Legal Dilemmas and Regime-Building in the East Asia Maritime Conflicts
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Chapter 5

The Presence of Third States in the Maritime Dispute Settlement of Northeast Asian Seas and the Application of the Multivariate Regime Theory

5.1 Introduction

The second and third chapters concluded that international law cannot fully settle the presence of third States in maritime dispute settlement, particularly in international maritime boundary delimitation. The fourth chapter has argued that the establishment of a multivariate maritime regime may assist littoral states to take the rights and interests of third states into account by focusing on common interests shared by regional stakeholders, filling in the loophole recognized under the legal means. It also indicates that in some semi-enclosed seas across the globe in which maritime boundary disputes are pending, a multivariate maritime regime has been set up to offset legal deficiencies. In the semi-enclosed seas of the East Asia region, a preliminary analysis points out that some elements of a multivariate regime formation are visible but incomplete and have to be further established to ensure the protection and preservation of third States in the maritime dispute settlement of relevant contested zones.

The fifth chapter will focus on how the presence of third States influences maritime delimitation in the Northeast Asia semi-enclosed seas, which includes the ECS, the Yellow Sea/West Sea, and the Sea of Japan/East Sea. Three contested maritime zones are the subject of disputes concerning territorial sovereignty and sovereign rights. It is known that the issue of sovereignty lays the foundation for settling maritime boundary disputes. In NEA, disputes relating to the Diaoyu/Senkaku Islands and Dokdo/Takesima Island really impede China, Japan, North Korea, and South Korea from delimiting parts of their respective maritime boundaries. In accordance with the UNCLOS, coastal States have passed domestic laws to claim TS, CS, and EEZ, which as a result has generated overlapping maritime entitlements among them. To be noted, more than two States are present in the multistate-disputed marine zones, which complicates the delimitation task before them. In other words, the presence of third States becomes a factor to be considered, specifically China-North Korea-South Korea in the Yellow Sea/West Sea, China-South Korea-Japan in the ECS, and North Korea-South Korea-Japan-Russia in the Sea of Japan/East Sea.
There will be four sections in this chapter; they will examine the presence of third States in the delimitation of NEA’s contested maritime zones. The first will discuss how to delimit maritime boundaries in NEA’s waters and the role of third States in the delimitation process. Given the application of delimitation methodology under international law, this chapter states that protection afforded to third states is insufficient. The second part demonstrates how a multivariate regime theory may help protect the rights and interests of third States in spite of pending interstate delimitations. Based on the application of multivariate regime theory, the third section will identify some existing but neglected elements of maritime regime building in NEA, and it will provide recommendations to strengthen the development of a multivariate maritime regime, in order to accommodate the rights and interests of disputing States and third States in multistate-disputed marine zones. The fourth section will give some concluding remarks on the application of a multivariate maritime regime in NEA’s contested semi-enclosed seas.

5.2 The presence of third States in the delimitation of NEA’s contested maritime zones

On account of unsettled maritime boundaries in three contested maritime areas, resource-oriented conflicts hang over coastal States. China and South Korea as well as Japan and South Korea have always had longstanding clashes regarding the regulation of fishing activities in the Yellow Sea/West Sea and the ECS. Even though bilateral fishery agreements among China, South Korea, and Japan have been reached and are regarded as provisional arrangements before maritime delimitation is to be effected, in practice encounters between fishermen and coast guards from three states cannot be completely avoided.\(^{674}\) China has always been constantly against the Japan-South Korea Joint Development Agreement and Fishery Agreement, claiming that Chinese sovereignty and sovereign rights have been prejudiced as a third State.\(^{675}\) Japan and South Korea also have conflicts about fisheries near the disputed Dokdo/Takeshima.\(^{676}\)

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On the other hand, China and Japan also collude on the exploration and exploitation of the Chunxiao oil and gas field in spite of reaching principled consensus on ECS issue.\textsuperscript{677}

Uncertainties surrounding the sharing of living and non-living resources in NEA’s waters are attributed to undemarcated maritime boundaries. This section will examine the challenges of dealing with the rights and interests of third States from the perspective of the delimitation methodology in three contested maritime zones of this region, pointing out the deficiency of legal means to protect the rights and interests of third States.

\textbf{5.2.1 The presence of third States in the delimitation of the Yellow Sea/West Sea}

So as to deal with the presence of third States, a series of legal challenges have been posed in the delimitation process of the Yellow Sea/West Sea.\textsuperscript{678} Notably, China, South Korea, and Japan respectively signed bilateral fishery agreements which cover the Yellow Sea/West Sea and ECS but do not completely cover all of them.\textsuperscript{679} Meanwhile, organizations from Taiwan and Japan in 2013 concluded the fisheries agreement around Diaoyu Dao/Senkaku Islands.\textsuperscript{680} This agreement was opposed by China, mainly due to its concern regarding Japan’s potential noncompliance with the “One-China Policy”.\textsuperscript{681} Nevertheless, as provisional arrangements, bilateral fishery zones should not have an impact on the final maritime delimitation, according to Article 74(3). The role of third States will be discussed on the basis of different possible assumptions or hypotheses with regard to the demarcation process.

The eastern boundary of the China-South Korea fishery agreement is the longitude 124°30′E and lies to the west of an equidistant point defined by the North Korea (36°50′45″N 124°32′30″E).\textsuperscript{682} So, it can be seen that the eastern limit of the provisional zone in the China-South Korea Agreement deliberately avoids intersecting with unilateral line delimited by North Korea.\textsuperscript{683} It is revealed that the North Korea’s

\begin{footnotesize}
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\item[678] Such challenges contain the legality of the NLL, ownership over sovereignty of the West Sea Five Islands, a decision of which delimitation method should be applied, whether there are certain relevant circumstances that should adjust a provisional maritime boundary, etc.
\item[682] Prescott and Schofield, \textit{The Maritime Political Boundaries of the World}, 628.
\item[683] Suk Kyoon Kim, \textit{Maritime Disputes in Northeast Asia: Regional Challenges and Cooperation} (Leiden, Netherlands: Brill Nijhoff, 2017), 23.
\end{itemize}
\end{footnotesize}
proposition amounted to rejecting the legality of the Northern Limit Line (NLL) and was continuously opposed by South Korea. Nonetheless, China remained silent, since it is more likely that China will maintain its friendly relationship with the North Korea and decide not to challenge that line. Predictably, one would presume that the China-South Korea single delimitation line in the EEZ and CS may comply with the non-encroachment upon the rights and interests of third States by leaving that controversial equidistance line aside. Victor Prescott and Clive Schofield suggest that China can “delimit the boundaries with the two Koreas excluding the section which involves the Northwest islands”. Alternatively, “China could agree on a boundary with South Korea as far as the northern point and insert in the treaty a statement that the northern section of the boundary is defined without prejudice to any claims which a third State might make”. As a consequence, the China-South Korea boundary may not be completely demarcated and may stop before it meets the hypothetical trijunction made by crossing the China-North Korea boundary.

Compared with the China-South Korea potential maritime boundary, the South Korea-North Korea maritime boundary seems to be more uncertain with regard to the historical and political complexity of the Korean Peninsula. Although North Korea’s equidistance line claim was announced earlier than China-South Korea’s fishery agreement, that line ended in front of the limit of that provisional fishery zone. There may be a hypothetical trijunction (38°16′N 123°36′E) among China, South Korea, and the North Korea, based on the South Korea or North Korea’s claimed maritime border. Nonetheless, in light of previous analysis, the final boundary between North Korea and South Korea is presumed not to reach that far but instead to fall short of meeting China at that tripoint. Hence, no interests and rights of China may be affected. To sum up, it is pointed out that in the delimitation process of the Yellow Sea/West Sea, the China-South Korea maritime boundary and North Korea-South Korea maritime boundary may fall short of

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684 Kim, *Maritime Disputes in Northeast Asia*, 18-9. After the Korean War, the United Nations Command General Mark Clark in 1953 unilaterally declared the Northern Limit Line “as military control lines in the West and East Seas”. This line “runs between the five West Islands under control of South Korea and the North Korea’s coast”. North Korea and South Korea have sovereignty disputes over five islands located around the NLL due to the Korean War. The five islands consist of Yeonpyeong Island, Baengnyeongdo, Daecheongdo, Socheongdo, and U Island (or Paekryeong-do, Daechung-do, Socheng-do, Yeonpyeong-do, and Woo-do). They are also called the Five West Sea Islands (to be noted: from South Korea’s perspective, the West Sea is the Yellow Sea, and the East Sea is the Sea of Japan). The five islands are currently controlled by South Korea, while North Korea rejects this and claims ownership of these islands.

685 “Xi Jinping Holds Meeting with Chairman of the WPK Kim Jong-un of the DPRK in Dalian,” Ministry of Foreign Affairs of the People’s Republic of China, May 8, 2018, accessed May 10, 2018, http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1558201.shtml. It is underlined that China and the North Korea have a special relationship in Northeast Asia. In March and May, Kim Jong-un as the leader of North Korea visited China twice and signified that “the DPRK-China friendship and the Korean Peninsula situation have achieved meaningful progress since March this year”.


687 Ibid.
the China-South Korea-North Korea hypothetical trijunction; consequently, a small portion of trilateral region may be formulated.

5.2.2 The presence of third States in the delimitation of the ECS

In the ECS, Robert Beckman and Tara Davenport observe that “it would be necessary for the three NEA States to agree on a trijunction where all the boundaries meet, or else there may be an area that is not delimited”. However, due to the presence of third States, two scholars consider it hardly possible to carry out trilateral maritime delimitation, since “negotiations on boundaries in the East China Sea have been exclusively bilateral and there has been no consideration of the need to consider the claims of the relevant third party”. Until now there has only been the CS boundary between Japan and South Korea in 1974. Nonetheless, this chapter will explore whether legal means can address the rights and interests of third States in the ECS delimitation.

5.2.2.1 The presence of third States in the delimitation of overlapping EEZs in the ECS

To begin with, Victor Prescott and Clive Schofield estimated a tripoint which is equidistant from China, Japan, and South Korea. The latitude 30°40′N constitutes the northern boundary of the provisional measure zone and lies to the south of that approximate trijunction (36°46′12″N 125°55′30″E), and it does not extend further than that location. As a result, the boundary of the provisional measure zone on fisheries takes the presence of third States into account. Given the non-encroachment upon third States and that the boundaries of two provisional zones set up by the China-South Korea and China-Japan’s fishery agreements do not extend up to a hypothetic tripoint, it is suggested that the final maritime boundary line between China and Japan concerning the EEZ may stop before meeting with South Korea at that hypothetical trijunction. Concurrently, the final boundary between China and South Korea in the future may follow the same track and refrain from intersecting with Japan as the third State. The extension of two maritime boundaries may leave a trilateral area without implicating EEZs generated by both States.

