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RESEARCH ARTICLE

# Free sea or territorial waters? The Sino-Japanese Xiongyue fishing dispute, 1906–1912

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**Abstract**

Following victory in the Russo-Japanese War, the Meiji government sought to expand its maritime influence in Northeast Asia by developing pelagic fisheries in the newly acquired Kwantung leased territory, but it encountered immediate resistance from the Qing court, which had just embarked upon ambitious reform to strengthen maritime defence through the building of a national fishing industry. The dispute first emerged as a clash between Japanese and Chinese fishery protection companies on the seas adjacent to the Chinese city of Xiongyue. It then gave rise to a protracted Sino-Japanese legal debate on the question of whether the Xiongyue fishing ground was in the free sea or part of Chinese territorial waters. However, the 1912 settlement agreement made no mention of the legal status of the fishing ground. By examining this oft-neglected dispute, this article not only provides a rare East Asian case that illustrates the tension between the requirements of national sea borders and the principle of navigational freedom, but also explores how the Meiji and Qing governments perceived and practised international maritime law at the turn of the twentieth century. It argues that neither government viewed international maritime law as the only referential framework to solve the dispute, especially when it contributed little to the conflict settlement and contradicted their perceptions of the historical relations between East Asian countries.

**Keywords:** International maritime law; modern Japan; modern China; fishery; maritime Asia

## Introduction

In the summer of 1907, a Chinese fisherman near the Liaotung Peninsula found himself in a difficult situation. When arriving at the fishing ground off Xiongyue (熊岳), a Chinese city close to Japan's Kwangtung leased territory (関東州) (see Figure 1), he encountered patrol vessels sent by the Kwantung Government-General (関東都督府). As demanded by the Japanese patrollers, he paid 50 yuan for 'anti-piracy protection on the high seas' and received a flag as a certificate of payment. Later, however, he encountered the Qing navy and was required to pay for the protection service it offered in 'Chinese territorial waters'. Unable to pay the protection money twice, the fisherman


**Figure 1.** The Northwest Pacific Ocean, 1907. *Source:* The author.

was beaten up by the Chinese sailors and lost his trawler. Those who disobeyed the Government-General's orders also received the same treatment from the Japanese patrol vessels. According to an investigation report compiled by the Japanese Foreign Ministry, both the Government-General and Chinese authorities extorted trawlers through intimidation and violence in the name of anti-piracy protection, leading to a confrontation that greatly disrupted fishing activities off the Liaotung Peninsula.[1]

The conflict described above reveals how maritime sovereignty at the turn of the twentieth century was associated with ambiguity, irregularity, and malleability. In line with recent works on the history of international law, I perceive 'maritime sovereignty' as a concept characterized by two interrelated elements: on the one hand, it refers to the expression of a state's supreme and exclusive power within a given littoral space; on the other hand, justified in terms of various kinds of moral good, modern states go beyond their maritime boundaries to exert control over foreign and public resources.[2] These two contradictory forces underpin the long-standing discourses about international maritime law which have contributed and responded to the changing conditions of empire and nation for centuries. Departing from the conventional narrative that a stable Western legal system has gradually rationalized lawless non-European waters since the Age of Exploration, recent studies demonstrate that the sea is neither an empty void nor a homogenous entity that can be 'rationalized' by a single juridical-political order; instead, it has long been a 'geographically variegated legal

[1] *Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 3*, Japan Center for Asian Historical Records (hereafter, JACAR) Ref. B11091896500, 1907, figs. 100–105.

[2] Martti Koskenniemi, 'Vocabularies of Sovereignty—Powers of a Paradox', in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*, (eds) Hent Kalmo and Quentin Skinner (Cambridge: Cambridge University Press, 2010), p. 237.

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space' composed of overlapping regulatory frameworks in which imperial agents and formations appropriate the concept of maritime law to their own ends.[3] Yet, to paraphrase the historian Matthew Taylor Raffety, whether as triumphal tales of a 'civilizing mission' or critical analyses illustrating the fragmentation of the law of the sea, both narratives remain 'too unidirectional, too Eurocentric a view', for they overwhelmingly focus on how the expansion of Western imperial formations shaped the oceanic world.[4]

Although the Xiongyue dispute provoked heated public discussion about international maritime law in Japan and China during the late 1900s, it soon faded from view following the Meiji government's decision to block Japanese-language news reporting in 1910 and the turbulent transition of Chinese leadership in 1912.[5] Neither has this dispute drawn much scholarly attention, as most historians treat it only in passing when examining the development of the Japanese fishing industry or the formulation of Chinese maritime sovereignty.[6] This article attempts to illuminate the historical significance of the Xiongyue dispute by situating it within a broader context. As Thomas Wemyss Fulton indicated in 1911, the issue of fisheries was 'the one of the greatest frequency' concerning territorial waters.[7] Seen in this light, the Xiongyue dispute, an oft-neglected Sino-Japanese fishing war off the Liaotung Peninsula from 1906 to 1910, generates a series of tantalizing questions not just for scholars of East Asia but also for historians of maritime law: How did imperial formations shape and reshape people's understanding of the sea in the ever-changing global environment? How did East Asian countries grapple with maritime disputes among themselves against the backdrop of Euro-American hegemony? How did East Asian governments perceive and use the system of international maritime law?

This article argues that despite their familiarity with international maritime law, neither the Japanese nor the Chinese governments regarded this system as the only referential framework to conduct foreign relations, especially when it contributed little to the conflict settlement and contradicted their perceptions of the historical relations among East Asian countries. As such, this article provides additional substantiation for a pragmatic stance on the part of nation-states towards the emerging international maritime law, while also showing that the principle of national maritime sovereignty and that of navigational freedom, a pair of opposing forces, worked in conversation with each other to make the law of the sea an argumentative resource amenable to numerous, sometimes directly contradictory, uses.

[3]Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), p. 158.

[4]Matthew Taylor Raffety, '"The Law is the Lord of the Sea": Maritime Law as Global Maritime History', in *A World at Sea: Maritime Practices and Global History*, (eds) Lauren Benton and Nathan Perl-Rosenthal (Pennsylvania: University of Pennsylvania Press, 2020), pp. 66–67, 70.

[5]The Meiji government's decision was mainly based on the fear that those 'sensational' news reports might provoke anti-Japanese sentiments in China; see *Kantōshū enkai gyogyōhogo ikken daisankan bunkatsu 3*, JACAR Ref. B11091897700, 1910–1911, figs. 61–62.

