

Fishery Disputes between China and the Two Koreas

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Illegal fishing in the Yellow Sea by Chinese fishing vessels is a particular source of tension between China and the two Koreas. The number of Chinese fishing vessels illegally entering ROK waters, the Exclusive Economic Zone (EEZ) and Northern Limit Line (NLL) jumped from 370 vessels in 2010 to 534 in 2011.[1] Since the DPRK is a closed regime, it is difficult to approximate the number of illegal cases in their waters, but several reports substantiate that illegal fishing is a serious concern for China-DPRK relations.[2] However, the policy response from Beijing toward the ROK tends to be audacious and unresponsive while that toward the DPRK tends to be cooperative and responsive. What explains the difference in China's official responses to fishery disputes with the two Koreas?

To answer the question, three different theories: the realist balance of power theory, economic interdependence theory, and misperception theory will be applied to see which approach better explains the difference in China's response to fishery disputes. To test the theories, this essay will cover China's relations with two Koreas since the Korean War – divided into three phases: the Cold War (1950-1990), Post Cold War (1991-2009), and recent years (2010-2012). By analyzing the history of fishery disputes, this essay looks to explain what causes the different response of China to the two Koreas in fishery disputes over time.

Before analyzing China's different response towards the two Koreas, there should be an explanation of why fishery disputes are a critical source of conflict in the region. The Yellow Sea has a great diversity of fish species – making the region one of the most productive fishing areas in the world.[3] Fishing is not only important for subsistence and domestic food stock for the countries bordering the Yellow Sea – it is also important source of export income. For these reasons, vital national interests extend to the sea.[4]

In 1982, the United Nations Convention on Law of Seas (UNCLOS) introduced the right of the coastal states to have exclusive jurisdiction over fishing out to a 200-mile from the baseline,[5] the Exclusive Economic Zone (EEZ). However, "the extension of the jurisdiction does not alter the fact that fish and fishermen do not recognize political boundaries in the sea." [6] The transnational character of fish and fishing makes fisheries management and access arrangements important political issues in the region.[7] Moreover, UNCLOS raised new points of tension in the form of conflicting claims and disputed boundaries in the Yellow Sea[8], because the region has semi-enclosed seas less than 400 miles wide – so legal claims to the full 200-mile EEZ create overlaps.[9] Hence, delimitation of the EEZ is an unresolved issue for China and the two Koreas and the problem of uncoordinated boundaries complicates fishery disputes. Furthermore, Chinese overfishing led to depletion of fishery reserves in its own coastal waters.[10] The Chinese government has launched several futile actions to stop overfishing and conserve fishery reserves such as establishing a fishing license, closed zones/seasons and a mid-summer fishing moratorium. Thus, with "beggar thy neighbor" attitude, Chinese fishermen intrude two Koreas waters and conduct illegal fishing to meet domestic demands, which has not reduced in line with the depletion of China's own stocks.

Chinese illegal fishing practices are becoming evermore astute and cunning. Chinese fishermen counterfeit fishing licenses, downscale the amount of catch, and bind the fishing vessels with other fishermen to avoid seizure. It is becoming more systematized, collectivized, and ferocious than before. The Associations of Korea Coast Guard

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categorized the types of illegal fishery into four types: systemized violence, collective action, mere-demonstration, and back-up collision, ranging from use of force to mere demonstration against seizure.[11]

During the Cold War, China kept good relations with the communist state DPRK compared to the ROK, which had a closer relationship with the capitalist United States. In fact, there was no diplomatic normalization between the ROK and China during the Cold War. This relationship can be best explained by Realism. Under the realist concept, China's priority was maintaining a balance of power in the region with the United States. Thus, China kept a close relationship with DPRK because it served the role of a "buffer state." In contrast, China remained distant to the ROK, who maintained friendlier relations and a strategic alliance with the United States.

The second phase is the post Cold-war era. In this period, there were no big fishery disputes between the DPRK and China despite China's further expansion into the Korean sea – while there were many cases between the ROK and China. This difference can be explained by the economic interdependence theory, which is a belief that increased economic relations could mitigate international tensions and lead to more stable security in the region. After the collapse of socialism, 'economy' was the key for China to survive. To pursue economic development, China wanted to invest on vast marine resources in the DPRK. Thus, China showed cooperative attitude in terms of fishery issue. On other hand, Chinese government remained unresponsive and refused to make any official movements regarding the fishery disputes with the ROK. It was due to the fact that China was facing severe fishery depletion in its own sea. Since fish related products were essential to the economic development, China overlooked the illegal fishery. And thereby their fishermen acquire economic benefit and sustain the fish industry. Also, growing trade volume between China and the ROK played a role in preventing the fishery dispute from escalating into a diplomatic tension.

