vacuum in law enforcement on fishing in some parts of China and Korea's EEZs. In the areas above the parallel of 37°00 N and below the parallel of 32°11 N (See Map 3), Korea and China decided to maintain the current practices of fishing operations unless agreed otherwise; they do not apply their laws and regulations

on fisheries to the national and fishing vessels of the other party.²¹ Instead, both countries agreed to pay due regard to the laws and regulations of the other party by a Note of Understanding.²²

Map 3: Various Zones covering the Korea-China Fishery Agreement



Source: SUN PYO KIM, MARITIME DELIMITATION AND PROVISIONAL ARRANGEMENTS IN NORTH EAST ASIA 226 (2004). (Modified by the author)

The actual fishing operations are very difficult mainly because of the complicated boundary delimitation at a tri-junction where the boundary claims of China, Japan and Korea overlap (See Area A in Map 3). As a result, in the area below 32°11' N (See Area B in Map 3) in the East China Sea where the area of the current fishing operations overlap with some parts of the Provisional Measures Zone under the China-Japan Fishery Agreement, operational disputes over the jurisdiction of law enforcement could arise if China and Japan exercise law enforcement on Korean fishing vessels operating in those overlapping waters. In the area above 37°00' N, Korea and China may consider the strained situation off the Northern Limit Line ("NLL") (See Map 3) and the status of the five western Islands of South Korea along the NLL.²³ However, in the absence of a legal framework to regulate Chinese fisheries in those areas - assumed to be Korea's EEZ if

²¹ China-Korea Fishery Agreement art. 9.

²² See the official website of the Ministry for Food, Agriculture, Forestry and Fisheries, available at <http://www.mifaff.go.kr/main.jsp> (last visited on Oct. 21, 2012).

²³ For the details of the status of NLL, see, Suk-kyoon Kim, *Korean Peninsula Maritime Issues*, 41 OCEAN DEV. & INT'L L.171-173 (2009). See also, J. Van Dyke et al., *The North-South Korea Boundary Dispute in the Yellow (West) Sea*, 27 MARINE POL'Y 143-144 (2003).

declared - Chinese fishing vessels straddle the narrow waters adjacent to the NLL taking advantage of the inter-Korean military confrontation for their fishing operations in the prohibited zone. Hundreds of Chinese fishing vessels during the blue crab season between every March and August cross the NLL to fish illegally in the waters of South Korea. Their actions would often lead to naval clashes between the two Koreas.²⁴

Second, there is no dispute settlement clause in the Agreement, while the 1998 Korea-Japan Fishery Agreement explicitly lays out such provision.²⁵ In the case of a dispute, general principles of international law would be invoked. As both China and Korea are parties to the UNCLOS, they would comply with the dispute settlement process provided for in the Convention which stipulates that a dispute would be referred to the court or tribunal unless firstly settled by the accords of the two countries or conciliation procedures in accordance with the UNCLOS.²⁶ A fishery dispute, however, would not be subjected to compulsory procedures unless agreed upon by Korea and China, even if no settlement is reached by means of agreement and conciliation because both countries declared not to accept the compulsory procedures for disputes concerning law enforcement activities in accordance with Article 298 of the UNCLOS.²⁷ Given this disclaimer, it is not clear which procedure should be followed when a fishery dispute is not settled by an agreement.

D. Domestic Legislations Governing Fisheries and Enforcement Authorities

1. Fisheries Legislations

Table 2 shows the major domestic laws and regulations concerning the fisheries in China and Korea.

²⁴ *Id.*

²⁵ The Korea-Japan Fishery Agreement art. 13.

²⁶ UNCLOS arts. 280 & 284.

²⁷ On April 18, 2006, the Korean government declared that it does not accept the procedures of compulsory settlement concerning disputes provided for in the Article 298 in the wake of a dispute with Japan over marine research in the vicinity of the Dok-do Island.