[6]For example, see Peng Wei and Itō Yasuhiro, 'Nijūseiki zenki no Chūgoku "Kantōshū" suisangyō no keisei to tenkai', *Chiikigyogyō kenkyō*, vol. 59, no. 2, 2019, pp. 105–112; Liu Limin, 'Qingmoshehui weihu linghaiyuyequan huodong kaocha', *Jinyang xuekan*, no. 4, 2015, pp. 65–75.

[7]Thomas Wemyss Fulton, *The Sovereignty of the Sea: An Historical Account of the Claims of England to the Dominion of the British Seas, and of the Evolution of the Territorial Waters: With Special Reference to the Rights of Fishing and the Naval Salute* (Edinburgh: W. Blackwood, 1911), p. vii.

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## The international and geopolitical contexts

The requirements of national sea borders and that of navigational freedom have haunted legal scholars for centuries. Many jurists in the Roman era portrayed the sea as a common property that could be controlled but not possessed by any individuals. This ambiguous definition generated a long-lasting debate about the rights of states and individuals on the oceans.[8] After the Age of Exploration, which witnessed increasing cases of maritime conflict, it was common practice for European colonial powers to sponsor judicial research and use it for their respective political causes. For our present purposes, two of the most important jurists in this era were Hugo Grotius and John Selden, who advocated the ideas of *mare liberum* (free sea) and *mare clausum* (closed sea) respectively. Grotius, supporting the 1609 Dutch seizure of the Portuguese merchant ship Santa Catarina in Singapore, argued that navigational freedom was a universal humanitarian principle and the capture, therefore, was a just punishment for the 'illegal' Portuguese monopoly over the East Indian trade.[9] On the other hand, Selden, working for English claims to British coastal waters in the early seventeenth century, contended that the sea was capable of private dominion in certain circumstances according to the law of nature and that of nations.[10] The following decades saw continuing debates on the line between the high seas and territorial waters, and it was not until the late eighteenth century that the 'three-mile limit' or the 'cannon-shot rule', which defined the extent of a nation's territorial seas as equivalent to the outer range of coastal artillery weapons, was adopted by a number of Western governments.[11]

This rule, however, had provoked much discussion by the late nineteenth century. Influenced by the Westphalian model of the international legal order, non-Western countries were anxious to maintain their territorial integrity and perceived maritime sovereignty as indispensable aspects of national independence, but the widespread use of extraterritorial jurisdiction, an instrument of imperialism, made their offshore waters open to foreign interference.[12] Moreover, as the development of technology greatly extended the range of guns, the three-mile limit became inadequate in terms of a nation's maritime security. Some states, especially those with superior maritime strength, had kept the three-mile principle to maximize their reach on the high seas.[13] Some others sought to strengthen their maritime defence by claiming more territorial waters, but their pretensions were not always recognized by the international community.[14]

[8]Benton, *A Search for Sovereignty*, p. 123.

[9]Hugo Grotius, *The Free Sea or a Dissertation on the Right Which the Dutch Have to Carry on Indian Trade*, (ed.) Robert Feenstra (Leiden: Brill, 2009), pp. xiv–xv.

[10]Fulton, *The Sovereignty of the Sea*, pp. 9–10, 370–371.

[11]Ibid., pp. 21–22.

[12]Raffety, '"The Law is the Lord of the Sea"', p. 73.

[13]Yoshifumi Tanaka, *The International Law of the Sea*, 3rd edn (Cambridge: Cambridge University Press, 2019), pp. 27–28.

[14]For example, Mexico tried to define the extent of its territorial waters as nine nautical miles in the late nineteenth century. Liu Limin, *Bupingdengtiaoyue yu Zhongguojindai lingshuizhuquan wentiyanjiu* (Changsha: Human renmin chubanshe, 2010), p. 268.

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The Xiongyue dispute thus took place at a time that saw remarkable divergences in scholarly and governmental opinion on the extent of territorial seas. Moreover, it broke out at a place of strategic and economic importance where the national boundaries of Korea, China, and Russia converged. In September 1905, the Meiji government received the former Russian lease of Dalian (大連) and Port Arthur (旅順) in Northeast China after victory in the Russo-Japanese War and placed them under the administration of the Kwantung Government-General. Located at the southern tip of the Liaotung Peninsula, the leased territory was close to the coastal waters off the Chinese city of Xiongyue, a highly productive fishing ground that attracted thousands of trawlers every summer. In pursuit of yellow croakers (黃花魚), which often arrived in the waters off the Liaotung Peninsula in early May and spent a dozen days there before moving northwards to the Yalu River, fishermen from North China came to Xiongyue in late April and brought considerable economic opportunities to the local community. According to observations made by the Japanese government, in the half-month fishing season, dozens of cottages provided lodging, live fish trade, and grocery supplies along the coast of Xiongyue, where barbers, peddlers, and merchants filled the streets and labourers worked tirelessly to load and unload cargo. The yellow croakers harvested every season were valued at more than 200,000 yen and generated large amounts of tax income for the local political authorities.[15]

Although the Kwantung lease agreement only covered issues on land and made no mention at all of maritime affairs, the Meiji government sought to exploit the opportunity provided by the new territorial gain to exert its influence over the adjacent seas of the Liaotung Peninsula through the expansion of the Japanese fishing industry, which had been tethered to the empire's imperial project since the 1870s.[16] Moreover, in the 1900s, the Meiji government also sought to resolve the overfishing problem in the Japanese metropole by developing 'pelagic fisheries' in Chinese offshore waters.[17] During the negotiations on the Sino-Japanese Treaty Concerning Manchuria (日清間満州ニ関スル条約) in the winter of 1905, the Meiji government made its first attempt to acquire fishing rights around the Liaotung Peninsula, but it met with strong opposition from the Qing court and was unable to receive consent from other great powers. Their China policy held to the principle of 'equal privileges' (均霑) and they were wary of increasing Japanese influence in East Asia.[18]

At around the same time the Qing government also devoted itself to the development of the national fishing industry with unprecedented enthusiasm. In 1904, preoccupied with the presence of German trawlers off the Shandong Peninsula,

[15]*Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 1*, JACAR Ref. B11091896300, 1906, fig. 20; *Kantōshū enkai gyogyōhogo ikken daisankan bunkatsu 3*, figs. 68–97.

[16]For the lease agreement, see *Qingji Zhongrihanguanxi shiliao* (Taipei: Institute of Modern History, 1972), p. 6431. For the connection between the Japanese fishing industry and the empire's expansion, see, for example, Jakobina Arch, 'Nineteenth-Century Japanese Whaling and Early Territorial Expansion in the Pacific', *RCC Perspectives*, no. 5, 2019, p. 61; *Kankoku engangyogyōba he gunkan hakenhogohō no ken*, JACAR Ref. C06091327100, 1901, fig. 14.