5.2.2.2 The presence of third States in the delimitation of overlapping CSs in the ECS


689 Beckman and Davenport, “Non-Living Resources in Disputed Areas in the East China Sea,” 130.
With regard to overlapping CSs among three States in the ECS, the scenario appears to become more intricate. China and South Korea, in line with the natural prolongation of mainland territory rather than distance, have overlapping CSs within and beyond 200 NM, whereas Japan merely acknowledges and requests the delimitation of overlapping CSs within 200 NM. Both China and South Korea claim their CS would extend up to the Okinawa Trough, which is closely adjacent to the Ryukyu Islands of Japan, and “the Okinawa Trough constitutes the boundary between the two countries’ continental shelves”, as asserted by Jianjun Gao. However, whether the Okinawa Trough constitutes an outer edge of the continental margin remains debatable. So, it is observed that two options may be discussed here. The first is that the Okinawa Trough does not constitute China and South Korea’s extended CS. Alternatively, the Okinawa Trough constitutes a discontinuity in the natural prolongation of mainland territory of China and South Korea, and, Japan’s CS generated by the Okinawan Islands ended in the trough.

5.2.2.2.1 If the Okinawa Trough were not the extended CS of China and South Korea

Given that the Okinawa Trough is not defined as the extended CS of China and South Korea, the distance standard prevails over the natural prolongation of land territory. A small segment at the beginning of the Japan’s median line claim is not involved in China’s maximized 200-NM CS. Thus, overlapping CSs straddling the median line between South Korea and Japan can resort to purely bilateral delimitation in a very limited scope. That short maritime boundary can be regarded as the extension of the 1974 CS boundary. So as to be precluded from prejudicing the rights and interests of China’s CS, it is better to leave the ending point of this short maritime boundary undecided and extend it at a certain angle until it reaches China’s CS. In addition, China and South Korea may delimit a small part of their whole maritime boundary.

delimitation line may stop before a left hypothetical trijunction and draw an arrowheaded line at a certain azimuth until the rights and interests of Japan are affected. For another, if adopting Japan’s delimitation method, both countries can extend their boundary at a certain azimuth before arriving at a middle hypothetical trijunction, and this may not affect the rights and interests of Japan. In order to avoid affecting South Korea’s rights and interests, the China-Japan maritime boundary may draw an arrowheaded line in the northern direction at a certain azimuth before the point (a hypothetical trijunction) where the rights and interests of South Korea may be affected. In the southern part of the ECS, the status of the Diaoyu/Senkaku Islands may have no ramifications on the rights and interests of third States in the northern part of this maritime boundary.693

5.2.2.2 If the Okinawa Trough were the extended CS of China and South Korea

It is acknowledged that China is legally eligible to claim an extended CS beyond 200 NM, in accordance with Article 76 of UNCLOS.694 Given the Okinawa Trough constitutes a discontinuity in maritime delimitation in the ECS, there will be an overlap between China’s CS beyond 200 NM and Japan’s “distance-based shelf”, as indicated by Tara Davenport.695 In the 1974 South Korea-Japan Joint Development Agreement, Choon-ho Park points out that almost the entire joint development zone “falls on the Japanese side of a hypothetical equidistant line” between Japan and the South Korea.696 Jianjun Gao further highlights that “the shape of the joint development zone accommodated both countries’ delimitation arguments with the northwestern limit based on Japan’s claim and northeastern and southeastern limits based on Korea’s claim”.697 However, as China claims its CS extends up to the Okinawa Trough as the boundary with Japan, China’s rights and interests as a third State are unavoidably prejudiced by the 1974 South Korea-Japan Joint Development Agreement.698 The 2008 China-Japan Principled Consensus sets up a rectangular zone which straddles the median line argued by Japan in order to embark on the joint development of natural gas and oil in the northern part of the ECS. The northeastern limit of this zone is closely adjacent to the hypothetical China-Japan equidistant line but does not itself fall on that line. This indicates that the shape of the zone in the 2008 China-Japan Principled Consensus has taken the extent of the 1974 South Korea-Japan Joint Development

693 Prescott and Schofield, 627.
696 Park, “Japan-South Korea,” 1072.
697 Gao, “A Note on the 2008 Cooperation Consensus”, 293.
698 Ibid., 298. China has consistently objected to the 1974 South Korea-Japan Joint Development Agreement, proclaiming that “the Agreement infringed its rights on the CS and, therefore, was unlawful and void”.

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Agreement into consideration and established the area without intruding into the rights and interests of South Korea as a third State.

When China and South Korea carry out delimitation within and beyond 200 NM on the basis of natural prolongation, the “equitable principle/relevant circumstances” may be applied. But since two States’ CSs largely overlap with each other as well as Japan’s 200-NM CS, in order not to prejudice Japan’s rights and interests, it may be unclear how far the delimitation line may extend. As regards the delimitation of China and Japan or South Korea and Japan, because of the presence of third States, an overlap on the outer CS between China and South Korea makes it almost impossible to demarcate a line beyond 200 NM. As a result, such an impasse indeed prohibits three States from effecting maritime delimitation, and possible small segments in the whole maritime boundary cannot be helpful to demarcate most of the overlapping maritime entitlements in this region.

5.2.3 The presence of third States in the delimitation of the Sea of Japan/East Sea

In the Sea of Japan/East Sea, there are two maritime boundaries which have been negotiated by South Korea and Japan in 1974, and Russia and North Korea in 1986. Additionally, in 1999, South Korea and Japan agreed to establish a joint development zone on fisheries without changing their own stances on the sovereignty of Dokdo/Takeshima (37°14′N 131°52′E). In the process of delimitation via the equidistance/relevant circumstances approach, the presence of third States in the delimitation of the Sea of Japan/East Sea must be taken into account. Several hypothetical trijunctions or a presumed quadri-junction may exist. The legal status of Dokdo/Takeshima is not of no avail in addressing the rights and interests of third States. Jon M. Van Dyke observes that South Korea “has tended to argue that small uninhabited islets should not be able to generate EEZs and continental shelves”.

By contrast, Japan “has tended to take the position that all islands and islets, no matter how small, should be able to generate extended maritime zones”. It is argued that the Dokdo/Takeshima may be given a partial effect rather than no effect at all in the delimitation process.

Three scenarios can be offered as follows.

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701 Jon M. Van Dyke, “Addressing and Resolving the Dokdo Matter,” in Dokdo: Historical Appraisal and International Justice, ed. Lee Seokwoo and Lee Hee Eun (Leiden, Netherlands: Martinus Nijhoff, 2011), 38. Jon M. Van Dyke indicates that “whether or not Dokdo, is a ‘rock’ under Article 121(3), it almost certainly would be given no effect or only a very limited effect in any maritime delimitation line drawn by a judicial or arbitral tribunal”.

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5.2.3.1 Dokdo/Takeshima is given partial effect when South Korea has sovereignty

If one considers that sovereignty of Dokdo/Takeshima belongs to South Korea and the feature is only entitled to 12-NM TS. South Korea’s Dokdo/Takeshima and Japan’s Okinoshima (34°14’N 130°6’E) can be used as base points to construct a provisional equidistance line which becomes the final maritime boundary, since there are no relevant circumstances or disproportionality to adjust that line.702 With regard to the Russia-Japan maritime boundary, it is presumed that a provisional equidistance line can be set up and becomes a final maritime boundary on account of there being no relevant circumstances and disproportionality to adjust it.703 Accordingly, South Korea-Japan boundary may meet Japan-Russia’s maritime boundary in the vicinity of a point (39°49’N 133°54’E) as an approximately hypothetical tripoint among South Korea, Japan, and Russia.704 With regard to South Korea-North Korea maritime boundary, Dokdo/Takeshima can be used as a base point to construct a provisional equidistance line between two countries. Neither relevant circumstances nor the disproportionality test may require the adjustment of this provisional line. Such a line may thus be regarded as a presumed maritime boundary. Notably, North Korea-Russia boundary has encroached upon the rights and interests of South Korea and may be rendered void. Following a provisional equidistance line in which no relevant circumstances or disproportionate effects exist, the new North Korea-Russia boundary may meet the North Korea-South Korea boundary at the vicinity of a certain point (39°54’N 132°11’E) as an approximate tripoint among South Korea, Japan, and North Korea. Taking South Korea-North Korea-Russia and South Korea-Japan-Russia tripoints into account, there is a short line connecting two established equidistant points.705 Therefore, a potentially short maritime boundary between Russia and South Korea may be formed.

5.2.3.2 Dokdo/Takeshima is given partial effect when Japan has sovereignty

If Japan has sovereignty over Dokdo/Takeshima, in the same vein, a provisional equidistance line in which Ullung Do (37°30’N 133°11’E) and Dokdo/Takeshima are decided as base points can be constructed between Japan and South Korea.706 No relevant circumstances and disproportionate effects may make it unnecessary to adjust

703 Ibid.
704 Ibid.
705 Ibid., 446-7.
706 Ibid.
that line; thus, a final maritime boundary can be demarcated.\textsuperscript{707} In addition, the North Korea-South Korea final maritime boundary can be delimited in the same way. Consequently, two equidistant lines may meet in the vicinity of a point (39°41'N 132°33'E) as an approximate tripoint among the Republic of Korea, Japan, and North Korea. Moreover, the North Korea-Russia boundary in 1986 may have extended and intruded into Japan’s EEZ and CS as a third State, and therefore be rendered void. According to the North Korea-South Korea-Japan tripoint, it may be possible to delimit a provisional equidistance line between the North Korea and Russia. Additionally, without relevant circumstances and disproportionate effects to adjust this line, it may become a presumed boundary between two States. The Russia-Japan potential boundary remains a provisional equidistant line and may meet the North Korea-Russia’s presumed boundary in the vicinity of a point (39°41'N 132°33'E) as an approximate tripoint among North Korea, Russia, and Japan.\textsuperscript{708} What is more, the line connecting one point (39°54'N 132°11'E) and another point (39°41'N 132°33'E) as a provisional equidistance line may constitute a potential maritime boundary between North Korea and Japan.\textsuperscript{709}