Table 2: Legislations related to Fisheries Activities of Korea and China

Articles	Korea	China
Territorial Sea	Territorial Sea and Contiguous Zone Act (1977)	Law on the Territorial Sea and the Contiguous Zone (1992)
EEZ	Exclusive Economic Zone Act (1996)	Exclusive Economic Zone and Continental Shelf Act (1998)
Foreign Fisheries	Law on the Exercise of Sovereign Rights on Foreign Fisheries Activities in the Exclusive Economic Zone (1996)	Interim Regulation on the Management of Fishing Activities of Foreigners and Foreign Vessels in the Jurisdictional Sea(1996)
		Regulation on Fisheries Surveillance in the Exclusive Economic Zone (2005)
Domestic Fisheries	Fisheries Act (2009)	Fishery Law of the People's Republic of China (1989)
Fishery Resources	Fishery Resources Management Act (2009)	Regulations for Breeding and Protecting the Fishery Resources (1979) Management Measures Regulations on Fisheries Catch Permission (1989) Notification on Establishment of New Summer Moratorium in the East China and Yellow Sea (1998) The State Council's Command and Additional Regulations on Mechanized Trawler Fishing Closed Area in Bohai Bay, Yellow Sea and East China Sea
Fishing Vessels	Fishing Vessels Act (1993)	Fishing Vessel Registration Regulation (1996) Fishing Vessels Inspection Regulation (2003)

Source: FAO Country Profile Fact Sheets, China, available at http://www.fao.org/fishery/countrysector/FI-CP_CN/en (last visited on Oct. 9, 2012).

Korea manages foreign fisheries activities in its own EEZ solely by the Law on the Exercise of Sovereign Rights on Foreign Fishery Activities in the Exclusive Economic Zone (hereinafter EEZ Fisheries Law), unless agreed otherwise with foreign countries,²⁸ while China governs fishery activities mostly by the government regulations proclaimed by the Ministry of Agriculture. The Chinese fishery laws can easily be modified in the changing legal environment. However, it makes it difficult for

²⁸ The EEZ Fishery Law art. 3.

foreigners to access to and predict China's legal fishery regimen.

2. Enforcement Authorities

China has two levels of fishery administration. The Bureau of Fisheries at the Ministry of Agriculture (漁政局) is the central and supervisory authority. At each provincial or municipal level, local fisheries authorities are operating as the basic institutions. The fisheries administrations of each level are responsible for implementing the fishery law and regulations.²⁹ On the other hand, in Korea, the Office of Fisheries Policy at the Ministry of Food, Agriculture, Forestry and Fishery ("MIFAFF") is in charge of framing and implementing the fishery policy and the management of marine fishery activities at the national level. At the regional level, the Regional Commands of the KCG and the Fisheries Supervision Office of the MIFAFF are dealing with the conservation of marine resources and law enforcement activities on illegal fisheries.³⁰

The West and South Regional Commands of the KCG, falling under the Ministry of Land, Transportation and Maritime Affairs, and the West Fisheries Supervision Office are the competent agencies to fight illegal fisheries in the Yellow Sea and the East China Sea.

3. Current Situation of the Illegal Chinese Fishing in the Yellow Sea

A. Introduction

Over the past 10 years, a total of 4,175 Chinese fishing vessels were seized for illegal fishing in Korean waters. As shown in Table 3, each year, more than 400 Chinese fishing vessels have been seized in Korean waters on the charge of illegal fishing. The overall number may well demonstrate the prevalence and gravity of the illegal Chinese fishing in this region. According to the KCG, during the same period, only two Korean fishing vessels were seized by the Chinese authorities in violation of the Chinese fishery laws.³¹

²⁹ See FAO Country Profile fact sheets, P.R.C., available at http://www.fao.org/fishery/countrysector/FI-CP_CN/en (last visited on Oct. 21, 2012).

³⁰ See Korea Coast Guard, available at <http://www.kcg.go.kr>; West Fisheries Supervision Office, available at <http://westship.mifaff.go.kr> (all last visited on Oct. 22, 2012).

³¹ See the Korea Coast Guard White Paper 2011 (available only in Korean) 214 (2011).