[17]See, for example, *Chokurei, Santonenkai gyogyōken wo jōyakujō nite kakutoku suheki gi*, JACAR Ref. B11091860300, 1902.

[18]*Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 1*, JACAR Ref. B11091896900, 1907–1908, figs. 30 and 56.

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the Qing government adopted the reformist Zhang Jian's (張謇) suggestion to establish state-owned fishing enterprises in coastal provinces as the first step to strengthen maritime security.[19] Nevertheless, when referring to the extent of Chinese territorial waters, several high-level officials disagreed with Zhang's idea that the Qing empire should follow major maritime powers in using the three-mile principle. In a joint memorial, Yuan Shikai (袁世凱), the superintendent for trade in the north, and Zhou Fu (周馥), the governor of Shandong Province, explained as follows:

> The islands along the Chinese coast scatter like stars in the sky or chess pieces on a board. Some of them are nearly a hundred nautical miles away from the mainland. Regardless of their size and distance, these islands are frequented by our fishermen, who go back and forth with the tide and do not care about boundaries. If the width is set as three nautical miles at low tide, then it will be protection only in name and a threat to our maritime territory in essence. Continuing our previous practices of maritime sovereignty is a better strategy.[20]

In this manner, the Qing government deliberately maintained an equivocal attitude towards the extent of Chinese territorial waters when developing national fisheries. Nevertheless, this stance created difficulties for the Qing government in the Xiongyue dispute, as it left room for the Japanese side to question Chinese claims to Bohai Bay.

As both the Meiji and Qing governments sought to extend their maritime reach through the mobility of fishermen, 'anti-piracy protection' became a useful justification for them to establish greater control over their trawlers on the contested waters, such as the adjacent seas of Xiongyue. Prior to the establishment of the Kwantung leased territory, the Liaotung Peninsula had been plagued by piracy for centuries. The Qing government tried to organize local fishermen into vigilante groups, but this proved futile due to the very low number of registered fishing households (漁户) and the government's inability to exclude trawlers from nearby provinces.[21] When the Tsarist regime took control of Dalian and Port Arthur (1897–1905), two local Chinese asked the Russian authorities to send fishery patrol vessels and volunteered to help collect 'protection fees' from local fishermen. Although the amount was set at 50 yuan per trawler officially, in practice they extorted much more from the fishermen, and the Russian authorities did not intervene because they received tens of thousands of yuan every year from the two Chinese agents.[22] The extortion continued until the Meiji government received the leased territory in 1905.

[19] Liu, 'Qingmoshehui', pp. 68–71.

[20] *Zouwei hanlinyuanxiuzhuan Zhangjian changshe yuyegongsi nizai jiangzhe shejukaiban shi*, First Historical Archives of China (hereafter, FHA) Ref. 04-01-01-1075-008, 21 April 1905, figs. 4–5. All dates following the Chinese lunar calendar have been converted to the Gregorian calendar. 中國沿海島嶼星羅棋布, 甚有相隔百餘海里者, 島無大小遠近, 皆漁人託業之區, 趁潮往來, 不分界限。若僅以潮退三海裡為限, 則名為保護, 反褫海疆。不如仍行我向來領海之權, 較為上策。

[21] *Shengjingjiangjun Yiketanga zouwei fengshengyuhu wuduo ainan zhuanbanyutuan shi*, FHA Ref. 04-01-01-1024-052, 28 January 1899.

[22] *Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 2*, JACAR Ref. B11091896400, 1907, fig. 2; *Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 4*, JACAR Ref. B11091896600, 1907, fig. 19.

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## Inception: From anti-piracy protection to joint fishing ventures, 1906–1907

In March 1906, Abeno Rikyō (阿部野利恭), a former interpreter working for Japan's imperial army, established the fishery protection company Qingli (清利) and received firearms, two patrol vessels, and 30 soldiers from the Kwantung Government-General which, according to its explanation later submitted to the Japanese Foreign Ministry, sought to 'continue the traditional practice under Russian rule'. In response, and with the Qing court's recent call for developing the national fishing industry in mind, the local Chinese authorities founded a state-owned company, Yuye (漁業), and claimed it to be the only institution legitimately responsible for anti-piracy protection in the peninsula. In addition, a third company, organized by the former Japanese Diet member Arimura Ren (有村連), was also created, but it failed to gain any kind of governmental support and soon withdrew from the stage.[23]

When the fishing season started in late April, Abeno's Qingli company sent its patrol vessels to the Xiongyue fishing ground and recruited a group of Chinese and Japanese thugs to collect 'anti-piracy protection fees' from trawlers. Its extortion was so ruthless that even Lieutenant Miyauchi Oritarō (宮内織太郎), who led the 30 soldiers sent by the Government-General to assist Abeno, decided to perform patrol missions independently from the Qingli company to avoid 'besmirching the Japanese empire's reputation'.[24] While pirates never appeared as expected, the company encountered the Chinese navy, which expressed its discontent by firing blanks and playing trumpets.[25] The Qing court also made representations to the Kwantung Government-General about Abeno's extortion, but was informed that the Qingli company was providing fresh fish for the Japanese army on the Liaotung Peninsula and would disband soon after the Meiji government finished withdrawing the soldiers it had sent to the war with Russia.[26] As a result, the Qing government's Yuye company signed an agreement with Abeno on 12 May 1906 stating that the protection fee collected from the local fishermen that year would be equally divided between the two parties and that Qingli would leave the peninsula within one year. While Abeno did not announce his earnings at the end of the fishing season, the Chinese side noted that it had received 31,175 yuan under this agreement.[27]

Despite the confrontation between the Chinese authorities and the Qingli company, the Japanese Foreign Ministry remained ignorant of the dispute until contacted by the peninsula's Consulate-General on May 22.[28] Although Kwantung Governor-General Ōshima Yoshimasa (大島義昌) insisted that the primary purpose of the Qingli company was to protect fishermen from piracy rather than to make profits, the Japanese Foreign Ministry's investigative report insinuated that Ōshima had nearly ignited an unnecessary war with the Qing empire for the sole benefit of a greedy merchant. The report also recorded the attitudes of some Chinese fishermen, who expressed their distaste at the high protection fees charged by the Qingli company and the 'treacherous

[23] *Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 1*, figs. 17–18.
[24] Ibid., fig. 35.
[25] Ibid., figs. 29–30, 31, 34.
[26] *Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 3*, fig. 37.
[27] *Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 1*, figs. 10–11.
[28] Ibid., figs. 7 and 19.

