

# Fisheries Cooperation and Maritime Delimitation Issues between North Korea and Its Neighboring Countries

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**Abstract :** This article intends to review the maritime delimitation and fishery issues between North Korea and its neighboring countries including South Korea. Even though the North Korean territory is subject to South Korea's sovereignty under its Constitution, North Korea has already entered the UN and is engaged in active ocean fishery diplomacy. So it is necessary to analyze North Korea's relevant agreements with other countries and prepare for the unification of the Korean peninsula. This is because North Korea's diplomatic activity can have an effect on the unified Korea's legal status according to international law. The fact that North Korea has been establishing diplomatic ties with western countries since the advent of South Korea's Sunshine Policy should also be noted.

The most important thing that remains to be solved between the South and the North is the problem occurring in the sea. In the light of North Korea's frequent violations of the Cheju Strait and Northern Limit Line, it is necessary to negotiate the matter peacefully. And the recent issue

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of allowing North Korean commercial ships to pass through South Korea's territorial sea should be discussed in terms of reciprocity. That is, if North Korea permits South Korean ships to pass through its territorial sea, the South Korean government should also let North Korean ships do the same in regards with the innocent passage rule provided by the 1982 UN Convention on the Law of the Sea.

The maritime delimitation North Korea made with Russia in the East Sea will probably be succeeded by the unified Korea. It seems to be preferable for the two Koreas to negotiate with each other prior to the maritime delimitation with third parties. If this is difficult for realistic reasons, it would be recommendable for both countries to organize a common seminar among their jurists of international law of the sea and converge the thoughts of each side.

## I. Introduction

Maritime issues between the two Koreas are in the spotlight owing to the recent Northern Limit Line violations and illegal passage through the Cheju strait by North Korean ships. Since the South Korean Constitution stipulates that "*the territory of the Republic of Korea consists of the Korean peninsula and attached islands*" in Article 3, the North Korean territory is also an area where the sovereignty of South Korea reaches.<sup>1)</sup>

However, North Korea has been participating as an international political actor. It should be noted that North Korea has entered the United Nations with South Korea and is now acting as a State in international society. Furthermore, North Korea has been establishing diplomatic ties with western countries since the initiation of South Korea's Sunshine Policy. North Korea's diplomatic activity can have an effect on the Korea's unified legal status according to international law, and thus it should be carefully analysed.

North Korea has been active in the field of international law of the sea as well. North Korea declared its 200 nautical mile economic zone and 50 nautical mile military zone in 1977 while participating in the 3rd United Nations Conference on the Law of the Sea(UNCLOS III) which began in the earlier part of the 70s. Although North Korea signed the result of the Conference, the United Nations Convention on the Law of the Sea, which took effect in 1994, it has for some unknown reason not ratified the Convention yet. Meanwhile, North Korea has been active in maritime delimitation activities such as the agreement on delimitation of the exclusive economic zone and

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1) In 1961 the South Korean Supreme Court ruled that "the North Korean territory is under the sovereignty of the Republic of Korea and so any political sovereignty that is in conflict with it cannot be legally recognized".

continental shelf with Russia in 1986. This article intends to review the maritime delimitation and fisheries issues between North Korea and its neighboring countries which includes South Korea.

## **II. Fisheries Relations with Russia, Japan and China**

### **1. Fisheries Cooperation with Russia**

Let's first review the basic diplomatic and economic relations between North Korea and Russia before looking into their fisheries relations. As the former Soviet Union became dismantled and the Commonwealth of Independent States composed of 11 republics came into being in December 1991, North Korea launched to reformulate relationships with the former Soviet Union bloc countries by establishing diplomatic ties with them. However, it was inevitable for Russia and North Korea to transform their relationship from a military alliance to a normal inter-state tie as Russia officially refused to prolong their 'Treaty on Friendly Cooperation and Mutual Aid between North Korea and Russia' in September 7, 1995.

Their relationship, under such circumstances, was transferred from a politically intimate tie based on ideology into a new one which was commenced during the first session of the 'North Korea-Russia Committee on Trade, Economy and Scientific Technology Cooperation' was held in Pyongyang in April 1996. North Korea and Russia opened a vice premier ministerial level conference, which later met regularly, in order to seek cooperation in various fields including foreign affairs, trade, agriculture, railway, light industries, and

forestry. As a subsequent measure of this conference, the two countries signed an investment agreement in November 1996 aiming to expand trade through investment in the Najin-Sunbong area, petroleum provision for North Korea, and exchange of metal products.

