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# LAW ENFORCEMENT OVER FISHERY ACTIVITIES IN CONTESTED EEZS

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## Abstract

*The Exclusive Economic Zone (EEZ) was introduced with the adoption of the United Nations Convention on the Law of the Sea. In the vast waters extending from the baselines to 200 nautical miles, the Convention allows coastal States to enjoy sovereign rights over—fishing resources but has created delimitation issues with neighboring States. Law enforcement is vital to maintain fishery order for sustainable utilization of resources in EEZs, even in the contested maritime zones. Therefore, in this paper, the mechanism of law enforcement in the complicated contested maritime zone is described, taking the Japan-China Fisheries Agreement as an example of a possible practical solution.*

**Keywords** : fishery agreement jurisdiction, Law enforcement, overlapping EEZs

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## I. INTRODUCTION

The United Nations Convention of the Law of the Sea (hereinafter, “LOSC”) was adopted in 1982 and came into force in 1994. The Convention was adopted after more than 30 years of discussions and negotiations by more than 160 States. The Convention, *inter alia*, codified written and unwritten law and integrated four 1958 Geneva Conventions on the Law of the Sea. Thus, the Law of the Sea Convention is regarded as the constitution at sea.

One of the most significant features of the Convention was the introduction of 200 nautical miles (NM) of Exclusive Economic Zones (EEZs). The EEZ is not a part of the territorial sea and neither does it fall under the sovereignty of the coastal State. On the other hand, coastal States have the right to the natural resources of the waters, seabed, and subsoil and may utilize natural resources, including fishery and oil and gas resources, in the vast waters of their EEZs for further economic development. It is the *sui generis* zone and, thus, significant for the coastal States.

The EEZs, however, brought the coastal States not only natural resources but issues of delimitation. Due to the presence of EEZ of the opposite or neighboring States, States needed to delimit their EEZs to less than 200 NM. The introduction of the EEZ reduced almost one-third of the tra-

ditional high seas which was governed by the freedom of high sea. Some semi-enclosed seas, such as the Baltic Sea and the East China Sea, mostly became a part of the EEZ of coastal States.

Besides, the delimitation of the EEZs is politically sensitive. Delimitation of EEZ often means setting out the geographical scope of waters, in which natural resources are available for the coastal States. Therefore, the negotiation process is often challenging, particularly for those zones having abundant resources. This can be explained using the perfect example of the East China Sea. Traditionally, the East China Sea serves as fishing grounds as it is rich in fishery resources. In addition, the United Nations Economic Commission for Asia and the Far East (ECAFE) reported that the East China Sea has the potential richest seabed with oil and hydrocarbon deposits in 1969.

Regarding the delimitation, the Japanese government considers median lines from the baselines for the appropriate and equitable delimitation of EEZ; this is reflected in the domestic law. In comparison, the Chinese law simply stipulates the Chinese EEZ as 200 NM from its baselines and, in the case of overlapping with adjacent or opposite coasts, delimitation “shall be determined under the principle of equity and based on the international law” without further detailed guidance. The distance between Japan and China in the East China Sea is less than 400 NM and different justification was claimed; hence, this raised the delimitation issue.

If there is no agreed borderline of EEZ between two States, how can a State maintain legal order in the overlapping zone through law enforcement operations? The role of law enforcement activities is to put legal order in reality through, *inter alia*, deterring violations of applicable laws and regulations by patrolling and showing its presence and suppressing and addressing wrongdoers. Before the introduction of the EEZ, for example, fishery activities in the East China Sea used to be governed by the freedom of high seas and controlled by the principle of the flag state jurisdiction. After the Law of the Sea Convention came into effect, the legal order in EEZs is to be governed by the coastal State in accordance with the legal regime of the EEZ. Without any clear delimitation line of the EEZ, what legal regime should be applied, and which coastal State may exercise jurisdiction over infringement in the overlapping EEZ need to be elucidated.