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methods' used for extortion. Interestingly, probably moved by Lieutenant Miyauchi's upright personality, these Chinese fishermen said they preferred to be protected by the 'well-disciplined Japanese army' because, in their view, the conduct of the 'corrupted' Qing government would be 'worse than those of bandits and pirates' if it were to acquire exclusive control over the business of anti-piracy protection on the waters off the Liaotung Peninsula.[29] In the end, to distance the Meiji government from any responsibility concerning this fishing dispute, the Foreign Ministry defined the confrontation as being provoked by a profit-driven businessman and irrelevant to the will of the Japanese authorities. It also suggested consulting with the Army Ministry in future incidents which, its report warned, might 'recur'.[30]

As foreseen by the Foreign Ministry, the conflict gradually became a protracted dispute carrying the potential for a new Sino-Japanese war. Despite its promise to dissolve the Qingli company, the Government-General established a new fishery organization named the Pelagic Fisheries Group (遠洋漁業団) in March 1907 and appointed Abeno, the owner of the Qingli company, as its head. In a brochure intended for Japanese citizens in the metropole, the Government-General provided detailed information about marine resources in the peninsula and highlighted that it was the duty of Japan's fishermen to 'help advance our empire's interests in South Manchuria', where the Open Door policy brought about 'a contest among great powers'. The brochure also sketched an ambitious expansion plan that portrayed the Kwantung leased territory as a stepping-stone to Japanese control of the offshore waters off Korea and Northeast China.[31] Drawing lessons from the 1906 confrontation, the Government-General concluded that the Qing court was unable to exclude Japanese vessels from its coastal waters by force. It thus expanded 'anti-piracy protection' from Xiongyue to 'the land and sea of the Kwantung leased territory, the Bohai Bay, the Yellow Sea, and the coastal area of Fengtian and Shandong provinces'. Besides trawlers, merchant ships were also included in the scope of this protection and required to pay 'five percent of the cargo value' for the service. As the fishing season approached, the Pelagic Fisheries Group made announcements across the peninsula, clarified the fee scale, and highlighted the military support it would receive from the Government-General.[32] In this way, the Government-General shifted from taking advantage of non-official actors to directly claiming jurisdiction over the coastal waters off Northeast China.

Contrary to the Government-General's expectation, however, this announcement provoked an immediate reaction from the Chinese authorities. As Abeno's men began to extort protection fees, they found Chinese soldiers doing the same work on the sea. At the expense of local fishermen, mostly Chinese, the Qing court significantly reduced the income of the Pelagic Fisheries Group and compelled the Government-General to acknowledge the need for negotiations.[33] The governor-general also faced pressure from the Japanese Foreign Ministry for he, again, had made an aggressive move without the approval of the central government. Nevertheless, given

[29]Ibid., fig 21.
[30]Ibid., figs. 25 and 35.
[31]Ibid., figs. 74, 76–77.
[32]*Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 4*, figs. 14–15, 17.
[33]*Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 3*, figs. 100–105.

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the potential damage this dispute could cause to Japan's international image, the Foreign Ministry determined to hold the Qing government accountable for the whole conflict.[34]

During the early stage of negotiations, the Qing court referred to international law and criticized the Government-General for 'violating Chinese national sovereignty' over the coastal waters off the Liaotung Peninsula. The Japanese side circumvented legal questions and stressed the 'atrocities' perpetrated by Chinese soldiers against fishermen of the leased territory. The Meiji government's choice of strategy mainly resulted from the Foreign Ministry's perception that the Xiongyue fishing ground was part of Chinese 'territorial seas'. As the Japanese Foreign Minister indicated in his letter to Ōshima, the Government-General made 'an absolutely inappropriate decision' to provide anti-piracy protection for fishermen in 'foreign waters'.[35] Without the confidence to engage in legal debates with the Qing court over the question of maritime sovereignty, the Japanese side directed its focus on fishermen from the leased territory who had sailed freely on the seas adjacent to the Liaotung Peninsula for centuries. Representing himself as speaking for the rights of these fishermen, Ōshima asked the Qing government to 'leave legal issues in abeyance' and 'respect the traditional practices of Chinese trawlers of the leased territory' by allowing them to fish freely near Xiongyue. He also poured scorn on the Qing court's reference to 'empty legal theories' (机上ノ法理論), indicating that its navy was incapable of enforcing international maritime law and excluding foreign vessels from Chinese coastal waters.[36] Although Ōshima demanded apologies and compensation for the economic loss suffered by fishermen of the leased territory, the Qing court firmly denied the existence of Chinese soldiers' extortion and required the Government-General to disband the Pelagic Fisheries Group immediately, fearing that any concession on this issue would encourage future Japanese activity in Chinese offshore waters.[37] However, seeing a 'great opportunity' to gain 'permanent fishing rights' in the peninsula, the Government-General was likewise unwilling to compromise and the negotiations ended in deadlock.[38]

In the summer of 1907, as the Qing court maintained its stance, the Foreign Ministry tried to move the negotiation process forward by replacing the issue of anti-piracy protection with that of fishing licences. It proposed that Chinese trawlers near the leased territory would pay 'license fees' to the Qing government in return for access to the Xiongyue fishing ground, while also calling for an end to the extortion of 'protection money' on both sides.[39] Although at first glance this proposal seemed to benefit the Chinese trawlers of the leased territory only, it left much room for the Government-General to establish control over the fishing grounds under the cover of Sino-Japanese joint ventures. As the Foreign Ministry explained to Ōshima:

> When the Chinese trawlers of the leased territory gained fishing rights outside the leased territory, our Japanese fishermen could acquire licenses under the

[34]*Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 2*, fig. 43.
[35]Ibid., fig. 45.
[36]Ibid., figs 62–63.
[37]*Qingji Zhongrihanguanxi shiliao*, p. 6454.
[38]*Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 4*, fig. 35.
[39]Ibid., fig. 113.