Despite these circumstances, the trade volume between North Korea and Russia has steadily decreased each year and thus North Korea is trying to expand trade cooperation with local governments of Russia such as the Maritime Province of Siberia and with independent States such as Ukraine and Kazakhstan. Along with the attempts for economic cooperation, the political relationship between the two countries is also gradually improving. The conference for a new treaty between North Korea and Russia headed by North Korea's Foreign Minister In Kyu Lee and Russian Vice Foreign Minister Gregory Karashin commenced on 21 January, 1997 and has continued through 4 sessions in Pyongyang and Moscow alternatively until December 1998.

As the two countries agreed to exclude the automatic military intervention clause and the Koryo Federation support clause, which were the controversial issues, the Mutual Friendliness and Cooperation Agreement was initialled in Pyongyang on 17 March, 1999 and is scheduled to be properly signed when the Russian Foreign Minister visits North Korea. This has triggered the dissolution of the military alliance and the transfer into an ordinary inter-state relationship.

In November 1998, the two countries showed an aspect of normal diplomatic relations by signing the 'Mutual Cooperation Plan on Foreign Politics in 1999-2000' which consists of mutual diplomatic negotiations, exchange of diplomatic information, and participation in international joint projects.

North Korea established an official fisheries cooperation tie with

Russia by signing the 1974 Fisheries Agreement. North Korea received an unconditional fishing quota of 200,000 tons from Russia in 1990. The unconditional quota was cut off, however, in 1991 when Japanese fishing vessels disguised as North Korean vessels were caught by the Russian authorities. North Korea instead received 30,000 tons of special pollack quota annually on the condition of paying the same of amount of fee as other countries along with 30,000 more tons of pollock quota in exchange of herring quota from the North Korean zone. North Korea is known to have received a total of 60,000 tons of fishing quota in 1992 which was comprised of the unconditional 30,000 tons and the conditional 30,000 tons, but North Korea is suspected of being unable to exhaust a significant amount of their quota owing to the difficulties of their deep-sea fishing fleet which lacks fuel and production material.

North Korea, on the other hand, has been continuing maritime delimitation negotiations with Russia in the East Sea. North Korea has concluded the 'Agreement on Delimitation of Territorial Waters' in 1985 and drew the border at the Tuman River. North Korea also concluded the 'Agreement on the Exclusive Economic Zone and the Continental Shelf' in 1986, and, in 1990, signed a treaty for the implementation of the 1985 territorial delimitation agreement and thus recognizing the boundary.<sup>2)</sup>

Let's briefly review the fisheries boundary between the two Koreas and Russia. As a certain zone within the East Sea centering around Yamato Tai has been developed into an abundant cuttlefish fishing ground, South Korean fishing fleets entered it in large numbers. However, South Korea's National Federation of Fisheries Cooperatives established an informal voluntary fishing regulation line in northern Yamato Tai in May 1978 as North Korea and Russia

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2) International Maritime Boundaries(1991), Vol. I, pp.1135-1145.

declared their Exclusive Economic Zones and Fishing Zones in 1977. Afterwards, the South Korean government revised its regulation on fishing vessel safety on 17 April, 1982 and officially established the voluntary fishing regulation line in northern Yamato Tai of which the limit was 40 degrees north latitude. The government subsequently expanded the fishing ground by pushing up the regulation line to 42 degrees in October 1990 and again on 5 July, 1999 in order to alleviate the shrinkage of fishing grounds caused by the new fisheries agreement between Korea and Japan. However, since the legal status of the reserved zone between the Middle Zone in the East Sea and North Korean Exclusive Economic Zone, which isn't covered by the new fisheries agreement between Korea and Japan, is currently obscure, this problem has been left as a task which needs to be negotiated between South Korea, Japan, Russia and North Korea in the future.

## 2. Fisheries Cooperation with Japan

Let's first review the diplomatic and economic relations between North Korea and Japan and then their fisheries relations. North Korea's efforts to approach Japan started rather early. On 25 February, 1955, Il Nam stressed North Korea's willingness to normalize their ties based on the peaceful coexistence principle among nations with different social regimes and expressed intentions to discuss trade and cultural issues between the two countries.<sup>3)</sup> North Korea afterwards participated in diverse activities underlining their good neighborhood policy with Japan which resulted in economic exchange through the organization of the pro-north Korean residents'

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3) *Roh-Dong Shinmun*, 1955. 2. 26.

league in Japan in May 1955 and establishment of Japan-North Korea Trade Association in March 1956.

