

China's success in freeing the Diaoyu-row skipper may offer lessons for US efforts to aid a jailed geologist, writes **Jerome A. Cohen**

Across state lines

What can a government do when it believes a foreign government has unjustly detained one of its nationals? This month's dangerous dispute between China and Japan understandably focused attention on their conflicting claims of sovereignty over the uninhabited islets known as the Diaoyu or Senkaku. Yet the methods used by China to free a fishing trawler captain from criminal investigation in Japan are undoubtedly being studied by countries that have similar problems in China and elsewhere.

Is there anything, for example, that the United States government should learn from this incident about how to effectively protect Americans being prosecuted in China? Should China's success at least stimulate the US to consider other methods it might use to assist one of its

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citizens, Xue Feng, whose ongoing prosecution in China has long frustrated American officials?

A Chinese-American businessman with a University of Chicago PhD in geology, Xue has been detained for almost three years for helping his American employer purchase a commercial database on China's oil resources. After investigation and trial that violated China's criminal procedure law, the US-China Consular Convention and international standards, Xue was belatedly convicted in July of "gathering intelligence" and "unlawfully sending abroad state secrets" and sentenced to eight years in prison. His case is on appeal.

Under pressure from Xue's family and university colleagues, the media, human rights critics and his former employer, the US has done more than nations normally do to protect nationals victimised by a foreign country's criminal justice system. Xue's name is on every list of prisoners for whom the US seeks China's release and is frequently raised in diplomatic exchanges.

Instead of sending a mere consular officer to make the monthly visits to Xue permitted by the consular convention, in order to demonstrate the extraordinary importance of his case, the American ambassador in Beijing or his deputy personally meets him for the limited conversation allowed. President Barack Obama himself discussed the case when meeting President Hu Jintao (胡锦涛) last November. At the UN last week, Assistant Secretary of State Michael Posner raised it with his Chinese counterpart.

What more should the US do? China, because the islets incident involved a major territorial dispute, not only mobilised economic, political and diplomatic sanctions and pointedly detained four Japanese, but it also threatened unspecified, more menacing measures, to force Japan into a humiliating repatriation of the trawler captain. To be sure, its success was hardly cost-free, arousing doubts about China's "peaceful rise" and enhancing anxieties among many neighbours with which it has territorial disputes.

It would be unrealistic and inappropriate to expect the US to emulate China's methods. Yet the US, without bullying, can do more to draw the attention of China's leaders to the unfair treatment of Xue and its adverse impact on Sino-American relations. A public expression of concern by Secretary of State Hillary Rodham Clinton, or even the president, in a press conference or speech is long overdue. Key members of Congress should also speak up, as should influential representatives of the American business community, which has been slow to see its own self-interest.

Would unconventional techniques also prove useful? In 1967, at the height of Indonesia's persecution of Chinese nationals, the late Chen Yi, the cultivated foreign minister of a weak China riven by the Cultural Revolution, resorted to poetry as well as more mundane efforts to protest against violations of international law. Should Clinton wax poetic on behalf of Xue? Certainly, his suffering and that of his wife and children are not lacking in drama. China's official press agency, Xinhua, would have no trouble turning their story

into a tale of family "torture", especially since Xue, unlike the detained trawler captain held by Japan, has actually been tortured both physically and psychologically by his interrogators.

Or should Hillary Clinton instead persuade her husband Bill to seek Xue's rescue, building on his extraction of two convicted American journalists from North Korean captivity last year? Of course, another former US president, Jimmy Carter – not always a State Department favourite – having last month procured the freedom of a third alleged American criminal from North Korea, may now want to try his luck in Beijing. After all, it was Carter who completed the challenging task of establishing US diplomatic relations with China 32 years ago.

This summer's startling Russian-American "swap" of people accused of espionage suggests a different possibility. China has not claimed that Xue spied for the US while gathering information for the

oil consulting company that employed him. Nevertheless, the US, without conceding the legitimacy of Xue's conviction, might be able to take advantage of the "state secrets" charges against him to arrange an exchange for one or more people of Chinese descent recently convicted by US courts of spying for China.

It is time for China's leaders to recognise Xue's unfair ordeal and the damage it has inflicted on Sino-American relations. In order to secure some kind of compromise leading to Xue's release, the US need not demand an apology or compensation for the harm done to Xue. This, after all, is not a dispute over sovereignty but the justice of its exercise.

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