This paper examines such issues that emerged with the adoption of the LOSC and that are persistent in the overlapping EEZ. This paper reviews the rights and duties of States in the EEZ, including law enforcement, and duties of coastal States in overlapping maritime zones under the Convention. Then, as a possible solution, the Japan-China fishery agreement is introduced

to examine its role in maintaining the legal order of fishery activities at sea. This Agreement has two functions, namely, (1) to provide a framework for sustainable fishery activities and (2) to clarify law enforcement mechanisms. Although it is essential to set out a sustainable standard for fishery activities, this paper mainly highlights the mechanisms of the maritime law enforcement aspect, which practically realize the standard.

## **II. RIGHTS AND DUTIES OF THE COASTAL STATE IN EEZ UNDER THE LAW OF THE SEA CONVENTION**

### **A. RIGHTS AND DUTIES OVER NATURAL RESOURCES**

The LOSC introduced a new maritime zone, the EEZ, which is up to 200 NM from the baselines. In this zone, coastal States have sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil. Besides, the coastal States have jurisdiction over artificial islands, installations and structures, marine scientific research, and protection and preservation of the marine environment.

As to the living resources in the EEZ, Article 61 obligates coastal State to conserve in the EEZ. The Coastal State needs to take conservation and management measures to avoid endangering living resources through over-exploitation. Such measures include setting out the maximum sustainable yield based upon the best scientific research available, and cooperate in the region or global level, if appropriate. For stocks occurring within the EEZs of two or more coastal States or both within the EEZ and in an area beyond and adjacent to it, highly migratory species, marine mammals, anadromous stocks, and catadromous species have their own rules for conservation and management. In contrast, sedentary species follow the regime of the Continental Shelf in Part XI.

When the use of EEZ overlaps with other States, “due regard” obligation comes into play. Article 56 provides “in exercising its rights and performing its duties under this Convention in the exclusive economic zone the coastal State shall have due regard to the rights and duties of other States.” The high seas rules, including freedom of navigation, also apply to the EEZ by virtue of Article 58(2). When a State, other than the coastal State, enjoys the rights applied in the high sea, the State has due regard obligation to the rights and duties of the coastal State and comply with laws and regulations adopted by the coastal State. Typical examples of overlapping interests are the navigation of ships versus

laying of fishing gears and naval maneuver exercises. Therefore, “due regard” obligation is imposed on both coastal State and other States in the EEZ in order to balance the interests of these States.

Exercise jurisdiction by the coastal State in its EEZ is set out in Article 73. This Article allows coastal States to take law enforcement measures with regard to the sovereign rights to explore, exploit, conserve, and manage the living resources in EEZs. The domestic laws and regulations relating to fishery activities of coastal States are applicable in its EEZ, and law enforcement activities are “necessary to ensure compliance” with such laws and regulations as prescribed in the Article. In case of violation of these domestic laws, a coastal State may take measures including boarding, inspection, arrest, and judicial proceedings. If appropriate financial security or bond is posted, the coastal State needs to apply the bond scheme, where detained boats shall be released promptly. Besides, the penalty is restricted to monetary punishment and does not include imprisonment or any corporal punishment. In cases of arrest or detention, the coastal State notifies the flag State regarding measures taken and penalties imposed.

## B. RIGHTS AND DUTIES OF STATES IN THE DELIMITATION OF EEZS

Article 74 stipulates “(t)he delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement.” When no agreement can be reached, relevant States may proceed to measures provided in Part XV, “Settlement of Disputes,” or to “enter into a provisional agreement of practical nature.” During this transitional period, States concerned are obliged not to jeopardize or hamper the process of reaching the final agreement, which often referred to as the duty to “self-restraint.”

In this paper, a pertinent question is whether or not law enforcement activities in contested water jeopardize or hamper the process of reaching the final agreement. Article 74 does not provide any guidance on what activities can be considered as a breach of this duty. For example, if Japanese or Chinese authorities exercise jurisdiction over a foreign fishery boat in overlapping zones, the question is whether or not it would be a breach of the duty to self-restraint.

International court cases have suggested the standard of this duty. In the Suriname-Guyana Award, the Arbitral Tribunal saw that, in the first place, the duty does not entirely preclude activities by States in the contested area.