North Korea's diplomatic policy turned toward a more diverse and utilitarian direction in the 70s.<sup>4)</sup> The background of this turn was comprised internationally of the reconciliation atmosphere such as the improvement of the relationship between the U.S and China through the admission of China into the United Nations in September 1971 and U.S President Nixon's visit to China in 1972 along with the diplomatic normalization of Japan and China. Domestic necessity to cooperate with western countries in order to introduce the capital and technology required for its new 6 year economic development plan as well as the necessity to gather support for confrontations with South Korea in the UN and other international organizations can also be counted as factors contributing to the turn.

After concluding the 'Civilian Temporary Agreement on Fisheries' with Japan on 5 September, 1977, North Korea accelerated its efforts to approach Japan by establishing the 'Friendship Promotion Association between Japan and North Korea' within North Korea on 10 September, 1981.

It was in the 90s that North Korea concentrated its diplomatic strength in adapting to the international situation and surviving it. North Korea's foreign policy was constituted as follows: ① Consolidation and development of friendships with socialist countries on the basis of principles of independency and proletarian internationalism, ② Diplomatic improvement and stronger political, economic, and cultural cooperation with the third world countries, ③ Formulation of friendly relations and enhancement of economic and

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4) It took off when the agenda 'On a few issues raised by international politics' was discussed at the 3rd session of the 5th General Conference of the Central Party Committee in November 1971. Source : *Chosun Central Yearbook*(1972), pp.269-270.



cultural exchange with western countries including the U.S and Japan, ④ Stronger contact as well as economic and cultural exchange with neighboring Asian countries for the development of friendly relationships.<sup>5)</sup>

Through such transformation, North Korea has once more strengthened its approach towards the western world including the U.S and Japan in the 90s in order to overcome the international isolation brought about by the rapid change of international politics, and the serious domestic economic crisis.

Fisheries cooperation between North Korea and Japan dates back to the late 70s. In 1977, as North Korea declared its Exclusive Economic Zone and 50 mile Military Zone in the East Sea and Yellow Sea,<sup>6)</sup> Japan had to negotiate with North Korea in order to secure its traditional fishing grounds. As a consequence, North Korea and Japan concluded in Pyongyang the 'Temporary Agreement on Fisheries Cooperation between Japan and North Korea' on a civilian level between North Korea's Chosun East Sea Fisheries Cooperation League and Japan's Japan-North Korea Fisheries Association on 5 September, 1977.

According to the 1st Agreement, the fishing zone for Japan's vessels was the EEZ of North Korea outside its Military Zone and the vessel size was limited to 200 tons. The Agreement was valid for 1 year starting from 1 October. Japan also guaranteed vessel safety and emergency aid besides receiving North Korea's cooperation on introducing fishing technology and equipment.

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5) *Roh-Dong Shinmun*, 1980. 11. 13.

6) The former Soviet Union adopted its Exclusive Fisheries Zone Act on 10 December 1976 and declared its EFZ on 1 March 1977, which has been changed into the Exclusive Economic Zone in 28 February 1984. Japan adopted its Fisheries Zone Act on 1 July 1977 and subsequently declared its EFZ. However, Japan showed a flexible stance in applying the law to South and North Korea. Japan transformed the law into the Continental Shelf and EEZ Act in 20 July 1996 to which North Korea naturally made a strong reaction.

〈Figure 1〉 Fisheries Zone between North Korea, Russia and Japan in the East Sea



The 2nd Temporary Agreement was signed in June 1978, the 3rd in May 1980, the 4th<sup>7)</sup> on 15 October, 1984, and the 5th<sup>8)</sup> was valid from 16 December, 1987 to late 1989.

The 6th Temporary Agreement, which was signed in December 1989, was concluded between North Korea's Association for Friendship between North Korea and Japan and Japan's League of Statesmen for Friendship between Japan and North Korea. The 'Temporary Fisheries Agreement on North Korea's 200 mile EEZ' which was to be valid for 2 years from 1990 was signed in Tokyo.

The 7th Temporary Agreement was signed in December 1991 and extended the validity of the Agreement for 2 years. However, since there was no further agreement on extending the Temporary Agreement after January 1994, the fisheries cooperation between the two countries has been interpreted and is discontinued to date.

### 3. Fisheries Cooperation with China

North Korea has maintained a close relationship with China. However, when China established diplomatic ties with South Korea in August 1992, the relationship between North Korea and China was aggravated because North Korea criticised China for becoming a traitor and submitting to imperialist countries.<sup>9)</sup> During 1995 China

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7) The Civilian Fisheries Committee between South and North Korea has been established based on this 4th Agreement in order to deal with violations.