Several controversial fishery disputes happened in this period between China and the two Koreas. In the status quo, there is no codified fishery agreement between China and DPRK and they rely on customary practice for management of fishery resources. Ironically, despite the fact there is no fishery agreement between China-DPRK, China is cooperative and responsive to the DPRK in fishery disputes, while they show an audacious and unresponsive attitude towards the ROK whom they have a fishery agreement with. Regarding the recent cases, the misperception theory best explains how process of perception has contributed to the different response of China. Misperception theory states that decision-makers tend to decide foreign policy based on the pre-existing "images" they hold about other states. It may result in a high possibility of misperception because decision-makers could miss or disregard the "signals" that do not assimilate into their pre-existing images. A change in attitude toward other states takes place when the signals are considered important. The ROK's submissive attitude in diplomacy, so called 'cream diplomacy' toward China made China think that fishery disputes were not a serious enough matter to threaten their relationship. But, the DPRKs 'strong protest' resorting to fire and seizure made China consider that fishery disputes can indeed threaten their relations. Also, it encouraged China to take a more active approach in addressing the issue with the DPRK.

This essay will provide detailed analysis of each of these three phases of China-Korea fishery disputes and conclude with policy implications. First, it is helpful to offer background on the theoretical perspectives that will be applied and competing explanations that will be considered in the case study.

Literature Review

Realism and Balance of Power

Realism emphasizes the ubiquity of power and the competitive nature of politics among nation-states. It tends to focus on 'real' interests rather than 'ideal' ones, to seek peace through power. The theory's explanation of states' endeavor to maximize their own national interests was the most rational account of the situation.

According to Baylis, Realists are skeptical of the idea that universal moral principles exist, but rather warn state leaders to go against sacrificing national interests to adhere to international 'ethics'.^[12] In fact, the key words of Realism are "survival" and "self-help". "Survival" is that international system has no central authority and it is significant that states "survive" through gaining more power.^[13] "Self-help" is that no other states but only the

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concerned state can pursue its own interests on its own.

Realists believe that a condition of anarchy exists internationally. In a system of anarchy, there is no single great power that is able to dominate all the other states. Since the power of the state is considered as an utmost interest among nations, the endeavor of keeping the 'balance of power' is significant in order to "survive" in the international arena. In other words, from this 'balance of power', states should ensure their survival through obtaining or expending their power in a "self-help" world and endeavor to prevent a potential hegemon from arising by balancing against it. Thus, nation-states tend to act based on their own interests to "survive", and a certain degree of "balance" is needed in distributing power in international world.

Economic Interdependence

Economic interdependence emphasizes that economic cooperation leads to peace and security in the region. Nye explained that interdependence could reduce international conflict by "raising its net costs, creating a sense of community, and producing value changes that promote 'integrative solutions' to conflict[14]." The greater the economic ties that exist among states, the lesser that conflict will arise.

Some authors argue that not only is the level of economic interaction important, but also the cost that a state faces during the process of trade. Crescenzi mentions that there are two kinds of costs that a state faces: accepted costs and adaptation costs. An accepted cost is easily expected by a state but adaptation cost is associated with a potential additional cost. Adaptation costs would sometimes change the relationship among states[15].

Economic interdependence is also shown in the East Asian region. Asia experienced an economic miracle since the 1960s. With a growing market in Asia, Asian countries began to create their own economic organizations such as the Association of Southeast Asian Nations (ASEAN) in 1967 and the Asia Pacific Economic Cooperation (APEC) in 1989. These economic organizations, as well as other economic entities, fostered political relations between states. For instance, as Vietnam joined ASEAN, Vietnam finally normalized its relations with United States. Democracy in the Philippines, the ROK, Russia and Taiwan has taken root after their respective economic reforms. China also began to willingly participate in multilateral meetings after it joined APEC and the ASEAN Regional Forum (ARF)[16].

Misperception and Decision Makers

"Perception" is not a passive process of receiving information but an active process of constructing reality. Meaning that there can be discrepancies between perception and reality. And, that gap between the world that actually exists and the world that exists in the mind of the perceiver can be deemed as "misperception".[17] Misperception happens due to largely three reasons: image, signals, and beliefs.