5.2.3.3 Dokdo/Takeshima is given a partial effect when it does not constitute a base point

Heeyong Daniel Jang suggests establishing a provisional equidistance line by selecting base points solely located on the coasts of South Korea and Japan.\textsuperscript{710} Offshore features, including Dokdo/Takeshima, Ullung Do, and Okinoshima, are not given any legal effect.\textsuperscript{711} When Dokdo/Takeshima is situated on the wrong side of a provisional equidistance line, a half-circle zone may be generated by Dokdo/Takeshima but does not affect the direction of a final maritime boundary between South Korea and North Korea.\textsuperscript{712} Weiqiang Zhang considers South Korea to have sovereignty over Dokdo/Takeshima. “If the middle point between Takeshima and the Oki Islands is selected to draw a provisional median line”, “this line would disproportionately expand South Korea’s EEZ and reduce Japan’s EEZ”.\textsuperscript{713} Therefore, Dokdo/Takeshima has no

\textsuperscript{707} Ibid.
\textsuperscript{708} Ibid.
\textsuperscript{709} Ibid.
\textsuperscript{711} Jang, “Diminishing Role of Islands in Maritime Boundary Delimitation.” Daniel Jang proposed that, “if it is determined that Dokdo(Takeshima) is located on the wrong side of the median line, the country that owns the island would have to compensate for the size of the islands’ territorial sea by slightly adjusting the line towards its coast”.
\textsuperscript{712} If it belongs to South Korea, that line may be slightly adjusted toward South Korea’s coast at the distance of 12 NM. If it belongs to Japan, that line may be slightly adjusted toward Japan’s coast at the distance of 12 NM.
role to play, whereas Ullung Do and Okinoshima are used as base points for setting up a provisional equidistance line. He ultimately establishes the South Korea-Japan-Russia and the South Korea-North Korea-Russia tripoints and delimits maritime boundaries in the Sea of Japan/East Sea.\textsuperscript{714}

In short, the previous analysis has discussed hypothetical delimitation proposals in three contested semi-enclosed seas. The North Korea-South Korea-China trilateral area in the Yellow Sea/West Sea and the China-South Korea-Japan trilateral area straddling the Yellow Sea/West Sea and the ECS remain unsettled. Due to divergent positions from three countries on the delimitation methodology of EEZ and CS in the ECS, several circumstances have failed to show possibilities for smoothly carrying out the delimitation. In the Sea of Japan/East Sea, in spite of possible tripoints to be set up, the precondition relies on the determination of sovereign ownership of Dokdo/Takeshima. However, in light of the long-standing sovereignty dispute, it might hardly be possible to currently execute the delimitation task. In addition, there are some judicial obstacles for third-party adjudication bodies to address the presence of third States in three contested zones. For instance, in the ECS, provided that relevant States resort to third-party judicial mechanisms, the \textit{Monetary Gold} principle may be applicable to prevent a court or tribunal from exercising jurisdiction \textit{ratione personae} over the delimitation dispute, since there is a large CS overlap among three countries. Even if this principle does not render the jurisdiction void, the procedure of intervention still cannot safeguard the rights and interests of third States in light of the higher threshold to be satisfied in recent case law. As a result, the legal dilemma in the ECS maritime boundary disputes is predictable. Leaving their rights and interests aside does not substantially address the presence of third States. In blurry maritime areas where sovereign rights and jurisdiction are not explicitly defined, it is necessary to find some solutions to overcome such a technical difficulty. In light of the fourth chapter, the establishment of a multivariate regime arguably has been proven to strengthen multilateral cooperation by converging on common interests shared by disputing parties and third States in a multistate-disputed marine area. In the next section, it is observed that NEA requires the construction of a multivariate maritime regime, in pursuit of protecting common maritime interests and rights, including those from third States in a multistate-disputed marine zone.

\textsuperscript{714} Ibid., 396-402.
5.3 The application of the multivariate regime theory in NEA’s contested maritime zones

The second section of this chapter examines how to deal with the rights and interests of third States in NEA from a legal perspective. It has delved into varying possible assumptions of maritime delimitation and presented legal difficulties to addressing the presence of third States in three multistate marine zones. It also has to be pointed out that bilateral delimitation would hardly be achieved due to the presence of third States. In order to pay due regard to the rights and interests of third States, some solutions other than delimitation by legal means have to be sought. In this chapter it is argued that a multivariate regime that can accommodate interests relevant to stakeholders in those disputed waters should be established. There are two sections in this chapter. First, based on the theoretical framework presented in the fourth chapter, there will be a discussion of how power, self-interest, and knowledge from epistemic communities perform their roles in NEA. Furthermore, this section explores why a multivariate maritime regime is inadequately set up. Second, this part proposes that some measures can be taken to build up a multivariate maritime regime in three contested maritime zones. An improved setting demonstrates the balance of power, self-interests, and knowledge, and how such a balanced regime contributes to taking the rights and interests of third States into account in the disputed multistate maritime zones.

5.3.1 Regime settings in NEA’s seas: From the perspective of international relations

NEA is deeply implicated in longstanding territorial and boundary disputes. The presence of third States complicates maritime dispute settlement and should not be overlooked in the problem-solving process. Territorial and maritime boundary conflicts are concerned with national interests domestically and easily trigger nationalism directed at other NEA countries, with each State consequently being barely able to compromise. However, gloomy prospects for conflict resolutions in those disputed waters have hidden potential “windows of opportunities” for cooling down tension and addressing common interests among States. Mark Valencia has outlined “maritime problem areas” in the Asia region, including “piracy, smuggling, illegal immigration, transnational oil spills, incidents at sea, search and rescue, navigational safety, exchange of maritime information, illegal fishing, and management of resources in areas of overlapping claims”. For one thing, to tackle such problems, bordering states are

required to effectively exercise sovereign rights and jurisdiction in their respective marine zones. For another, most of these problems have the same transboundary character, which represents common interests shared by disputing states and third States in the same maritime domain. In NEA, this includes the management of resources in areas with trilateral overlapping claims, particularly fisheries, transboundary oil drilling activities, transnational vessel-sourced pollution, transnational maritime search and rescue, etc. As a consequence, convergence on common interests leads relevant stakeholders to take other states whose interests and rights may be affected into account. From the international relations perspective, in compliance with a negotiated framework, promoting trilateral and multilateral cooperation constitutes a reasonable response to such issues. A further question is how surrounding states participate in current regional arrangements in three contested zones for the purpose of launching cross-border cooperation. It is state-to-state relations in the same region that determine the form and degree of treating diverging maritime rights and interests. Specifically, different international relations scholars have distinct analyses in this respect, demonstrating varying attitudes toward NEA maritime dispute resolution. This section consists of two parts. The first part gives an overview of prevalent international relations theories in the analysis of NEA maritime conflicts, and points out some underlying qualms contained therein. The second part illustrates how the theory of a multivariate regime can offset the drawbacks of the application of a single international relations model in addressing commonly shared maritime rights and interests claimed by bordering States.

5.3.1.1 Prevalent international relations theories in the analysis of NEA maritime conflicts

As indicated by Barthelemy Courmont, Frederic Lasserre, and Eric Mottet, “the maritime disputes in East Asia have several factors in common (historical, political, legal, economic and more), but also that there is no particular determinism in the directions taken to solve them”. With regard to theoretical analysis, different international relations theorists have merely chosen one of the factors to describe the whole picture of NEA maritime conflicts. Realists believe that the escalation of NEA maritime conflicts originates from the imbalance of state power distribution. Based on the offensive realism theory, Mearsheimer regards China as a regional hegemon against the US and its allies in NEA. Regional power transition will disrupt established hegemonic stability and create armed conflicts between China and America’s allies.


Similarly, Jung Sung Chul and Lee Kihyun also consider China to be the main reason for regional instability and that China’s rise in economic and military power has posed threats at sea to neighboring countries, including South Korea and Japan. Koo Min Gyo also asserts that, “the United States, its allies, and China’s Asian neighbors worry that a powerful China could project its capabilities in a more unpredictable and dangerous manner than ever before”. Koo Min Gyo’s comment reasonably represents realists’ concern over NEA maritime tension.

Nevertheless, there are some disagreements with a purely power-based analysis of regional maritime conflicts. Michael Magcamit and Alexander Tan argue that “the underlying forces sustaining complex interdependence are what prevent rival states from engaging into a realist-inspired, zero-sum warfare”. Such an interdependence among regional actors at stake is overwhelmingly seen in the economy. Koo Min Gyo further illuminates that, from a liberal perspective, due to deepening economic relationships within NEA, “a regional multilateral architecture is developing, making the longer term trends more positive”. Taylor Fravel finds that China is not inclined to carry out territorial expansion, since the benefits of acquiring territory in the disputed maritime zones by aggression are much lower. His finding “increases confidence in the predictions of those scholars who stress the effects of economic interdependence on state behavior”. Another liberalist approach is placing emphasis on the power of normative rules and principles which require states to obey them. In NEA, the role of the UNCLOS has drawn attention from some scholars. As observed by Mark Valencia, the Convention itself “already serves as a framework within which nations carry out their ocean management rights and responsibilities”. For one thing, the exclusive nature of relevant provisions relating to the EEZ and CS really encourages coastal States to maximize their maritime jurisdiction within the limit permitted by the UNCLOS. If there are overlapping zones among bordering States in a semi-enclosed or enclosed sea, it may create conflicts arising from the exercise of such maritime entitlements on its own. For another, since those States are asked to cooperate with each other under Article 123 of the UNCLOS, their behaviors are obligated to be restrained

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720 Koo, “Belling the Chinese Dragon at Sea,” 55.
722 Koo, “Belling the Chinese Dragon at Sea,” 57.
724 Ibid.
so as not to hamper such cooperation, although they do not need to give up their original claims. Be that as it may, Article 123, to some extent, seems to have symbolic and declaratory meanings rather than a regime setting, since some basic elements relating to regime in international relations are incomplete. As a package deal in the process of negotiation, Article 123 may constitute a principled or fundamental rule instead of clarifying how the power of involved States is distributed and how to invoke rules and regulations to execute such cooperation in practice. Therefore, the UNCLOS in theory may offer spiritual and incentivized instruction for contracting parties to follow, and a maritime regime setting for cooperation in the semi-enclosed or enclosed sea remains incomplete.

What is more, there are comments from constructivists as well regarding NEA maritime disputes. As described by Dongxiao Chen, “in constructivist explanations, each nation has its particular identity, which indicates and implies a distinct understanding of the state’s preferences, motivation, interests, and behavior as well as the consequences thereof”. With respect to the Diaoyu/Senkaku Islands in the ECS, Wrenn Yennie Lindgren and Petter Lindgren observe that “Japanese identity-making relies on a construction of superiority vis-a-vis a subjugated China”. From a Japanese perspective, Japan is identified as standing for democracy and transparency, being law-abiding and peaceful, and a status quo player whereas China is identified as standing for dictatorship and non-transparency, and being unruly, aggressive, and a challenger. However, no solutions to ease bilateral maritime tensions have been put forward. What is more, Kevin Clements states that “postwar national identity formation in China, Japan, and Korea, therefore, may have generated some internal unity in each country, but it has a profoundly negative impact on intergroup relations within the region”. Masaru Tamamoto and Koichi Nakano point out the longstanding existence of historic identity-making in the three countries which keeps having a negative impact upon the promotion of trilateral relations. Nonetheless, Geun Lee proposes that an epistemic community can be developed to address historical memories. In spite of identity differences as well their adverse outcomes, Yamaguchi Noboru and Sano Shutaro see

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727 Lindgren and Lindgren, 384.