8) The fishing fee has been levied for the first time in the 5th Agreement. The fishing permission applied to pollack, salmon, squid, and crab, and a limited partnership corporation was scheduled to be established for that purpose. North Korea regulated the fisheries by the number and size of fishing vessels, and the period and method of fishing instead of fixed quotas with the exception of pollack.

9) Chosun Central Broadcast, "Strengthening the Opposition Against Imperialism is the Fundamental Request for Accomplishing Socialism"(1992. 9. 21).

sent members of their party, government and social organizations to North Korea and the head of States of China and North Korea visited each other on the Chinese Political Foundation Day and North Korea's Ruling Labor Party Foundation Day, respectively, to stress their intentions to strengthen mutual friendship and cooperation.

The honeymoon of North Korea and China reached its vertex when the 'Agreement on Economic and Technology Cooperation',<sup>10)</sup> by which China promised to offer North Korea 500,000 tons of grain, 1,300,000 tons of oil, and 2,500,000 tons of coal, half for free and half for 1/3 the international price, on 22 May, 1996.

Since China's participation as one of the parties to the 4 way talks in 1997, its diplomatic support for North Korea has been reinforced. Although it is true that China is opposed to North Korea's possession of nuclear weapons and that China's posture on the unification issue is 'solution through negotiation', which means that China's participation in the 4 way talks isn't necessarily in support for North Korea, the presence of China in the talks has been significantly beneficial to North Korea.

Such efforts to restore the relationship between North Korea and China reached its goal when North Korea's Chairman of the People's High Committee visited China. China not only promised to offer 150,000 tons of food and 400,000 tons of coke for free but also agreed to promote cooperation in their diplomatic and military relations. North Korea consequently loosened its opposition to China's open door policy and mentioned that "China has achieved socialism with its own color", and China also stressed the friendship between the two countries by highly regarding North Korea's "efforts to construct a strong nation".<sup>11)</sup> North Korea and China has thus maintained an

10) The Agreement has been confirmed by the 『Chosun Shinbo』, the official newspaper of Cho-Chong-Ryun.

11) North Korea's 『Rohdong Shinmun』 stressed their friendly relationship in the column of 20 June 1999.

intimate diplomatic relationship.

China claims its delimitation to be made by the 'half line of the sea' which is assumed to be the middle line,<sup>12)</sup> but hasn't made the specific details public while declaring the entire area as a military zone.

South Korea has established a voluntary regulation line for fishing on 28 January, 1975, which is an approximate 35 mile buffer zone from the China-Japan Fisheries Agreement Line in the Yellow Sea, in order to prevent fisheries conflicts and seizure of its vessels by Chinese authorities. This line was changed to match the China-Japan Fisheries Agreement Line on 30 March, 1992 and thus expanded the fishing area until it was replaced by the Voluntary Fisheries Regulation Zone on 5 September of the same year. This zone was expanded to the China-Japan Fisheries Agreement Line on 11 July, 1994.

### III. Fishing Boundary Issue between the Two Koreas

#### 1. Fishing Limit Line

North Korea has continuously seized South Korean fishing vessels since the conclusion of the armistice treaty in 1953. Therefore South Korea has maintained the Fishing Limit Line established by the 32nd decree of the Agriculture Ministry since 29 June, 1964 in order to prevent its vessels from being seized in fishing grounds near North Korea. The Fishing Limit Line has the legal character of the South

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12) Foreign Ministry of the Republic of Korea, "North Korea's Declaration of the EEZ", *The Maritime Laws of North-East Asian Countries*, 1997, p.306.

Korean government's self-protective control line on its fishing vessels' activities.<sup>13)</sup>

The line is extended toward due east from the crossing point of the coastline and Lat. 38 degrees 35 minutes 45 seconds N. in accordance with the Military Demarcation Line in the East Sea, and starts from Changhoo-Ri located in the northwest region of Kanghwa Island and reaches Lat. 38 degrees 3 minutes N. through an irregular course in the Yellow Sea. The Fishing Limit Line has been lowered to 5-7 miles south when tensions between the two Koreas were seriously heightened, but has recently been moved upward and so the length to the Northern Limit Line has been shortened to 3 miles in the East Sea and 6 miles in the Yellow Sea owing to their somewhat relaxed relationship.<sup>14)</sup>

The Fishing Limit Line in the East Sea was made by stretching straight eastward on the basis of the Southern Limit Line which was unilaterally established by North Korea in 1977. Therefore, the Fishing Limit Line cannot and should not be bestowed the legal status of a maritime boundary line between South and North Korea. That is, the line hasn't been made by mutual agreement nor on the basis of principles of the international law of the sea.