Table 3: The Number of Seized Chinese Vessels and Crews

Year	Vessel	Crewmen	Bond(USD million)
2011	534(*191)	5,675(**72)	13
2010	370(61)	3,664(56)	6.9
2009	381(15)	3,537(130)	4.9
2008	432(16)	4,390(109)	5.6
2007	494(0)	4,650(246)	4.3
2006	522(0)	5,156(218)	4.8
2005	584(11)	5,659(167)	4.4
2004	443(3)	3,993(188)	3.5
2003	240(16)	1,630(151)	1.6
2002	175(7)	1,714(67)	2.2
Total	4,175(320)	40,068(1,404)	39.5

Note: * Number of vessels seized by fishery guidance vessels from the Ministry of Food, Agriculture, Forestry and Fisheries.

**Number of Chinese fishermen imprisoned.

Source: White Paper of the Korea Coast Guard 2011. (Compiled by the author)

The question of the illegal Chinese fishing in the Yellow Sea becomes more evident, when compared with similar illegal activities committed in Japanese waters. During the same reporting period, only 44 Chinese fishing vessels were seized by the Coast Guard and the Fishery Administration of Japan.³² This contrast is even more striking, considering that the coastal countries of Northeast Asia are sharing marine resources in the narrow semi-enclosed seas. Thus, the large gap in the number of seized Chinese vessels between Korea and Japan might be indicative of how serious the illegal Chinese fishing problem is in Korean waters.

In regards to the much lesser degree of illegal Chinese fishing in Japanese waters than in Korean waters, the Japanese Fishery Administration explains that, in the East China Sea, Chinese fishing vessels mostly operate in the joint fishing zone, called the “Japan-China Provisional Zone” and the longer distance from the coast of China discourages Chinese fishermen from going to Japanese waters.³³ It is interesting to note that the number of Chinese fishing vessels seized in Korean waters has sharply increased since 2001 (on an average, only 43 vessels were seized in the 1990s). Following the KCG, Chinese fishing activities, in the absence of fishery rules, were regulated only

³² See the official website of the Japan Coast Guard, available at <http://www.kaiho.mlit.go.jp/info/tokei/index.htm> (last visited on Oct. 21, 2012).

³³ Japan Fishery Agency, available at <http://www.jfa.maff.go.jp/j/kanri/torishimari/torishimari.html> (last visited on Oct. 22, 2012).

in Korean territorial waters before the Korea-Japan Fishery Agreement entered into force in 2001.³⁴ After the Korea-Japan Fishery Agreement was enacted, however, Chinese fishing vessels operating in the Korean EEZ came under the jurisdiction of Korea.³⁵

Noticeable is that the number of seized Chinese vessels has been steadily declining since 2005. Such steady decline in this period is due to: on one hand, tougher measures against illegal fisheries taken by the Korean government, which includes greater policing and stricter law enforcement, heavier fines, and imprisonment of crews; and on the other hand, the decrease in annual Chinese fishing quotas in the Korean EEZ from 2,174 vessels (2005) to 1,700 (2011).³⁶ However, this does not necessarily indicate the alleviation of the illegal fishery problem itself. As illustrated in the case of 2011, the number of seized Chinese fishing vessels sharply increased nearly 50% from the previous year. The KCG maintains that nearly 2,000 to 3,000 Chinese fishing vessels are operating in the joint fishing area off the Korean EEZ (Provisional Measures Zone) everyday. Hundreds of those, mostly unlicensed or undocumented for fishing activities in the Korean EEZ, attempt cross-border fishing in Korean waters, particularly when the weather is bad.³⁷

It is relevant to share a particular concern that the Chinese fishermen would resist against the KCG with illegal measures in order to escape arrest and fines. Chinese fishermen often chain their ships together when they are chased.

Photo 1: Chinese fishing vessels, which are chained together to avoid seizure by the Korea Coast Guard



Source: Compiled by the author from the Korea Coast Guard.

³⁴ See Korea Coast Guard White Paper 2004 39-40 (2004).

³⁵ *Id.*

³⁶ See The Report of the 10th Korea-China Joint Fishery Committee in 2010, available at <http://www.mifaff.go.kr> (last visited on Oct. 21, 2012).

³⁷ *Supra* note 31, at 29-35.

Photo 2: Chinese fishermen resist with weapons as the coast guard officers try to get on board



Source: Compiled by the author from the Korean Coast Guard.

