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The U.S.-Korean Fishing Rights Dispute in the North Pacific Ocean

Choon-ho Park*

INTRODUCTION

The first South Korean† adventure in distant-water fishing began in 1957, when a 299-ton commercial fishing vessel was sent to the eastern part of the Indian Ocean to test the feasibility of tuna fishing.‡ Korea's long-distance fishing industry continued to develop at a slow pace until 1965, when Japan and Korea concluded a fisheries agreement, ending a fourteen-year dispute over Japanese fishing in the waters off the Korean peninsula and obligating Japan to help Korea develop its fishing industry.§

Encouraged by Japan's assistance, Korea made plans to expand its distant-water fishing industry into the North Pacific. In 1966 a 380-ton vessel was sent to the North Pacific and the Bering Sea with the stated purpose of experimenting with salmon fishing.¶ Thus began a serious fishing rights dispute between Korea and the United States, a dispute remarkably similar to that between Japan and the United States in the late 1930's.∫

I

THE KOREAN FISHING INDUSTRY

In 1986, the Korean fishing industry landed a total catch of approximately 3.1 million metric tons. In terms of live catch alone, this makes it

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† Hereinafter South Korea is referred to as "Korea."


¶ Eung-soo Kim, supra note 2, at 16.

one of the ten largest fishing nations in the world.\(^6\) In terms of Korea's 1986 gross national product, however, the fishing industry income represented only 1.6% of the total, and only 4% of total Korean exports of $34.7 billion.\(^7\)

Although the fishing industry's importance to Korea's economy may be limited, its value cannot be measured in economic terms alone. Fish is one of the major sources of animal protein in the Korean diet.\(^8\) And the demand for fish is not based only on the need for animal protein; fish are also important in the Korean dietary culture, satisfying traditional tastes. Anything that interferes with a secure supply of fish easily reaches an emotional level in domestic politics, stirring nationalistic sentiments.

II

ROUND ONE: KOREA'S CONFRONTATION WITH THE UNITED STATES OVER THE NORTH PACIFIC SALMON FISHERY

From the standpoint of the United States, the expansion of Korea's distant-water fishing industry continued uneventfully until the Korean foray into the Bering Sea and Bristol Bay in the name of experimental salmon fishing. Naturally, the Korean advance into the North Pacific did not escape U.S. attention. Initially, U.S. reaction took the form of a resolution condemning Korea's entry into the North Pacific salmon fishery.\(^9\)

Korea ignored this and other warnings not to fish salmon off the U.S. coast. In part, Korea was unaware how sensitive the United States was to foreign access to North Pacific salmon. Had Korea fully realized how acrimonious the dispute between Japan and the United States over North Pacific salmon fishing had been, it is unlikely that the U.S.-Korean dispute would have taken place, costing so much good will between these two traditionally friendly nations.

Paradoxically, the dispute originated in part from the very friendliness of U.S.-Korean relations. Perhaps naively, Korea thought that it

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8. Something quite similar can be said of Japan, a nation that sometimes calls itself a gyoshoku minzoku (fish-eating nation).
could share for nothing some of what its friend regarded as indisputably its own.

Following Korea's failure to respond to warnings, the United States threatened to suspend its economic aid to Korea unless the North Pacific salmon were left alone. Bilateral talks were held between Korea and the United States in April 1970 in Washington, D.C. In these negotiations Korea was asked, and agreed, to abstain from North Pacific salmon fishing in return for U.S. efforts to facilitate World Bank loans for Korea.

The agreement was short-lived, however, and Korea continued to fish for salmon deep within the waters of Bristol Bay in disregard of it. As a result, the United States began to exercise economic pressure on Korea, and fisheries relations between the two otherwise friendly nations cooled. The final blow to Korea's participation in the salmon fishery came with the enactment of the Fishery Conservation and Management Act of 1976 (FCMA), placing all foreign fishing within 200 miles of the U.S. coast under U.S. regulation.

III

ROUND TWO: THE OTHER NORTH PACIFIC FISHERIES AND THE ADVENT OF JOINT VENTURES

Korean interest in North Pacific fishing is not confined to salmon fishing. Korea gave up the salmon fishery, but other North Pacific fisheries continue to play a crucial role in satisfying its national demand for fish. Among the most important of these fisheries is the Alaskan pollack, a species even more popular in Northeast Asia than salmon. Korea landed large quantities of Alaskan pollack until 1977, when 200-mile exclusive fishing zones were put into force by Canada, the Soviet Union, and the United States.11

Initially, in the name of the freedom of the high seas, Korea adamantly refused to recognize U.S. jurisdiction over species migrating beyond the three-mile U.S. territorial seas. Korea's position in this regard was consistent with its earlier refusal to sign or ratify the United Nations Convention on Fishing and Conservation of Living Resources of the High Seas12 in 1958.

