

Global Talk MIGA

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The Impoundment of the Mitsui Cargo Vessel

The April 19 impoundment by the Chinese authorities of a Mitsui O.S.K. Lines (MOL) ore carrier in order to enforce a final and binding court order compensating the descendants of the owner of two freighters that were chartered in 1936 by a Japanese shipping company that merged with MOL in 1999, commandeered by the Japanese government and subsequently lost at sea caused headlines to erupt all over the Japanese media. The reports suspected a political motive behind it. Specifically, they saw the hand of the Chinese authorities behind the sudden action that purportedly reflected the politics of the deteriorating bilateral relationship and raising fears of more to come.

From this perspective, the impoundment was linked it to the change in the attitude of the Chinese courts to law suits seeking restitution for the Chinese that had been forced to work in Japanese mines and factories during the war, raising fears that this could be the portent of more wartime claims. Was this then a shot across the bow, a warning that China could become a highly un hospitable place for Japanese businesses if the Japanese government did not make concessions on the political front? If so, the Chinese reaction was a curious one. The Chinese embassy went into full damage control mode, blanketing Japanese businesses with phone calls telling them that this was a purely commercial case with no political implications whatsoever. If the Chinese authorities had intended to issue a warning, this was a strange way to reinforce the message.

The facts of the case appear to back the Chinese Foreign Ministry's assertion. The plaintiffs i.e. the descendants of the owner of the vessels were not seeking war reparationsⁱ, but what instead amounted to damages for breach of contract. They had launched a lawsuit in the Chinese courts in 1988 based on the newly-enacted civil code that instituted a statute of limitationsⁱⁱ but gave people whose alleged grievances predated the limit a two-year (1987-88) window to pursue their claims in the Chinese courts. They prevailed in the first instance in 2007, when the Japan-China relationship was on an uptick through the first Abe administration and the Fukuda administration. MOL pursued the case to no avail, and its appeal and the plea for a new trial in 2010 and 2011 respectively (when the bilateral political relationship had taken a turn for the worse) failed, finalizing the judgment. Mitsui sought to negotiate a settlement, but three years later on April 19, the Chinese authorities forced Mitsui's hand. Mitsui posted a bond for the award plus interest and the ship in question sailed on the 24th. Anybody who missed the two-year window is out of luck. End of story...but like so many stories about China, not.

For the conventional wisdom about the Chinese judicial system—and the Chinese police for that matter—is that politics and/or money wields considerable influence over it. Indeed, the Chinese courts for years failed to accept the claims of the Chinese who had been shipped to Japan and forced to work in mines there even as the Chinese government declined to confirm the Japanese assertion that such claims had been conclusively renounced by the Chinese government in the 1972 Joint Communiqué that normalized relations between the two countries. Yet last March, against the political backdrop of a deteriorating bilateral relationship, a Beijing court finally agreed to hear the case. More generally, there is no end to stories about Chinese and foreigners getting the short (or, to their greater misfortune, literally the long) end of the stick as the judicial (and security) system is used to further commercial interests. It is against that background that the suspicions arose, and it is that background that the Chinese authorities must deal with if they intend to dispel those suspicions. For starters, Japanese businesses will be looking to see if the Chinese authorities will respect the statute of limitations when the forced labor cases make their way through the Chinese judicial system. ⁱⁱⁱ

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- i Chief Cabinet Secretary Yoshihide Suga obviously recognized this distinction. In denouncing the impoundment, he stated that it “could shake the foundations of the spirit of the normalization of diplomatic relations between Japan and China (日中国交正常化の精神を根底から揺るがしかねず),” all but tacitly acknowledging that it did not actually contravene the Joint Communiqué itself (<http://www.mofa.go.jp/region/asia-paci/china/joint72.html>).
 - ii The English version of the facts on the MOL site claims “laches” but the Japanese version uses the narrower and more appropriate term 消滅時効 (the officially recognized translation being “extinctive prescription”), the Japanese equivalent of the statute of limitations. This does not likely to be a deliberate attempt to obscure the circumstances of the case since there are other errors in the translation.
 - iii The facts of the case are fascinating in and of themselves. Some of them can be gleaned for the MOL website here (E: <http://www.mol.co.jp/en/pr/2014/14021.html>, J: <http://www.mol.co.jp/pr/2014/14026.html>; noting that the Japanese version is more informative and accurate).