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The Half-Moon Shoal Trials: China's Half-Hearted Response

By Lim Kheng Swe and Li Mingjiang

Synopsis

China has responded softly to the Philippines' conviction of nine Chinese fishermen for poaching near Half-Moon Shoal. China's not-so-strident stance raises questions about its "historic rights" claim in the South China Sea.

Commentary

IN NOVEMBER 2014, a Philippine court found nine Chinese fishermen guilty of poaching sea turtles near the Half-Moon Shoal in the South China Sea. Manila claimed that the poaching took place in its Exclusive Economic Zone (EEZ). On that basis, the fishermen were fined US\$102,000 each, and they may remain in jail until May 2015 as they are unlikely to be able to pay up.

China also claims sovereignty over the shoal. From Beijing's point of view, the fishermen were in Chinese waters exercising China's "historical rights", and the Philippines had no right to arrest them and try them in a Philippine court. What is puzzling, though, is China's low-profile response to the arrest, legal process, and verdict despite the fact that Chinese leaders have been expressing strong resolve to protect China's maritime interests.

China's Half-hearted response

China's Ministry of Foreign Affairs stated that the arrest had infringed on China's sovereignty and called on the Philippines to release the men and their boat. China, though, has not openly placed other forms of diplomatic pressure or other coercive means on Manila to release its citizens. China's actions could be a gauge as to its current policy towards the South China Sea, behind the official statements.

Beijing's stance stands in sharp contrast to its actions over a similar case in 2010, when the Japanese coast guard vessels arrested a Chinese fishing-boat captain in waters over the disputed Diaoyu/Senkaku islands, turning him over to a Japanese court. Beijing suspended all high-level exchanges and blocked rare-earth exports to Japan, eventually securing the captain's release.

The nine fishermen were arrested on 6 May 2014, after the Philippine coast guard spotted two

Chinese fishing vessels in the vicinity of Half-Moon Shoal. One ship fled, but the Philippine authorities boarded the other vessel, and arrested the fishermen, taking them to Palawan to be charged and stand trial.

In response to their arrest, China demanded the release of the fishermen and their boat. China also placed pressure on the Chinese community of Palawan not to cooperate with the Philippine authorities, making it difficult for the courts to find an interpreter. Furthermore, the Chinese embassy refused to issue a “certificate of indigence”, which would qualify the defendants for a public lawyer, further delaying the trial.

China therefore tried to show that it does not recognise the jurisdiction of Philippine law primarily by using the loopholes of that very legal system, which contradicts the very aims it sets out to accomplish. This approach is very different from Beijing’s very vocal stance towards Japan in 2010, and has implications for its claims in the South China Sea. Beijing’s response, after the fishermen were found guilty, further cements the impression of China “going soft” on the issue.

Why so quiet?

Certainly, the “history issue” between China and Japan played a vital role in China’s response to Japan’s arrest of the Chinese captain. Chinese authorities may feel safe that a softer stance to the fishing dispute with the Philippines would not entail strong nationalistic backlash inside China. But, there are other factors that have helped shape China’s nearly quiet response this time around.

This small incident suggests that China is perhaps changing its tone over the South China Sea. There are four possible reasons: Firstly, China’s soft response may reflect the tacit understanding of many among the Chinese elite that China’s claim in the South China Sea, still ambiguous in some respects, has weaknesses.

China understands that, under mainstream interpretations of international law, it cannot realistically make an exclusive claim to the waters within the entire nine-dash line, disregarding the interests of its Southeast Asian neighbours. This is compounded by a second factor, namely that such fishing disputes happen very often in the South China Sea, meaning that China no longer has any strong impulse to act.

Thirdly, the Philippines has initiated an international arbitration that is mainly targeted at China’s positions in the South China Sea. Although China does not officially recognise the arbitration proceedings, it does not want to arouse international tension that may have an impact on the proceedings. China’s top priority is to encourage the tribunal to drop the case. Beijing may have feared that a high-profile and heavy-handed approach to the fishing dispute would only help the Philippine legal case.

Lastly, China is trying to mend fences with ASEAN countries after a few years of difficult interactions over the South China Sea disputes. China has proposed several initiatives, such as the 21st Century Maritime Silk Road, the attempt to forge a “Diamond Decade” in the Sino-ASEAN partnership over the next ten years, and the declaration of 2015 as a Sino-ASEAN “Maritime Cooperation Year”. China would not want to take any actions that could scupper the positive trajectory in Sino-ASEAN relations.

Implications for China’s historical rights claim

China has not clearly defined its claim in the South China Sea, largely because of the ambiguity revolving around the nine-dash line. The policy discourses in China have revealed a few possible interpretations of the line. Emerging as mainstream is the view that China enjoys sovereignty over all the land features and “historical rights” in the waters within the whole nine-dash line.

The right of Chinese citizens to exploit the fishing resources within these waters has been a key component of the “historical rights” claim. This view is based on the argument that Chinese fishermen have historically exploited the resources within the nine-dash line for hundreds of years.

China faces a dilemma in its actual behaviour in the South China Sea. If it tries to press its claims strongly, it risks inflaming relations with its neighbours, hurting regional stability. However, by not

doing so, China has not shown sufficient resistance over the arrest of its fishermen for exercising their 'historical right' to fish near Half-Moon Shoal. By taking such an approach, China is not standing up for its own claimed historical rights in the South China Sea, thus weakening its very claims in the South China Sea.

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