Abstract

In the Korean waters, illegal fishing activities by Chinese fishing vessels are increasing rapidly and becoming violent. For example, due to the severe resistance to the recent crackdown, Korean Coast Guard was settled down and the high-speed boat was sunk. Marine security issues such as marine environment and maintenance of ocean order are becoming a national problem. In this regard, Korean Coast Guard revised its manual on use of weapons and shifted its position toward stronger response. However, it is necessary to prevent the controversy of international disputes by explicitly stipulating its role and authority in the relevant laws and regulations. Korean Coast Guard have cracked illegal fishing vessels in China and processed them according to domestic legal process. Since these disputes are international in character, they cannot be expected to be actively responded to because they can become diplomatic problems.

This study examined the actual situation of illegal fishing in China and domestic and overseas laws, and suggests the enhancement of responsiveness and social interest of the seaside through the improvement of the legal system.

South Korea and China have promised to cooperate in order to maintain fishing order and protect fishery resources in the West Sea in 2014. In the "2015 Working Group Meeting on Penetration of Fisheries in Korea and China", it was decided to strengthen the cooperative control of the two countries on unauthorized Chinese fishing vessels with the common awareness that strong crackdown and punishment are necessary for the eradication of illegal fishing.

Disputes over maritime sovereignty in Korea and China, as well as globally, are at stake. In each country, fisheries resources and energy security are emerging as important issues for national security as well as for economic development. Therefore, a national maritime sovereignty protection strategy is needed to effectively secure the maritime security of the Republic of Korea. First, it is necessary to strengthen responsiveness through the maintenance of related laws and efforts to reduce disputes under international law. Second, it is required to enhance the conservation of fishery resources and raise social interest to maintain good fishing relations. In addition, it is necessary to build an efficient marine management system between government ministries and strengthen multi-dimensional maritime security cooperation with neighboring countries.

[Keywords] Korean Coast Guard, Maritime Police, Illegal Fishing, Chinese Fishing Boat, EEZ, Maritime Security

1. Introduction

Countries around the world are competing to expand their sovereignty[1]. As the United Nations Convention on the Law of the Sea came into force in 1994, the rights and obligations of the coastal states to the oceans have been strengthened. As a result,
countries around the world have declared the exclusive economic zone (EEZ) and are increasing the strength of maritime jurisdiction and development[2]. Disputes between neighboring countries are intensifying in connection with securing marine resources.

Despite domestic and international laws and agreements, the illegal fishing of Chinese fishing vessels within the EEZ of Korea is becoming increasingly collective and violent rather than eradicated. The problem is that the Korean maritime police officer is killed by a violent resistance to cracking down on illegal fishing, and an accident such as the sinking of high-speed assimilation occurs, and the level of resistance is increasing such as intentional demonstration of power or acts of violence using weapons. In the meantime, Korean maritime police have cracked illegal fishing vessels in China and processed them according to domestic legal process. Since these disputes are international in character, they cannot be expected to be actively responded to because they can become diplomatic problems.

Nonetheless, recently, the Korean government announced the manual for weapons in November 2016. It has decided to take tough action against illegal fishing and acts of violence in China that have undermined the sovereignty of the Republic of Korea and have lost its power. However, there is still international dispute, which is a challenge for improving maritime police activities for maritime security in Korea. Therefore, this study examines the domestic and foreign laws for the illegal fishing practices of the Chinese fishing vessels and their crackdowns, and suggests ways to improve the security of the maritime security of the Republic of Korea.

2. The Actual Conditions of Illegal Fishing of Chinese Fishing Vessels

2.1. Definition of illegal fishing of Chinese fishing vessels

2.1.1. Definition and cause of illegal fishing

Illegal fishing can be defined as fishing activity that does not comply with the regulations set by the law. Illegal fishing of a foreign language ship can be defined as a foreign ship engaging in fishing engaged in the maritime jurisdiction of Korea which is prohibited from fishing in accordance with domestic law or international law[3]. These include unauthorized fishing activities, breach of permits, breach of fishing zone, breach of fishing gear, and use of illegal fishing gear[2].