In international relations, complex communication takes place through the sending and receiving of "signals".[18] States send each other signals and at the same time receive signals and make sense out of it. Signals are delivered through statements and behaviors both intentionally and unwittingly.[19] However, decision-makers tend to see what they "expect" to see and can miss or ignore "signals" that do not fit their pre-existing "beliefs".[20] Belief derives from the "image" that one state holds about other states. Decision-makers holds "images" of other states based on their nature, goals, capabilities and the particular events of the past.[21] These images, once formed, become the perceptual filter through which all subsequent information concerning that state must pass and leads to expectations of the other states' action.[22] The image allows decision-makers to go beyond the information readily available and fill in the blanks about the state.[23] This way of perceiving is rational, because intelligent decision-making in the international arena is impossible due to the lack of certain information and variables being available.[24] However, perceiving others through images carry significant costs and a contains a high possibility of misperception, especially, when many interactions are occurring simultaneously among actors – as occurs in international relations.[25]

Fishery Disputes in the Cold War Era (1950-1990)

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ROK-China Fisheries Disputes

During the Cold war era, there were fewer cases of fishery disputes between the ROK and China than in recent years. Among them were minor cases of Korean vessels approaching the East China Motor Trawl Prohibition line, or Mao Tse-teung line, and getting arrested for crossing the border.[26] However, according to Dr. Sun-pyo Kim, the Chinese fishing vessels became more active over time and disputes between the two countries started to become more frequent.[27] Since a fishery agreement came into effect after diplomatic normalization in 1992, the Cold war lacked such a framework.

Although a number of fishery disputes existed during this era, China and the ROK failed to make a concerted effort to solve the problem. This was mainly due to the prevalent structure of the Cold war, under which there was clear division between the Communist and Capitalist nations.[28] Also, the disputes themselves are considered as one part of a wide spectrum of antagonism and disagreement, making it more complex to establish resolutions at that time.[29] This can be best explained by Realism which comprises the concept of “balance of power.” In other words, the states’ goal is to maintain “appropriate” amount of power in the global society.[30]

In the case of China, it kept the “power balance” in the North East Asian region from the capitalist power of the United States. Unlike with the DPRK where China already established diplomatic normalization, the relationship with the ROK was as cold as ice, resulting in no fishery agreements. Since Realism also emphasizes “self-interests” among nations, China’s behavior can be seen as an endeavor of keeping communist values in the region.[31] On the other hand, maritime issues in the Northeast Asian region were becoming more significant over time. This was fuelled by the United Nations Conference on the Law of the Sea (UNCLOS) where sovereignty over marine resources was legitimized.[32] This change influenced states with a new paradigm of maritime regions, where states’ coastal areas were perceived as another form of “security”.

To sum up, the theory of realism best explains China’s behavior toward fishery disputes with ROK. Due to the legacy of the Cold War, China and the ROK was cautious about each other’s maritime boundaries, substantiated by fewer fishery disputes. At that time the concept of the EEZ was understood more in the context of security than economic interest owing to the Cold War structure. Furthermore, the theory of economic interdependence fails to describe the relationship between China and the ROK, because during the era there was little diplomatic or economic relations between both nations. Also, since there were definite “images” that indicated China was a communist country and the ROK was a capitalist one, the situation lacked wrong signaling between them. The definite Cold War paradigm made a theory of misperception hard to explain in this era. The situation that both countries considered each other as an opponent in the Cold war was not misperception, but rather it accurately captured the regional situation.

China’s Fishery Policy towards the DPRK

During the Cold War era, China and the DPRK had highly interconnected stances and defined themselves as a “blood alliance”. China’s aid in the Korean War and mutual assistance in the anti-Japanese movement built a strong “militant friendship” between itself and the DPRK. Chinese premier, Zhou Enlai, and People’s Liberation Army Commander in chief, Marshal Zhu De, used the metaphor “as close as to lips to teeth” which clearly shows the strategic importance of the DPRK to China[33] as a “buffer state” against hostile external powers. [34] Therefore, China made a great effort to create harmonious stances on security issues with DPRK thereby creating more solid interconnections and allies between them. This special relationship between China and the DPRK has also contributed to the fishery issue in the region.

Starting from the 1960s, the domestic fishing industry began to rapidly expand in the DPRK, as the government invested in vessels, equipment and port facilities. Hence, the total marine products increased from 465,000 tonnes in 1960 to 1.14 million tonnes in 1970. At the beginning of the 1970s, various states began to identify and pursue national interests from marine resources.[35] The DPRK was not an exception. Starting with the launching of the Third Seven-Year Plan, the DPRK called for modernization of its fishing industry through increasing the number and size of the fishing vessels, introducing modern fishing implements, and modernizing cold-storage and processing facilities to effectively manage and process the catches.