Furthermore, as coast guard officers try to board a suspected fishing vessel, crewmen on board often violently resist by wielding axes, shovels, and steel pipes and by throwing iron balls (Photo 2). Chinese fishing vessels are also armed with steel fences and spears to deter officers from boarding. Once a target vessel comes under control, other vessels from the same fishing fleet operating in the vicinity encircle the boarded vessel and use collective force to prevent the detained vessel from being seized. In this process, many KCG officers have been seriously injured or even killed (See Table 4). Accordingly, Chinese crewmen have been charged with the “obstruction of enforcement.”³⁸ Such violent resistance by Chinese fishermen also causes serious injuries to themselves. On December 18, 2010, *e.g.*, a Chinese fisherman drowned and another disappeared when their boat sank after ramming into a KCG ship as they attempted to prevent their colleagues from being seized.³⁹ Additionally, on November 16, 2012 a violent Chinese fisherman was shot to death by a rubber bullet fired by a Korea Coast Guard officer during a crackdown on illegal fishing in the Yellow Sea.⁴⁰

As these clashes are becoming more violent, it is sometimes escalating into a diplomatic issue. China delivered a concern about “an excessive law enforcement on a minor violation,” which, they argue, happened on January 17, 2012, during a crackdown of a suspected Chinese fishing vessel by the KCG officers in the Korean EEZ of south Jeju Island.⁴¹

³⁸ Criminal Law of Korea art. 136. It reads: “A person who uses violence or intimidation against a public official engaged in the performance of his duties shall be punished by imprisonment for not more than five years, or fine not exceeding ten million won (approximately 8,850 USD).”

³⁹ See *Chinese Fishing Boat Poaching in Korean Waters Capsizes*, KOREA TIMES, Dec. 19, 2010, available at http://www.koreatimes.co.kr/www/news/nation/2011/01/113_78245.html (last visited on Oct. 21, 2012).

⁴⁰ See also *Permanent Ban Sought on Illegal Fishing*, KOREA TIMES, Oct. 19, 2012, available at http://www.koreatimes.co.kr/www/news/nation/2012/10/117_122615.html (last visited on Oct. 21, 2012).

⁴¹ Jingya Zhang, *Spokesman: China Hopes ROK Will Enforce Laws in Civilized Way*, XINHUANET, May 4, 2012, available at http://news.xinhuanet.com/english/video/2012-05/04/c_131568065.htm (last visited on Oct. 9, 2012).

Table 4: Status of Victims of Violent Resistance and Imprisonment

Year	Occurrence	Victim (coast guard officers)		Imprisonment (Chinese crewmen)
		Dead	Injured	
2011	4	1 ⁴²	7	22
10	5		14	2
09	2			5
08	6	1 ⁴³	10	18
07	2		2	13
06	6		7	29
05	4		4	9
04	1		2	2
03	1		1	1
2002	2		6	2
Total	33	2	53	103

Source: White Paper of the Korea Coast Guard 2011. (Compiled by the author)

B. Penalty

When the vessels have been seized and fishermen arrested following the violation of the EEZ Fishery Law, Korean authorities have promptly released the arrested or detained vessels and their crews upon the posting of appropriate bond or other security.⁴⁴ After seizing or detaining a Chinese vessel and fishermen, it is provided that the Korean authorities shall immediately notify its Chinese counterpart through diplomatic channels.⁴⁵ The EEZ Fishery Law stipulates only the maximum amount of fines imposed on the vessels in violation of obligations under the Law, which is less than 200 million won (approximately USD 177,780). The amount of bond, imposed by the Supreme Prosecutor's Office, varies based on the types of violation, ranging from unlicensed fishing to the violation of operation conditions. The fines were determined on the reciprocal basis among the coastal States in Northeast Asia with slight variations (Table 5). Those who cannot afford to pay the fines face criminal charges with their catches being confiscated. These Chinese fishermen would be also punished back in

⁴² As described in the part of introduction, in December 2011, a coast guard officer was stabbed to death during a crackdown by a captain of an illegal Chinese fishing vessel west of the Prohibited Area in the vicinity of the Northern Limit Line.