The statistics on seizure and release of South Korean fishermen and fishing vessels by North Korea is shown in <Table 1>. The total numbers of captured and released fishing vessels are 465 and 433 respectively, and the numbers of captured and released fishermen are 3,669 and 3,241 respectively. Thus, a total of 32 vessels and 428 fishermen haven't been returned yet.

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13) Jung-Yoon Choi et al., *Fisheries Cooperation Method to Establish the Basis for Unification in the 21st Century*, Ministry of Maritime Affairs and Fisheries, p.118.

14) Domestic laws targeting to prevent seizure and provide guidance are as follows: Fishing Vessel Safety Regulation(1972. 4. 17), Fishing Vessel Safety Ordinance(1992. 9. 5), Vessel Control Ordinance(1989. 6. 7).

〈Figure 2〉 Maritime Claims in the East Sea



〈Table 1〉 South Korean Fishermen and Fishing Vessels Seized and Released by North Korea

Category	Period	Seized			Released		
		Total	East Sea	Yellow Sea	Total	East Sea	Yellow Sea
Number of Vessels	1954~1959	92	22	70	89	21	68
	1960~1969	309	119	190	296	115	181
	1970~1979	47	21	26	38	20	18
	1980~1989	10	2	8	9	2	7
	1990~1999	7	-	7	1	-	1
	Total	465	164	301	433	158	275
Number of Fishermen	1954~1959	625	134	491	590	118	472
	1960~1969	2,173	914	1,259	1,943	836	1,107
	1970~1979	674	410	264	534	391	143
	1980~1989	161	54	107	148	54	94
	1990~1999	36	-	36	26	-	26
	Total	3,669	1,512	2,157	3,241	1,399	1,842

Source : South Korean National Maritime Police

## 2. Special Zone

The South Korean government unilaterally established the Special Zone near the southern part of the Fishing Limit Line of the East and Yellow Sea on 25 November, 1968 in order to patrol the borderline, prevent its fishing vessels from being seized, and provide guidance for fishing safety, and integrated it into its legal system as article 5 of the Regulation on Fishing Vessel Safety on 17 April, 1972.<sup>15)</sup> The Special Zone is an area where the South Korean government implements self-protective control measures for the activities of its fishing vessels.

Although the Special Zone is legally Korea's territorial water or EEZ, the baseline in the area above Soryung Island located in the Yellow Sea hasn't been established owing to the area's special circumstances, and thus the scope of the territorial water itself is still to be finalized. Nevertheless, the provisional middle line claimed by North Korea cannot be accepted since it is preposterous to ignore the economic interest or historical title of the 5 islands in the Yellow Sea in terms of principles of the international law of the sea or international custom. Moreover, it is unacceptable to us that the Northern Limit Line which is a part of the armistice system can be valid as a maritime military boundary.

Korea revised the Regulation on Fishing Vessel Safety by pushing north the southern limit line of the Special Zone from Lat. 37 degrees 27 minutes N. to Lat. 38 degrees in the East Sea and abolishing the Fishing Limit Line of Long. 124 degrees E. in the Yellow Sea which resulted in a significant relaxation of fishing restrictions. The current fishing grounds are managed by dividing the area, in the Yellow Sea

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15) The size of the East Sea Special Zone is 18,984 km<sup>2</sup>, and that of the Yellow Sea Special Zone is 11,738 km<sup>2</sup>.



into fishing grounds A, B and C ; fishing grounds near Yunpyong, Paekryong, Taechong, Taechon, Sochong Ilsands and the zone west of Kanghwa Island, and there is the Jeodo fishing ground in case of the East Sea.

The Yellow Sea Special Zone is a major fishing ground for ocellate spot skate, butterfish and blue crab. Fishermen, fishing vessels operating in the area near the 5 islands in the Yellow Sea as well as the major fisheries are shown in <Table 2>.

<Table 2>      **Fisheries in the 5 Island Zone of the Yellow Sea**

Name	Number of Fishermen	Number of Fishing Vessels by Fishery Types	Major Fish
Paekryong-Do	868	Long Line 37, Angling 28, Trap 4, Combined 16, Gape Nets with Wings 3, Fishing Management 2 [Total 90]	Pacific Sand Lance, Anchovy, Abalone, Sea Cucumber
Taechong-Do	674	Gill Net 9, Coastal Long Line 59, Off-Shore Long Line 10, Combined 15, Angling 11, Trap 4, Transportation 2 [Total 110]	Rockfish, Spotty Belly Greenling, Blue Crab
Sochong-Do	240		
Yunpyong-Do	688	Gill Net 38, Angling 6, Combined 15, Trap 3, Fishing Management 1 [Total 63]	Blue Crab, Oyster, Short-necked Clam
Total	2,470	263	

Source : Ministry of Maritime Affairs and Fisheries

Vessels fishing in the Special Zone are required to organize a fleet of at least 2 vessels, and carry out duties such as fishing registration, fishing notification, and location report at least 3 times a day.<sup>16)</sup>

16) According to the Fishing Vessel Safety Regulation, the ocean area of Korea can be divided into the Special Zone, the Voluntary Fishing Regulation Zone, and the ordinary zone.