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As the DPRK's interests increased in the fishing industry, China and the DPRK developed disputes. However, these minor skirmishes over fishing did not become a major dispute. Any possible problems were overwritten due to the overarching structure of communist versus Western division at that time.[36] At that time, the DPRK was in a conflicting situation with the ROK on the Korean peninsula. And to "survive" and protect themselves in the situation, the DPRK had to closely ally with the strongest communist state within Asia, China. In other words, the maintenance of friendship with China was quintessential for the DPRK for their "security". Fishery issues were considered as incredibly minor compared to the other more pressing security concerns at that time. Fishery skirmishes could not derogate the blood alliance between the DPRK and China. At that time, both China and the DPRK's priority was to keep a balance of power with the Western bloc. Such special relations of "as close as lips and teeth" between DPRK and China prevented them from putting their relationship in a dispute mode. To recap, shared security concerns and interests, the survival of the communist bloc, and maintenance of national security made their alliance firm enough to overcome minor fishery disputes.

Fishery Disputes in the Post Cold War Era (1991-2009)

China's Fishery Policy toward ROK

As the Chinese fishing boats sailed to the shore of the ROK during the post Cold War era (1991~2010), fishery disputes between the two countries came to the fore. The EEZ boundary was established in consensus but the joint fishing zone was still maintained by the two governments' 'ambiguous' negotiation. Chinese fishing boats without license crowded in the joint fishing zone and over-caught tonnes of marine resources[37]. China and the ROK went through conversations to relieve illegal fishing conducted by Chinese fishermen in the West Sea of the ROK. Consequently, "Agreement of Fisheries between the Republic of Korea and China" was initiated in November 1998 and ratified in July 30th 2001[38].

It seemed as if the two countries were cooperative in dealing with the illegal fishery problem because fishery disputes did not seem to create major diplomatic problems. But clearly, there have been continuous fishery disputes. Illegal fishing reached its apex in 2005 at which time the ROK decided to reduce the number of the Chinese fishing vessels and total allowable catch (TAC) granted for them in the EEZ of the ROK[39]. Also there have been 2,464 reported cases of Chinese fishing vessels engaging in illegal fishing in the EEZ of the ROK between 2006 - 2010 according to the data provided by the Korea Coast Guard. However there were no cases of ROK fishermen entering China's EEZ since 2008.

It is important for the ROK government to maintain a good diplomatic relationship with China for its economic national interests. The trade volume of China and the ROK was \$6.38 billion dollars in 1992 and increased 35 times more to \$220.62 billion dollars in 2011. Today, the ROK's number one trading country is China, surpassing the United States[40]. Thus, the ROK government would not want to trouble its relationship with China concerning fishery disputes. This is shown by the Korean government's attitude in dealing with illegal fishing by Chinese fishermen. For instance, in September 2008, a Korean marine officer was killed while trying to arrest an illegal Chinese fishing boat near the island of Gageo. However, Korean investigation authorities did not even charge the Chinese fisherman of murder. The Korean government's response was that "it was afraid a strong punishment would exacerbate its relationship with China." This incident resembled the climax of the fishery dispute between China and Korea. The Korean media sharply criticized the Korean government for its 'cream diplomacy'[41]. Another case that shows the Korean government's cream diplomacy would be in 2010 when Chinese sailors struck a Korean patrol ship but were subsequently released to China without any punishment. The Korean Ministry of Foreign Affairs and Trade explained that China and Korea decided to wrap up the case 'amicably'[42].

In contrast, the Chinese government's response to fishery dispute was quite contrasting to that of the Korean government's. Whenever the ROK criticized Chinese fishermen's invasion in the ROK EEZ, the Chinese government would respond with indifference - or even demand for 'fair treatment' to its sailors. For instance when marine officer Park died during the arrest of illegal Chinese fishermen in 2008, the Ministry of Foreign Affairs of the People's Republic of China delayed an official apology to the Korean government but requested to protect the legal rights of its own fishermen[43]. China's response is clearly comparable from that to the DPRK. In the perspective of economic

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interdependence, China's main goal is to secure marine resources and promote economic development. China's economic development strongly depends on its marine industry[44]. However, as fishery depletion exacerbated in 1990s, China declared territorial sea law in 1993 to secure marine resources. It also began to expand to South Chinese Sea and East Chinese Sea that are assumed to have diverse marine resources[45].

