

Prevention of U.S. Involvement in the South China Sea on the Pretext of Monitoring and Combating IUU Fishing and China's Response

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Abstract: The frequent IUU fishing of the South China Sea countries has seriously violated China's sovereignty and the legitimate fishing right of China's fishermen in the South China Sea. Therefore, it is urgent for China to adopt monitoring and control measures for IUU fishing in the South China Sea. However, the U.S. current involvement in the South China Sea affairs on the pretext of monitoring and combating IUU fishing, trying to confront China by constructing an intelligence sharing mechanism in the vast Indo-Pacific region, which is more harmful than the path that the U.S. adopted before. The reasons held by the U.S. make it more difficult for China to counteraction and reciprocal confrontation, more strict in the intelligence surveillance of China, and more harmful for China's action to defend its sovereign security and safeguarding rights in the South China Sea, whereas the U.S. and the South China Sea states consistently harnessing IUU to speculation. The multilateral targeted mechanism is absent in the South China Sea fisheries, while the bilateral mechanism couldn't comprehensively protect and manage fisheries resources in the South China Sea, be short of legal constrict and have a low level of cooperation. Therefore, it is urgent to promote practical cooperation in fisheries resources. At the same time, the South China Sea fisheries law enforcement faces controversies over the scope, the construction and the character of the subject, the necessity and compatibility of the means, also the problem of the lack of law enforcement capacity. By elaborating on the international law issues involved in the South China Sea fisheries disputation and fisheries management, the analysis focuses on IUU fishing, fisheries management and fisheries law enforcement, then making suggestions on the possible system for the conservation and management of fisheries resources in the South China Sea. China should strengthen its assessment of the hazards and risks of IPMDA, actively work with the regional countries to increase trust and defuse doubts, and promote cooperation in fisheries between countries. Based on enhancing the ability of international region cooperation setting, China should establish a regional fishery cooperation regime led by regional countries.

1. The Emergence of the Problem and Its Background

The U.S., Japan, India and Australia announced the launch of a cooperative initiative, the Indo-Pacific Partnership for Maritime Domain Awareness (IPMDA) at the Quadrilateral Security Dialogue

(QUAD) summit in Tokyo on May 24, 2022, which pursue maritime information sharing on the grounds of combating “illegal fishing”, in order to “maintain a free and open Indo-Pacific”. U.S. President Biden signed a National Security Memorandum on IUU fishing (Illegal, Unreported and Unregulated Fishing) during the subsequent 2022 UN Ocean Conference, which required U.S. government agencies to strengthen cooperation and introduce new regulations to combating illegal fishing. It is also the first time that the U.S. has included the IUU fishing issue in a national security memorandum.

Although China was not mentioned in the lengthy policy framework released by the White House, the Associated Press and other foreign media consistently consider that its content was undoubtedly aimed at China. A brief note posted on the White House website indicated that the White House senior officials accused that “China is a leading contributor of the global IUU fishing, has impeded progress on the development of measures to combat IUU fishing and overfishing in international organizations.”[1] UK Reuters also pointed out that U.S. officials have long spoken out about “combating illegal fishing activities” by introducing a policy, which is a part of the U.S. plan to counter China’s growing influence on the Indo-Pacific and other regions. It shows that the U.S. is utilizing the monitoring and combating of IUU fishing as its new pretext and path to intervene in the South China Sea issues.

2. The Nature of the U.S.’s Intervention in the South China Sea

IUU fishing undermines the effort of national and regional management organizations to protect and manage fish stocks, significantly threatens the marine ecosystem, and is impeding the progress of international society to realize long-term sustainability and responsibility goals. However, it is necessary to realize that the causes of so-called “IUU Fishing” are more complicated, and is therefore different from IUU activities in other uncontested waters.

