

Ma Ying-jeou's last desperate tactic

Written by Masahiro Matsumura
Friday, 06 May 2016 07:35

President Ma Ying-jeou (馬英九) on Sunday dispatched two armed patrol boats, which were later followed at a distance by a military vessel, to the exclusive economic zone (EEZ) centered on Japan's Okinotori Islands in the western Pacific. This was his response to the Japan Coast Guard's seizure of a Taiwanese fishing boat illegally operating there, followed by the release of its detained captain after payment of bail. Ma claims that Japan's law enforcement is unlawful under the UN Convention on the Law of the Sea (UNCLOS) because the Okinotori is a rock that cannot serve as the basis of the EEZ.

This abrupt move is unnecessary because Taiwan can demand that Japan enter serious negotiations through an established non-governmental bilateral mechanism for fishing rights, in addition to lodging a formal protest with Tokyo. The move is also imprudent because it puts an unnecessary strain on steadily progressing bilateral relations at a time when Taiwan is preparing for a change of government, merely complicating the coming power transition and policy continuity.

Certainly, there is a superficial consistency between Ma's two positions, one on the international legal status of the Taiping Island (Itu Aba Island, 太平島), one of the Spratly Islands (Nansha Islands, 南沙群島), and the other on that of the Okinotori.

Ma sees the former as an island given that it can accommodate human habitation and economic life of its own. He seems to be eagerly awaiting a ruling soon to be made by the Permanent Court of Arbitration in The Hague regarding the Philippines vs China proceeding, which would clarify the legal status of the Spratlys as islands or rocks, including Taiping Island, which has consistently been under Taiwan's effective control.

If judged an island, Taiping would will give Ma and his followers a legal basis for their claim on Taiping's EEZ and gear up Taiwan's South China Sea policy toward enhanced activism. To be consistent, the Okinotori must be identified as a rock.

However, Ma, a Harvard-educated international lawyer, misses the point, though his argument makes technical sense in international law, particularly under the UNCLOS. That is because the South China Sea EEZ issues are linked directly to competing territorial claims among neighboring nations, particularly revisionist China, and, therefore, inevitably to the durability of the existing international legal order based on the San Francisco Peace Treaty.

Ma Ying-jeou's last desperate tactic

Written by Masahiro Matsumura
Friday, 06 May 2016 07:35

Conversely, the Okinotori case is not a territorial question, although China and South Korea had thrice filed formal objections with the UNCLOS Commission on the Limits of the Continental Shelf (CLCS) over claims that the Okinotori is an island that gives Japan an EEZ based on it. Neither the US nor Palau nor any major stake-holding country has filed an objection to the CLCS regarding the Okinotori's status as an island.

The Okinotori is at most a global commons issue centered on seabed metals and resources, and, to a lesser extent, on fishing rights and living aquatic resource preservation. In fact, the CLCS adopted a binding recommendation in 2012 to expand Japan's control over continental shelves beyond its EEZs, including those using the Okinotori as the datum point except one area between it and Palau. Obviously, the legal status of the Okinotori as an island is not at all politically controversial, except for China and South Korea, although it is rebuttable legally given its topological and physical features.

It is not surprising given that China and South Korea, which see Japan as a primary regional rival or an opponent, have compelling reasons to check Japan's maritime sea power in general and hamper the expansion of Japan's control and influence over wider waters in the western Pacific in particular.

It is well known that China is ambitious and plans to expand its would-be blue-water naval power to the so-called Second Island Chain, dispatching its flotillas once in a while in the western Pacific. China has also used its ample economic assistance for dual-use infrastructure building, such as ports, as a policy tool to build possible military footholds in the Pacific.

Moreover, by using economic aids, China has continually resorted to diplomatic offensives vis-a-vis smaller powers and micro-states in the Pacific, to further deprive Taiwan of diplomatic allies, which number only 22. Depending on the complex interplay of domestic and international factors, South Korea has sometimes jumped on the Chinese bandwagon to check Japan.

It has become increasingly evident that Ma and his followers are undermining Taiwan's national interests by sticking myopically to the Taiping issue. Unfortunately, the outgoing president's last-minute efforts to leave his legacy will most likely turn out to be a farce for the people of Taiwan. More importantly, the legacy may regress into a tragedy unless incoming

Ma Ying-jeou's last desperate tactic

Written by Masahiro Matsumura
Friday, 06 May 2016 07:35

president-elect Tsai Ing-wen (蔡英文) completely overhauls Taiwan's South China Sea policy by decoupling the Okinotori from the Taiping issue and shifts its policy priority from the South China Sea to the defense of the main island of Taiwan.

Masahiro Matsumura is a professor of international politics and national security at St Andrew's University's Faculty of Law in Osaka, Japan.

Source: [Taipei Times - Editorials 2016/05/06](#)