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name of their Chinese counterparts, then controlling most of the local fishing industry.[40]

Notably, the proposal epitomized a strategy used by the great powers in China during the early twentieth century. The German empire, for example, also established a joint fishing venture in its Kiautschou Bay concession in 1908 to exert influence over the adjacent seas of eastern China.[41] Besides the fishing industry, many other economic fields in late Qing China saw joint enterprises dominated by foreign capital, such as the banking, transportation, and mining sectors.[42]

The Qing court was, therefore, not unfamiliar with this form of economic intrusion. As it warned in a letter to the Japanese government, any transfer of fishing licences from Chinese to Japanese trawlers in the name of joint ventures would be strictly forbidden, for it 'did harm to our national dignity and the interests of Qing subjects'. However, the Meiji government believed that the Qing court was in practice unable to prohibit transfers, and so carried on with its plan. In the spring of 1908, the Government-General gathered nearly 3,000 Japanese and Chinese trawlers to prepare for the incoming fishing season. Based on conversations with some Qing officials, the Foreign Ministry concluded that the Chinese government would give tacit consent to transfers for the prevention of illegal fishing activities along the Liaotung Peninsula.[43]

Nevertheless, the Meiji government's plan was undermined by the Chinese authorities, who suddenly increased the fishing licence fee and required more money from trawlers of the leased territory, thereby leaving little profit for newly established joint ventures. The Government-General also requested that the Foreign Ministry terminate fishing activities, as the tension might provoke open warfare.[44] After several rounds of fruitless negotiations, the Meiji government was forced to abandon the joint ventures plan and sought new strategies. Ironically, this time it was Ōshima—the same person who had showed disdain for the Qing government's adherence to 'empty legal theories' in 1907—who suggested using the vocabulary of international law to advance Japanese interests in Chinese offshore waters.

## A legal confrontation, 1908–1910

The governor-general started considering the use of international maritime law as early as June 1907. When the Qing government maintained a firm stand against the entry of Japanese trawlers into 'Chinese territorial waters', Ōshima reminded the Foreign Ministry that the Xiongyue fishing ground was approximately ten nautical miles away from land and therefore, according to the 'three-mile principle in the international law', should be perceived as part of the 'free sea'.[45] However, given the

[40] *Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 1*, fig. 54. 結局租借地内居住ノ清国漁業民ニ租借地外ノ漁業権ヲ許與シタル以上ハ本邦漁民ハ清国人名義ヲ以テ鑑札ヲ受ケルノ便宜アルカ故ニ実際大仕掛漁業ハ本邦人ノ手ニ経営セラルト可得ト思考致候。

[41] Liu, *Bupingdengtiaoyue*, p. 229.

[42] See, for example, the Russo-Chinese Bank and the Sino-Japanese Benxi Lake Commercial Coal Mining Company Limited.

[43] *Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 1*, figs. 72–73.

[44] *Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 2*, JACAR Ref. B11091897000, 1908, fig. 14.

[45] *Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 4*, figs. 33 and 44.

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Qing empire's 200-year rule in the Liaotung Peninsula, the Foreign Ministry deemed this reclassification to be unreasonable and paid little heed to Ōshima's advice. The Qing government dismissed Ōshima's proposal as nonsense and felt no need to make a serious response.[46]

Nevertheless, as the joint ventures plan failed in May 1908, the Meiji government reformulated its negotiation strategies by confronting the Qing court through legal means, which consisted of two major claims. The first replicated Ōshima's 1907 argument that the Xiongyue fishing ground was on the 'free sea'. Representing the three-mile principle as a universally accepted rule in the international community, the Japanese government criticized the Chinese authorities for 'illegally obstructing' its pelagic fishing vessels on the high seas.[47] It also referred to the Qing government's 1904 Declaration of Neutrality in the Russo-Japanese War that prohibited gunboats of the warring sides from entering the seas within three nautical miles of the Chinese shore, which, according to the Meiji government's interpretation, indicated the extent of China's territorial waters.[48]

While the Meiji government cited several legal references, it should be noted that its claim was questionable under both international and Chinese law. As noted earlier, although major sea powers promoted the three-mile principle, the advancement in artillery technology and the call from weaker maritime states made this rule the subject of a widespread debate in the early twentieth century. During the 1930 Hague Conference, for example, only Britain and Japan supported using a three-mile maximum as the uniform extent of territorial waters for all states and for all purposes.[49] In terms of Chinese law, the Qing court showed no intent to limit its sea borders in a declaration of neutrality and viewed the three-mile rule as unfavourable for the development of the Chinese fishing industry. Moreover, the Meiji government also refused to follow the three-mile principle entirely in the formulation of its own maritime boundary. In the 1878 Draft of Japanese Maritime Law (日本海令草案), for example, it highlighted that the cannon-shot rule was inapplicable to the 'inland seas in Musashi, Ise, Chūgoku, and Kyūshū' that were more than three nautical miles away from the shore but still constituted parts of Japanese territorial waters.[50] Although the Meiji government shelved this draft in the 1880s, it never applied the three-mile principle to those 'inland seas' and took every opportunity to display its sovereignty over them on the international stage.[51] In other words, given the Meiji government's own maritime practices, its argument that the cannon-shot rule should be applied to the Xiongyue fishing ground, which was on seas bounded by Chinese territory on three sides, seemed untenable.

[46]*Qingji Zhongrihanguanxi shiliao*, p. 6451.

[47]*Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 2*, figs. 35–44.

[48]Ibid., fig. 62.

[49]Jesse Reeves, 'The Codification of the Law of Territorial Waters', *The American Journal of International Law*, vol. 24, no. 3, 1930, p. 491.

[50]*Ōnyū 39 kaijōsaibansho soshōkisoku gai 2 satsu kaijōhōritsutorishirabeka jōshin (3)*, JACAR Ref. C09102206200, 1878, fig. 14.

[51]For example, the Meiji government mounted a vigorous defence of its sovereignty over the Seto Inland Sea in its negotiations with the British empire on the 1892 Chishima-Ravenna incident. See Douglas Howland, 'International Law, State Will, and the Standard of Civilization in Japan's Assertion of Sovereign Equality', in *Law and Disciplinarity: Thinking Beyond Borders*, (ed.) Robert J. Beck (New York: Palgrave Macmillan, 2013), pp. 196–197.

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The other major claim made by the Japanese authorities was that Chinese residents of the leased territory fell under the protection of the Government-General, no matter where they went. The Meiji government first expressed this claim in the spring of 1907, during which a Chinese employee of the Pelagic Fisheries Group was killed in the territory of the Qing empire. Although the Chinese authorities viewed the case as a domestic affair, the Japanese government demanded compensation and apologies for 'the murder of a resident of the Kwantung leased territory'.[52] Later, as both sides transformed the case into a bargaining chip in the negotiations over the question of fishing rights, they moved their attention away from the issue of jurisdiction. In 1908, however, the Japanese side brought this issue back to the negotiating table. In combatting the Qing court's representation of the Xiongyue fishing ground as its territorial waters, Ōshima asserted that it was the Government-General's responsibility to develop self-defence strategies against the Chinese navy's extortion on the 'free sea', as well as to protect the trawlers of the leased territory by sending gunboats to the Liaotung Peninsula.[53] As such, although ethnic Chinese were hardly treated as equal to their Japanese counterparts in the leased territory, they became an important channel through which the Meiji government expanded its influence to the coastal waters off Manchuria.