The definition of IUU fishing in the South China Sea needs to take into account the practical situation at present, that is the South China Sea has turned into extremely unstable waters influenced by the sovereignty claims of coastal countries which occur with constant friction and conflict in recent years and the intervention from outside countries led by the U.S. At the same time, IUU fishing involves more complicated economic issues for the sovereignty claimants in the South China Sea. The depleted offshore fishery resources construct an existential dilemma for coastal countries that must seek the sustainable governance of their offshore waters to maintain fish stocks in the long term. The emergence of laws and regulations that keeps the fishermen away from coastal operations not only increases the chances of violent conflicts, but also makes it more difficult for sovereign countries to concede in sovereignty disputes on account of the overlap of sovereignty ownership, maritime delimitation and resulting maritime rights of some islands in the South China Sea waters.[2] For instance, the fishing of China fishermen is legal under China’s domestic regulations while considered illegal fishing in Indonesia on account of the overlap between China’s nine-dash line and the exclusive economic zone in Indonesia’s Natuna Islands. Such overlapping claims make it very difficult to determine the “illegal fishing” of fishermen, and sometimes turn into further enforcement conflicts.

2.1 Maintaining the U.S.-led Regional Order and Consolidating its Maritime Hegemony

The Biden administration believes that China cooperates with neighboring countries in order to seek to reshape the Indo-Pacific order and change the geopolitical structure. Therefore, the Biden administration advocates that the U.S. should strive to restore the original rules in the Indo-Pacific, insist on the “rules-based order”, change the isolationism tendency of the Trump administration, and regain the initiative of the multilateral mechanism in the Indo-Pacific. To this end, the Biden administration has tried to rally all possible allies to maintain the U.S. balance of power relative to

China in the South China Sea. Therefore, combating IUU fishing is now one of the issues that the U.S. rallies allies and surrounding countries in the region. Given the inherent legitimacy and morality of combating IUU fishing in the aspect of international law, the U.S. began to choose it as a pretext to rally allies and partnerships in hopes of maintaining the U.S.-led regional order.

2.2 Deepening the Cooperation of the Quad Mechanism--- a new path to involve in the South China Sea issue

The Quad mechanism is a significant lever for the U.S. to implement its strategic will and maintain its hegemony in the long term. The IPMDA initiative is emerging as the new focus for the U.S. to deepen the cooperation of the Quad mechanism and bring the South China Sea region into the Quad agenda. On the one hand, the U.S. hopes to utilize the IPMDA initiative to deepen the intelligence sharing mechanism of four nations, promote its upgrade, and pave the way to construct the Indo-Pacific version of NATO; on the other hand, it tries to promote the inclusion of the South China Sea into the Quad agenda on the grounds of combating the IUU fishing in the South China Sea to strengthen the political, economic, military and diplomatic presence of the U.S. in this region.

2.3 Strengthening the Maritime Domain Awareness of the South China Sea and Intelligence Sharing Mechanism to Monitor China

Kurt Campbell, the coordinator for Indo-Pacific Affairs in the National Security Council, and Rush Doshi, the director for China in the National Security Council, advocate that “the U.S. should encourage new military and intelligence partnerships among regional states.” At present, the U.S. is incompetent in containing China in the South China Sea on its own strength, urgently needs to strengthen the military and intelligent cooperation with regional states, and jointly construct the intelligence sharing mechanism to monitor China. The U.S. Indo-Pacific Strategy that launched in March 2022 asserted, “We will refocus security assistance on the Indo-Pacific, including building maritime capacity and maritime-domain awareness.” Through the IPMDA initiative, the U.S. will take advantage of monitoring and combating IUU fishing as camouflage to build the intelligence sharing mechanism with a core of information sharing to enhance the monitoring of China in the South China Sea.

3. Characteristics of U.S. Involvement in the South China Sea on the Pretext of Monitoring and Combating IUU Fishing

3.1 Confusing Reason and so-called “legitimacy” in international law

The involvement of the U.S. in the South China Sea on the pretext of combating IUU fishing is more confusing and so-called “legitimacy” in international law than other reasons before. It is due to the fact that IUU fishing is illegal in itself and the combating of IUU fishing is also the direction in which the international society should work together. The U.S. can easily gain superiority in morality on the pretext of it and can also utilize its hegemony of public opinion to render China’s reasonable safeguarding rights in the South China Sea as illegal activities that break the international order and encourage the IUU fishing, which is quite confusing and compelling.