⁴³ On Sept. 25, 2008, a Korea coast guard officer drowned after being hit by a Chinese fisherman wielding an iron stick when the coast guard officer was trying to get on board with his colleagues to seize an illegal Chinese fishing vessel.

⁴⁴ China-Korea Fishery Agreement art. 5(2). *See also* UNCLOS art. 73(1).

⁴⁵ China-Korea Fishery Agreement art. 5(3).

China, which imposes a ban on fishing and the abolition of fuel subsidies.⁴⁶

The Korean government increased the amount of fines in 2006 in order to discourage illegal Chinese fishing operations in its waters.⁴⁷ Faced with mounting pressure for heavier punishment in the wake of a coast guard officer's death, the Korean government increased the maximum amount of fine up to 200 million won (approximately USD 177,780) and to confiscate the catches in addition to fines by amending the EEZ Fishery Law.

Table 5: Status of Fines imposed on Vessels in Violation of EEZ Fishery related Laws

Types of Violation		Korea			China	Japan	
		Larger than 80t	80 to 50 t	Smaller than 50t	No size distinction	Larger than 30t	Smaller than 30t
Unlicensed/ Fishery activities in the prohibited area /Violation of no-fishery order		45,270	36,210	27,160	54,320	36,210	18,100
Transfer of catch		45,270	36,210	27,160	54,320	36,210	18,100
Violation of operation conditions	Area of fishing operation/fishing method and gear	27,160	18,100	13,570	40,740	18,100	9,050
	size of fishing nets	27,160	18,100	13,570	6,780	18,100	9,050
	chronology of fishing activities	9,050	4,520	2,710	6,780	4,520	2,260
	list of crews	9,050	4,520	2,710	6,780	4,520	2,260
Not carrying license		1,800	1,350	900	Non	900	450

Note: Fines are calculated into U.S. dollar with an exchange rate as of October 17, 2012.

Source: White Paper of the Korea Coast Guard 2011. (Compiled by the author).

C. Causes of Illegal Chinese Fishery

It is a matter of serious concern as to what brings the Chinese fishermen to the long-held illegal fishery problem in the Yellow Sea, despite the fishery regimes in place. A number of practical factors are commonly referred to as the causes of illegal Chinese fishing in Korean waters.⁴⁸

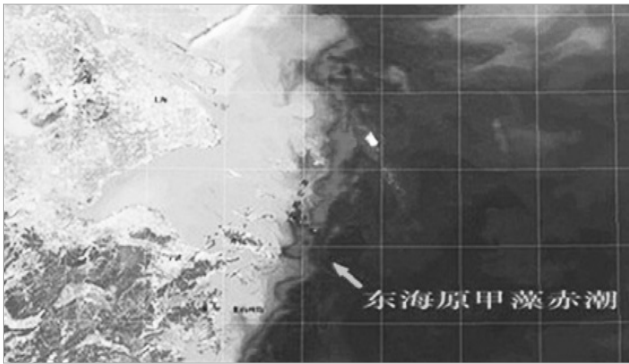
⁴⁶ According to the Fishery Act and Administrative Penalty Regulation of China, fishermen who violate the law of other countries shall be punished.

⁴⁷ After the Korea-China Fishery Agreement entered into force in 2001, the Korean government, for the first time, amended the EEZ fishery law to increase the amount of fines to be imposed on illegal Chinese fishermen.

⁴⁸ *Supra* note 31, at 30-31.

First, a fundamental reason is the depletion of fish stocks in the Chinese coastal waters due to the degradation of the marine environment. It has been caused by pollutants discharged from coastal areas in the course of rapid industrialization and population growth over the past decades.⁴⁹ The overall satellite image of the Chinese coastal waters opposite to the west coast of the Korean Peninsula would be indicative of the degree of marine pollution.

Photo 3: Satellite Image of Red Tides in the Coast of China



Source: OhmyNews, available at http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0001362109 (last visited on Oct 18, 2012).

As a result, Chinese fishermen cross borders into Korean waters, which are much richer in fishery resources.

