



South China Sea Institute, Xiamen University Center for Oceans Law and the China Seas

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Comments on the Fu Yuan Yu Leng 999 Case

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On August 5-7, 2017, the *Fu Yuan Yu Leng 999*, a Chinese-flagged carrier vessel, purchased 10,286 fish catches from two fishing ships—*Hai Fang 301* and *Hai Fang 302* on the high seas more than 1,000nm away from Ecuador and then continued to navigate to Peru. The fish catches include 6,223 frozen sharks (fins cut off), 1,513 shark backs, 309 shark heads and 1,696 white fishes. On August 13, the vessel entered the Galapagos Marine Reserve for shelter from the wind and was within Ecuador's straight baselines of Galapagos Islands. It was discovered and seized by the Ecuadorian Coast Guard, under hot pursuit and inspection on board by the latter. After the hearing on August 14 and the three-day trial from August 25 to 27, the Ecuadorian Court ruled that the 19 crew violated the article 247 of Ecuador's *Criminal Law*. The crew were charged with the crime of breaching the wildlife protection law with the acts of transporting and holding the wildlife. More severe punishments were imposed on them because their acts took place in marine protected area: respectively 1 to 4 years imprisonment, and the penalty amounting to 5.9 million U.S. dollars in total. After the ruling, the crew appealed and the second instance trial of the case is now pending.

The author believes that:

1. There are no specific provisions on marine protected areas (MPAs) in the 1982 United Nations Convention on the Law of the Sea. MPA is an endeavor aimed at protecting marine environment, marine living resources and marine biodiversity, and the respective rights and obligations established for each regime should base on the marine zones where it is located. The Galapagos Marine Reserve, as Ecuador's such endeavor in the marine areas under its jurisdiction, is located in its internal waters, territorial sea and exclusive economic zone. According to articles 7, 17 and 58 of UNCLOS, the *Fu Yuan Yu Leng 999* is entitled to freedom of navigation and innocent passage in respective areas mentioned above, and should comply with Ecuador's laws and regulations on living resources. Entry into the Reserve without permit is a violation of Ecuadorian laws. However, it should be noted that the vessel's designated routes did not involve the Reserve and it got into the area to take shelter from the wind, very possibly without knowledge of the laws on the Reserve, for which Ecuador should have given reasonable considerations.
2. The vessel's fish catches all came from the ships: *Hai Fang 301* and *Hai Fang 302*. Both acts of fishing and transfer took place in the high seas, where Ecuador has no jurisdiction. Further, although the vessel navigated into the areas under Ecuador's jurisdiction including the Galapagos Marine Reserve, it should still be noted that: (1) the catches did not come from the areas under Ecuador's jurisdiction and thereby did not pose harms to the living resources within the areas under its jurisdiction; (2) the vessel entered the Reserve for shelter from the wind, but Ecuador did not fulfill the duty to render assistance under article 98 of the UNCLOS. Instead, it imposed heavy penalty on the vessel without due regard to force majeure. This is quite unfair.
3. The trial took only three days and the calculation method and legal bases for the heavy penalty are also very puzzling. In addition, the personal belongings of the crew, irrelevant to the case, should be properly kept and returned after the case ends.

The case has created a sensation, mostly because among the fish catches, there are a large number of sharks with their fins cut off. And four categories of them are under Ecuador's protection and one category is among the listed species prohibited from international trade under Appendix II of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. Undoubtedly, it is of vital importance to protect marine living resources. However, safeguarding the fishermen's rights and interests should never be ignored. While the second instance trial of the case is around the corner, we hope that the Ecuadorian Court would take the force majeure into account and render a fair and equitable ruling.

EVENTS

International Symposium on Distant Offshore Archipelago Management and the 21st Century Maritime Silk Road: State Practice and Lessons Learnt was convened on November 4, 2017, in Xiamen, China

<http://scsi.xmu.edu.cn/d3/61/c7404a316257/page.htm>

The Wuhan University Second Forum on Border and Ocean Studies was convened on September 24, in Beijing.