On the other hand, the Tribunal found that unilateral actions that cause a physical change to the marine environment would jeopardize or hamper the process of reaching the final agreement on the delimitation of maritime

boundary and are, thus, not permissible. This decision was consistent with that of the Aegean Sea Case between Greece and Turkey. Greece requested the International Court of Justice to direct, *inter alia*, refrain from all exploration activities or any scientific research on the disputed continental shelf. Turkey carried out a seismic research activity by a ship, including using small explosives to send sound waves to the seabed. The International Court of Justice denied the request since the research did not risk any physical damage to seabed and subsoil and natural resources therein and was of temporary nature. This stance was maintained in the Arbitral Tribunal.

Next, the Ghana and Cote d'Ivoire case addressed this duty, too. Ghana and Cote d'Ivoire submitted their disputes on territorial sea and EEZ to the Special Chamber of the International Tribunal for Law of the Sea (ITLOS), and Côte d'Ivoire requested provisional measures to suspend Ghana's activities for natural resources. In the order of the provisional measures in 2015, the Special Chamber of ITLOS pointed out that unilateral activities to gain information in the disputed area and the use of such information may cause irreversible risk to the other. Yet, it did not order to stop the existing activities but only new activities. In the judgment of the case in 2017, the Special Chamber of the Tribunal avoided stipulating the standard of violation and did not find a breach of duty to self-restraint in Ghana's unilateral activities. However, Judge Paik, in his separate opinion, argued that activities causing a physical change to the marine environment is an element for consideration. He contended it is a "result-oriented notion" and the necessity to consider whether the actions in question would endanger the process of reaching a final agreement. In other words, it is the case-by-case basis to determine whether activities in question amount to jeopardizing or hampering the process of reaching the final agreement.

Considering these points, law enforcement activities in the contested maritime zone would be a breach of duty of self-restraint. Such activities do not cause a physical change to the marine environment, in general. Therefore, law enforcement activities do not meet the standard of a physical change to the marine environment. On the other hand, law enforcement activities clearly express that the contested area is under the jurisdiction of one State since law enforcement is based on State jurisdiction. This claim would be provocative to the other party and make the negotiation process difficult. Thus, reaching the final agreement could be jeopardized or hampered through law enforcement activities.

### III. THE FUNCTION OF JAPAN-CHINA FISHERY AGREEMENT

Now, a pertinent question arises on how a coastal State can conduct law enforcement operations to maintain legal and fishery order in contested waters. A coastal State has sovereign rights to explore, exploit, conserve, and manage living resources in the EEZ and, to ensure compliance of laws and regulations, the right to carry out law enforcement activities. Nevertheless, in overlapping maritime zones, law enforcement activities are often challenging since those activities could be a breach of international law and raise diplomatic tension. As a result, the coastal State may hesitate to take law enforcement measures against infringement. On the other hand, if no law enforcement activities are carried out, there will be no power to maintain the legal order, which would possibly lead to lawlessness. This paper analyzes the law enforcement mechanism of the Japan-China Fishery Agreement as an example of addressing this legal complexity in overlapping maritime zones to maintain legal order in the contested area of East China Sea.

#### A. 1955 AGREEMENT

The Agreement originated before the adoption of the Law of the Sea Convention. Around the end of the Korean Peninsula War in the 1950s, more than 160 Japanese fishery fleets and 1,900 fishers were detained by Chinese voluntary corps on the high seas off the Chinese coast without clear explanations. Since the Japanese government had not recognized the then Chinese Communist government, the Japanese government could not take effective protest measures without proper diplomatic relations. A Japanese non-government organization, the Japan-China Fisheries Enterprise Association, initiated the negotiation process with the Chinese side, the China Fisheries Council.