On the other hand, apart from taking strong measures for the marine environment preservation, Korea's efforts to resolve the problem of overcapacity in the fishery sector, partly, take credit for the conservation of fishery resources in its coastal waters. The Korean government reduced 1,929 marine fishing vessels, spending nearly USD 719 million between 1995 and 2004.⁵⁰ The government planned to undertake another vessel reduction plan, which aimed to reduce another 1,280 vessels by 2010, starting in 2007 to correspond to a decline in fishery resources as well as an aggravation of economic benefits in fisheries.⁵¹ According to data from the Ministry of Food, Agriculture, Forestry and Fishery in 2010, the number of motorized marine fishing vessels in Korea amounted to 74,669, a significant decrease from 87,554 vessels in 2005.⁵²

⁴⁹ *Id.*

⁵⁰ *Supra* note 22.

⁵¹ *Id.*

⁵² *Id.* See also Fisheries Information Service (available only in Korean), available at <http://www.fips.go.kr/> (last visited on Oct. 21, 2012).

Second, there are too many fishing vessels in the Chinese coastal waters and the fishery resources have been overexploited. The statistics of the UN Food and Agriculture Organization (“FAO”) shows that, in 2007, there were 288,799 motorized marine fishing vessels and with 3.32 million traditional fishermen in China, the largest number of fishing vessels and fishermen in the world.⁵³ In February 2006, the Chinese government released the “Program of Action on Conservation of Living Aquatic Resources of China” in order to reduce the number of the motorized marine fishing fleet from 279,937 vessels in 2004 to 190,000 vessels by 2010.⁵⁴ In order to address such a chronic problem in the fishery sector, the Chinese government initiated a program of reducing vessels and relocating fishermen away from living on marine fisheries. For example, up to 2004, the government had input nearly USD 100 million, scrapped nearly 8,000 vessels and relocated over 40,000 fishermen.⁵⁵ The Chinese government has imposed a “hot season moratorium”⁵⁶ in the Yellow Sea and the East China Sea which covers 120,000 fishing vessels and one million fishermen each year⁵⁷ from 16 June to 1 September in the area north to 35° N. in the Yellow Sea and the East China Sea. Under the scheme of “hot season moratorium,” during that season, trawling and sailing stake net fishing are banned, while gillnet, hook-and-line and entrapment are permitted.⁵⁸

Third, the relatively short distance from Chinese coasts to the Korean fishing grounds is an attraction of illegal Chinese fishing in Korean waters. Due to the short distance, Chinese fishermen can easily reach the Korean fishing ground and swiftly transport their catches back home.⁵⁹ The KCG data shows that 85 percent of the seized Chinese fishing vessels during the period between 2005 and 2011 were either from Shandong or Liaoning Province, situated across the coastal fishing ground of Korea.⁶⁰

Fourth, the rapidly growing domestic demand for seafood in China is another important factor. The FAO maintains that China’s domestic consumption of fish and fishery products per capita has increased from less than 5kg in the 1970s to 25.8kg in 2010,⁶¹ though the Chinese Statistical Book shares an even greater per capita

⁵³ See The State of World Fisheries and Aquaculture 2010, FAO, available at <http://www.fao.org/docrep/013/i1820e/i1820e00.htm> (last visited on Oct. 21, 2012). See also Fishery and Aquaculture Country Profiles: China, available at http://www.fao.org/fishery/countrysector/FI-CP_CN/en (last visited on Oct. 21, 2012).

⁵⁴ See FAO Country Profile fact sheets, China, available at http://www.fao.org/fishery/countrysector/FI-CP_CN/en (last visited on Oct. 9, 2012).

⁵⁵ *Id.*

⁵⁶ *Id.* The hot season moratorium is a self-restraint measure imposed by China, which bans fishing in the Yellow Sea in a period between June and August to protect fishery resources.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Supra* note 34.

⁶⁰ The rest of those are from the Zhejiang Province (nearly 8%) and others (nearly 7%).

⁶¹ See FAO Aquaculture Newsletter No. 45, available at <http://www.fao.org/docrep/012/al363e/al363e00.htm> (last

consumption of fish and fishery products, i.e. from 10.9 kg in 1990 to 37.0 kg in 2008.⁶² The seafood consumption in China is expected to increase corresponding to a high rate of its economic growth.