728 Ibid., 386-94.


the increasing necessity for the three countries to cooperate on security issues. Three States can alleviate such conflicts “by addressing the issues sensitively and by taking prudent action”, and “establish a common identity as ‘international security contributors’ and cooperate on commonly shared security issues”. However, current constructivists do not attach much importance to the effectiveness of knowledge in NEA maritime conflict resolution, and the role of epistemic communities on marine science and environment should draw more scholarly attention.

5.3.1.2 Regional arrangements in NEA’s maritime zones
The previous part introduces three mainstream international relations theories regarding the analysis of NEA disputed waters. The status quo research in international relations predominantly focuses on the ECS dispute rather than the Yellow Sea/West Sea and the Sea of Japan/East Sea. This section intends to seek a more equilibrated research on three areas. Different international relations theories have different understandings on reasons, modes, and consequences of state behavior and offer separate solutions to territorial and maritime disputes. Meanwhile, in light of mainstream international relations theories, corresponding regime models in international relations can be set up separately to deconstruct how to resolve NEA maritime cooperation in pursuit of common interests. Specifically, they are the power-based regime model under the realist theory, the self-interest regime model under the liberalist theory, and the knowledge-based regime model under the constructivist theory. The discussion below will observe that the dominant power among the three states is far from being established, but power distribution in the power-based regime model appears to be seen in the bilateral regional arrangements. The interest-based regime model has some clues in the bilateral documents. However, the power-based regime model and the interest-based regime model are not set up among the three countries in some trilateral maritime zones. The knowledge-based regime model proves to be rarely seen. Then, such a finding gives rise to a conclusion that a multivariate regime-building has not yet been set up for taking the rights and interests of all stakeholders into account.

5.3.1.2.1 An overview of regime settings in NEA: From the fishery perspective

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732 Yamaguchi Noboru and Sano Shutaro, “Trust and Trust-Building in Northeast Asia: The Need for Empathy for Japan-ROK-China Security Cooperation–A Japanese Security Perspective,” in: Identity, Trust, and Reconciliation in East Asia: Dealing with Painful History to Create a Peaceful Present, ed. Kevin P. Clements (Cham, Switzerland: Palgrave Macmillan, 2018), 226-9. Concrete areas include common goals such as denuclearization and peace and security of the Korean Peninsula, the protection of sea lines of communication in the Asia-Pacific region, sharing common interests in international cooperative activities.


Currently, there are some bilateral agreements which have established some cooperative frameworks in NEA maritime region.\(^{735}\) In the previous sections, bilateral fishery agreements were invoked. With references to the China-South Korea, China-Japan, South Korea-Japan, Japan-Russia, and Japan-North Korea fishery arrangements, there are some common features which indicate that these agreements establish marine regimes for the utilization, management, and conservation of fishery resources.\(^{736}\) Both Mark Valencia and Lewis Alexander argue that “in a system of governance, it (a maritime policy regime) has its structure, objectives, functions, powers, processes, and programs”.\(^{737}\) Specifically, first, “structure includes the activity for which an arrangement is designed, geographic coverage, membership, administrative framework and institutional affiliation”.\(^{738}\) From a structural perspective, in China-South Korea and China-Japan fishery agreements, transitional zones and provisional measure zones are set up, in order to achieve the gradual transformation from “fishing freedom beyond territorial seas” as a traditional fishing mode to “the exclusive economic zone regime” as “new forms of fishery relationships”, as pointed out by Liangfu Zhang.\(^{739}\) The same arrangement also occurs in the Japan-South Korea fishery agreement which sets up the Joint Fisheries Commission. Joint organs are established to serve as administrative institutions to regulate fishing activities in certain maritime areas.\(^{740}\) Additionally, certain areas for fisheries have been determined with precise geographic coordinates. Accordingly, the establishment of bilateral fishery agreements and institutions


\(^{736}\) Tsuneo Akaha, “From Conflict to Cooperation: Fisheries Relations in the Sea of Japan,” *Pacific Rim Law and Policy Journal* 1, no. 2 (1992): 244. According to Tsuneo Akaha, “The current Japanese-Russian fisheries regime consists of two government-level agreements: (1) the Agreement between the Government of Japan and the Government of the Union of Soviet Socialist Republics Concerning the Fisheries off the Coasts of Japan and off the Coasts of the Union of Soviet Socialist Republics (1984), and (2) the Agreement between Japan and the Soviet Union Concerning Fisheries Cooperation (1985).” Specifically, “the first treaty regulates the two countries’ fishing activities within each other’s 200-mile zone;” “The second accord bans Japanese fishing of salmon of Russian origin outside the 200-mile zone of the former Soviet Union and promotes bilateral cooperation on the conservation and propagation of marine biological resources in the Northwest Pacific”.

In addition, no official diplomatic relationships has yet established between Japan and North Korea. So the first Japan-North Korea provisional fishery agreement in 1977 was concluded by private parties from two States, that is, Japanese-North Korean Fisheries Council (of Japan) and the Federation of Eastern Sea Cooperatives. This agreement allowed Japan to continue fishing in the DPRK economic zone outside the military zone but purchased 50000 tons of Alaskan pollak from the DPRK. It also established a non-governmental binational fisheries committee to review Japanese fishing in the DPRK EEZ”. However, in 1987, a new provisional agreement was concluded between them and Japan was allowed to implement “small-scale fishing activities within the DPRK-designated provisional operation zone established within the 200-mile EEZ but outside the fifty-mile military zone”. Moreover, Japan was annually also “required to pay fishing fees in return for permission to fishing in the DPRK EEZ”. In 1989, a new provisional agreement was again concluded that Japan was permitted to fish and fishing fees and cooperation fees were required to be paid as an exchange.


\(^{738}\) Ibid.


\(^{740}\) The China-Japan Joint Fisheries Committee, The China-Korea Joint Fisheries Committee.
represents the power distribution and convergence on common fishery interests of participating States.

Secondly, Mark Valencia indicates that “functions and powers are at the heart of maritime regimes and included the scope of the system and the degree of integration achieved”.741 The deterioration and sharp decline of fisheries in those contested zones have posed serious threats to fishery industry, the marine environment, and the lives of fishermen from all nations. It is stipulated that “species allowed for harvesting, quotas of catch, areas of fishing and other specific conditions” should be negotiated by parties to these agreements. Mutual notification is required by each party when enforcement measures in joint regulated zones are executed against nationals and fishing vessels of the other party. Therefore, contracting parties have shared and distributed their enforcement power to the other parties, in order to achieve a sustainable use of fishery resources. In brief, China-South Korea, China-Japan, and Japan-South Korea fishery agreements have constructed bilateral fishery regimes.

As commented by Julia Guifang Xue, bilateral fishery regimes in NEA region “have established a fisheries ‘order’ based on the EEZ regime” and “are remarkable steps towards the building of a cooperative framework governing fisheries activities”.742 Nevertheless, limitations as regards fishery regimes in the Yellow Sea/West Sea, ECS, and the Sea of Japan/East Sea cannot be eschewed. The salient restraint is the ignorance of the regulation and management of fishery activities which simultaneously fall within overlapping EEZs among three States. In the Yellow Sea/West Sea, the Sino-South Korea fishery agreement does not make any provisional arrangements but only “maintain the current fishing order unless agreed otherwise between the Two Parties” in a certain area to the north of 37°N and another certain area to the south of 32°11′N.743 In the ECS, the Sino-Japan fishery agreement maintains the status quo regarding the fishing relationship without laws and regulations against the other country in a certain area to the north of 34°40′N and an area to the south of 27°N.744 To be submitted, in the area to the north of 37°N where China, South Korea, and North Korea have overlapping EEZs, there is no common fishery regime with the intention to regulate the fishing activities of three States. Additionally, in the area between the south of 32°11′N and the

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north of 34°40′N, China, Japan, and South Korea are only responsible for regulating fishing activities of their nationals and fishing vessels instead of those from other neighboring States or countries outside the region.\textsuperscript{745} Therefore, two fishery agreements do not work and “all three States enjoy the freedom of fishing in these areas as in the high seas”, as indicated by Kim Hyun Jung.\textsuperscript{746}

Moreover, an associated limitation is that the interests and rights of third States are prejudiced by bilateral fishery agreements. For one thing, Keyuan Zou observes that, in the China-Japan fishery agreement, South Korea “expressed its dissatisfaction with the Sino Japanese Fishery Agreement by asking China and Japan to explain how they drew the northern limit line of their joint fishing area”.\textsuperscript{747} This is because South Korea considered its sovereign rights in its claimed EEZ to be affected. For another, since Keyuan Zou explains that it “infringed on China’s sovereign rights over its EEZ in the border areas among the three countries”, the ECS’s fishery zone in the Japan-South Korea fishery agreement overlaps with part of China’s EEZ, which was protested by China.\textsuperscript{748} Although the Japan-South Korea agreement has no intention of jeopardizing the fishery relations established by Japan or South Korea with a third State (China), overlapping fishery zones create practical difficulties for the functions of the Sino-Japan Joint Fishery Committee and the Japan-South Korea Fishery Committee. So, coordination of the implementation of recommendations from two committees needs to be settled. Apart from that, laws and regulations of the three States cannot be complied with when two areas are not bound by bilateral fishery agreements. Accordingly, Liangfu Zhang illustrates that “fishermen from China, Japan and South Korea may still fish in these areas without regulation, and disputes are inevitable”.\textsuperscript{749} Notably, Julia Guifang Xue observes that “from a biological point of view, almost all the fish stocks in the China Seas (the Yellow Sea/West Sea and the East China Sea) migrate beyond the boundary of any one State”.\textsuperscript{750} So do the fish stocks of the Sea of Japan/East Sea.\textsuperscript{751} It is commented that “independent management by a single or even two states will not cover the whole migratory range of the fish stocks”.\textsuperscript{752} Therefore, as recommended by Julia Guifang Xue, “a cooperative mechanism for the rational and peaceful management of


\textsuperscript{746} Kim, “Governing Fishing Stocks in Northeast Asia’s Disputed Waters,” 517.