The first private Agreement was adopted in 1955 (hereinafter, “55 Agreement”) to ensure the safety of fishery operations and avoid detentions and maintain freedom of high seas, including fishery. The 55 Agreement was applied to the high seas of the East China Sea and the Yellow Sea and, *inter alia*, designated six fishery zones for trawling to restrict fishery activities and promoted cooperation in case of accidents. Fishery councils, representing both States, took responsibility to supervise fishers for compliance of the Agreement, and in case of breach of trawling operations, such incidents were to be reported to the other party, which reported back the results of the investigation. This mechanism ensured enforcement jurisdiction by the flag state. The Agreement was renewed, and a series of revised Agreements were adopted in 1963 and 1965, respectively; however, the framework of the Agreement was maintained until the 70s and influenced subsequent intergovernment-

tal Agreements. All these Agreements were provisional and private Agreements, but it secured the safety of fishery operations in the East China Sea.

## B. 1975 AGREEMENT

The first formal intergovernmental agreement was concluded later in 1975 (hereinafter, “75 Agreement”) after the Joint Communiqué of the Government of Japan and the Government of the People’s Republic of China was signed in 1972. This 75 Agreement basically inherited the existing fishing order rather than providing a completely new fisheries regime. Nevertheless, this Agreement was significant since both governments officially recognized the existing fishery order, in particular, the following points.

Firstly, the 75 Agreement shelved territorial disputes in the Senkaku Islands and delimitation of the continental shelf between two countries. The Chinese government had put forward its claim on Senkaku Islands after the ECAFE suggested potential oil and gas reservoirs in the East China Sea in 1968. Therefore, the Agreement applied to the high seas of the Yellow Sea and the East China Sea north of the Latitude 27 degrees North and excluded off the Senkaku Islands and Japanese coastal areas. Article 1 of this Agreement stipulates, “(n)o provision of this Agreement shall be deemed to prejudice their respective positions on maritime jurisdiction.”

Second, protected areas from fisheries activities were taken over in this Agreement. During the negotiation, the Chinese delegation claimed the succession of the unilaterally claimed security zones, namely the Military Warning Zone in the Bohai Sea, the Military Navigational Zone in the south of Shanghai, and Military Operation Zones in the north of Taiwan. The Japanese government did not recognize these zones mainly due to inconsistency with international norms, including the freedom of high seas. Besides, the security situations in the East China Sea and the Yellow sea had been substantially improved in the mid-70s compared with that of the 50s, and the legitimacy of such zones seemed illogical. On the other hand, early adoption of the Agreement was essential for the safety and reasonable exploitation of fish resources. Therefore, the Japanese government reserved its stance on these military zones but decided pragmatically to deem these areas as protected areas for fishery resources and prohibited fishery operations.

Third, regarding the enforcement mechanism, both sides agreed with the principle of the flag state jurisdiction. Each party instructed and supervised its fishery fleets to comply with the 75 Agreement faithfully and, in case of breach by domestic fishers, punished them. In case



of breach by foreign fishers, each State reported the breach to the other party, which, in turn, reported back the results of the investigation. Each State was not allowed to take enforcement measures such as stopping and warning the breach witnessed on the scene. Thus, the law enforcement mechanism was retained in the flag state jurisdiction strictly in this Agreement, too.

### C. CHANGES IN THE MARITIME LEGAL REGIME

Around this time, there were changes in the international maritime order, which substantially influenced the Japanese maritime policy. The international community had gradually accepted the 200 NM maritime zones for the exploitation of fishery resources. The Japan government initially opposed the new maritime zone as it adversely affected the expanding Japanese fishery industry; however, it later changed its stance and accepted the new maritime zone. In 1974, however, the Japanese delegation to the UN Conference of the Law of the Sea in Caracas witnessed that Japan was one of the few States to commit 3 NM for territorial sea. The majority had moved and accepted 12 NM for territorial seas and 200 NM for EEZs, which was reflected in the Informal Single Negotiation Text. Reflecting this movement, the neighboring States, including the US, Canada, and the USSR, introduced their fishery zones up to 200 NM from the baselines. Observing the acceptance of the new maritime zone by the international community and movement of neighboring States, the Japanese government decided to change its stance.