Set against the backdrop of international practices regarding the judicial administration in the leased territory, the second claim was also questionable in terms of its legal basis. From the capitulations in the Ottoman empire to the concessions in Qing China, the imperial treatments of extraterritoriality mainly aimed to exempt their citizens from the jurisdiction of local authorities. Although native residents were not the supposed beneficiaries of extraterritoriality, their existence complicated the judicial system of the leased territory greatly, as no uniform international practice had been developed with respect to their legal status. For example, when the British empire acquired the Weihaiwei (威海衛) leased territory from China in 1898, it spent much time addressing the question of whether the native residents remained subject to Chinese jurisdiction, as no settled principles could be found in English law.[54] It finally applied Chinese law and customs to civil litigation among the native population, but this decision, according to the historian Carol Tan, mainly resulted from the pragmatic need to minimize administrative expenses rather than uphold 'lofty ideals' such as the rule of law.[55] In this context, at the turn of the twentieth century, international law could not provide a definite answer regarding the legal status of Chinese residents of the Kwantung leased territory.

As the Meiji government took up the mantle of international law, the Qing court responded by referring to the same system in protesting against the 'Japanese invasion of Chinese territorial waters'. However, it made a huge mistake in defining territorial waters as 'the seas frequented by Chinese trawlers since ancient times'. The Foreign Ministry soon discerned the fallacy of this argument: If the traditional practices of fishermen provided a legal basis for the Qing government's claim over the fishing ground,

[52]*Kantōshū enkai gyogyōhogo ikken dai'ikkan bunkatsu 4*, figs. 19–21.

[53]*Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 2*, fig. 72.

[54]Carol G. S. Tan, *British Rule in China: Law and Justice in Weihaiwei, 1898–1930* (London: Wildy, Simmonds, and Hill, 2008), pp. 22–23.

[55]Ibid., p. 265.

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then the Kwantung Government-General could make the same argument, as Chinese fishermen from the leased territory had fished off Xiongyue for centuries.[56] Unable to provide a counterpoint, the Qing government had to allow the entry of Chinese fishermen from the leased territory into the Xiongyue fishing ground and reduce their fishing licence fee by 20 per cent, but it stressed that foreign trawlers were strictly prohibited from Chinese territorial waters. In April 1909, it went further, claiming the whole Bohai Sea as part of Chinese 'inland seas', thereby demonstrating its firm determination to exclude Japanese influence from offshore fishing grounds around Manchuria.[57]

In terms of the Meiji government's claim over the Chinese trawlers of the leased territory, the Qing court argued that the fishermen onboard 'returned to the jurisdiction of China' when leaving the areas governed by the Japanese authorities, thus portraying anti-piracy protection off Xiongyue as its responsibility. The Government-General, on the other hand, declared its desire to protect its fishermen on the 'free sea' and represented the patrol vessels as 'spontaneously recruited' by the trawlers of the leased territory for self-defence.[58] Unable to preclude Japanese gunboats from Xiongyue, the Qing government chose to 'exercise its jurisdiction' by threatening the Chinese fishermen of the leased territory. According to an investigation conducted by the Japanese Foreign Ministry, Qing officials brought soldiers to the fishing ground, forced Chinese trawlers to pay 'protection money', and claimed to 'hold power over their life and death'.[59] As such, although both sides depicted themselves as protectors of the Chinese trawlers of the leased territory, they did not hesitate to advance 'national interests' in Manchuria at the expense of these fishermen.

In summary, as the joint ventures plan proved untenable, by May 1908 the Meiji government changed its negotiation strategy by invoking the language of international law, asserting that the fishing ground was on the free sea and that the Government-General was responsible for protecting Chinese trawlers from the leased territory. The Qing court also referred to international legal practices and criticized the Meiji government for violating Chinese sovereignty. Due to the remarkable divergence in their interpretation of international law, this legal debate did not settle but rather escalated the fishing dispute. Preoccupied with the deterioration of Sino-Japanese relations and the economic damage caused by the conflict, some officials on both sides proposed leaving aside legal issues in the search for new ways to restore peace in the Xiongyue fishing ground.

## A settlement without reference to international law, 1910–1912

As described earlier, when the Meiji government acquired the Kwantung leased territory in 1905, it sought to develop pelagic fisheries in Chinese offshore waters as a method of consolidating Japanese maritime hegemony in Northeast Asia. On the Chinese side, since the appearance of German trawlers off the Shandong Peninsula

[56]*Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 2*, figs. 26 and 28.

[57]*Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 3*, JACAR Ref. B11091897100, 1908–1909, figs. 75 and 83.

[58]Ibid., figs. 63–65.

[59]*Kantōshū enkai gyogyōhogo ikken daisankan bunkatsu 2*, JACAR, Ref. B11091897600, 1910, fig. 82.

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in 1904, the Qing government had become determined to strengthen maritime sovereignty by promoting the national fishing industry, which led to its firm stance in the Xiongyue dispute. However, well aware of the remarkable difference in national military strength between the two powers, it used caution so as not to allow the dispute to escalate into open warfare. As one high-level Qing official wrote in a memorial, the Chinese navy only had two patrol vessels in Manchuria and could hardly deter the Japanese torpedo boats dispatched to the Kwantung leased territory.[60] At the same time the Meiji government, especially the Foreign Ministry, also sought to acquire fishing rights in Chinese coastal waters through diplomatic negotiations. It was in this context, perhaps, that both sides considered leaving aside the language of international law when the legal debate increased tensions between the two governments.

The Chinese authorities were the first to attempt to reformulate the agenda of the negotiations. In April 1910, they suggested returning to the 1907 agreement that required both sides to stop collecting protection money and allowed the Chinese trawlers of the leased territory to enter the Xiongyue fishing ground if they paid fishing licence fees to the Qing government. In terms of the recent legal debate, Han Guojun (韓國鈞), the representative of the Chinese authorities, perceived that it was slowing down the negotiation process:

> There is no clear definition concerning the breadth of a nation's territorial waters in international law, so now it is impossible to quickly settle the issue (of the Chinese maritime boundary)… In this way, the Xiongyue fishing dispute has provoked intense conflicts for years… Therefore, we can leave aside the question of whether the Bohai Sea is part of the free sea or Chinese territorial waters and focus on the resolution of the other issues. Let's follow the settlement agreement (made in 1907) and traditional practices to sign a new treaty today. We should try to avoid wasting this fishing season.[61]

Nevertheless, the Government-General still held that the fishing ground was on the free sea and required a complete abolition of licence fees.[62] Moreover, given the sudden increase in the fishing licence fee by the Qing court in 1908, Ōshima expressed concern that the Chinese side would change the amount again to keep trawlers of the leased territory away from Xiongyue. As a result, the Meiji government rejected the proposal and continued to claim Japanese fishing rights in Manchuria through legal means.[63]

However, as the fishing season started in May, the Government-General found its trawlers 'greatly disturbed' by the Chinese authorities which, according to Ōshima, had increased its efforts to extort not only protection money but also licence fees.[64]

[60] *Qingji Zhongrihanguanxi shiliao*, p. 6976.