#### IV. Maritime Boundary Issues between the South and North Korea

Although land boundaries between the South and North Korea were established in the Armistice Agreement, maritime boundaries weren't decided upon. The Armistice Agreement only stipulates that the 5 islands in the Yellow Sea belong to South Korea. The 5 islands include Paekryong, Taechong, Sochong, Yunpyong, and Woo Island which are located south of Lat. 38 degrees N. and north of Kyunggi Bay under the jurisdiction of South Korea.<sup>17)</sup>

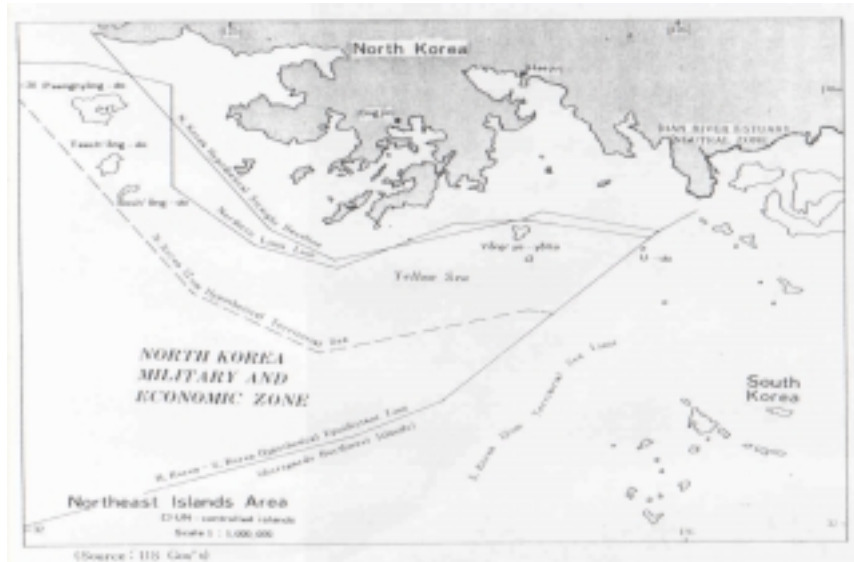
Even though these islands are located near North Korean territory, their legal status is indisputable since they have been under the South Korean jurisdiction before, during, and after the Korean War. Their current status is provided in Article 2, paragraph 13(b) of the 1953 Armistice Agreement.

However, although the area around these islands is critical for the South and North Korean relationship especially in terms of fishing, transportation, and military purposes, it has been a major cause of tension since 1973 due to the obscure boundaries between the two parties. The ambiguity of the boundaries is caused by the lack of necessity to draw the Line of Contact in the sea because, unlike the land which was divided by the Military Demarcation Line on the basis of the Line of Contact provided by the articles of the Armistice Agreement, the U.N forces controlled the entire sea. Moreover, paragraph 13(b) of Article 2 was established without complete agreement between the two because the U.N forces argued for a 3 mile territorial sea while North Korea maintained that it must be 12 miles.

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17) Yunpyong-Do can be divided into the Big Yunpyong and the Small Yunpyong and so it would be more exact to refer to them as the 6 islands.

〈Figure 3〉 Northeast Islands



Source : US Gov't

Under such circumstances the commanding office of the U.N forces unilaterally established the Northern Limit Line in approximately the middle line between the 5 islands and the territory occupied by North Korea on 30 August, 1953, and notified this to North Korea without receiving any protest at that time.<sup>18)</sup>

Afterwards, the Northern Limit Line was used as the de facto Maritime Military Demarcation Line between South and North Korea for about 20 years until the Yellow Sea crisis in the months of October and November 1973 during which the North Korean patrol ships invaded the Line in large groups about 43 times. Also, at the 346th Military Armistice Committee opened on 1 December of the same year, the head of the North Korean delegation, Pung-Sub Kim,

18) Institute of Foreign Affairs and National Security, *The Legal Status of the 5 Islands in the Yellow Sea*, 1988, p.3.

