The Korean Coast Guard's Law Enforcement Concerning Chinese IUU Vessels

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II. Statistics on the Chinese Fishing Vessels and their Illegal Activities
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I. Current State of the EEZ of Korea

- No permanent maritime boundaries among China, Japan, North/South Korea
- Provisional arrangements under Art. 74(3)
- Korea-Japan Fisheries Agreement
  - 1965 Fishery Agreement
  - Newly concluded on 28 November 1998 after ratification of the UNCLOS by two States
  - Entered into force on 22 January 1999
- Korea-China Fisheries Agreement
  - Concluded on August 2000
  - Entered into force on 30 June 2001
II. Statistics on the Chinese Fishing Vessels and their Illegal Activities

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Fishing Vessels</th>
<th>Quota (tonnage)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Agreed</td>
<td>Operated</td>
</tr>
<tr>
<td>2001.6~2002</td>
<td>2,796</td>
<td>939</td>
</tr>
<tr>
<td>2003</td>
<td>2,531</td>
<td>1,532</td>
</tr>
<tr>
<td>2005</td>
<td>2,100</td>
<td>1,586</td>
</tr>
<tr>
<td>2007</td>
<td>1,917</td>
<td>1,843</td>
</tr>
<tr>
<td>2013</td>
<td>1,600</td>
<td>1,511</td>
</tr>
</tbody>
</table>

Statistics on Chinese Fishing Vessels in the EEZ of Korea
Fishing Activities in Korean waters by Chinese Fishermen

* EEZ
- 400-500 fishing vessels per day

* NLL
- Apr. to June, Sept. to Nov.
- 200-300 fishing vessels per day

Inspection on Chinese Fishing Vessels

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>EEZ</th>
<th>NLL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>No Licence (Violation of Territorial Sea)</td>
<td>Violation of Certain Conditions</td>
</tr>
<tr>
<td>2016.10</td>
<td>152</td>
<td>103 22(2)</td>
<td>81</td>
</tr>
<tr>
<td>2015</td>
<td>378</td>
<td>353 71(2)</td>
<td>282</td>
</tr>
<tr>
<td>2014</td>
<td>245</td>
<td>220 88(11)</td>
<td>132</td>
</tr>
</tbody>
</table>

[Source: Ministry of Public Safety and Security, October 2016]
<table>
<thead>
<tr>
<th>11</th>
<th>Evolving Obstruction by Chinese Fishing Vessels of Korea Coast Guard’s Law Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>◆</td>
<td>Violence and use of weapon (2002~2009)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>12</th>
<th>Evolving Obstruction by Chinese Fishing Vessels of Korea Coast Guard’s Law Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>◆</td>
<td>Resistance by making huge fishing fleets and fleeing (2009~)</td>
</tr>
</tbody>
</table>
Evolving Obstruction by Chinese Fishing Vessels of Korea Coast Guard’s Law Enforcement

◆ Installations to prevent boarding and inspection (2011~)

◆ Welding the iron door of steering house (2012~)
Sinking of Korea Coast Guard’s Speedboat

- **7 Oct. 2016:** Sinking of Korea Coast Guard’s Speedboat
  - Chinese fishing vessels suspected to be involved in illegal fishing were spotted by Korean Coast Guard at 37°28′33″N, 124°2′3″E
  - The vessels were fleeing despite the order to stop and Korea Coast Guard undertook the hot pursuit
  - After identifying the speedboat, the Chinese fishing vessels rammed and sank the speedboat at 37°23′06″N, 123°58′56″E

Sinking of Korea Coast Guard’s Speedboat

- **1 Nov. 2016:** First use of firearms by Korea Coast Guard
  - Use of firearms against Chinese fishing thrawlers for the first time
  - The Korea coast guard seized two trawlers after firing about 700 M60 machine gun rounds at a fleet of 30 Chinese fishing ships
III. Use of Force in Law Enforcement Activities at Sea under International Law

International Instruments

- Code of Conduct for Law Enforcement Officials (1979 UNGA Res.34/169)

- UNCLOS
  - No specific provisions on the use of force against illegal fishing vessels
  - Guideline on the extent of force to be used for protecting marine environment
  - Art. 225: “In the exercise under this Convention of their powers of enforcement against foreign vessels, States, shall not endanger the safety of navigation or create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk.”

- UN Fish Stocks Agreement
  - Art. 22(1)(f): “[…] avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.”
### International Case Laws

- **I'm Alone case**
  - US Coastguard vessels sank Canadian registered vessel with loss of life in 1929
  - “[…] the intentional sinking of the vessel […] could not be justified by any principle of international law”

- **Red Crusader case**
  - Danish vessel opened a fire on the British trawler in 1961
  - “[…] the firing exceeded legitimate use of armed force on two counts: (a) firing without warning of solid gun-shot; (b) creating danger to human life on board the Red Crusader without proven necessity”

- **M/V Saiga (No. 2), ITLOS, 1999**
  - Guinean patrol boat opened a fire on a St. Vincent and the Grenadines registered tanker suspected of bunkering fishing vessels
  - “It is only after appropriate actions fail that the pursuing vessel may, as a last resort, use force. Even then, the appropriate warning must be issued to the ship and all efforts should be made to ensure that life is not endangered.”
  - “Although the Convention does not contain express provisions on the use of force in the arrest of ships, international law, which is applicable by virtue of article 293 of the Convention, requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances.”

