Editorial Note

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Volume 8, Number 2 of the *Korean Journal of International and Comparative Law* is a special issue on transboundary fisheries management. The articles in this volume were presented at the 7th Asia Pacific Ocean Law Institutions Alliance (APOLIA) Conference, in Dalian, China, in June 2019. The theme of the conference was ‘Sharing Fish: Management of Living Marine Resources Across Borders in Asian Pacific States.’ The articles in this special issue provide valuable insights into regional and State practice, legislation and policy developments, institutional mechanisms and initiatives on the protection, conservation, and management of transboundary fisheries in the Asia-Pacific.

The first article in this issue, Keyuan Zou of the University of Central Lancashire, United Kingdom and Jiayi Wang of Sun Yat-sen University, Guangzhou, China, is entitled ‘Transboundary Fisheries Management: China’s Practice.’ The article commences with a comprehensive yet succinct discussion of the nature and social conditions of China’s fisheries, followed by an overview of the international legal framework on transboundary fisheries. It then outlines the broad legislative framework and institutional arrangements for the management, conservation, and sustainable development of China’s fisheries resources. It discusses China’s practice on the management of shared stocks in the East China Sea, Yellow Sea, Gulf of Tonkin and the South China Sea. It also covers China’s practice on distant water fisheries, conservation measures implemented to combat the problem of decreasing fisheries resource and promote international cooperation of management of highly migratory species, and address IUU fishing. The authors opine that due to the “migratory characteristics of fish, the fish stocks might be exploited by many fishing nations, thus, the conservation of transboundary fisheries cannot be achieved by individual states, and international cooperation is inevitable.” The authors lament that despite Chinese efforts to crack down on IUU fishing, “the measures taken so far have not been effective enough.” The article concludes that given the

dramatic decline of fish stocks and catch rates in the South China Sea, “fisheries cooperation requires no delay.” In order to promote fisheries cooperation, the authors recommend the creation of a new RFMO or the establishment of a marine protected area in the South China Sea.

The next article, entitled, ‘Transboundary Fisheries Management: The Malaysian Perspective,’ was written by David M. Ong of Nottingham Trent University, United Kingdom. The article introduces the topic with the factual and legal backgrounds to transboundary fisheries management issues in Southeast Asia in general and Malaysia in particular. The author observes that, unlike other major regions, “there is to date no established regional fisheries management organization (RFMO) for the South China Sea and its adjacent marine areas.” The article outlined the Malaysian legal and institutional framework for the management of transboundary fisheries. Professor Ong observes that “the Malaysian national legal framework for regulating shared fish stocks generally is arguably inadequate”, highlighting the “negative impacts of continuing incursions by foreign fishing vessels within the Malaysian EEZ, and even her territorial sea.” The article likewise notes the fragmented institutional environment governing the management of fisheries-based ecosystems as a major impediment to their sustainability. The article discussed transboundary fisheries management issues involving Malaysia in the South China Sea, the Gulf of Thailand, the Straits of Malacca, the southern Andaman Sea, corresponding to the northern part of the Malacca Straits, and the Sulu-Celebes Sea areas. The article concludes with a positive note, that “Southeast Asian transboundary fisheries co-operation and management is progressing along the right pathways but needs more co-ordination between regional, sub-regional and national levels to achieve its goals.”

The third article, written by Jacqueline Joyce F. Espenilla, of the U.P. Institute for Maritime Affairs and Law of the Sea, University of the Philippines, is entitled, ‘Sharing Fish: The Philippine Experience.’ The article commences with the international legal considerations in the governance of shared fish, observing that the Philippines is a State party or signatory to important international legal instruments, which includes the United Nations Convention on the Law of the Sea and the 1995 United Fish Stocks Agreement. The Philippines is also a member of three RFMOs: the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC), and the Western and Central Pacific Fisheries Commission (WCPFC); and a cooperating non-member of the Commission for the Conservation of the Southern Bluefin Tuna (CCSBT). The Philippines has also expressed commitment to the implementation of several non-binding international instruments such

as the FAO Code of Conduct for Responsible Fisheries and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). The article also discusses the legal and institutional frameworks at the domestic level governing fisheries regulation. Professor Espenilla observes that “Philippine fisheries policy straddles the fine line between consumption/exploitation and conservation.” The article concludes with the recommendation for the Philippines “to approach fisheries management from a more wholistic perspective”, emphasising the imperative for enforcement, compliance and international cooperation complemented by domestic restraint.

The final main article of this volume, by Anastasia Telesetsky of the University of Idaho College of Law, USA, is entitled, ‘United States Practice in Sharing Transboundary, Highly Migratory, and Straddling Stock Fishery Resources.’ The article provides a detailed survey of US domestic fisheries laws, international treaties, and institutional practices concluded to manage specific transboundary, highly migratory, or straddling commercial stocks. Professor Telesetsky observes that “[I]nternational law and international institutions shape and guide U.S. legal responses to cooperative fisheries management.” Whilst the US has not acceded to the UN Convention on the Law of the Sea, the article notes that it has ratified the UN Fish Stocks Agreement, and the US is a member of a number of tuna-specific regional RFMOs and other fishing organizations with a broader conservation interest in commercial stocks other than tuna. The article discusses US fishing laws and practice for transboundary stocks, which are managed either through formal treaty arrangements or other institutional mechanisms. Professor Telesetsky argues that the motive behind treaties and non-treaty arrangements governing transboundary fisheries management is a “reaction to a crisis in a specific fishery reflected in a trend of depleted catches.” The article reiterates a conclusion similar to the ones before it in this volume: “to ensure adequate management for transboundary and migratory species relies heavily upon genuine cooperation between States.” The article closes with a warning that conservation and management measures need to take climate change into account, because without doing so, “some of the current shared fisheries agreements will become increasingly irrelevant as fisheries relocate to new and cooler waters or potentially disappear for failure to adapt.”

The featured articles of this volume are followed by a summary of important Korean judicial decisions that pertain to international law. The first article is a summary of decisions from the Korean judiciary from the second half of 2018 to the first half of 2019 by Professor Buhm-Suk Baek of Kyung Hee University and Hosung Ahn of the Korea Military Academy. The second article, ‘The

Constitutional Complaint concerning the Announcement of the Agreement on the Comfort Women Issues (2016 Hun-Ma 253, Constitutional Court)' is written by Professor Seryon Lee of Chonbuk National University Law School and Professor Seokwoo Lee of Inha University Law School. The final judicial summary is on 'Japanese Forced Labor re Mitsubishi Heavy Industries (2015 Da 45420 Compensation for Damages (Others), Supreme Court (2nd Division), Judgment),' translated by Professor Seokwoo Lee of Inha University School of Law.