China's Fishery Policy toward DPRK

In the Post Cold War period, China began to open its doors. These were the efforts to seek for the better methods to develop one's own state, in which made China to pursue economic cooperation with various states as a prior concern for foreign policy. However, the conversion of China's policy goals created cracks between China and DPRK's alliance. In August 1992, Sino-ROK normalization took place because both China and the ROK felt the need to improve their relationship in order to gain economic benefits. From the DPRK's perspective this normalization was regarded as a betrayal. Thereby since then, the DPRK began to gradually distance from China and diversify the source of economic assistance.[46] It is also largely related to the DPRK's post-Cold War foreign policy, when the ultimate goal was to obtain as much economic assistance. It seemed, at first, as if the DPRK had succeeded in extracting economic benefits from major powers such as the United States and the ROK. However, in 1999, the DPRK refused the inspection of a suspect underground construction site and it led to isolation of the DPRK from other donors.[47] Moreover, the murder case of the Kumgang mountain tourism in 2008, the Cheonan ship incident, and the second attempt of a nuclear test in 2009 deteriorated the DPRK's relations with other states, making it give up the 'dispersion of reliance' and cling to China's assistance only.[48] Therefore, even though the DPRK had discontent about Sino-ROK normalization, it had to endure it to get economic assistance from China.

However, China also appeared to be tied up with the DPRK as an economic hostage.[49] China feared of the collapse of the DPRK, because the stability of the DPRK was inevitable for the economic development of China. However, China felt burden of being the DPRK's only economic patron. So, China desired to adjust their relations from 'full assistance to DPRK' to 'mutual relations on market-oriented basis'. Change in China's economic relations with the DPRK is substantiated by the fact that China's share of North Korea's foreign trade increased from 20 percent in 2000 to 28 percent in 2001.[50]

The change of China-DPRK relations from a traditional notion of blood alliance to mutual economic interdependence has also contributed to the reshaping of their fishery relations. In 1992, there was an incident that exactly shows how the blood alliance shattered and transformed in to more economic and market oriented relations that can benefit their own states. In August 1992, North Korean gunboats opened fire on Chinese fishing vessels in the Yellow Sea. This resulted in casualties and it was suspected as a DPRK expression of discontent about China-ROK normalization.[51]

The emergence of a new ocean regime under UNCLOS III further developed China-DPRK fishery relations. The DPRK also signed the UNCLOS, though without ratifying it, to secure their economic benefits from the EEZ. "None of the North-east Asian states now oppose this trend, and (even)...North Korea have joined the many other states that have passed legislation putting such a zone into effect".[52] The EEZ arose as a new source of fishery disputes with China due to an overlapping zone. Though, the DPRK was economically dependent on China, at times DPRK took actions against Chinese illegal fishery in their coastal water to protect the fishing reserves. The DPRK took such action because illegal fishing had critical effects on national interests. "Since 2000, North Korea's fishery products have accounted for about 20 percent of its total exports; 75 percent of the exports have gone to South Korea in the form of inter-Korean trade." [53] However, it is interesting that the issue of illegal fishery between China-DPRK did not escalate into to serious conflicts.

This peculiar circumstance in fishery issues was possible due to the economic interdependence between China-DPRK. The DPRK's high dependence on China's economic assistance made them endure much of the cases of illegal fishing that took place in their regions. Bringing up the case as diplomatic issue can deteriorate economic relations, so the DPRK did not want risk it. It was also the same for China, because to pursue economic development, China had to maintain a favorable economic relationship with North Korea. China had vast interest in the marine resources in North Korea, both living and non-living especially the deep seabed mineral resources and ports. North Korea would lend Najin port and Chungjin port to China for 50 years, which implies that China gains

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much from China-DPRK economic relations. Hence, China preferred to maintain good relations with the DPRK and it is well reflected in China's attitude in fishery disputes. China showed cooperative and less violent responses toward the DPRK than they did with the ROK.

Therefore, both the DPRK and China continued to focus more on economic relations, trying to show a harmonious approach to fishery issues. Even though the changed relations brought up the possibilities for an increase of illegal fishery disputes, the DPRK and China did not want to risk their cooperative economic relations.

Fishery Disputes in 2010-2012

Illegal Fishery Disputes Between China-ROK

Until 2010, Chinese illegal fishing in the EEZ of ROK was in decline. However, in 2011 it drastically rose and 504 illegal fishing cases were reported in 2012.[54] The rise in illegal fishing and lack of dispute resolution between China-ROK can be explained by the "misperception theory".