Finally, the Japanese government adopted a new legislation to reflect the new policy. The government adopted the Act on Temporary Measures Concerning Fishery Waters to counter the introduction of 200 NM zones by neighboring States. This Act set out the Japanese 200 NM fishery zones except for the west part of the Sea of Japan (west of 135 degrees East), the East China Sea, and a part of the Pacific Ocean (the Southwestern parts of the Okinawa Islands), considering that China and Korea had not set out such zones yet. When the Law of the Sea Convention in 1982 became effective for Japan in 1996, the Japanese government adopted the Act on Exclusive Economic Zone and Continental Shelf, which abolished the Act on Temporary Measures Concerning Fishery Waters. This new Act set out the Japanese EEZ as 200 NM from the baseline; in case of overlapping of EEZ claims with neighboring or opposite State, the delimitation of the EEZ should be based on equidistant lines.

Soon after, the issue of delimitation of EEZs between Japan and China in the East China Sea appeared. In 1998, the Chinese government adopted the

Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf, which provides the Chinese EEZ as 200 NM from the baselines. The Law, however, does not suggest a practical solution in case of overlapping claims with other States but simply provides that for claims that overlap with adjacent or opposite coasts, delimitation "shall be determined under the principle of equity and based on the international law" without further detailed guidance. Besides, the Chinese side claims its continental shelf up to the Okinawa Trough by upholding the theory of natural prolongation and claims further that other characteristics of the East China Sea, such as length of the coastline, should be taken into account for equitable solution. This different approach towards the delimitation of EEZ created the overlapping area in the East China Sea. Despite consultation between the two States, there is no agreed delimitation line of the EEZ yet. Thus, a new agreement became necessary for exercising sovereign rights and the jurisdiction of two States and the utilization of fishery resources.

#### D. 1997 AGREEMENT

The governments of Japan and China concluded this new Agreement in 1997 (hereinafter, "97 Agreement"). This Agreement is significant since it reconciles the legal regime of the LOSC, in particular, the EEZ regime, and the existing traditional fishery regime in the East China Sea by separating maritime zones. In other words, the 97 Agreement, as a practical solution, allows both States to utilize fish resources sustainably in the overlapping EEZs.

The 97 Agreement sets out the geographical scope of its application to the entire EEZ of both States. As in the previous Agreement, this new Agreement shelve the delimitation issue by providing that "nothing in this Agreement shall be deemed to prejudice the position of either Contracting Party regarding any question on the law of the sea" (Article 12). Besides, the fishery protected zones that remained in the previous Agreement were abolished since these areas are now in the Chinese EEZ, and fisheries activities are under the sovereign rights of China.

In order to overcome overlapping maritime claims in the East China Sea, the 97 Agreement introduced unique maritime zones. First, this Agreement designates the "Provisional Measures Zone" in the East China Sea, where the EEZ claims overlap (Article 7(1)). Also, the Agreement excludes waters in the south of the Latitude 27 degrees North (Article 7(2)), where Senkaku Islands rests. Furthermore, the north of the Provisional Measures Zone is designated as an intermediate zone, where the traditional fishing pattern is maintained. This zone is located at the south tip of the EEZ claimed by Korea and was

introduced by the exchange letter between the relevant Ministers. In order to accelerate entry into force of this Agreement, both governments agreed to allow their fishery fleets to carry out fishery operations without a fishery license issued by the other party. This zone is not prescribed in the Agreement, but, in reality, the fishery regime is identical to the waters in the south of the Latitude 27 degrees North, which is excluded from the Agreement. In short, from the perspective of the fishery regime, the Agreement designated waters where the EEZ claim is overlapping, such as the Provisional Measures Zone. (Fig.1)

In the Provisional Measures Zone, the flag State jurisdiction, the traditional legal regime before the LOSC, is retained. In this zone, both States observe the decision made by the Japan-China Fisheries Joint Committee and take appropriate conservation measures and quantity control measures so as not to endanger living resources by overexploitation while considering the influences of the traditional fisheries. (Article 7(2)) In case of taking law enforcement measures, each State exercise jurisdiction over its fishery fleets only. Therefore, for example, the Japanese authorities exercise jurisdiction over Japanese fishery fleets only in this zone.<sup>1</sup> When a Japanese patrol ship witnesses a violation by a Chinese boat, the Japanese patrol ship may warn the Chinese fishery boat on the scene but does not take any further action. Instead, the Chinese authority will be notified and take measures against the fishery boat. (Article 7(3)) This warning against breach by foreign fishery boats is one improvement to ensure more strict compliance of the Agreement.