- **M/V Virginia G (No. 19), ITLOS, 2014**
  - The vessel of Guinea-Bissau opened a fire against Panamanian flagged bunkering vessel in the EEZ
  - “[…] in international law force may be used in law enforcement activities provided that such force is unavoidable, reasonable and necessary.”
IV. Law and Practice on Fishery Law Enforcement of Korea

National Legislations on Fisheries Law Enforcement

- **Relevant Provisions of the UNCLOS**
  - Arts. 61, 62, 73: Directly applicable to national legal system of Korea
  - Monist State: Art. 6 of the Constitution of Korea

- **Act on the EEZ and Continental Shelf (recently amended)**
  - On 21 March 2017, the Act was amended to add some provisions on the continental shelf
  - Art. 3: Sovereign rights and jurisdiction over living or non-living resources
  - Art. 5(2): Refraining the exercise of sovereign rights and jurisdiction beyond median line from the baseline

  “Unless the concerned States agreed otherwise, the rights in the EEZ under Art. 3 shall not be exercised in the maritime zone beyond the median line between Korea and the concerned State.”
National Legislations on Fisheries Law Enforcement

- **Act on the Exercise of Sovereign Rights on Foreigners’ Fishing within the Exclusive Economic Zone**

  **Art. 1: Purpose of the Act**
  - exercising sovereign rights, etc. in relation to foreigners’ fishing activities conducted in the exclusive economic zone of the Republic of Korea

  **Art. 4: Prohibition of Fishing Activities in the Certain Prohibitive Zone**

  **Art. 5: License for Fisheries**

  **Arts. 6-2: Order for Stoppage of Vessels Suspected of Illegal Fishing Activity**

  **Art. 7: Fishing Fees**

  **Arts. 16-2 ~ 22: Penal Provisions**
  - Violation of Arts. 4 and 5(1): Fine below 267,900 USD
  - Violation of Arts. 10, 11, 13 and 14(1): Fine below 178,600 USD

- **Article 23: Judicial Procedure against Violating Vessels**

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National Legislations on Fisheries Law Enforcement

- **Act on Coast Guard (recently amended)**

  **Art. 1: Purpose of the Act**
  - To ensure maritime security, maintain public order, and protect marine fishery resources and maritime installations

  **Art. 7(2): Scope of Coast Guard Activity**
  - Prevention of marine pollution and protection of oceans fishery resources

  **Art. 12(1): Boarding and Inspection at Sea**
  - Vessels which are suspected of violating national legislation and treaties or in which the violation is about to happen

  **Art. 13: Hot pursuit and arrest**
  - Fleeing vessels by disobeying the order to stop
  - When there are reasonable grounds that the vessels violate national legislation and treaties or the violation is about to happen
National Legislations on Fisheries Law Enforcement

- Act on Coast Guard (recently amended)

Art. 17: Use of Firearms
- To ensure maritime security, maintain public order, and protect marine fishery resources and maritime installations

Art. 7(2): Scope of Coast Guard Activity
- Prevention of marine pollution and protection of oceans fishery resources

Art. 12(1): Boarding and Inspection at Sea
- Vessels which are suspected of violating national legislation and treaties or in which the violation is about to happen

Art. 13: Hot pursuit and arrest
- Fleeing vessels by disobeying the order to stop
- When there are reasonable grounds that the vessels violate national legislation and treaties or the violation is about to happen

2016 Revision of the Manual on the Use of Firearms

<table>
<thead>
<tr>
<th>Principle</th>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>· When obstructing justice with weapon, use of all necessary measures including equipment and firearms are allowed to arrest</td>
<td>· When obstructing justice with weapon, use of all necessary measures including equipment and firearms are allowed to arrest</td>
<td></td>
</tr>
<tr>
<td>Decision making</td>
<td>×</td>
<td>Personal Firearms: Individual officer Common Firearms: On-scene commander</td>
</tr>
<tr>
<td>Report</td>
<td>×</td>
<td>Act First, Report Later</td>
</tr>
</tbody>
</table>
### Requirements

<table>
<thead>
<tr>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vessels attack Coast Guard by using the body of vessels or fatal weapons</td>
<td>Inspection officers are threatened to be attacked by using the body of vessels or fatal weapons</td>
</tr>
</tbody>
</table>

#### Personal firearms
- Inspection officers’ security threatened
- Judging enforcement is impossible
- Self-defense

#### Common firearms
- Boarding inspectors’ security threatened
- Murder the office or taking hostages
- attack occurs or there is imminent attack
- Intentional ramming by the body of the vessel
- In emergent situations similar to the two cases above

### Procedure

<table>
<thead>
<tr>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warning shots only</td>
<td>Elaborating warning shots before use of firearms</td>
</tr>
</tbody>
</table>

#### Procedure
- Restrictions
- Taking safety action with firearms loaded
- Minimizing the damage (Targeting below thigh of the suspect)
- Warning shots and prior warning
- Collecting evidence on use of firearms

- Elaborating the procedure of using firearms
- Warning → Warning shots → Use of firearms
- Required to target the part of body of the suspect or the vessel to minimize loss of lives

### Safeguard
- ×
- Maintaining medical emergency unit for the injured

### Immunity
- Immunity for lawful use of firearms from criminal responsibility

### Legal ground
- ×
- Amendment of the Coast Guard Act
- Broaden the requirements of use of firearms
V. Concluding Remarks

- Crucial role of the bilateral fishery agreement between China and Korea to maintain the peaceful legal order and sustainable fisheries
- To some extent the bilateral fishery agreement system is vulnerable to the IUU fishing activities and fluctuation of the diplomatic relations between two States.
- Considering the stand-off among China, North and South Korea and peculiarities of north eastern region of China, IUU fishing activities will continue for considerable periods.
- Recent legislation and practice of Korea Coast Guard has given serious consideration to the Convention and international case laws on the use of force for fishery law enforcement.
- Negotiation on the permanent maritime boundary is still going on and establishing permanent boundary will contribute to establishing sustainable fishery in the waters near Korean peninsular.

Terima kasih atas perhatian!

Thank you for Attention!

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