\textsuperscript{748} Zou, “Maritime Issues between China and Japan,” 166.

\textsuperscript{749} Zhang, “First Steps in New Fishery Relationships,” 369.

\textsuperscript{750} Xue, “Bilateral Fisheries Agreements for the Cooperative Management,” 370.

\textsuperscript{751} “Policies: Marketing,” Ministry of Agriculture, Forestry and Fisheries of Japan, accessed June 8, 2018, http://www.maff.go.jp/e/foj/food/seafood.html. “Warm and cold currents flow around the Japanese archipelago and run into each other along its coast. These locations produce large volumes of plankton, which make them rich fishing grounds by gathering migratory fish.”

\textsuperscript{752} Xue, “Bilateral Fisheries Agreements for the Cooperative Management,” 370.

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the shared resources is highly desirable” in order to forestall out-of-order fishery activities in these areas.753

Although Japan and Russia are allowed to fish in each other’s 200-NM EEZ, there is not much available information concerning the geographic limit of the fishing zones for both parties, such as the provisional measure zones in the Sino-Japanese or the Sino-South Korea fishery agreements or the Agreement Zone in the South Korea-Japan fishery agreement. In addition, The North Korea-Russia agreement is likewise murky.754 Given the regional delimitation proposals mentioned above, the geographic limit of South Korea-Japan fishery agreement seems not to infringe on Russia’s and North Korea’s EEZs. Moreover, the Japan-North Korea agreement allows Japan to unilaterally fish in the North Korea’s EEZ but outside of the military zone, so no rights and interests of neighboring States are implicated. Nevertheless, given the large amount of migratory fish in this region, bilateral agreements are scarcely able to sustainably manage migratory fishing activities.

In summary, bilateral fishery management regimes in three contested zones have been preliminarily constructed. Power distribution and the pursuit of self-interest can be found inside and mirror the existence of the power-based regime model and the interest-based regime model. Nevertheless, a comprehensive and trilateral regime setting governing transboundary fisheries has not been fully shaped. Moreover, since the role of the epidemic community needs to be strengthened, a knowledge-based regime model has not been adequately constructed.

5.3.1.2.2 An overview of regime settings in NEA: From a marine environment perspective

In the Yellow Sea/West Sea, it is necessary to divide such a semi-enclosed area into three zones: The first is Bohai Bay, the second is the area between China and South Korea, and the third is the Japan-South Korea-China trilateral area. As observed, “industrial pollution, agricultural runoff and domestic sewage continue to contaminate the Yellow Sea’s coastal waters and habitats”.755 Bohai Bay constitutes one of the most seriously polluted areas and indeed causes transboundary environmental damage. China itself has made efforts to reduce pollution and strengthen the protection of Bohai Bay’s

753 Ibid.
754 Akaha, “From Conflict to Cooperation,” 258. Few resources can be obtained with regard to the North Korea-Russia fishery agreement. Tsuneo Akaha states that “starting in 1992 the two countries have adopted a principle of quantitative equality, each side giving the other a total quota of 30000 tons (Alaskan Pollack for the DPRK fishermen, sardines for the Russian)”. 755 “Yellow Sea,” World Wildlife Fund, accessed June 8, 2018, http://wwf.panda.org/knowledge_hub/where_we_work/yellow_sea/.
marine environment. Nonetheless, unilateral environmental governance merely restrains
the production of pollution domestically but is incapable of controlling the flow of
marine pollutants, including plastic bags, oil spill from oil drilling platforms, vessel-
sourced pollution, etc. China and South Korea signed and ratified a series of
international conventions with regard to marine pollution and the preservation and
protection of biodiversity, including the UNCLOS, of which Part XII is entitled
“protection and preservation of marine environment”; the MARPOL and Annexes; the
International Convention on Maritime Search and Rescue; the CBD, etc. However,
North Korea is not a party to those treaties, which gives rise to obstacles in
straightforwardly applying international frameworks to marine environment protection
for Bohai Bay. Currently, there are no regional agreements concerning marine
environment protection that deal with transboundary environmental damages. As a
result, the norm-making effectiveness produced by international or regional agreements
in the Yellow Sea/West Sea seems weak in addressing transboundary marine problems.
In the Sea of Japan/East Sea, North Korea remains absent and creates similar obstacles
for regional states to consistently launch international collaboration on marine
environmental issues. Normative power from such agreements cannot be overestimated
in the Sea of Japan/East Sea marine environmental preservation and protection. In the
ECS, three states are all parties to a series of international agreements, including
UNCLOS, MARPOL, CBD, etc. On the international level, the rights and obligations of
three states have been defined. To some extent, international instruments have
distributed state power and ensured the legitimate pursuit of their own interests.
Nonetheless, compared with other semi-enclosed seas, including the Mediterranean Sea
and the Baltic Sea, no regional environmental agreements have been reached to promote
trilateral cooperation and to pay due regard to common environmental concerns. With
regard to the capability of normative restraint, the width and depth of power distribution
and self-interest pursuit are still situated at the lower level.

From an institutional perspective, as contended by Chan-woo Kim, “there are various
environmental cooperation mechanisms constituting NEA environmental cooperation
governance”. 756 Those primary mechanisms contain the Tripartite Environment
Ministers Meeting (TEMM), the North-East Asian Subregional Programme for
Environment Cooperation (NEASPEC), the Northwest Pacific Action Plan (NOWPAP),
the Northeast Asian Conference on Environmental Cooperation (NEAC), etc. 757

756 Chan-woo Kim, “Northeast Asian Environmental Cooperation: From a TEMM’s Perspective,” Korea Review of
Chan-woo-Kim.pdf.

are high-level cooperation mechanisms dealing with the atmosphere and ecosystem, and marine affairs
respectively. NEAC is a working level cooperation mechanism in which five Northeast Asian countries
participate. The special feature of NEAC is the participation of civil societies”. 

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Additionally, the United Nations Economic and Social Commission for Asia and the Pacific and the UNEP collaboratively engage in the activities of these mechanisms. Notably, North Korea is a member of NEASPEC, which is directly relevant to land environmental issues rather than marine environmental concerns. However, compared with the active engagement of other member States, the role of North Korea may be uncertain and unpredictable. Furthermore, it is elaborated by Jeong Won Bourdais Park that, in a series of institutions, “none of which include the North Korea constantly as a member, and only the TEMM exclusively addressed environmental issues”. Additionally, “regional’ environmental institutions shun incorporating North Korea issues into the agendas outlined by major regional groupings, particularly under the UN and US-led international sanctions”. In contrast with some other semi-enclosed seas which have constructed multivariate maritime regimes, NEA region has commonalities but lacks some key elements which are essential for the effective operation of maritime regimes. Current regional arrangements consist of periodical governmental meetings, action plans, and certain programs. But they are not organizational bodies, such as the secretariat in charge of daily routine, and specific committees responsible for specific matters, including science, finance, and legal instrument drafting. For instance, NOWPAP is a cooperative regime for marine environmental protection covering a partial area of the Yellow Sea/West Sea and the Sea of Japan/East Sea without involvement in the ECS. There are some Regional Activity Centers as coordination units under the NOWPAP. Notwithstanding, as Suk Kyoon Kim points out, NOWPAP is “based on a non-legally binding document and thus dependent on the willingness and commitment of its member states”. It is “somewhat loose in terms of rallying the cooperation of member states”, lacking “a strong legal framework in the form of a regional convention and associated protocols on specific problems”. Suh-Yong Chung also observes that NOWPAP “has suffered from fundamental organizational flaws and, pressingly, lack of an adequate mechanism for financial sustainment that is threatening its very existence”. Similar problems can also be

759 Jeong Won Bourdais Park, Regional Environmental Politics in Northeast Asia: Conflict and Cooperation (London, Netherlands: Routledge, 2018), 9, 16. These institutions contain NEASPEC, NOWPOP, TEMM, sub-bodies of Asia Pacific Economic Cooperation (APEC), ASEAN, and ASEM.
760 Park, Regional Environmental Politics in Northeast Asia, 16.
found in other marine environmental regimes in NEA’s contested zones. What is more, Woosuk Jung argues that “the different interests and competition between (and within) countries is also causing an overlap of environmental activities pursued by multilateral bodies”. For example, NEASPEC is implemented by the Ministry of Foreign Affairs in each member state. The TEEM is organized by the Ministry of Environment in each member state. Because of a potential lack of policy coordination, information communication, and sharing, overlapping competences may hinder cooperation among neighboring states. As remarked by Kenji Otsuka, “the regional environmental initiatives in East Asia are overlapping, nested, non-binding, general, consensus-based, and weak in comparison to similar institutions among Western countries in terms of regional environmental governance”. Therefore, such obstacles at the multilateral level have to be surmounted by upgrading to more robust cooperative organizational regimes and setting up a leading and coordinating institution.

To illustrate, the role of the epistemic community that contributes to using scientific knowledge to strengthen fisheries and marine environmental cooperation in NEA is equally of great significance. As underpinned by Inkyoung Kim, “the transboundary environmental problems of climate change, air and marine pollution have provided such good examples of successful environmental regime formation and implementation attributable to the involvement of epistemic community”. Mark Valencia also advocates that “cooperation may be enhanced when central players in the region form an epistemic community that coordinates their activities and attempt to translate their beliefs into public policies furthering cooperation”. Specific discussions relating to the epistemic community in NEA environmental cooperation have focused on transboundary air pollution, whereas less focus has been given to the field of fisheries and marine environmental protection, and these areas need more encouragement.

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766 Chung, “Strengthening Regional Governance to Protect the Marine Environment in Northeast Asia,” 553.


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Lorraine Elliott demonstrates that “in Northeast Asia, problems arise from continued reliance on transnational agencies for funding and secretariat support as well as from lack of coordination of overlapping and competing initiatives.”\textsuperscript{771} As a result, under these regional institutions regarding fisheries and the marine environment with some degree of overlap, inconsistent decision-making processes and policies, and institutional fragmentation, epistemic communities are sporadic and loose and lack specific scientific committees for two issues. This is substantially different from some semi-enclosed seas whose instructions normally have a centralized or coordinated scientific organ. In short, in NEA fisheries and regional marine environment governance, the knowledge-based regime model is not fully developed and requires cementation from now on.