The same regime applies to the East China Sea of the south of the Latitude 27 degrees North and the intermediate zone of the north of the Provisional Measures Zone. In the exchange letters between both governments, the Japanese (or Chinese) government will not apply its fishery laws and regulations over Chinese (or Japanese) nationals in these zones provided the cooperation between two States is maintained not for endangering living resources in this zone by overexploitation. Thus, both States carry out law enforcement activities against domestic fishery boats only.

The EEZ regime of the LOSC is applied to waters not designated as the Provisional Measures Zone, which is the "Reciprocal Measures Zone." Each State may exercise sovereign rights over fish resources in its EEZ, as stipulated in the LOSC. One State allows fishing operation by the other party and may decide the kind of fish, quota, operating areas, and other conditions for the other State annually, taking into account the conditions of resources and capacity of its fishery fleets.<sup>2</sup> In setting concrete terms, the Japan-China Fish-

<sup>1</sup> On the other hand, the agreement is not applicable within territorial seas. Therefore, any violation by a Chinese fishing boat in the Japanese territorial sea is subject to law enforcement by the Japanese authorities.

<sup>2</sup> Article 3 of the 1997 Agreement

eries Joint Committee is established to negotiate for recommendations, which is subject to be endorsed by both parties. In case of violation of laws and regulations, one State may take law enforcement measures subject to prompt release upon sufficient bond in accordance with Article 73 of the LOSC. The State needs to notify the other party regarding the measures taken and punishment imposed.

#### **IV. IMPLICATION OF THE AGREEMENT TO LAW ENFORCEMENT ACTIVITIES IN THE EAST CHINA SEA**

One of the most pertinent functions of the fishery Agreements between Japan and China is to reconfirm and introduce fishery law enforcement mechanisms in the East China Sea. The 55 and 75 Agreements confirmed that only the flag state could exercise jurisdiction over its boats on high seas or the principle of the flag state jurisdiction. The confirmation of this provision was essential to avoid detention of Japanese fishery fleets by the Chinese authority. The explanation of these detentions was not clear nor consistent with international legal and fishery order at sea. Since the number of Japanese fishery fleets detained by Chinese authority was significantly reduced after the adoption in 1955,<sup>3</sup> this Agreement was successful for this purpose.

Upon the adoption and entry into force of the LOSC and the introduction of the EEZ regime, the new legal regime brought separate issues in law enforcement. First, the claims of EEZs of Japan and China overlap with each other. Both governments have not yet found any solution of delimitation. The coastal State has sovereign rights over natural resources, including fishery resources, in its EEZ. Which State's laws and regulations to apply and enforce is unclear without the clear delimitation line. Second, law enforcement activities in the overlapping EEZ would be a breach of the LOSC, as argued before. Law enforcement activities are essential to maintain the legal order and realize the sustainable use of fishery resources. However, the States would hesitate to take such action to avoid a violation of international law. Moreover, such events would escalate the situation and raise diplomatic tensions, which will result in further difficulties in the negotiation process in the future.

To address these issues, the 97 Agreement designated and introduced the Reciprocal Measures Zone, where the EEZ regime applies, and other zones, including the Provisional Measures Zone, where flag state jurisdiction applies. This separation clarifies the laws and regulations applicable to fishery boats of each State. Within the Reciprocal Measures Zone, Japan and China, as coastal

<sup>3</sup> See Kataoka, "History of the Trawl Fisheries", note 28 above, 5.

States, may enjoy sovereign rights and exercise jurisdiction over both domestic and foreign boats. On the other hand, the flag State jurisdiction is retained in the Provisional Measures Zone to avoid a breach of the LOSC provision and diplomatic confrontation. Without these mechanisms, both States would not have been able to carry out enforcement activities effectively, which could lead to lawlessness in fishery activities as well as overexploitation.