Finally, China's long-held tradition of free fishing in the Korean coastal waters may be another reason. Chinese fishermen were not regulated for their fishing in the Korean waters until the EEZ was established in 1996. Because most of Chinese fishermen are not aware of fishing conditions in the Korean EEZ introduced with the new legal changes, they just continue to fish in accordance with the past practices.

4. International Legal Aspects of the Illegal Fishing

A. Political Environment

The current illegal fishing in the Yellow Sea has emerged as a highly relevant issue as well as a challenge for further cooperation between Korea and China. Since 1992, when Korea and China established diplomatic ties, their relations have rapidly developed into a "strategic partnership of cooperation."⁶³ China has become the largest trading partner of Korea since 2004⁶⁴ and Korea is China's third-largest trading partner after the U.S. and Japan. Moreover, the socio-cultural exchanges between the two countries have also greatly increased in a short period, e.g., the number of Chinese tourists to Korea has increased ten-fold since 1998.⁶⁵ Nonetheless, the illegal Chinese fishing in the Yellow Sea could be a stumbling barrier towards friendly relations between these two countries. When the KCG officer was brutally killed in December 2011, Koreans reacted seriously and created pressure on the government for tougher law enforcement and to allow the use of firearms to combat violent acts of some Chinese fishermen when necessary. One of the most influential Korean newspapers even opined that "strong reprisals are the best deterrent."⁶⁶ On the other hand, as a counteraction, some Chinese accused the Korean

visited on Oct. 21, 2012).

⁶² *Supra* note 31, at 31.

⁶³ See Korea-China Joint Statement, available at http://www.mofat.go.kr/countries/asiapacific/countries/20110804/1_22623.jsp?menu=m_40_10_20#contentAction (last visited on Oct. 9, 2012).

⁶⁴ A trade volume between China and Korea was of USD 220.3 billion in 2011 (export to China: USD 134.1 billion, import from China USD 86.2 billion). See Korea's Ministry of Strategy and Finance, Economic Accomplishments and Prospects of the 20th Anniversary of Korea-China's Diplomatic Relations, Jan. 27, 2012.

⁶⁵ *Id.*

⁶⁶ See *Korea Must Act Firmly over Murder of Cost Guard*, CHOSUN ILBO ENG., Dec. 13, 2011, available at http://english.chosun.com/site/data/html_dir/2011/12/13/2011121301625.html (last visited on Oct. 21, 2012).

authorities of bullying behaviors.⁶⁷ Fortunately, the Government of China expressed regret over the death of the Korean coast guard officer.⁶⁸ In the summit with Korean President Myung-bak Lee on January 9, 2012, Chinese President Jintao Hu assured that: “China takes this matter seriously and will strengthen the education and management of Chinese fishermen.”⁶⁹ Simultaneously, they agreed to strengthen cooperation between competent authorities of the two countries to combat illegal fishery.⁷⁰

B. International Legal Issues

A number of international legal issues may arise in dealing with the illegal Chinese fishing. The first question would be the legality and propriety of using lethal firearms against Chinese fishermen violently resisting law enforcement activities. Currently, the KCG officers are authorized by the Act on the Performance of Duties by Police Officers to use firearms in limited circumstances.⁷¹ In addition, the newly enacted law of the Marine Guard Act grants the KCG officers to use firearms under the same conditions as in the Act on the Performance of Duties by Police Officers. Despite the rights to use firearms, the KCG would rather use non-lethal or less lethal weapons, such as tear gas and electronic stun guns. For the safety of coast guard officers, however, the KCG recently gave more discretionary powers to its officers to use firearms to crackdown on violently resisting Chinese fishermen.⁷²

However, there will still remain a fundamental question about when coast guard officers will use firearms against violently resisting Chinese fishermen, i.e. the principle of proportionality in using firearms against civilians. A secondary question in this regard will be the accountability of misfiring at innocent fishermen aboard.