argued, without effect that *"since there is no mention what so ever of the demarcation line or armistice zone in any article of the Armistice Agreement, the area above the boundaries of Hwanghae-Do and Kyunggi-Do<sup>19)</sup> as well as the zone containing the 5 islands is under the military jurisdiction of North Korea. And since according to Article 2, paragraph 13(b) of the Armistice Agreement, the western extension line of the Hwanghae-Do and Kyunggi-Do is a single boundary, the north side of the line is North Korea's coastal waters. So the U.N forces should immediately stop dispatching their navy ships and spy vessels into North Korea's coastal waters, and acquire permission in advance if they are to enter the waters in the future."*<sup>20)</sup>

North Korean delegates continued to argue during the main session of the 354th Military Armistice Committee held on 12 September, 1974 that South Korea violated the Armistice Agreement and invaded their ocean territory. The U.N forces refuted and ignored the argument.

There is no problem regarding the land delimitation, since the application of Article 11 of the 'Agreement on Reconciliation, Nonviolation, and Cooperative Transaction' doesn't cause any disputes. But the article, on the other hand, is unable to provide clear criteria for maritime delimitation. South Korea interprets the provision *"the area which has thus far been governed by each party"* to mean the extension line of the Military Demarcation Line in the East Sea and the Northern Limit Line in the Yellow Sea, while North Korea is repeating the above-mentioned claim of 1973.

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19) The Note to the 3rd Map Attached to the Armistice Agreement refers to the boundary line as *"this boundary line has no other meaning than marking the jurisdiction of the coastal islands of the Yellow Sea, and so should not be given any other meaning"*, which testifies that the North Korean claim is very arbitrary and distorted.

20) Armistice Committee, *The 346th Conference Record of the Armistice Agreement*, 1973. 12. 1.

Although North Korea repeatedly claimed jurisdiction over the 5 islands during the conference for the 1991 South-North Basic Agreement which was signed on 19, September 1992, both parties reached a compromise on the provision and stipulated that "*the South and North will continue to negotiate the non-violation boundary between them*" in Article 10 of the Annex. The phrase "continue to negotiate" implies that the potential dispute between the South and North on jurisdiction over the area near the 5 islands was realized and that it hasn't been resolved yet. However, it should be noted that the Basic Agreement as well as its Annexes, didn't take effect.

On 15 June, 1999 the so-called west sea clash occurred and a North Korean submarine was destroyed. North Korea argued for a new maritime military demarcation line during the high-level conference of the Armistice Committee in July and August 1999, and officially declared it in September.

North Korea also announced the passage rules for the 5 island area on 23 March, 2000, which was an extension of their claim made at the 346th Armistice Committee of December 1973 and a tactic to invalidate the UN Forces' Northern Limit Line.<sup>21)</sup>

The response of South Korea can be summarized into 3 categories.<sup>22)</sup> First, despite the fact that the Northern Limit Line was a self-regulatory measure made unilaterally by the UN Command, it

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21) Chosun Central Broadcasting Station announced that the Navy Command of the North Korean Army declared a passage rule made up of 6 articles for the 5 islands in 23 March 2000.

22) ① Myung-Ki Kim, "The Legal Status of the 5 Islands in the Yellow Sea", *Korean International Law Journal*, Vol.23, 1978.

② Jung-Kun Kim, "The Legal Status of the Maritime Zone around the 5 Islands of the Yellow Sea", *Korean International Law Journal*, Vol.33, 1988.

③ Charn-Kiu Kim, "The Northern Limit Line and the Armistice Regime of the Korean Peninsula," *The Law Newspaper*, 1996. 8. 5.

④ Chong-Sung Park, *The Territorial Sea of the Republic of Korea*, Pubmunsa, 1985, p.201.

⑤ Byung-Hwa Ryu, *Northeast Asia and the Law of the Sea*, Jinsungsa, 1991, pp.277-289.

was in reality an indispensable measure to administer the Armistice Agreement. Second, the Northern Limit Line is approximately the middle line between the South-governed 5 islands and the Northern territory. Third, it must be admitted that the Northern Limit Line was acquiesced by North Korea, because it did not raise any objections for about 20 years from the UN Forces' notification to 1973. And so, in terms of international law, the Northern Limit Line was implicitly recognized by both parties as a part of the armistice regime.<sup>23)</sup>

In conclusion, there is no doubt that the 5 island zone is under the jurisdiction of South Korea, and that the zone can have its own continental shelf and EEZ as well as a 12 mile territorial water according to the 1958 Territorial Sea and Contiguous Zone Convention and the 1982 UN Convention on the Law of the Sea.<sup>24)</sup> Therefore, North Korea's claim on the area surrounding the 5 islands, and its establishment of a maritime military demarcation line ignoring the 5 islands as well as the passage rule based on such disregard for international covenants and law are all arbitrary claims which do not conform to international practice.