Moreover, the law enforcement function of the Japan-China Fisheries Joint Committee of 97 Agreement is working suitably. For example, Japan witnessed a swarm of 212 Chinese coral poaching boats off the Ogasawara Islands chain in the Pacific Ocean in 2015.<sup>4</sup> Due to the vastness of the ocean, law enforcement operation was significantly challenging since huge resources and efforts were required. Japan Coast Guard arrested ten boats for violation of Japanese fishery law and fishery activities without a license. The Japanese government quickly updated the penalty to ten folds and notified these cases to the Chinese authorities. Chinese government inspected suspected boats and investigated cases. As a result of the increased penalty imposed upon coral poaching and efforts by Chinese authorities, the number of Chinese poaching boats in the vicinity reduced significantly.<sup>5</sup> This fact demonstrated the effectiveness of the law enforcement function by the Committee.

On the other hand, there still challenges in the Provisional Measures Zone. First, the efforts of two States to due diligence to their fishers remain an important issue. If a State is not eager to enforce laws and regulations over its fishery fleets, the fishery order is volatile. The other party may warn violations of the other but is not allowed to take enforcement measures. This structure may further lead to unfairness in fishery activities and destroy the fishery order expected through the Agreement.<sup>6</sup>

Second, the 97 Agreement is effective only for Japan and China. For example, the Agreement does not bind Korean and Taiwanese fishery fleets. In order to harmonize legal fishery regime in the northern part of the East China Sea with Korea and accelerate the ratification process, the intermediate zone was introduced. A separate, non-governmental fishery agreement was necessary between Japan and Taiwan to bring the harmonized fishery order in the East China Sea. These separate agreements lead the fishery order and law enforcement operations complicated. As far as the fishery Agreement is bilateral, the treatment of the third party remains in the future.

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<sup>4</sup> Japan Coast Guard, Annual Report 2015.

<sup>5</sup> Japan Coast Guard, Annual Report 2016.

<sup>6</sup> The Agreement on Fisheries between Japan and the Republic of Korea, 1998, was suspended in 2016 due to, *inter alia*, illegal fishery operations by Korean boats and occupation of fishery grounds under the Agreement.

## V. CONCLUSION

One of the significances of the LOSC was the introduction of EEZs, which was up to 200 NM from the baselines. Under the LOSC, natural resources under the vast area of the EEZ are under sovereign rights of the coastal State. On the other hand, the vastness of EEZs leads to an issue of delimitation. The equitable solution is often challenging for States and overlapping EEZs remain even today.

Under overlapping maritime zones, law enforcement operation is one of the most challenging issues. Law enforcement is essential to realize the rule-based order and ensure compliance of laws and regulations to avoid overexploitation. Besides, achieving sustainable use of fish resources is not only an obligation of coastal States under the LOSC but the interest of the international community. Without practical law enforcement function, adverse effect, such as overexploitation of fish resources, is possible. Nevertheless, law enforcement operations in the overlapping zone are challenging due to legal and diplomatic problems. Such operations would be a breach of an obligation not to hamper or jeopardize the process of reaching the final agreement under the LOSC. Besides, it would lead to a political and diplomatic concern, which further makes the negotiation process difficult.

In order to address this problem, this study investigates and analyzes the series of Japan-China fishery agreements as a possible solution. It was found that, first, the 97 Agreement is of practical nature as the delimitation and territorial issues are shelved. Second, the Agreement separates maritime zones for clarification of governance, the Reciprocal Measures Zone, and other zones including the Provisional Measures Zone where the EEZ claims overlap. While Japan and China may exercise sovereign rights under the LOSC in the Reciprocal Measures Zone, both States retain the traditional legal regime, *i.e.*, the exclusive flag state jurisdiction, in the Provisional Measures Zone. From the perspective of law enforcement, the Japan-Chine fishery Agreement is beneficial since it ensures, by establishing the law enforcement mechanism, sustainable use of fish resources while maintaining legal order in fishery activities in the overlapping EEZs.