The second question is the level of penalties based on international law. Article 73(3) of the UNCLOS stipulates that: “Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of

⁶⁷ Sang-hun Choe, *Chinese Fisherman Kills South Korean Coast Guardsman*, N. Y. TIMES, Dec. 12, 2011, available at http://www.nytimes.com/2011/12/13/world/asia/chinese-fisherman-kills-south-korean-coast-guardsman.html?_r=1&scp=1&sq=chinese%20fishermen%20kills%20south%20korean%20coast%20guardman&st=cse (last visited on Oct. 21, 2012).

⁶⁸ See Foreign Ministry Spokesperson Weimin Liu’s Regular Press Conference, Dec. 13, 2011, available at <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t887527.htm> (last visited on Oct. 22, 2012).

⁶⁹ See President Lee Hopes that China Takes Effective Measures on Illegal Fisheries (available only in Korean), YONHAP NEWS, Jan. 9, 2011, available at http://app.yonhapnews.co.kr/YNA/Basic/Article/Print/YIBW_showArticlePrintView.aspx?contents_id=AKR20120109195900001 (last visited on Oct. 9, 2012).

⁷⁰ *Id.*

⁷¹ Performance of Police Functions Act art. 10.4.

⁷² The Firearm Use Guideline of the Korea Coast Guard.

corporal punishment.”⁷³ Since the penalties for those in violation of fishery laws and regulation are based on primarily the principle of consensus, as reflected in Article 73, a large rate of increase in the level of fines in the absence of consensus of the countries concerned may not correspond with the principle of the UNCLOS.

Third, some cast doubt on the effectiveness of the Korea-China Fishery Agreement to prevent Chinese fishermen from committing illegal fishing and even argue for the abolition of the Agreement.⁷⁴ Without the Fishery Agreement, however, there is no fishery procedure in this region. Thus, more fishery disputes will surely arise and fishery resources will be depleted much faster. There should be mutual efforts to address the legal deficiencies, in the Fishery Agreement. At the same time, more concerted efforts should be made to control illegal, unreported and unlicensed fishing in the Yellow Sea.

5. Conclusion

It is needless to mention that the illegal Chinese fishing in the Yellow Sea has been a long-standing issue between Korea and China. This is not only an isolated problem of illegal fishing in Korean water, but also may disrupt the integrity of the EEZ regime even frustrating the friendly relations between the two countries.

The illegal fishing in the Yellow Sea will not be alleviated in the near future unless the fundamental concerns such as depletion of fish stocks in Chinese coastal waters and overcapacity in Chinese fishing fleets can be resolved. Considering its enormous scale, it is impossible for a small number of KCG ships to fully combat illegal Chinese fishing vessels in Korean water. In this regard, Chinese efforts to address the illegal fishery problem such as fishing vessel reduction, a hot season moratorium, and education and awareness of fishermen can play crucial role.

A critical concern of how to address the illegal fishery issue is closely connected with how to prevent violent clashes and fill the legal vacuum in some parts of waters

⁷³ UNCLOS art. 73(3).

⁷⁴ Lawmaker Hyo-dae Ahn at the 304th session of the National Assembly on December 22, 2011 asked for “the government to engage in re-negotiation to ensure the least accountability of the Chinese government for the control of the illegal fishery problem.” Besides, in a press release circulated on September 19, 2006, Lawmaker Mun-heon Jung argued that: “The Korea-China Fishery Agreement is blamed for the dispute over the ownership of Ieodo because Ieodo is placed in the Provisional Measure Zone.” See S.H. Choo, *S.Korea-P.R.C. Fishery Agreement caused the dispute over the ownership of Ieodo Island* (한-중 어업협정이 이어도 논란 빌미 제공) (available only in Korean), THE HANKYOREH DAILY, Sept. 19, 2006, available at <http://www.hani.co.kr/arti/politics/diplomacy/158370.html> (last visited on Oct. 21, 2012).

under the Korea-China Fishery Agreement.

To this end, the Chinese fishermen need to be well educated about obligations in the Agreement and the EEZ regulations. They also have to know how to comply with law enforcement activities by Korean law enforcement authorities. Together with the diplomatic channels, direct contact and cooperation between the coast guard and fishery agencies of the two countries are also recommended.