<http://www.cibos.whu.edu.cn/index.php?id=724>

Professor Xiaolin ZHANG Gave a Lecture on “the Current Situation in the South China Sea and the Development of the Chinese Navy” on October 16, 2017, in South China Sea Institute, Xiamen University
<http://scsi.xmu.edu.cn/c9/e8/c7404a313832/page.htm>

Professor Genqi YAN Lectured on “Genglubu and Fisherman in Hainan Province” on October 23, 2017, in South China Sea Institute, Xiamen University
<http://scsi.xmu.edu.cn/ca/6f/c7404a313967/page.htm>

Continuing Cooperation in the Straits of Malacca and Singapore: Malaysia hosted the 10th Meeting of the Cooperation Forum (CF-10), 42nd Meeting of the Tripartite Technical Experts Group (TTEG-42), and 10th Meeting of the Project Coordination Committee (PCC-10) was held on October 2, 2017, in Kota Kinabalu, Sabah, Malaysia.
<http://www.mima.gov.my/index.php/news-list/212-continuing-cooperation-in-the-straits-of-malacca-and-singapore>

6th South China Sea Conference(SCS) 2017 and Malaysia International Marine EXPO (MIMEX) 2017 — “Forging a Shared Future in the South China Sea” was convened on October 4, 2017, in Malaysia.
<http://www.mima.gov.my/index.php/news-list/211-6th-south-china-sea-conference-scs-2017-and-malaysia-international-marine-expo-mimex-2017>

“Sustainable shipping in light of environmentally sensitive sea areas protection: Regional Workshop on Particularly Sensitive Sea Areas (PSSAs) in Southeast Asia: Trends and Prospects” was held on October 11, 2017, in Malaysia.
<http://www.mima.gov.my/index.php/news-list/214-sustainable-shipping-in-light-of-environmentally-sensitive-sea-areas-protection>

Arctic Circle Assembly 2017 was convened on October 13, 2017, in Iceland.
http://www.arcticcircle.org/?goback=%2Egmp_3927536%2Egde_3927536_member_232550859

Seminar on the South China Sea and the 21st Century Maritime Silk Road Safety was held on October 14, 2017, in GuangXi University for Nationalities
<http://www.hellosea.net/news/focus/2017-10-15/44629.html>

Conference on New Approaches to the South China Sea Conflicts was convened on October 19, 2017, in University of Oxford China Centre
<http://www.nanhai.org.cn/dynamic-detail/35/5358.html>

UPCOMING EVENTS

Maritime Security Dialogue: Building the 350 Ship Navy: Prospects and Challenges will be held on November 15, 2017, Washington
<https://www.usni.org/events/maritime-security-dialogue-22>

The Annual Meeting of Asian Maritime Academic 2017 will be held on November 23, 2017 in Zhanjiang, Guangdong Province
<http://www.meeting.edu.cn/meeting/meeting/notice/meetingAction-91062!detail.action>

The 2nd Conference of the Digital Belt and Road will be held on December 6, 2017, in Hong Kong, China

<http://www.meeting.edu.cn/meeting/meeting/notice/meetingAction-90823!detail.action>

“The 21st-Century Maritime Silk Road” and South China Sea History and Culture Symposium will be convened on December 18, 2017, Zhuhai, Guangdong Province

<http://www.meeting.edu.cn/meeting/meeting/notice/meetingAction-90836!detail.action>

CIL Conference on Climate Change and Law of the Sea will be held on March 13, 2018, in Singapore

<https://cil.nus.edu.sg/event/save-dates-cil-conference-climate-change-law-sea/>

The First Guangdong-Hong Kong-Macao Greater Bay Area Cultural Forum will be convened on June 1, 2018, in Guangzhou, China

<http://www.meeting.edu.cn/meeting/meeting/notice/meetingAction-90616!detail.action>

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Philippines Vows Fair Probe after Vietnamese Fishermen Killed *The Star Online, September 25, 2017*

<http://www.thestar.com.my/news/world/2017/09/25/philippines-vows-fair-probe-after-vietnamese-fishermen-killed/>

The Philippines and China Hold A Bilateral Meeting Today to Discuss Joint Development of the South China Sea