## REFERENCES

### Articles in journals and periodicals

- Alexander, Louis M. and R.D. Hodgson, “The Impact of the 200-Mile Economic Zone on the Law of the Sea”, *San Diego Law Review* 12, (1975).
- Kataoka, Chikashi. “History of the Trawl Fisheries in the East China Sea and the Yellow Sea after the Second World War I.” *Bulletin of the Faculty of Fisheries, Nagasaki University* 90, (2009).
- Oda, Shigeru Oda, *Nicchuu Gyogyokyoutei no Seiritsu wo Megutte* (On Adoption of Japan-China Fishery Agreement), *Jurist*, (1955).

### Books and book chapters

- Churchill, Robin R., and Alan Vaughan Lowe. *The Law of the Sea*. Juris Publishing Yonkers, N.Y, 2008.
- Rothwell, Donald and Tim Stephens, *The International Law of the Sea*, second ed.. Hart Publishing Oxford, 2016.
- Kim, Sun Pyo, *Maritime Delimitation and Interim Arrangements in North East Asia*. Brill | Nijhoff Leiden, 2004.
- Miyoshi, Masahiro. “*Nicchuu Gyogyo Mondai* (Japan-China fishery issues)” in *Gendai no Kaiyohou* (Contemporary Law of the Sea Issues), edited by Chiyuki Mizukami. Tokyo: Yushindo, 2015.
- Park, Choon-ho. *East Asia and the Law of the Sea*. Seoul National University Press, 1983.

### Legal documents

- Award in the Arbitration Regarding the Delimitation of The Maritime Boundary between Guyana and Suriname, Award of 17 September 2007, RIAA Vol. 30.
- Aegean Sea Continental Shelf, Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976.
- Agreement on Fisheries between Japan and the People’s Republic of China, 1975 (signed on 15 August 1975).
- Agreement on Fisheries between Japan and the People’s Republic of China, 1997 (signed on 11 November 1997 and entry into force on 1 June 2000).
- China, *the Law of the People’s Republic of China on the Exclusive Economic Zone and the Continental Shelf*, adopted at the third session of the Standing Committee of the Ninth National People’s Congress, 26 June 1998,
- Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015.
- Japan, *Act on Exclusive Economic Zone and Continental Shelf*, Act No. 74 of 1996.
- Japan, *the Act on Temporary Measures Concerning Fishery Waters*, Act No. 31 of 1977. Japan, *the Act on Exclusive Economic Zone and Continental Shelf*, Act No. 74 of 1996.
- The Agreement on Fisheries between Japan and the Republic of Korea, 1998.
- The United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 31363 (entered into force on 16 November 1994).

### Web sources

Irini Papanicolopulu. “Enforcement Action in Contested Waters: The Legal Regime” 6th IHO-IAG ABLOS Conference, *Contentious Issues in UNCLOS-Surely Not?* Monaco, 25-27 October, (2010). Available at [https://www.iho.int/mtg\\_docs/com\\_wg/ABLOS/ABLOS\\_Conf6/S7P2-P.pdf](https://www.iho.int/mtg_docs/com_wg/ABLOS/ABLOS_Conf6/S7P2-P.pdf). Accessed on 6 May 2020.

Ministry of Foreign Affairs Japan. “Japan’s legal position on the development of natural resources in the East China Sea.” August 6, 2015. Available at [https://www.mofa.go.jp/a\\_o/c\\_m1/page3e\\_000358.html](https://www.mofa.go.jp/a_o/c_m1/page3e_000358.html). Accessed on 11 May 2020.

### **Others**

The US Dept of State, *Bureau of Oceans and International Environment and Scientific Affairs, Limits in the Seas*, No: 108, 1st Rev., Maritime Boundaries of the World, 1990.

UN Economic Commission for Asia and the Far East Committee for Co-ordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas, (Report of the Sixth Session) Held at Bangkok, Thailand, 13 – 27 May 1969, Published by the Department of Mineral Resources, Ministry of National Development, Thailand, June 26, 1969.