[61] *Kantōshū enkai gyogyōhogo ikken daisankan bunkatsu 1*, JACAR Ref. B11091897500, 1909–1910, fig. 83. 領海ノ範囲ニツキテハ国際法上定説モナキ今日容易ニ断定セラル可キモノニアラズ……然ニ熊岳城附近漁業問題ハ累年甚シキ紛争ヲ惹起シ……故ニ渤海公海領海ノコトハ其解決ヲ他日ニ期シ其他ノ事項ニ関シテハ専ラ曩キニ定メタル漁業事件解決条欵ノ定ムル所ニ據ク従来ノ舊慣ニ従ブコトシ今日更ニ新ニ協定ヲ試シテ時期ヲ失スルカ如キコトハ之ヲ見合セタント申述ベ居リ候。

[62] Ibid.

[63] Ibid., figs. 88–89.

[64] *Kantōshū enkai gyogyōhogo ikken daisankan bunkatsu 2*, figs. 13–14.

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Although Ōshima asked the Foreign Ministry to exert more diplomatic pressure on the Qing court by referring to 'international law', the ambassador to China, Ijūin Hikokichi (伊集院彦吉), suggested moving away from these 'trivial matters' (枝節) and concentrating on the tax issue:

> The reason why the Qing government claimed the whole part of Bohai Sea as its territorial waters was to gain an upper hand in the negotiation on the tax rate. The Government-General promoted the idea of developing the fishing industry on the free sea, attempting to evade all kinds of taxation… In short, the (Qing government's) representation of all of the Bohai Sea as Chinese territorial seas, as well as the issue of jurisdiction over trawlers of the Kwantung leased territory, are only trivial matters causing unnecessary trouble. What we should focus on now is, clearly, the tax issue…[65]

After clarifying the focal point of the dispute, Ijūin noted that the Qing government had already offered to 'reduce the license fee to thirty-one yuan per trawler', which was less than 80 per cent of its previous demand.[66] More importantly, a peaceful fishing season could bring considerable profits to the trawlers of the leased territory, even if 'the Chinese side took the responsibility of anti-piracy protection'. Lastly, he made an intriguing comment about the Government-General's legal claims: 'considering the history and location of the Bohai Sea, the idea that the Qing government enjoys no right in this area is hardly consistent with common sense'.[67] Ijūin's suggestion not only generated a shift in the Japanese government's strategy, but also displayed how high-ranking Meiji officials perceived international law at the turn of the twentieth century.

Recently, departing from the conventional focus on the cultural difference between the 'East and West' reflected by Meiji Japan's engagement with Euro-American legal norms, a group of scholars has turned to 'the consequences of international law' for this Asian empire. According to Douglas Howland, the Meiji government's approach to international law was highly practical and realistic, and prioritized the question of how the system could be used to assert its sovereignty in ways that were 'legitimate in the eyes of the Western powers'.[68] However, cases in which the Japanese authorities deliberately circumvented international legal norms have received very limited scholarly attention. As demonstrated by the Xiongyue dispute, the Meiji government's mastery of international law also included the art of *not* using the law when policymakers found other approaches more beneficial for national interests. This pragmatism

[65]*Kantōshū enkai gyogyōhogo ikken daisankan bunkatsu 3*, figs. 27 and 30. 元来清国側ノ於テ渤海湾全部領海説ヲ唱フルニ至リタル所以ノモノハ畢竟税率ニ関スル協商調ヘサル為メ都督府側ニ於テ公海漁業説ヲ立テ以テ一切ノ課税ヲ免レント試ミタルニ由来スルモノニシテ……要之渤海湾全部領海説ト云ヒ関東州内出漁船ニ対スル管轄権問題ト云ヒ単ニ節外枝ヲ生レタル迄ノ事ニシテ其眼目トスル所ハ明カニ徴税ニ存スル……

[66]Ibid., fig. 28. For the Qing government's previous demand, see *Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 2*, fig. 57.

[67]*Kantōshū enkai gyogyōhogo ikken daisankan bunkatsu 3*, figs. 31–32. 在来ノ歴史ト共位置トニ鑑シ実際之ニ対シ清国ニ於テ何等権利ナレトハ常識上主張シ難キXモ有之候。

[68]Douglas Howland, *International Law and Japanese Sovereignty: The Emerging Global Order in the 19th Century* (Hampshire: Palgrave Macmillan, 2016), p. 4.

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also partly resulted from the Japanese government's suspicion of the emerging global legal order. While the Foreign Ministry made skilful use of expertise in the concept of the free sea, Ijūin's comparison of 'international law' and 'common sense' showed that the Qing government's longstanding rule in Manchuria provided it with significant political legitimacy over Bohai Bay, even if its pretensions eschewed the three-mile principle in the Law of the Sea.

Although the Foreign Ministry valued Ijūin's advice to outflank legal debates, the Meiji and Qing governments suspended negotiations as the fishing season ended in May 1910. The following year also saw no progress in the settlement of the dispute, as the Qing government was overwhelmed by domestic unrest and was unable to return to the negotiating table. In 1912, aiming to pre-empt friction with foreign powers in the process of national unification, the newly established Chinese Republican government reopened negotiations and expressed its willingness to make compromises.[69] On 22 April the two sides signed a treaty that brought the Xiongyue dispute to an end. In line with Ijūin's suggestion, the Japanese government set aside the issue of international law, focused on the amount of fishing licence fees, and left the responsibility of anti-piracy protection in Manchuria to the Chinese authorities. The Republican government agreed to reduce the licence fee to 20 yuan per trawler, which was 30 yuan lower than the Qing court's initial demand in 1908. More importantly, in ensuring 'equal access to Bayuquan (鮸魚圈), Wanghaizhai (望海寨), and Xihetao (西河套) for trawlers from the Republic of China and Kwantung leased territory during the fishing season', the treaty secured Japanese fishing rights along the Liaotung Peninsula, fulfilling the primary goal set by the Government-General.[70] In the spirit of reciprocity, Article 5 of the agreement noted that the Kwantung Governor-General would request the Korean Government-General to provide Chinese fishermen with access to the western coast of the Korean Peninsula. As the Kwantung Governor-General explained to the Foreign Ministry, this was not so much a treaty offering Korean fishing grounds to China but rather a promise that the Korean Government-General would be informed of the issue. Article 5 thus became a mere scrap of paper as the Japanese government never approved the entry of Chinese trawlers into the Korean fishing grounds.