5.3.2 The application of the multivariate regime theory in NEA maritime areas

The previous analytical framework concedes that the power-based regime model and self-interest–based regime model are frequently established on a bilateral basis. However, two models at the trilateral or multilateral level have not yet been adequately established. Since two regime models are closely related to States’ actions as rational decision-makers, relevant proposals that serve to set up a multivariate maritime regime integrate the power-based and self-interest–based regime models. In addition, the knowledge-based regime model remains underdeveloped. According to the fourth chapter, it is highly likely that the multivariate maritime regime model may be applied to assist bordering states in addressing common rights and interests in the region, in the instance that traditional legal means of bilaterally resolving maritime delimitation disputes cannot take third States’ rights and interests into account. In the current chapter, so as to settle cross-border and common interests shared by disputing states and third States in a maritime delimitation dispute, it is stated that multivariate maritime regime building should be established in NEA. There will be two parts in this section; the first part focuses on how the multivariate regime theory deals with trilateral or multilateral cooperation on regional fisheries, and the second part examines how the multivariate regime theory addresses trilateral or multilateral cooperation on transboundary marine environment protection.

5.3.2.1 The application of the multivariate regime theory regarding the management of transboundary fisheries in NEA maritime areas

In light of multivariate regime theory, power distribution under the power-based regime model, pursuit of self-interest under the interest-based regime model, and support from epistemic communities under the knowledge-based model have to be carried out in a balanced way. The following part concerns the operation of this theory in the management of fisheries, particularly on transboundary fisheries in some trilateral or quadrilateral areas within three contested zones.

5.3.2.1.1 Power-based and self-interest–based regime models regarding the management of transboundary fisheries

A. The Yellow Sea/West Sea

In the context of China-South Korea and Japan-South Korea fishery agreements, as illuminated by Liangfu Zhang, “the new international maritime law regime under the UNCLOS has had considerable negative influences on China’s marine fishery industry”, which urges China to continue fishing overseas instead of original fishing in two seas. Therefore, China has actively engaged in international conventions related to overseas fishing, and it has participated in the utilization, management, and conservation of overseas fishery resources. Similarly, Japan and South Korea have become parties to a series of international fishery conventions as well. Notably, North Korea is not a party to the UNCLOS, and trilateral cooperation between China, South Korea and North Korea has faced insurmountable difficulty under the Convention. Consequently, the role of North Korea in regional fishery management is not very certain. Political willingness from North Korea is essential for reaching a trilateral fishery arrangement. Since 2018, North Korea has made efforts to restore its political and diplomatic relations with South Korea and China. As a result, the inflammatory climate in the Korean Peninsula seems to have been remitted. This provides a window of opportunity for the three States to put the issue of trilateral cooperation on the table regarding Bohai Bay.

Chinese fishermen were reported to commit illegal fishing activities near the NLL and even conflicted with South Korea’s coast guard vessels; Chinese fishermen were also seized by coast guard from North Korea and South Korea because of their potentially

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772 Zhang, “First Steps in New Fishery Relationships.” 373. Specifically, there are mainly two adverse consequences. First, “the grounds available to China’s marine fishing vessels shrank considerably, which included the loss of important traditional fishing grounds and high-quality and highly-productive areas.” Second, “a large number of fishing vessels with-drew from China's traditional fishing grounds in the open seas and offshore fishery resources are increasingly squeezed. This has had a certain impact on the current system for protecting offshore fishery resources”.

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illegal fishing.\footnote{Draudt and Warden, “The Strategic Rationale for Maritime Tension Reduction,” 191.} Due to the low political sensibility of overfishing activities, periodic meetings and policy dialogues can be held by fishery management and enforcement departments from the three States. As observed by Darcie Draudt and John Warden, “dialogue also is needed to reduce the potential for miscalculation and eliminate unnecessary friction”.\footnote{Draudt and Warden, “The Strategic Rationale for Maritime Tension Reduction,” 191.} Three parties are necessary to negotiate accepted rules or regulations or codes of conduct concerning the exercise of power of enforcement, for the purpose of reducing potential conflicts between fishermen and the coast guard. Additionally, mutual prior notice and exchange of information on fishing boats are also important to regulate Chinese fishermen’s fishing activities. Darcie Draudt and John Warden additionally remark that “each government should commit to providing more training for fisherman in a variety of areas: the laws and repercussions of illegal fishing outside their government’s territorial waters, techniques for safe response to boarding by another nation’s coast guard, and understanding their rights in the event of seizure”.\footnote{Draudt and Warden, “The Strategic Rationale for Maritime Tension Reduction,” 191.} These measures constitute basic steps for forwarding more cooperation, including knowledge sharing on the improvement of fishing skills of North Korea fishermen. Owing to a mitigating political atmosphere and increasing mutual trust and confidence in each other, in order to establish a more robust institution the three States may develop a more comprehensive regime covering a trilateral fishing committee (if not, a working group is possible), species allowed for harvesting, quotas of catch, areas of fishing, and other specific conditions. What is more, the FAO is working on some projects in the North Korea, including fisheries.\footnote{“FAO Builds Support for DPR Korea Forestry, Fisheries Sectors,” Food and Agriculture Organization of the United Nations, August 3, 2015, accessed June 9, 2018, http://www.fao.org/democratic-peoples-republic-of-korea/news/detail-events/en/c/340089/.
} The three parties may find cooperation opportunities under the FAO framework and may promote the sustainability of fishery in the trilateral area.

B. The ECS

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As highlighted by Min Gyo Koo, “no comprehensive, multilateral maritime regime has been initiated in East Asian Seas and the process of regional maritime dialogue in East Asia is indeed very young”. Such an impression is eminently seen in the establishment of a multivariate regime regarding the management of fisheries in the triangles of the ECS. According to Hongzhou Zhang and Fengshi Wu, China’s “structural shift to offshore fishing” gives rise to “a rising number of fishing incidents and disputes involving Chinese fishermen in regional waters”. To overcome such a regional increasing concern, “political will and commitment to sustainability and international cooperation are needed”. It should be recalled that China, South Korea, and Japan are parties to the UNCLOS and have signed the Implementation Agreement. However, Japan and South Korea have ratified this Agreement, whereas China has not. With regard to the abundance of migratory fish stocks, unanimous compliance with the UN Fish Stocks Agreement may not happen soon. Accordingly, in line with Article 123 of the UNCLOS, the East Asian Sea’s transboundary fishery cooperation should adopt other regimes. It is observed that at least two multilateral regimes may positively contribute to the use, conservation, and management of fisheries in the trijunction area. On the one hand, China, Japan, and South Korea are parties to the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement) as well as the Code of Conduct for Responsible Fisheries (FAO Code of Conduct). It is said that there are some regional fishery bodies which have been set up under the FAO’s framework. Currently, fishing activities in the trijunction area are similar to those in the high seas. Although they actually are situated in overlapping EEZs, the regulation and management of fishing carried out by flag States are insufficient. As a result, in the trijunction, in accordance with the FAO Compliance Agreement and FAO Code of Conduct, three States through negotiation may design a regional marine regime to conserve and manage migratory fishery stocks, including a tripartite joint fishery committee to provide recommendations on species allowed for harvesting, quotas of catch, areas of fishing and other specific conditions, prior notice mechanism, exchange of information and knowledge-sharing on fishing, policy coordination on seasonal fishing moratorium, etc. What is more, Hongzhou

Zhang suggests that regional States should collaborate to “promote the development of regional aquaculture as an alternative to meet Asia’s rising demand for seafood and to combat over-fishing”. Three States are able to negotiate and reach an agreement on how to develop regional aquaculture and training or educating fishermen regarding sustainable fishing, and as well as how to promote fishing skills.

On the other hand, China, South Korea, and Japan have agreed to establish the China-Japan-South Korea Trilateral Cooperation Secretariat, which provides a trilateral forum to discuss issues regarding the rights and interests of three States, including sea-related matters. The law enforcement departments have exchanged views on ways to improve regional law enforcement cooperation, enhance cooperation in combating transnational crimes, and strengthen personnel training cooperation. It is noted that the scope of fishery cooperation remains limited and seems not to cover law enforcement movement against illegal, unreported, and unregulated (IUU) fishing. The latest Declaration in the China-Japan-South Korea Trilateral Summit underlined “the significance of cooperation in forestry and biodiversity including invasive alien species management and sustainable use of living marine resources”. Predictably, to ensure the sustainability of regional fisheries, there should be implementation of relevant law enforcement measures taken by the three States in a negotiated and coordinated way against the IUU fishing in the trijunctions. It is advised that the TEMM set up a tripartite fishery departments meeting to address the IUU fishing, which may affect the integrated ecological system of migratory fish stocks. Alternatively, it is advised that three countries in the region take the Caribbean Regional Fisheries Mechanism into account and establish regional fishery mechanisms or administrative bodies or units. Such a mechanism or unit should have the competence conferred by member States to address transboundary fishery management challenges.

C. The Sea of Japan/East Sea

South Korea and Japan reached a fishery agreement in the Sea of Japan/East Sea which “provides the procedure for cooperation in fisheries management and help sustain fishery resources”, even if it is “not without shortcomings”, as set out by Seokwoo

In addition to Japan-Russia and Japan-North Korea fishery agreements, a multilateral or regional fishery agreement or mechanism or institutional body has not yet been set up. One of the biggest difficulties in cooperation is the stalemate of political and diplomatic relations among states. Nowadays, the North Korea and South Korea are restoring their relations, while Japan’s relations with the North Korea and South Korea are incrementally tenser. As commented by Mark Valencia regarding South Korea-Japan-Russia conflict of saury fishing around the Russian-controlled southern Kurile Islands/Northern Territory, “given the difficult relations in NEA, relatively low level disputes over fish can damage relations between the states involved”. Strengthening the political willingness of cooperation is essential to building up the framework of managing cross-border fisheries in the Sea of Japan/East Sea.

In addition, the presence of Chinese fishermen poses a potential challenge for bordering States to regulate and manage fishing in the Sea of Japan/East Sea. It is reported that the China Overseas Fisheries Association and the North Korea Joint Fishing Association in 2013 reached an agreement that allowed Chinese fishermen to fish in the 200-NM EEZ, and China strictly asked fishermen not to go beyond this zone and not to continue illegally in other neighboring States’ jurisdictional waters. However, some incidents still occurred because some Chinese fishing boats violated the agreement, committed illegal fishing, and clashed with coast guard vessels from South Korea, Japan, and Russia. To effectively regulate illegal fishing activities by Chinese fishermen, it is likely there will be policy coordination and law enforcement collaboration based on mutually accepted rules between China and these four countries. Moreover, the Joint Declaration of the Seventh Japan-China-South Korea Trilateral Summit advocated a “China-Japan-South Korea+1” mode to promote regional sustainable development. Accordingly, such a mode motivates China, Japan, South Korea, the North Korea, and Russia to develop a multilateral fishery cooperative mode entitled “China-Japan-South
Korea + North Korea and Russia”, in order to regulate the IUU fishing in the Sea of Japan/East Sea.