The illegal fishing activities of Chinese fishing vessels are due to the increase of consumption of fishery products in China and the depletion of fisheries and fishery resources due to marine pollution and indiscreet overfishing due to the rapid industrialization process[4]. Therefore, China is operating in the exclusive economic zone or disputed waters of neighboring countries facing the sea area. As a result, conflicts arise with neighboring countries, and competition against marine resources and territories becomes more serious[2].

2.1.2. Type of resistance by illegal fishing vessels

Chinese illegal fishing vessels have been completely armed, including barbed wire and barbed wire on the fishing boat, and hull surrounded by steel plates to block the check of the Korean peninsula. These types of resistance are organized violence, collective behavior, and simple protest[5][6]. The type of organized violence is a situation that crew members carry steel pipes and stand in line and use weapons to show off the power of the multitude under the command of the captain. It is a form of resistance to the end by charging the body of the police officer on board the ship with a weapon, In case of collective action type, if one of illegal fishing vessels is arrested and overpowered, the ship will arbitrarily break down and join with other fishing vessels to conduct collective action. By shutting down the course of vessels and threatening lives of Korean Coast Guards and crew members as a collateral damage, they
make the officers give up sending the vessel under escort. Lastly, the type of simple protest is the type that crew members threaten the coast guards with shovels until the guards get on board. If the guards get on the vessel, they abandon resisting to the guards.

2.1.3 Status of regulations on Chinese illegal fishing vessels

Table 1. Status of regulations on Chinese illegal fishing vessels[7].

<table>
<thead>
<tr>
<th>Year</th>
<th>No of arrested people</th>
<th>Amount of margin posed (unit: ten thousand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>381</td>
<td>553,000</td>
</tr>
<tr>
<td>2010</td>
<td>370</td>
<td>781,000</td>
</tr>
<tr>
<td>2011</td>
<td>534</td>
<td>1,458,000</td>
</tr>
<tr>
<td>2012</td>
<td>467</td>
<td>1,715,000</td>
</tr>
<tr>
<td>2013</td>
<td>487</td>
<td>2,442,000</td>
</tr>
</tbody>
</table>

2.2. China’s position on Chinese illegal fishing vessels

It is pointed out that “the main cause of the conflict between Korea and China is the Chinese ship” and the main cause is the "unauthorized fishing act" caused by Chinese fishing vessel's invasion of Korean territorial waters[8]. As a solution to this problem, the two governments proposed strengthening cooperation between the two governments, proper handling of fisheries conflicts, strengthening of fisheries management in China, protection of offshore resources, and strengthening training for fishermen. The most important of these is that the fishermen should improve their fisheries quality through education and promotion of fishermen[9].

Chinese Fisheries Department is in charge of the illegal fishing of its own fishing vessels. It sent an official letter to each relevant department instructing them to prohibit fishing, fishermen education and management in violation of the regulations. It also said that it should not be opposed or fugitive when conducting the work in accordance with the conditions of the agreement in relation to the agreement, and when it is checked by a Korean enforcement agency.

Despite the efforts of Chinese government, however, the dispute over illegal fishing on Chinese fishing vessels continues. In October, there was an incident in which the Chinese ship accidentally crashed and sunk the Korean seaport high-speed expressway. The Chinese side said in a press conference, "China is watching the relevant reports and is already checking the situation through the Chinese embassy in Korea and checking the situation with the related departments. On the Korean side, "We will start to deal with the problem calmly and reasonably”, Korean Foreign Ministry spokesman said.

A few days later, the Ministry of Foreign Affairs of China reiterated in a press conference, "The Korean side's position on the incident is unfounded, and as a result of demonstrating the geographical coordinates provided by the Korean side, The Chinese government has already raised strict negotiations with relevant ministries in Korea through diplomatic channels in relation to the case, and the Korean side I need to calmly
They also stressed out that "Cooperation between Korea and China is an important part of bilateral relations, and good fisheries cooperation order is in harmony with the interests of both Koreans"[10].

After that, China has not disclosed its position until now (as of November 15th). However, the Korean Coast Guard secured a message from the Chinese maritime and fishery bureaus on November 16 that the illegal fishing and illegal acts of violence were strictly prohibited on Chinese fishing vessels. It seems that China is making an effort to improve its domestic fishing vessels in response to the strong response of the Korean side.