Despite ending its predecessor's effort to exclude Japanese trawlers from Manchuria, the Republican government still succeeded in closing off possibilities for further fishing disputes with Japan in the Liaotung Peninsula. It also tried to build up a local fishing industry without destabilizing Sino-Japanese relations, but this plan failed after Japan occupied Manchuria in 1931.[71] As Japan's mechanized fishing fleets proliferated in number, the Japanese government sought to transform Chinese offshore waters into its own fishing grounds during the early twentieth century. The Xiongyue dispute, one of the earliest Sino-Japanese fishing wars, therefore served as a precursor to the later expansion of Japanese fishing into Chinese coastal waters. For example, the Sino-Japanese fishery controversy on the East China Sea between 1924 and 1931 has striking parallels to those of the Xiongyue dispute, such as the fruitless legal debates on the breadth of territorial seas, the call to circumvent the issue of international law,

[69] *Kantōshū enkai gyogyōhogo ikken daisankan bunkatsu 4*, JACAR Ref. B11091897800, 1911–1912, fig. 5.
[70] Ibid., figs. 7–8.
[71] Ibid., fig. 22.

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the intensity of attention given to the fishing licence fees, and the stark contrast in military strength that precluded every attempt made by the Chinese government to deter Japanese fishing vessels from its adjacent seas.[72] These similarities are evidence that the Xiongyue dispute prefigured many key strategies that the Japanese empire later used to impose its influence on Chinese offshore waters. As Kwantung Governor-General Ōshima noted in 1907: this confrontation would not only become a useful lesson for the development of Japan's pelagic fisheries on the 'free sea', but would also enable Japanese jurists to later turn international maritime law to the empire's advantage.[73]

Nevertheless, this article does not mean to imply that the ways in which the Qing and Meiji governments resolved the Xiongyue dispute epitomized the 'norm' for East Asian states to tackle fishing controversies at the turn of the twentieth century. On the contrary, a growing body of scholarship on maritime East Asia has revealed a great diversity in their strategies. For example, in attempting to exclude German trawlers from waters off the Shandong Peninsula during the 1900s, the Qing government, as shown by the study of Liu Limin, relied less on fishery protection companies and tax adjustments than on the purchase of mechanized fishing boats, the establishment of fisheries education, and the charting of fishing grounds.[74] The Japan–Korea fishing war on the seas adjacent to Jeju Island during the 1880s also unfolded in ways starkly different from the Xiongyue dispute. In making the 1883 Japan-Korea Treaty of Amity and Trade (日朝通商章程), the Meiji government took up the mantle of reciprocity and proposed to provide Korean fishermen with access to waters off Northwest Japan in exchange for Japanese fishing rights in South Korea. Despite being keenly aware that very few Koreans at the time could conduct fishing activities over such a long distance, the Joseon government still accepted this proposal, according to Sakai Hiromi, in an attempt to suspend the application of the treaty by taking advantage of growing anti-Japanese sentiments in Jeju to deter trawlers from Japan.[75]

While the available space for this article precludes a detailed comparison of these cases, it seems safe to assume that the strategies applied by East Asian states to fishing controversies spanned different modes depending on particular political and social environments. Seen in this light, the Xiongyue dispute provides a lens showing the complexity of the oceanic world in modern East Asia which, to paraphrase Lauren Benton's analysis of European maritime practices, was not 'rationalized' by a single consolidated order but rather saw 'repeating sets of irregularly shaped corridors and enclaves with ambiguous and shifting relations to imperial sovereignty'.[76]

[72]For more details about the fishery controversy (1924–1931), see Micah S. Muscolino, *Fishing Wars and Environmental Change in Late Imperial and Modern China* (Cambridge, MA: Harvard University Asia Center, 2009), pp. 96–126.

[73]*Kantōshū enkai gyogyōhogo ikken dainikan bunkatsu 3*, figs. 19–20.

[74]Liu, 'Qingmoshehui', pp. 68–71.

[75]In the end, the Joseon government achieved temporary success in suspending Japanese fishing activities around Jeju Island. For more details, see Hiromi Sakai, 'Niichōryōkoku tsūgyokisoku (1889) teiketsukōshō no saikentō: saishū tsūgyomondai wo meguru Chōsengaikō no tenkai wo chūshin ni', *Jōchi shigaku*, vol. 65, 2020, pp. 11–27.

[76]Benton, *A Search for Sovereignty*, p. xii.

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## Conclusion

The Xiongyue dispute epitomized how the tension between the requirements of territorial waters and the principle of navigational freedom made international maritime law a resource for governmental and non-governmental actors in debates about jurisdictional problems at the turn of the twentieth century. This tension also greatly shaped sea appropriations beyond the Liaotung Peninsula. In 1893, for example, the British government cited the Law of the Sea to refute the American claim over seals found more than three nautical miles away from the American islands in the Bering Sea.[77] In the same decade, the Peninsular and Oriental Steam Navigation Company challenged the Meiji government's sovereignty over the Seto Inland Sea, portraying these waters as 'the highway of nations' ruled by international rather than Japanese maritime law.[78] Thirty years later, jurists in the Hague conference still failed to reach a consensus on the question of whether to establish a uniform extent of national territorial waters.[79] As such, the system of international maritime law became a shared vocabulary used by a variety of players for different, sometimes contradictory, purposes and transformed the modern oceanic world into a variegated legal space.

Moreover, in contrast to the question of how the vocabulary of the Law of the Sea was invoked to support different visions of global order, the cases in which non-Western governments deliberately circumvented international legal norms remain a relatively under-researched topic. This article thus not only joins previous studies in exploring the complexity of international maritime law, but also shows that both the Meiji and Qing governments did not hesitate to put aside their legal disputes when this system threatened their perceived national interests and contradicted their understanding of historical relations in East Asia. The Xiongyue dispute demonstrates that the two Asian powers did not merely take on the instruments of Euro-American powers but rather viewed transnational legal norms in a highly pragmatic and critical manner, offering a rare non-Western perspective through which historians can probe the expansion of the system of international law at the turn of the twentieth century.

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[77]Yoshifumi Tanaka, *The International Law of the Sea*, 3rd edn (Cambridge: Cambridge University Press, 2019), pp. 24–25.

[78]Richard T. Chang, 'The Chishima Case', *Journal of Asian Studies*, vol. 34, no. 3, 1975, pp. 600–601.

[79]Reeves, 'The Codification', p. 486.

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