3.2 The Extensive Regional Quad Mechanism

The U.S. IPMDA initiative asserts to integrate and expand the information of four information centers, including the Information Fusion Center-Indian Ocean Region, based in India; the

Information Fusion Center, based in Singapore; the Pacific Fusion Center, based in Vanuatu, and the Pacific Islands Forum Fisheries Agency, based in the Solomon Islands, and combines it with relevant commercial data, which attempts to construct the intelligence sharing mechanism under the Quad mechanism in the whole Indo-Pacific(including the South China Sea), covering a wide range of maritime areas.

3.3 Threaten to China's National Sovereignty Safety and Safeguarding Rights in the South China Sea

The U.S. is attempting to “legally” intervene in the South China Sea affairs by harnessing the combating of IUU fishing, trying to build the intelligence sharing mechanism to confront China in the vast Indo-Pacific region, which is more harmful than the paths it used before. The reasons held by the U.S. make it more difficult for China to counteraction and reciprocal confrontation, stricter in the intelligence monitoring of China, and more harmful for China's action to defend its sovereign security and safeguarding rights in the South China Sea.

4. China's Countermeasures to the involvement of the U.S. in the South China Sea on the Pretext of Monitoring and Combating IUU Fishing

As a regional power, China's position and measures on the South China Sea issue have attracted attention. Given the specialty of fisheries resources and the complexity of the South China Sea issue, it is difficult to choose any key positions and implement governance measures. IUU fishing in the South China Sea is not only the allocation of fisheries resources or fisheries rights. In the general context of fishing right is sea power, the fundamental objectives of the coastal states in the South China Sea when establishing their positions and designing the system are consistent, that is not only to fight for fishing right, but also to declare sovereignty. In the South China Sea, it requires that China propose IUU fishing governance solutions that meet objective needs, while following the existing governance structure and regulatory instruments and combining China's own values. [3]

4.1 Demonstrate Position: Accelerate Research to Develop a National Plan

Overall, in order to strengthen the assessment of IPMDA hazards and risks, measures should be taken to systematically assess the monitoring channels and specific hazards of the U.S. IPMDA initiative on China's ships and scientifically judge the threat of the U.S. initiative to China's legitimate rights and interests in the South China Sea, to conveniently arrange the corresponding countermeasures and coping strategies. Since the enactment of IPOA-IUU, many maritime powers have successively introduced national action plans in response to IPOA-IUU [4], demonstrating their support for working together to address the challenges of IUU fishing. In contrast, China has not formulated a national action plan for a long time, which is not quite suitable for the goal of building China into a maritime power and has also caused puzzlement from some scholars. In order to respond to these confusions and doubts, and demonstrate China's willingness to actively participate in the global governance of IUU fishing, China could consider setting out a systematic national action plan. [5]

The preface of the plan should demonstrate China's political willingness to participate in the global governance of IUU fishing, concern about the various hazards of IUU fishing, and firm support for addressing the issue through global cooperation. Institutionally, the plan should specify a series of specific Chinese measures. The priority is to put the IPOA-IUU into practice, although the IPOA-IUU localizes its provisions for sovereign states through the interpretation of the Chinese language, so as to consciously fulfillment of several initiatives in the IPOA-IUU that do not conflict with

national interests. For example, as a major fisheries country, China can introduce market trade measures to increase the punishment of IUU fish catches, and the various restriction of accepting port states can also serve to fill the defects of China's governance regulations. For another instance, to further clarify the scope of China's civil and criminal jurisdiction over IUU fishing ships in different waters, and to consciously promote the development of state practice towards the regulations of customary international law, with a particular focus on the problems of identification and proof of customary international law. Furthermore, it is also another example that the significance of the principle of international cooperation can be fully affirmed, and initiatively dovetail with the international minimum standards guided by the spirit of practicing true multilateralism.