3. Regulations on Illegal Fishing in Korea

3.1. Domestic and international law on illegal fishing

According to the provisions of national law and international law, waters which are mainly applied to the illegal fishing of foreign fishing vessels can be classified as domestic waters, territorial waters, fishery protection waters, exclusive economic waters and specific prohibited waters. The United Nations Convention on the Law of the Sea (LOSC) It is the basis for the establishment of maritime boundaries and considers illegal fishing practices and the conservation of the marine environment based on this agreement (including the United Nations Fish Stocks Agreement and the FAO Compliance Agreement).

In addition, Korea is regulating fishery activities in EEZ between the two countries through the "Agreement on Korea-China Fisheries" with China. The conclusion of the agreement has made it possible to preserve and manage fish stocks, crack down on illegal fishing, and resolve peaceful settlement of fisheries disputes. According to the agreement, Chinese vessels that wish to operate in Korea's EEZ must be approved by our fisheries authorities. And the type of fish that can be caught, the quota, the operating area and other operating conditions. On the other hand, offending vessels can be boarded and captured, and jurisdiction can be exercised.

As for domestic law, 'ACT ON THE EXERCISE OF SOVEREIGN RIGHTS ON FOREIGNERS' FISHING, ETC. WITHIN THE EXCLUSIVE ECONOMIC ZONE'. It is said that this law is applied to protect the sovereignty of the Republic of Korea and its jurisdiction except exceptive cases determined by agreement with a foreign country. The main contents of this law are fishing in specific prohibited areas, fishing in EEZ without permission, and prohibition of excess amount of fishing. In case of violation, not only fines and confiscations but also legal measures such as seizure of offending vessels can be taken.

In addition, 'FISHERIES ACT' and 'FISHERY RESOURCES PROTECTION ACT' have been granted to judicial police officers to the officers of the naval vessels, officers of the naval vessels and the supervisory staff of the fishery management group to crack down on the permission violations. In addition, according to the TERRITORIAL SEA AND CONTACTUOUS ZONE ACT, foreign vessels are considered to be harming the peace, public order or security of the Republic of Korea if they engage in fishing in territorial waters without permission. Any fishing activity in violation of the above laws will be punished under the procedure of 'CRIMINAL PROCEDURE ACT'.

3.2. The manual on the use of weapon by Korean coast guard at sea

The Headquarter of Maritime Safety at the National Security Agency announced that it will completely reorganize the existing "Gun Usage Guidelines" as a follow-up measure to strengthen crackdown measures against illegal operations, and to revise them as a "Manual for Use of Weapons". In other words, the decision maker of use of weapons at sea depends on the type of firearms: personal firearms will be determined by the officers on crackdown, and crew-served firearms by the field commanders.
Although the high-speed boat was sunk during the recent crackdown on illegal fishing, which was due to the deliberate clashes by Chinese illegal fishing vessels, it pointed out that complete reorganization of the manual on use of weapons is needed. It was because it cannot properly cope with the use of crew-served firearms. As a result, the use of weapons is based on the principle of 'reporting after, action first', and the use of weapons has to be fired on parts of the body or hull where the damage of use of weapons can be minimized after warnings and warning shots. It also expanded the requirements for the use of weapons, including the use of crew-served firearms in case of deliberate clashes. In the meantime, it also clarified the respect of legal rights and reasonable treatment in compliance with legitimate law enforcement based on the respect on human rights and humanitarian spirit. In addition, Korean Coast Guard decided to revise the maritime security law so that police officers' indemnity clause for legitimate use of weapons could be specified[11].