5.3.2.1.2 Knowledge-based regime formation in the management of transboundary fisheries: The knowledge-based regime model

In the previous three parts, institutional and rule-based suggestions have been made to manage transboundary fisheries. Additionally, these suggestions have reflected power-based and self-interest–based regime models. This section pays special attention to the building of epistemic communities relating to transboundary fishery management. Hongzhou Zhang and Fengzhou Wu suggest that “transnational advocacy networks have proved to be effective in pushing for policy changes in China across policy fields”. Specifically, “NGO, experts networks and other forms of non-confrontational transnational policy advocacy may have a role to play”. Thus, how to converge the capabilities of epistemic communities that have professional scientific knowledge is of great importance. According to a white paper titled China-Japan-South Korea Cooperation (1999-2012), the Chinese Academy of Fishery Sciences, the Fisheries Research Agency of Japan, and the National Fisheries Research and Development Institute of South Korea have jointly carried out academic exchanges among scientific and technical personnel and held a China-Japan- South Korea symposium on fishery science and technology every year. Such a cooperative model should be encouraged. Bilaterally, scientific cooperation institutions have been established, including the China-Korea Joint Ocean Research Center and the Japan-China Science and Technology Cooperation Joint Committee. Alternatively, marine think tank communications at the bilateral level also contribute to mutual marine cooperation. For example, the NISCSS and the Korea Institute for Maritime Strategy hold The China-South Korea Maritime Cooperation Forum; and Institute for South China Sea Studies (NISCSS) and the Sasakawa Peace Foundation hold the annual China-Japan Dialogue on Ocean Affairs. These epistemic community cooperative endeavors should be

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790 Zhang and Wu, “China’s Marine Fishery,” 223. Transnational advocacy networks are “fluid, open, voluntary-based and loosely coordinated” groups of committed individuals and non-governmental organizations (NGOs) for a particular course.

791 Ibid.


continued. Nevertheless, multilateral scientific cooperative institutions are absent. Scientific communities relating to fisheries in NEA remain sporadic and scattered. For instance, the Asia-Pacific Fisheries Commission under FAO does not set up a specific committee responsible for fishery experts, even if it does hold meetings or training activities in which fishery experts participate. Unlike the Caribbean Fishery Management Council, which sets up a scientific and statistical committee and gathers fishery scientists to provide professional knowledge, NEA lacks similar institutions, and these must be established later. Notably, in 2015 China launched a new marine cooperative effort called the “East Asia Marine Cooperation Platform”. This platform intends to become a primary channel to consolidate China’s cooperation with the South Korea and Japan, and fishery cooperation can be contained therein.

5.3.2.2 The Application of the multivariate regime theory regarding the preservation and protection of transboundary marine environment in NEA maritime areas

In the same vein, the establishment of a multivariate maritime regime concerning marine environment mandates that bordering states improve institutionalism (power distribution), normativity (pursuit of self-interest), and professionality (epistemic community) in NEA’s contested zones. The following sections will separately elaborate how to promote transboundary marine cooperation in the common interests of three disputed areas and to enhance the importance of the epistemic community regarding the marine environment.

5.3.2.2.1 Power-based and self-interest–based regime models regarding the preservation and protection of transboundary marine environment

A. The Yellow Sea/West Sea

As one of the important tools to protect and preserve the marine environment, Large Marine Ecosystem (LME) mechanisms are more and more applicable in oceans worldwide. LME is defined as “important global areas for practicing ecosystem-based research, assessment and management of ocean goods and services”. Additionally, Raphaël Billé et al. have introduced that “LME projects aim at engaging states and partners in an ecosystem approach linking coastal zone management with the marine

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environment”. From an integrated perspective, given the existence of some disputed maritime zones, the ecosystem approach highlights the ocean’s common ecological nature rather than its disputed character. UNEP, in cooperation with China and South Korea, has launched the Yellow Sea Large Marine Ecosystem Project (YSLMEP), which “is a transboundary initiative providing advice and assistance to China and South Korea to implement ecosystem-based, environmentally-sustainable management of the Yellow Sea and its watershed”. China and South Korea carry out the YELMEP based on a bilateral agreement that stipulates that respective national commitments work together. In other words, the YELMEP constitutes a robust institution to deal with marine environmental protection and should be continued. Nevertheless, the geographic scope of the YELMEP is limited and excludes Bohai Bay, indicating the limitation of this project. More broadly speaking, the Action Plan for the Protection and Development of the Marine and Coastal Areas of the East Asia region also adopts the ecosystem approach.

This is led by the Coordinating Body on the Seas of East Asia (COBSEA), which excludes North Korea and Japan. It is difficult for such a multilateral regime to become a framework for trilateral cooperation.

Although there are certain flaws in some current institutions on China-South Korea-North Korea environmental cooperation, Partnerships in Environmental Management for the Seas of East Asia (PEMSEA) may become an institution for the three States to deepen cross-border marine environment cooperation, now that North Korea has joined PEMSEA as a partner. The three States may collaboratively carry out “priority management and governance programs aligned with global and regional commitments and targets”, in accordance with the “Sustainable Development Strategy for the Seas of East Asia Implementation Plan (2018-2022) (SDS-SEAP)”, including biodiversity conservation and management, pollution reduction and waste management, knowledge management, capacity-building, etc. Furthermore, with a gradually warming political climate on the Korean Peninsula, as a measure to build up mutual trust and confidence in this region, environmental protection may be a priority for the three States to take

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into account. A multilateral approach to implementing regional environmental governance may begin with the TEMM among the three States. In the cooperative process, three parties through this platform can discuss how to suppress the diffusion of marine pollutants and enhance the capacity to implement anti-pollution action plans. First, the TEMM should focus on research and surveys on pollution in the trijunction area. China and South Korea should provide technical and scientific support for it. Second, the three parties may consider seeking sustainable funding to constantly support a fixed-term plan. Financial resources may mainly come from China and South Korea, and it also could seek support from multilateral financial institutions, like the Asian Infrastructure Investment Bank, the Silk Road Fund, or other multilateral banks. Third, joint environmental enforcement action among the three countries is necessary as well. These measures may assist three States in controlling and regulating transboundary marine pollution in the Yellow Sea/West Sea.

B. The ECS

The ECS’s marine ecosystem, as claimed by Chen-ju Chen, “is of vital importance to the neighboring countries”. In spite of bilateral environmental cooperation, a multilateral approach in addressing the transboundary marine environment has scarcely been adopted. In comparison with the Yellow Sea/West Sea, the LME method remains inapplicable but is open to be put into practice. On the one hand, neighboring States in the ECS have to collaborate with international institutions, including FAO or UNEP, or regional organizations, including the EU or the Arctic Council, which have implemented LME projects, to gain substantial experience. As illustrated by Elizabeth Kirk, “this growing integration points to improved implementation of the ecosystem approach and augurs well for its application at the national level”. Regional and international integration on the implementation of LME in the ECS may assist three States in addressing transboundary environmental damages. Under the framework of PEMSEA, in which the three countries are member States, internal cooperation among them remains indispensable for addressing biodiversity conservation and management, land-based and sea-based pollution, knowledge management, capacity-building, etc. Trilateral cooperation is required to follow the SDS-SEAP. Nonetheless, Henrik Österblom and Olof Olsson remind people that “developing and maintaining a strong commitment to the ecosystem approach in a politically contentious environment is challenging, as priorities among and alliances between members, states and actors

802 This is similar to the TEMM among China, South Korea, and Japan.
change over time”. To develop LME in the ECS, political willingness and mutual trust and confidence must be consolidated.

With the sharpening increase of commercial trade at sea, vessel-sourced marine pollution is also an emerging concern for bordering States. On 6 January 2018, the Panamanian-flagged, Iranian-owned tanker Sanchi collided with the Hong Kong–flagged cargo ship CF Crystal in the 160 NM (300 km) off of Shanghai, China. Such a serious oil leakage resulting from the sunk ship has caused great concerns over the marine environment in the ECS. In accordance with the International Convention on Maritime Search and Rescue in 1979, since the oil tanker incident took place in the 160 NM from China’s coastline and was located in the EEZ as well as the Northwestern Pacific search and rescue zone, China first sent search and rescue teams to save sailors and put out a fire on the tanker Sanchi. The movement of search and rescue may be regarded as an exercise of China’s sovereign rights and jurisdiction. However, in light of overlapping EEZs between China and Japan and South Korea where this accident occurred, three States are involved in overlapping zones for the exercise of sovereign rights regarding oil pollution abatement and search and rescue. Tom Corben criticizes that “the manner in which NEA states have both individually and collectively responded to the Sanchi crisis is indicative of the poor state of regional environmentalism and distrustful relations between Tokyo, Beijing, and Seoul”. It is observed that coordinated collective actions are required to ensure the effectiveness of search and rescue in this region. By resorting to the China-South Korea-Japan Tripartite Cooperation Mechanism, oil pollution abatement and search and rescue should be added to the agenda of cooperation in the form of TEMM. An overview of the TEMM’s working programs falls short of considering these issues. It is highly recommended that the TEMM as an established body enhance cooperation on oil pollution and maritime search and rescue. First, via the establishment of working groups, such a cooperation should be based on science and technology, which necessitates the exchange of intergovernmental information and knowledge-sharing from experts from three States. Second, joint drills with regard to oil pollution abatement and search and rescue should be frequently adopted, in order to consolidate understandings on each State’s laws and

regulations concerning oil pollution abatement, and search and rescue. Third, in view of various cooperation mechanisms in NEA, as commented by Chan-woo Kim, “TEMM, the only ministerial and comprehensive mechanism, is in a better position to claim the role of the leading mechanism.” 810 Yasumasa Komori underscores that “the lack of coordination among multiple regional environmental forums has been the central characteristic of environmental initiatives in Asia”. 811 But Chan-woo Kim further observes that “the leading mechanism (TEMM) should be in a position to wield influence over other mechanisms and be flexible enough to cover all the environmental issues”. 812

C. The Sea of Japan/East Sea

In the Sea of Japan/East Sea, for one thing, no intergovernmental environmental institutions or agreements are set up to specifically deal with transboundary marine environmental concerns. This brings doubt as to the effectiveness of cooperative willingness and outcomes in the region. For another matter, current regional regimes or mechanisms in the management of fisheries and the marine environment have some institutional flaws. NOWPAP lacks North Korea as a participating member, Russia is absent in the PEMSEA framework, and Japan is not present in the COBSEA. Even if all four States are members of NESPEC, MPAs are all land based along the coast without establishing sea-based ones. To some extent, it is indicated that NESPEC is more focused on land rather than the sea. Mark Valencia points out that “the main constraints to regional cooperation in marine environmental protection are poor political relationships and environmental apathy”. 813 As a commonly shared issue with lower sensitivity, political willingness and mutual trust should be increased, although Japan has tense diplomatic relations with North Korea and South Korea. Though relevant declarations have been issued on different platforms, the process of a binding regional environmental agreement needs acceleration. Specific assistance may be provided to North Korea and improves its management capacity for coastal and offshore environment. To offset the inefficiency of institutional overlap, Mark Valencia proposed “a loose consultative mechanism”. 814 After 20 years, a more coordinated and invigorating organ through negotiation comprising four countries can be established to tackle transboundary marine environment problems, just like the Baltic Commission, the Black Sea Commission, or the Arctic Council.