Korea's claim of free access was effectively undermined by three events. First, in 1976 the U.S. Congress superseded the terms of a 1972

12. Apr. 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285. Korea attended the 1958 Conference, but in addition to refusing to sign or ratify the Convention, Korea rejected the interpretation that the United States placed on the Convention with its ratification, that "such ratification shall not be construed to impair the applicability of the principle of 'abstention' as defined in paragraph A.1 of the documents of record in the proceedings of this Conference." Id. at 185, 559 U.N.T.S. at 286 (citing this codicil).
Fisheries Agreement between the U.S. and Korea by enacting FCMA.₁³ Second, in 1977, often referred to as "year one" of the 200-mile regime in the law of the sea, many of the major maritime powers, including Britain, Canada, and the Soviet Union (as well as the United States), extended their maritime jurisdictions to 200 miles.₁⁴

Finally, in 1982 the U.N. Convention on the Law of the Sea (1982 Convention)₁⁵ further solidified the international consensus in favor of a 200-mile limit. While the United States did not sign the Convention, Korea has, although it has not yet ratified it. Provisions of the 1982 Convention grant a coastal state "sovereign rights" to explore, exploit, conserve, and manage all the resources within 200 miles of its coast.₁⁶

In the case of living resources, the 1982 Convention allows a coastal state to determine whether there is any surplus amount, beyond the harvesting capacity of its own nationals, that may be taken by foreign vessels without affecting long term yields.₁⁷ Thus, it is the coastal state that determines the total allowable level of foreign fishing (TALFF). However, these provisions cause concern for distant-water fishermen in that they may be so subjective as to give foreign interests little real opportunity to harvest within an exclusive fishing zone.

The historic interests of foreign states—and those of developing countries in particular—are supposed to receive due consideration in determining TALFF's within an exclusive economic zone (EEZ).₁⁸ But the fact still remains that the "optimum yield" is determined by the coastal state. In spite of these concerns, by 1982 Korea ceased to assert unrestrained freedom to fish within the 200-mile EEZ of the United States, because FCMA, combined with the 1982 Convention, deprived it of any legal basis for this assertion.

Even earlier, in January 1977, realizing that it was fruitless to continue to contest U.S. regulation beyond its territorial seas, Korea had signed a governing international fisheries agreement (GIFA),₁⁹ granting Korea annual quotas for Alaskan pollack fishing off the coasts of the United States. This agreement was renewed and extended once in 1983 and again in 1987, and it still remains in force.²⁰

₁³. See supra note 10 and accompanying text. The 1972 Agreement is reported in Cooperation in Fisheries, U.S.-Korea, 67 STATE DEP'T BULL. 742 (1972).
₁⁴. R. SMITH, supra note 11, at 21.
₁⁶. Id. art. 56.1.
₁⁷. Id. art. 61.
₁⁸. Id. arts. 62(3), 69, 70.
Korea was not unaware that FCMA was intended to phase out foreign fishing within 200 miles of the U.S. coast for the benefit of the U.S. domestic fishing industry. At the same time, however, the United States needed to enhance the debilitated capacities of its own fishing industry. One of the measures taken to rebuild U.S. capacity while softening the impact of reducing foreign catches was to encourage foreign fishing interests to participate in joint ventures with various segments of the U.S. fishing industry.21

### TABLE 1
Korean Catches under Quotas and Joint Ventures, U.S. EEZ*
(unit = metric tons)

<table>
<thead>
<tr>
<th>Year</th>
<th>Quota</th>
<th>Actual Catch</th>
<th>%</th>
<th>Quota Fees**</th>
<th>J/V Catch</th>
<th>Planned</th>
<th>Actual Catch</th>
<th>Actual ($1000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>243,205</td>
<td>206,247</td>
<td>85</td>
<td>2,584</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>1981</td>
<td>268,536</td>
<td>248,819</td>
<td>93</td>
<td>4,428</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>307,000</td>
<td>239,134</td>
<td>78</td>
<td>6,124</td>
<td>45,000</td>
<td>48,100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1983</td>
<td>324,690</td>
<td>272,568</td>
<td>84</td>
<td>8,326</td>
<td>58,600</td>
<td>57,323</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1984</td>
<td>329,757</td>
<td>268,432</td>
<td>81</td>
<td>8,266</td>
<td>102,700</td>
<td>98,166</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1985</td>
<td>250,219</td>
<td>221,294</td>
<td>88</td>
<td>7,475</td>
<td>181,900</td>
<td>176,767</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1986</td>
<td>116,169</td>
<td>98,596</td>
<td>85</td>
<td>4,560</td>
<td>458,837</td>
<td>357,570</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


** For admission into fishing grounds, etc.

While joint ventures have been expanded, Table 1 shows that this expansion has been largely offset by a decrease in the annual quotas for direct fishing by Korean vessels (a trend similar to that for other foreign fleets fishing within the U.S. 200-mile zone). The success of the joint venture program in helping to rebuild U.S. fishing capacity is shown in Table 2, indicating marked increases in the number of both U.S. fishermen and fishing vessels since 1976.