While Chinese illegal fishing techniques are getting more intelligent, the ROK government has not developed appropriate countermeasure to the problem.[55] And such attitude of the ROK unintentionally and unwittingly sends out a "signal", which contributes to the Chinese government's perception of the ROK. When illegal fishing vessels are captured by coastal guards, not only the vessels but also the fishing instruments are confiscated. However, the fishermen can take that back and even the fish they caught when they pay the security – a maximum of one hundred million won. Usually the benefits that accrue to fishermen by over-fishing outweigh the security they should pay, thus they find no reason to stop illegal fishing.[56] According to the analysis by the Ministry of Foreign Affairs and Trade on other countries' regulations on illegal fishing based on the data of the UN FAO, Brazil imposes maximum fines of 30 billion won, commensurate to 300 hundred times larger than the ROK. Indonesia imposes a maximum 2.6 billion won or charges 6 years of imprisonment – and France imposes an additional 2.31 million won per 100kg of overfishing on top of a fine. A high officer of MOFAT said that the government sees illegal fishing as a serious national security concern and feels the need to take stronger measures to stop it.[57] However, amendments have not been made, meaning that ROK's countermeasures are still comparatively weak. Therefore, China thinks that fishery disputes are unlikely to significantly affect overall ties with the ROK.

Moreover, lack of investment to coast guarding reinforces China's perception that fishery disputes are not a serious prior concern and allows China to remain uncooperative. In the status quo, the ROK coast guard's capability is lagging behind and their equipment is obsolete. Since 2001, the government has promised to increase the coast guards by 47 in the Yellow Sea and expand investment in equipment. However, this promise was not kept due to the lack of a governmental budget. So, still only 200 guards are in charge of inspecting 2000 km² ranging from Baengnyeongdo to Marado.[58] Fishery inspection boats are too slow and small, so there is difficulty in capturing and casting out the Chinese illegal fishing vessels.[59] Thus, the ROK's poor coast guard capability causes China to have less incentive to rein in illegal fishing.

China expects that the ROK will behave in certain ways that fit with their 'image' of the ROK. This is well documented in the fishery disputes. In December 2010 a Chinese fishing vessel capsized while running away from seizure after being found illegally fishing in the ROK EEZ. In the incident, one Chinese fisherman died, another disappeared and four Korean coast guards were injured.[60] However, this is the situation where the proverb 'the thief turns on the master with a club' fits. The Chinese Foreign Ministry, on December 21st, blamed the ROK Coast Guard for the incident, demanding punishment of the responsible personnel and compensation for the damage.[61] The reason why China could show this audacious attitude was that there was a belief that the ROK would not protest.[62]

Furthermore, such perceptions even led China to filter or neglect the information that does not fit with the "image" they have. In December 2011, a Chinese fisherman stabbed a ROK coast guard officer to death in an operation to apprehend a Chinese vessel illegally fishing in the ROK EEZ. The ROK government lodged "strong protest" over the incident and blamed the Chinese government for failing to rein in illegal fishing by their nationals.[63] However, Chinese foreign policy decision-makers disregarded the strong protest of the ROK, because it was discrepant

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information from the image that they held.[64] So despite the strong protest from the ROK, China maintained their audacious attitude, because China had expectations that the ROK will not resort to violent or aggressive measures. The image of the ROK as a democratic country that holds up human rights made China expect that the ROK would not persecute its nationals, but also the fact that the ROK is a signatory state of United Nations Convention on Law of Seas affected China's expectations. Coastal state penalties for violations of fisheries laws and regulations in the EEZ may not include imprisonment, in the absence of agreements to the contrary by the states concerned, or any form of corporal punishment (Article 73.3), meaning that the ROK can only resort to arrest, detention and monetary penalty.[65] Chinese Foreign Ministry spokesman Liu Weimin stated "We also hope the ROK side can properly protect the legitimate rights of Chinese fishermen and treat them in a humane way" rather than expressing sincere apology.[66]

After the incident, the ROK government suggested the establishment of a 'High-Level Permanent Consultative Body between China-ROK' in High-Level Strategic Talks on December 2011 to end illegal fishery. But the answer that came back from Zhang Zhijun, Vice Minister of Foreign Affairs, who attended the talk, was only "we are reviewing the suggestion internally".[67] In May 2012, one ROK patrol ship got attacked by Chinese illegal fishermen again and the voices asking for the establishment of the forum to discuss illegal fishery became larger. However, according to Han Hye Jin, spokesmen of MOFAT, "China stated it takes time to establish the consultative body and there hasn't been concrete discussions on it." Meaning that 4 months later, nothing had changed. It was not only China that did not change but also the ROK government. The ROK government promised to increase the support and budget directed to coast guarding for ten years. However, this turned out to be an empty promise, substantiated by the fact that there were only 7 protective gears when 16 guards were on board at the time of the aforementioned attack[68] Empty promises only send out a signal to China that the ROK itself is not prioritizing the issue.