4.2 Normal Jurisdiction: Enhancing Governance and Supervision of Foreign Fishing vessels

The implementation of normal jurisdiction is an inevitable choice under the consideration of realism. With the implementation of the maritime police law, China has the legal elements to carry out normal jurisdiction in the South China Sea. It will become an important guarantee for China to comprehensively enhance its maritime control and deterrence in the future. To improve governance and supervision, the first should be to implement the submission mechanism of information in order. With the reference to the entry system established by the Agreement on Port State Measures, any foreign fishing vessels need to report the necessary information to the department of fishery administration, the administration can authorize entry to sea fishing to those who obtained a foreign fishing license and meet other conditions, or has been qualified to obtain a foreign fishing license and meet other conditions although not obtained the license. [6]

The China Coast Guard shall have the right to land and inspect foreign fishing vessels which are founded enter the sea on a single day under the jurisdiction of the South China Sea, and are authorized but do not comply with the regulations on the conservation and management of China's fisheries resources, and all other suspicious fishing vessels. For fishing vessels with clear evidence that have engaged in IUU fishing, the China Coast Guard has the authority to take different levels of compulsory measures against involved fishing vessels in accordance with domestic laws. In addition, China should actively develop a list of Chinese IUU fishing vessels based on the recognition of the list of IUU fishing vessels drawn up by regional fisheries management organizations that it has joined, strengthen unified supervision and information communication, so as to bring the association closer between the supervision and inspection work of China and the neighboring states in the South China Sea.

4.3 Attention to the Neighborhood: Make a Development Program that Meets the Needs of the Region

The attributes of the semi-enclosed sea and the complex characteristics of historical entanglements and real contradictions determine that China must cooperate with neighboring countries when discussing the IUU governance issue in the South China Sea, a governance program without general recognition from neighboring countries is unworkable. To emphasize the importance of neighboring cooperation and regional development is to integrate neighboring countries into the governance program proposed by China. The key to current convergence is to substantially grasp the opportunity of the consultation on the "Code of Conduct in the South China Sea" and thoroughly explore the possibility of regular fisheries cooperation. [7]

The development of general fisheries cooperation is firstly determined by the geographical environment. The South China Sea region is a typical and relatively independent large marine ecosystem that has unique water temperature characteristics, biological populations, and climatic conditions.[8] Such an ecosystem would dilute the rights of coastal states, and instead, encourage

them to promote the sustainable development of the entire sea area ecology through cooperation from the large regional perspective. From this perspective, cooperation in various fields in the South China Sea is a practical necessity to protect the maritime ecosystem in the South China Sea, and cooperative governance is a rational choice. China should increase trust and defuse doubts with regional states, and promote cooperation in fisheries between countries. The U.S. cannot build an intelligence surveillance system on China in the South China Sea without the cooperation of regional countries. In this regard, China should actively clean the multi-channel communication mechanism with regional countries, strengthen political and security mutual trust with them, and promote cooperation in fisheries between countries, so as to dispel vigilances and doubts of regional countries on China's legitimate actions in the South China Sea, and prevent them turn into adopt the contain strategy on China that following the U.S. due to the fear of China's action in the South China Sea.

In conclusion, to strengthen the ability to set up international regional cooperation and establish a regional fisheries cooperation mechanism led by regional countries, in response to the U.S. involvement in the South China Sea affairs through the pretext which providing by its harness of the hegemony of public opinion, China should strengthen its international communication capacity to form an international discourse that matches its comprehensive national power and international status, and strengthen the international community's ability to set up regional cooperation, take the initiative to build a regional fisheries cooperation mechanism jointly led by countries in the South China Sea that including China at the same time, advocate the concept of maritime community with a shared future, provocatively and initiatively manage the IUU fishing, and prevent the U.S. involvement in the South China Sea on the pretext of fisheries governance.

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