The Northern Limit Line is a maritime military demarcation line between the South and North Korea which lacks any alternatives. Although the issue has been raised between the two parties, it is not a situation which should be resolved by peaceful means as stipulated in Article 33 of the UN Convention.<sup>25)</sup> Why? The current relationship between the two Koreas is governed not by general international law but by the special regime under an armistice agreement. So the legal

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23) This can be explained by the principle of later practice between parties of the treaty as stipulated in article 31, paragraph 3(b) of the 1969 Vienna Convention.

24) Byung-Hwa Ryu, *supra* note 23, p.272.

25) The peaceful means provided in article 33 of the UN Convention include negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement and resort to regional agencies or arrangements.

status of the Northern Limit Line is a matter of political compromise rather than that which should be resolved by the international law of the sea. It is true that the reciprocal status of South and North Korea has been somewhat settled since the two countries joined the UN together. However, still the only legal document that covers the relationship of the two is the 1953 Armistice Agreement. Unfortunately, the 1991 Basic Agreement and its Annexes are not valid yet, although they do have some legal character. That is why the various issues between the two will supposedly be solved through highly political interactions. Nevertheless, it is necessary to review in advance such issues concerning the international law of the sea as they pertain to North Korea's ocean policy, development and exploitation of fishing grounds, and the legal status of the boundary fishing grounds.

First of all, there is a wide gap between the ocean policies of the South and the North because North Korea's ocean policies disregard the general principles of the international law of the sea and international custom and so lack the necessary legality. But this problem can hardly become a critical obstacle to fisheries cooperation between the two, and the legality can be discussed any time after the unification.

Secondly, there are no agreements on ocean boundaries, even though the two are under an armistice regime of which the military confrontation hasn't been resolved. The problem is particularly serious in the Yellow Sea. However, the character of the Northern Limit Line as the ocean boundary is intact and cannot be subject to legal resolution since it is a matter of national security.

Thirdly, the Special Zone and the Fishing Limit Line was established unilaterally as a self-regulatory measure to protect South Koreans. Although the necessity to alter the legal character of the

Special Zone as well as the Fishing Limit Line has been raised along with the recent political reconciliation mood, the issue should be approached discreetly since it is not a major burden to the cooperation between the two parties.

Finally, even though it is true that North Korea has recently established a basic legal system on fisheries management, it cannot be expected to dramatically stimulate North Korea's fisheries.

In conclusion, the gap between the ocean policies of the South and the North with North Korea's arbitrary reference to international law, international practice of allowing only its own fisheries in the internal waters and the territorial sea, and the situation of North Korea's fishery resources all indicate that it would not be easy for us to enter the coastal and off-shore fisheries of North Korea for the time being except for the case of aquaculture farming in the internal waters or the territorial sea. Even if South Korean fishermen are allowed to fish in North Korea's EEZ, it is necessary to scrutinize the experience of Japan to minimize any possible problems.

## V. Conclusion

Even though the North Korean territory is subject to South Korea's sovereignty under its Constitution, North Korea has already entered the UN and is engaged in active ocean fisheries diplomacy. So it is necessary to analyze North Korea's relevant agreements with other countries and prepare for the unification.

However, the most important thing is to solve the ocean problems between the South and the North. In the light of North Korea's frequent violations of the Cheju strait and Northern Limit Line, it is necessary to negotiate the matter peacefully. As mentioned above, the



ocean boundary between the two can be negotiated as provided in the Annex of the 1991 Basic Agreement. But until a new agreement is reached, it is clear that the Northern Limit Line should be maintained in terms of maritime stability. The recent issue of allowing the North Korean commercial ships to pass through South Korea's territorial sea should be discussed in terms of reciprocity. That is, if North Korea permits South Korean ships to pass its territorial sea, the South Korean government should also let North Korean ships to do the same thing in regards with the innocent passage rule provided by the 1982 UN Convention on the Law of the Sea.

The maritime delimitation North Korea made with Russia in the East Sea will probably be succeeded by the unified Korea. But it is unclear whether the South Korean government, which will constitute the unified government, is satisfied with the North Korea-Russia agreement. North Korea might proceed to establish ocean boundaries with Japan and China in the East Sea and the Yellow Sea, respectively. In that case it would be preferable for the two Koreas to negotiate with each other prior to the maritime delimitation with third parties. If this is unrealistic and impractical it is recommendable for both countries to organize a common seminar among their jurists of international law of the sea and make it an occasion for their thoughts to converge.

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