Like the other two seas, the Sea of Japan/East Sea forms an LME, and the ecosystem approach has a role to play. To begin with, the common consciousness of adopting an integrated ecosystem approach shall be followed by regional States involved. Second, some early harvests can be obtained in marine environmental cooperation. For example, since there has been no such measure taken in NEA and it is normally regarded as a prerequisite step to embarking on environmental projects, the Transboundary Environmental Impact Assessment (TEIA) as a conventional rule can be considered as an initial step.\(^{815}\) Political and financial support for the TEIA are important.\(^{816}\) Compared with North Korea, which has a weakening economy, and Russia, which is increasingly focused on the Far East Region, South Korea and Japan can coordinately and collaboratively take the lead in the TEIA. Third, Froukje Maria Platjouw asserts that “vague environmental legislation and levels of environmental protection that are the result of the use of discretionary powers by decision makers, are not in conformity with the ideology of an ecosystem approach and will arguably not safeguard our ecosystems”.\(^{817}\) In the multivariate maritime regime of the Sea of Japan/East Sea, regional normative construction is essentially required, in relation to state power distribution and the pursuit of states’ respective self-interests.

5.3.2.2.2 Epistemic community-building in the preservation and protection of the transboundary marine environment: The knowledge-based regime model

Previous policy recommendations on transboundary environmental cooperation in three semi-enclosed seas of NEA reflect two dimensions of multivariate regime-building: a power-based regime regarding power distribution, and a self-interest regime concerning state interest manifestation. The two dimensions are usually interconnected and interact with each other. Another element concerns how to improve the knowledge-based regime and build up a robust epistemic community relating to the marine environment. Epidemic communities of the marine environment in NEA have the same problem as those of fisheries in that epistemic communities of marine environment are organized loosely under various regional institutions. They really need stronger transnational community-building to offer professional knowledge and recommendations for

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governmental policy-makers or decision-makers, such as the Mediterranean Science Commission, the Baltic Science Network, the Scientific and Technical Sub-Commission of Caribbean Sea Commission, the International Arctic Science Committee, and the Scientific Committee of Antarctic Research. Elisa Morgera concedes that “the ecosystem approach also aims to integrate modern science and the traditional knowledge of indigenous peoples and local communities in adaptive management”. Therefore, the community consists of not only marine scientists but also ecologists.

It is revealed by Peter Haas that “decision makers only selectively defer to science”\textsuperscript{819} Such “scientific knowledge’ that is most likely to be converted to effective governance” is called “usable knowledge”.\textsuperscript{820} Policy-makers thus have the final discretion in determining the utility of provided knowledge. To modify the constrained role of epistemic communities, Peter Haas proposes “a new model of reflexive governance” based on processes of social consensus.\textsuperscript{821} Outside national governments, members of the epistemic community should not only integrate with each other within the community but also build up a network with other multiple actors, including private firms, NGOs, etc.\textsuperscript{822} Such an approach will incrementally increase the bargaining power of epistemic communities in discussions with policy-makers and compel the latter to absorb more professional knowledge into the decision-making process.\textsuperscript{823} Consequently, “broader policy doctrines are formulated and ultimately institutionalized as they are converted to international regimes, national policies, and administrative procedures”.\textsuperscript{824} Sporadic constitution of epistemic communities in NEA environmental cooperation indicates that this region remains at the first stage. A better governance of NEA transboundary marine environment requires regional epistemic communities to collaborate more with other regional active participants who share similar understandings. Such deepening cooperation may assist epistemic communities in a more powerful position to work with policy-makers in NEA.

It has been discussed how transboundary fishery management and marine environment protection in NEA can be promoted by neighboring States in three contested zones. Concurrently, it may take the rights and interests of third States into account when other States are in maritime disputes due to the existence of common interests among the


\textsuperscript{819} Peter M. Haas, Epistemic Communities, Constructivism, and International Environmental Politics, (London, United Kingdom: Routledge, 2016), 372.

\textsuperscript{820} Haas, Epistemic Communities, 373.

\textsuperscript{821} Ibid.

\textsuperscript{822} Ibid.

\textsuperscript{823} Ibid., 374.

\textsuperscript{824} Ibid.

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relevant States involved. The proposed scheme in NEA to coordinate the different interests of implicated States is to construct the multivariate maritime regime based on the multivariate regime theory of international relations. Such a regime contains power-based, self-interest-centered, and knowledge-based regime models but intends to seek an equilibration as a new regime model, in order to deal with common interests shared by all regional States concerned. In three semi-enclosed seas, trilateral or quadrilateral area cooperation needs the construction of the multivariate regime by institutional consolidation, normative reinforcement, and epistemic community integration building.

5.4 Conclusion

This chapter has reviewed the presence of third States in maritime disputes of NEA from the legal and international relations perspectives. Specifically, the second section points out legal defects in settling maritime boundary disputes due to the presence of third States. What legal means instructs disputing States to do is to not infringe upon the rights and interests of third States rather than consider how to take concrete measures to settle such rights and interests, unless all the parties manage to cooperate in bringing the whole delimitation to the Court, in the style of North Continental Shelf. The ultimate outcome is to supplement the function of dispute settlement law but not replace it. At the bilateral level, some countries in the region can still delimit some maritime boundaries based on international maritime delimitation law. The third section is based on the multivariate regime theory in the fifth chapter and provides some possible policy recommendations to handle the legal dilemma in the trilateral or multilateral disputed areas of NEA.

Specifically, in the Yellow Sea/West Sea, China and South Korea can delimit part of their maritime boundary on a purely bilateral basis. Moreover, the China-South Korea final maritime boundary and North Korea-South Korea final maritime boundary may fall short of the hypothetical China-South Korea-North Korea trijunction; therefore, a small portion of trilateral region may be formulated. In the southern part of the Yellow Sea/West Sea and the ECS, the final maritime boundary line between China and Japan concerning EEZ would stop before meeting with South Korea at a hypothetical trijunction. Meanwhile, as a part of a bilateral maritime boundary between China and Korea, the southernmost boundary may follow the same track and refrain from intersecting with Japan as the third State. Regarding the delimitation of the CS, if the Okinawa Trough does not constitute an extended CS of China and South Korea, a short maritime boundary which is regarded as the extension of the 1974 CS boundary will be drawn between South Korea and Japan. It is better leave the ending point of this short maritime boundary undecided and extend it at a certain angle until it reaches 200 NM
CS of China. Moreover, China and the South Korea’s delimitation line may stop before a hypothetical trijunction and draw an arrowheaded line at a certain azimuth until the rights and interests of Japan are affected. If the Okinawa Trough does constitute the extended CS of China and South Korea, due to the presence of third States, an overlap on the outer CS between China and South Korea makes it almost impossible to demarcate a line beyond 200 NM. In the Sea of Japan/East Sea, final maritime boundaries may be drawn in compliance with provisional equidistance lines among four States and meet each other at two approximate trijunctions. Alternatively, if only partial maritime boundaries are to be determined, the presence of two approximate trijunctions may inform bordering States not to prejudice the rights and interests of third States; thus, potential maritime boundaries will stop in front of these tripoints by drawing an arrowheaded line at a certain point at a certain azimuth until areas where third States are involved are reached. However, such a conclusion is reached on the basis of clear sovereignty ownership over Dokdo/Takeshima and the Northern Territories and Kuril Islands. Accordingly, the China-South Korea partial maritime boundary in the Yellow Sea/West Sea seems the most likely case that can be delimited.

Given that it may hardly be possible for maritime delimitation to take care of the rights and interests of third States, it is argued that the establishment of the multivariate maritime regime may be useful to contain such rights and interests which are commonly shared by relevant stakeholders, specifically in fishery management and marine environment protection. Moreover, sharing and common rights and interests may require the restraint of national interests in order to seek a delicate balance among all neighboring States. The fourth chapter considers the multivariate regime theory to overcome the legal dilemma arising out of third States in maritime conflicts. Following from this theory, the current chapter examines status quo maritime regime-building in three disputed maritime zones of NEA. With respect to fishery management, bilateral regimes have been set up, but multilateral regimes have not yet been established. Keyuan Zou observes that “the East Asian seas urgently need a regional and multilateral fishery arrangement which can be more effective to conserve and manage the fishery resources therein”.825 With regard to the transboundary marine environment, no regional environmental agreements have been reached, although there are certain international agreements. A variety of institutions produce overlap and inherently fail to achieve effective coordination. Primary institutions and agreements do not cover all bordering States in each contested zone, and the geographic scope of certain agreements is limited. As regards the capacity-building of epistemic communities in both fields, sporadic and loose constitutions have to be enhanced, and stronger integration is urgently needed. In order to apply the multivariate maritime regime, this chapter provides some policy

recommendations on the settlement of common concerns in multistate-disputed areas. In the Yellow Sea/West Sea and the Sea of Japan/East Sea, decreasing tensions in the Korean Peninsula provide a window of opportunity to strengthen mutual trust and confidence in transboundary cooperation. It is also mentioned that trilateral fishery cooperation in three areas can be implemented under FAO framework on fisheries. States implicated at respective disputed zones can arrange a specific fishery institution to reinforce coordination with law enforcement, mutual notification, and other matters.

As for the marine environment, it is suggested that the ecosystem method may be helpful to focus on the integrity of the marine zone and the LME based on every region’s specific geographic conditions can be established. Regional environmental institutions and agreements also must be strengthened. So as to incrementally build the capacity of epistemic communities, it would be good to set up regional scientific organs or units to converge on transboundary fisheries and the marine environment. It further proposes a network model of reflexive governance for epistemic communities to hold a more advantageous stance and to make environmental knowledge play the largest role in the decision-making process. Finally, a multivariate maritime regime will be established to address transboundary common interests.

In the same vein, the sixth chapter will turn the focus to the South China Sea region, where the presence of third States also draws attention in the delimitation process. Meanwhile, the multivariate maritime regime is equally significant to encourage all neighboring States to properly handle shared and common interests, so as to resolve transboundary legal dilemmas.