Illegal Fishery Dispute between China-DPRK

Unlike the ROK, there are less fisheries disputes between China and the DPRK. Even if it takes place, it does not set off diplomatic tensions. Again it can be explained through the perception theory; strong signaling of the DPRK and perception of image China holds about the DPRK. Before examining it with perception theory, we should be aware of the practice taking place between the two countries; one of the reasons why there are less visible fishery disputes. For a long period of time there has been an unofficial custom that when Chinese fisherman pays certain amount of money, the DPRK's marine forces provide them with tickets certifying that they are allowed to operate in the EEZ of the DPRK by condoning their activity. The custom first took place with the suggestion of the DPRK to China as they were struggling with a foreign exchange crisis.[69] It has been regarded as mutually beneficial for both parties.[70] Aside from the long custom between China and the DPRK, China's effort to reduce illegal fishery and develop cooperative actions with the DPRK explains the low rate of visible fisheries disputes. And, the driving factors for China to take such measures are the DPRK's strong reactions towards China's illegal fisheries and China's general perception of "image" about the DPRK.

The DPRK, similar with the ROK, has been frustrated with the flow of Chinese illegal fishing since 2004. Yet, as the DPRK had to rely on China for food and energy supply, they, at first, leaned to passive control of illegal fishing. However, when Chinese fishing started to affect their fishery products exports negatively, the DPRK dramatically changed their position. They now confront Chinese illegal fishing squarely.^[71] It has been reported that the DPRK's patrol ships are armed with guns for the purpose of capturing North Korean defectors and that those guns are also being used to shoot Chinese illegal fishing vessels.[72] According to professor Kang, "DPRK immediately shoots at the moment Chinese illegal fishing vessel enters into the Yellow Sea."^[73] From late 2005 to 2006, regarding Chinese illegal fisheries, the DPRK has captured 6 Chinese fishing vessels, shot and injured 4 fishermen, and killed 2 fishermen.^[74] Such strong measures sent a strong signal to China that the DPRK views illegal fishing negatively and takes it seriously, indicating that they will not hesitate to take harsh measures. According to a North Korean defector, Chinese vessels call DPRK coast guards "pirates" and even fear approaching the coasts of North Korea.[75]

Also there is the well known case of a DPRK patrol craft capturing three Chinese fishing vessels operating in waters separating the northeastern coast of China from the DPRK on May 8. The patrol ship held total of 29 sailors captive at gunpoint and required ship-owners to pay 2.7 million yuan (500 million won) each for the release.^[76] This differs

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from the ROK where it imposes a maximum one billion won fine towards illegal fishing vessels.[77] Additionally, the DPRK has not yet ratified the United Nations Convention on Law of Seas, that is to say, they do not have responsibility to abide by the treaty. Especially regarding article 73.3, they do not have to only resort to arrest, detention and monetary penalty but is free to imprison and practice corporal punishment towards illegal fishing. This again contributes to the formation of “image” that the DPRK is capable of taking strong actions regarding fishery disputes.

Along with the DPRK’s strong signaling, China also refrains from actions that can threaten the economic stability of the DPRK. Unlike other 6 party talk countries, Chinese policymakers have consistently resisted military action, severe economic sanctions, and other developments that threaten instability towards the DPRK which can further spur instability on the Korean peninsula. And, as fishery policy takes part within the framework of China’s policy towards the DPRK, China is unwilling to set off diplomatic conflicts with the DPRK unlike with the ROK.[78]

In 2006, China created the “China-DPRK emergent notification on strengthening fishing vessel management in alteration waters boundary” which has the legislative power forbidding any fishing vessels from entering the territorial sea of the DPRK.^[79] And, regarding the capturing of a Chinese illegal fishing vessel by DPRK in May 2012, Chinese Ministry of Foreign Affairs spokesman Hong Lei announced at a briefing after the incident that “negotiators were maintaining communication with the DPRK’s side through relevant channels and are hoping to resolve the issue very soon”.^[80] Such a statement is in stark contrast to China’s response to the ROK in fishery disputes. Finally, the incident that took place in June 28, 2012, when DPRK swung an iron mace towards a Chinese fishing vessel illegally operating in the East coast, best displays China’s cooperative attitude towards DPRK. After the incident, China declared the “Regulation on deep sea fishery program management in the East Coast of DPRK” which will only allow certified Chinese fishing vessels to operate on the East coast of the DPRK[81] Also, China’s agricultural district claimed that Chinese illegal fishery will not only be controlled by the DPRK but they themselves will strictly reign in illegal fishing vessels by implementing preventive measures.[82]

Conclusion

The Yellow Sea is renowned for possession of a variety of fishery resources. However, paradoxically, its richness is also a potential source of conflict in the region. In the status quo, China and the two Koreas are facing the problem of EEZ delimitations and depletion of fisheries due to overfishing as the coastal states of the Yellow Sea. Especially, Chinese illegal fishing vessels’ intrusion into the EEZ of the ROK and the DPRK are increasing tensions in the region and threatening regional maritime security. There are prevailing fears about fishery disputes escalating up to diplomatic conflicts. A collision between fishing vessels and coast guards could expand to zero-sum competition for maximization of national interest in the Yellow Sea.