Although Korea has not yet ratified the 1982 Convention,22 it is conscious of the fact that the 200-mile regime adopted in the Convention has been accepted as customary international law. In other words, Ko-

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21. These joint ventures may involve any stage of the industry, including the catching, processing, and export of fishery products to the foreign partners of the ventures. See generally E. MILES, S. GIBBS, D. FLUHARTY, C. DAWSON & D. TEETER, THE MANAGEMENT OF MARINE REGIONS: THE NORTH PACIFIC 202-13 (1982).

TABLE 2
Number of Fishermen in the United States and Number of Vessels over 5 Gross Registered Tons (GRT) in the United States Fishing Fleet.*

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Fishermen</th>
<th>Number of Vessels Over 5 GRT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>173,610</td>
<td>16,875</td>
</tr>
<tr>
<td>1977</td>
<td>182,068</td>
<td>17,545</td>
</tr>
<tr>
<td>1978</td>
<td>188,300</td>
<td>18,000</td>
</tr>
<tr>
<td>1979</td>
<td>184,000</td>
<td>18,400</td>
</tr>
<tr>
<td>1980</td>
<td>193,000</td>
<td>18,900</td>
</tr>
<tr>
<td>1981</td>
<td>197,900</td>
<td>19,500</td>
</tr>
<tr>
<td>1982</td>
<td>215,600</td>
<td>20,400</td>
</tr>
<tr>
<td>1983</td>
<td>223,000</td>
<td>21,100</td>
</tr>
<tr>
<td>1984</td>
<td>230,700</td>
<td>24,000</td>
</tr>
<tr>
<td>1985</td>
<td>238,800</td>
<td>24,300</td>
</tr>
</tbody>
</table>


rea itself has yet to proclaim a 200-mile zone for fishing (as Japan did in 1977) or for economic purposes, but it no longer seeks to contest the jurisdiction of the United States or, for that matter, the jurisdiction of other coastal states as to their claimed 200-mile zone. Thus, while the U.S.-Korean fisheries dispute was effectively ended by the advent of the 200-mile regime worldwide and FCMA, this settlement cannot be said to have been achieved in the form of bilateral negotiation. Rather, Korea simply acquiesced in the order emerging on the international legal scene.

The advent of 200-mile zones in the North Pacific in 1977 may have dealt a fatal blow to Korean distant-water fishing. Under the 1977 GIFA, Korea agreed to place its catches within the U.S. EEZ under a quota system. Korea’s fishing vessels continue to catch Alaskan pollack and other species (except salmon), but the amounts allotted Korea continue to decrease, and the 1988 quota for Korea is expected to be minimal. While joint ventures may maintain the supply of fish to Korea, the Korean industry’s role continues to decline.

CONCLUSION

The U.S.-Korean dispute over fishing rights in the North Pacific began with Korean insensitivity to U.S. concerns about a species with a very particular ecology, namely, the North Pacific salmon. To some ob-

23. Fisheries Agreement, supra note 19, Annex II.
servers on the Korean side, it is still a mystery as to why the Korean authorities allowed the dispute to continue as it did, quite needlessly.

One interesting development following the exclusion of Korea from the North Pacific salmon fishery is that efforts are being made in Korea to spawn and release salmon into the sea. The purposes are two-fold: first, to farm salmon; and second, to study the ecology of salmon. If the second purpose is eventually intended to provide Korea with a North Pacific salmon fishery, joint research will be necessary to establish the migratory ranges of Korean salmon in the North Pacific.

From the standpoint of the two nations involved, the Korean-U.S. dispute over North Pacific fisheries was an international legal tragi-comedy: tragic because the Korean distant-water fishing industry suffered extensive losses;25 and comic because a small “non-maritime” country bluntly sought to press the doctrine of freedom of the high seas on a maritime superpower.26 Although the dispute over salmon has virtually ended, controversies are still likely to take place with respect to other species in the course of U.S. regulation of foreign fishing within its 200-mile zones.

26. JONG-SUNG PARK, supra note 9, at 219.