4. Problems of the Dispute Between Korea and China and Measure to Strengthen the Maritime Security

4.1. Reinforcement of response through reform of legal system.

4.1.1. Establishment of clear legal grounds for law enforcement on illegal fishing

Act on the performance of duties by police officers and the "Maritime Security Act", which are the basis of the seafarers' duties and activities, do not accurately reflect the changes in the marine environment. Although it is necessary to have a clear authority regulation on the police function, it is evaluated that it does not. It is, therefore, difficult to actively respond to the illegal fishing of foreign fishing vessels[12]. On the other hand, the revised manuals on use of weapons are not clear in terms of liability, and only a provision that lacks reality is taken into account when considering the special circumstances of maritime. Therefore, it is necessary to strengthen the powers to eliminate the possibility of disputes in international law and to actively carry out the duties of the maritime affairs, and to prepare the legal system such as the clear grounds for the forced disposition. In particular, the principle of necessity and the principle of proportionality should be carefully considered in relation to the use of force.

4.1.2. Reinforcement of equipment for safe law enforcement

Compared to the size of Chinese fishing vessels, there are not enough human resources to cover the coastal area and the working conditions are quite poor. In addition, there are many factors that threaten the officers' lives, such as Chinese fishing vessels that resist the crackdowns armed with iron pipes. Reinforcement of equipment is necessary for the safety of both fishermen and Korean Coast Guard.

Therefore, it is required to replace the personal safety equipment such as the bumper buoyant vest and uniforms for the oppression at sea directly connected with life. Also, it is necessary to improve equipment such as net gun and grenade launcher for safe crackdown. In addition, for severe punishment, it is necessary to reinforce the investigative equipment such as long distance and infrared camera that can prove illegal activities and to collect evidence[3][13].

4.2. Raising social awareness on marine resources and competitiveness

The offshore order of the coastal countries has been collapsing due to illegal fishing, the resources of fish stocks have been rapidly decreasing, and marine pollution has been intensifying. It is necessary to improve social awareness on the illegal status of Chinese fishing vessels, to inform them of its seriousness and to make them take preventive measures themselves.

Since the accident of the Sewol Ferry, the Korean Coast Guard has been restructuring and has suffered various problems such as the reduction of personnel. However, it is
necessary to establish social consensus through the interest and cooperation among the states, citizens and the media as well as the strengthening of law enforcement by the Korean Coast Guard.

5. Conclusion

Both Korea and China have stipulated strict regulations on illegal fishing through agreements. Recently, however, Chinese fishing vessels have invaded Korean waters due to lack of fishery in the sea near China. A more serious problem is that Chinese fishing vessels armed themselves with steel pipes and acted with force to avoid the crackdown on the Korean peninsula.

South Korea and China have promised to cooperate in order to maintain fishing order and protect fishery resources in the West Sea in 2014. In the "2015 Working Group Meeting on Penetration of Fisheries in Korea and China", it was decided to strengthen the cooperative control of the two countries on unauthorized Chinese fishing vessels with the common awareness that strong crackdown and punishment are necessary for the eradication of illegal fishing.

However, the ongoing illegal fishing and Korean-Chinese fishing disputes are not likely to be solved in a short period of time. Not only the efforts taken by both governments, but most importantly, it seems that fishermen themselves need to improve their awareness of compliance with the law.

Disputes over maritime sovereignty in Korea and China, as well as globally, are at stake[6]. In each country, fisheries resources and energy security are emerging as important issues for national security as well as for economic development. Therefore, a national maritime sovereignty protection strategy is needed to effectively secure the maritime security of the Republic of Korea. First, it is necessary to strengthen responsiveness through the maintenance of related laws and efforts to reduce disputes under international law. Second, it is required to enhance the conservation of fishery resources and raise social interest to maintain good fishing relations. In addition, it is necessary to build an efficient marine management system between government ministries and strengthen multi-dimensional maritime security cooperation with neighboring countries.

6. References

6.1. Journal articles

6.2. Additional references


Lead Author
Shin Hyun-joo / Catholic Kwandong University Professor
B.A. Catholic Kwandong University
M.A. Kwangwoon University
Ph.D. Kwangwoon University

Research field

Major career
- 2014~present. Korean Association for Criminal Psychology, Chief Manager
- 2016~present. International Society for Military Affairs, Member

Corresponding Author
Lim Ying-hua / Catholic Kwandong University Professor
B.A. Korea National Open University
M.A. Donga University
Ph.D. Kyungsung University

Research field

Major career
- 2006~present. Korea Association for Chinese Studies, Member
- 2016~present. International Society for Military Affairs, Member