The ideological conflict during the Cold War restrained fishery disputes between China and two Koreas, but based on different reasons. Due to the political division and antagonism, there was almost no case of fishery disputes between China and the ROK, because both nations refrained from entering each other’s waters in the early Cold War period. In the 1970s maritime issues arose in the Yellow Sea. However, it was hard for China and the ROK to resolve fishery disputes or cooperate for fishery management during the Cold War, because China and the ROK’s diplomatic relationship was closed. On the other hand, in the case of China-DPRK relations, fishery disputes were contained due to the overarching structure of Cold War geopolitics. As with other countries, the DPRK also had great interest in marine resources in 1970s. The DPRK expanded the fishery industry by increasing the number and size of the fishing vessels, and via modernizing equipment and port facilities. Hence, there were several fishery skirmishes on the Yellow Sea between China and DPRK in the later part of the Cold War. However, at that time, both China and the DPRK’s priority was to keep the balance of power in the region – and their special relationship of “as close as lips and teeth” prevented them from major dispute.

In the post-Cold War era, fishery disputes were also not highlighted much compared to the other periods of time. This was a general geopolitical period where new forms of relations began to emerge and transform states. The states that strived hard to adjust to the changing relations began to face normalization and more market-oriented economic policies. Therefore, the two Koreas focused on creating cooperative relations with China rather than creating

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disputes. There were a number of fishery issues that might have led to serious disputes with China. However, both Koreas did not want to risk cutting the economic benefits that emerged from the relations with China. Economic interdependence theory, therefore, can be applied, in the sense that greater economic ties among states promoted fewer conflicts in the region.

However, China's attitude towards two Koreas from 2010 to 2012 cannot be fully explained by the previous two theories: the realist approach and economic interdependence approach. Realists see fishery disputes in line with the China's acute concern with traditional notions of sovereignty and desire to change the territorial status quo. However, this perspective does not fully provide the reason why China is taking a different approach towards the ROK and the DPRK. Political alignment under the Cold War structure is no longer a dominating factor that shapes China's foreign policy toward the DPRK and ROK. Since the 1992 ROK-China normalization, China has adopted a 'two-Koreas-policy' and developed a strategic partnership with the ROK. Beijing even distanced itself from the DPRK when there were nuclear developments, raising questions about their "lips and teeth" relationship. Hence, the realist approach is not sufficient to explain China's two different responses in the recent period.

On the other hand, liberal institutionalists argue economic interdependence curtails diplomatic tension between China and two Koreas. However, as the depletion of the fishing reserves in China's water aggravates, the Chinese government overlooks illegal fishing from its own operators, which results in the rising number of fishery disputes nowadays. Hence, the expectation of cooperative diplomatic relations between China and two Koreas based on economic interdependence does not explain recent fierce fishery disputes. Furthermore, economic interdependence theory has limitations in explaining China's different actions toward the two Koreas because in fact economic interdependence between China and South Korea outpace that between China and North Korea. Due to these limitations, misperception theory, which emphasizes the signaling of ROK and DPRK which effects change in China's attitude, would be the most eligible theory to analyze China's different actions toward the two Koreas in fishery issues.

This research suggests that reducing "misperception" among states, especially between China and the ROK is critical for reducing fisheries disputes in the present situation. The UNCLOS regime has failed to be applied in Northeast Asia region[83] such that development of maritime governance in Northeast Asia is needed that has legal force to manage disputes effectively and ultimately eradicate illegal fishing from taking place. To do so, it requires all states' progressive and prolonged effort[84] and the establishment of a joint fisheries management agreement.

To solve the problem all parties should forge a compromise on the boundaries of joint management, distribute shared roles and costs, sign joint fisheries management agreements and finally develop any agreements into an operating system.[85] Such basic trilateral co-operation will bring about a series of benefits. First, it will control the excessive haul of Chinese vessels by binding them within the joint management program. Second, with the operation of a joint fishery dispute resolution and monitoring system, a self-working preventive measure to cut down not only the maritime budget of each state but also illegal fishing will take place. However, for these benefits to be fulfilled, a more systemic and transnational organization modeled on NEAFC, NAFO and ASEAN should be created so that more objective and prolonged research and cooperation on fisheries issues can be pursued[86] to finally address the tragedy of the commons and usher in peaceful prosperity in the Yellow Sea.

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