Chinese Commercial News, September 28, 2017

<http://www.shangbao.com.ph/fgyw/2017/09-28/66293.shtml>

ISA Holds Workshop on Impact Reference Zones in the Area

International Seabed Authority, September 28, 2017

<https://www.isa.org.jm/news/isa-holds-workshop-impact-reference-zones-area>

World's First Amphibious Drone Made in Shanghai

China Daily, September 29, 2017

http://africa.chinadaily.com.cn/weekly/2017-09/29/content_32632820.htm

The Philippines Will Fully Support ADB and OBOR

Xinhua Net, October 3, 2017

http://news.xinhuanet.com/2017-10/03/c_1121760848.htm

The Philippines and the United States Began to Hold the Third Joint Military Exercise in the Year

Xinhuanet, October 3, 2017

http://news.xinhuanet.com/mil/2017-10/03/c_129716001.htm

US Media Said the Two US Military Forces Together to Compete Against China

Global Net, October 6, 2017

<http://world.huanqiu.com/exclusive/2017-10/11304910.html>

New Submersible Completes First Testing

China Daily, October 6, 2017

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Zhao Jianhua, China's Ambassador to the Philippines: China Has No Intention to Resolve Disputes over the South China Sea by Force

Huanqiu, October 7, 2017

<http://world.huanqiu.com/hot/2017-10/11310744.html>

China's First 6000m Class Remote-Controlled Submersible Has Completed Its First Deep Sea Test

Chinese Ocean News, October 10, 2017

<http://epaper.oceanol.com/shtml/zghyb/20171010/69614.shtml>

China Lodges Complaint with US after Destroyer Sails Near South China Sea Islands

The Straits Times, October 11, 2017

<http://www.straitstimes.com/asia/east-asia/china-lodges-complaint-with-us-after-destroyer-sails-near-south-china-sea-islands>

Indonesia, Malaysia, Philippines Launch Joint Air Patrols

Bangkok Post, October 12, 2017

<https://www.bangkokpost.com/news/asean/1341396/indonesia-malaysia-philippines-launch-joint-air-patrols>

US Warship Sails Near Islands Claimed by Beijing in S. China Sea

The Straits Times, October 12, 2017

<http://www.straitstimes.com/world/united-states/us-warship-sails-near-islands-claimed-by-beijing-in-s-china-sea>

US Urged to Stop 'Wrong Behavior'

China Daily, October 12, 2017

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Cankaoxiaoxi, October 12, 2017

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Philippine, Australian Forces Stage Sea Drill As Ties Deepen

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South China Sea Situation Is Cause of Concern: Navy Chief

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China's Icebreaker Xue Long Has Completed Its Eighth Arctic Expedition to Create Multiple Historical Records

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19th Party Congress: China has come out in front in Areas of Deep-sea Exploration, Says Operator

The Straits Times, October 18, 2017

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China Agrees to Lower Stake in Myanmar Port Scheme

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China: No Militarization of South China Sea

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Chinese Navy Gets South China Sea Rescue Squadron

Global Times, October 19, 2017

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Duterte on South China Sea Row: We Did the Correct Step

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Duterte Finds No Urgency in South China Sea Row

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'We Will Be Asked to Pick A Side' If US-China Tensions Rise, Says Asian Leader

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Duterte: The Philippines Do Not Worry to Solve the South China Sea Issues, they Have Come Out "The Right Step"

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The Straits Times, October 22, 2017

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Asean Defence Ministers Start Two-day Talks in Philippines

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China's Maritime Power Boosted Under Outside Pressure

Global Times, October 23, 2017

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The Sixth Session of the South China Sea Opened in Malaysia (MIMA)

Bnews, October 4, 2017

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China Sent Warships and Planes to Expel U.S. Warships in the South China Sea

THE VOICE OF VIETNAM, October 12, 2017

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Vietnam Has Issued A Statement on U.S. Warships Entering the Area Near Xisha

Infonet, October 12, 2017

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It Is Legal for U.S. Warships to Enter the Xisha Islands, US Defense Secretary Mattis Said

Vietnam Youth Daily, October 14, 2017

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