

Five years after the July 12, 2016 PCA Arbitration on the South China Sea: Negotiations and New Bullying

A web-conference, organized at the Department of Southeast Asian Languages and Cultures, University of Hamburg

The webinar will explore the legal situation five years after the ruling of the Permanent Court on Arbitration (PCA) dated July, 12, 2016, the concrete developments in the South China Sea thereafter, the emergence of an international “anti-hegemonistic alliance” and the contradictions of the People’s Republic of China which influence its foreign policy, especially with regard to the conflict in the South China Sea.

Date and time:

Friday, July 9, 2021. 16.00 – 19.00 (Central European Summer Time)

Zoom link:

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Participants:

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Presentation:

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Background

On July 12, 2016, the Permanent Court of Arbitration (PCA) in The Hague ruled the case Philippines versus China in the South China Sea (SCS). The ruling, based on the provisions of the UN Convention on Law of the Seas (UNCLOS), had far-reaching legal results.

It invalidated China's claims to virtually the whole SCS, where altogether six countries claim territories. China's claims based on historic grounds, especially the self-proclaimed Nine Dash Line of maritime borders, is incompatible with international law. The PCA ruled, that the waters of the South China Sea beyond the territorial sea were legally part of the high seas, in which vessels from any state could freely navigate and fish.

The PCA did not rule about the sovereignty over the features called islands by different claimants, but stressed, that there is no proof that Chinese had ever settled all of these features in history or that China had exercised effective control over the waters around them. The PCA concluded, that all of the high-tide elevations in the Spratly Islands legally are rocks, and not islands. They do not generate an exclusive economic zone or a continental shelf.

The PCA agreed with the Philippines that Scarborough Shoal, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef are high-tide features, entitled to a 12 nm maritime zone, but not beyond this area like an island, and that Subi Reef, Hughes Reef, Mischief Reef, and Second Thomas Shoal were submerged at high tide in their natural condition and have no rights for an exclusive zone. However, the PCA disagreed with the Philippines regarding the status of Gaven Reef (North) and McKennan Reef and concluded that both are high tide features. Although the PCA emphasized that it was not deciding on the sovereignty over Scarborough Shoal, China had violated its duty to respect to the traditional fishing rights of Philippine fishermen by halting access to the shoal after May 2012. The PCA noted that it would reach the same conclusion with respect to the traditional fishing rights of Chinese fishermen if the Philippines were to prevent fishing by Chinese nationals at this place.

The PCA ruled that China's massive land reclamation and construction of artificial islands on seven features in the Spratly Islands caused severe harm to the coral environment and violated Articles 192 and 194 of UNCLOS.

China rejected the ruling but proposed renewed negotiations with ASEAN on a "ASEAN-China Code of Conduct in the South China Sea". These negotiations have made virtually no progress up to now. Both sides agreed to disagree.

In a confidential note to the "ASEAN-China Single Draft Code of Conduct in the South China Sea" dated August 2018, the PRC demanded that companies from outside of the region shall be excluded from oil and gas exploration in the SCS. Under Chinese political and military pressure, including PRC coast guard

operations, Vietnam had to cancel several contracts with foreign oil exploration companies in 2020, which comprise maritime territories which China claims as inside of its so-called Nine-Dash-Line of maritime borders, that had been ruled invalid by the 2016 PCA ruling. In 2017-28, this concerned concessions of the Spanish company “Repsol” near Vanguard Bank. In April 2020, the Russian built, London registered and Liberian flagged platform “Noble Clyde Boudreaux” had to cease exploratory activities in Block 06-1, where Russia’s state company “Rosneft” is engaged since several years. Vietnam had to pay hefty compensations to the harmed companies. With other words: the “ASEAN-China Code of Conduct in the SCS” has not yet been finally negotiated and concluded, but Beijing is already imposing its will and interpretation on the ground.

Even worse: under the cover of the COVID crisis which occupied world-wide attention, the PRC, undeterred, tried to create new facts on the ground. China continued to use its bullying and sabre rattle tactics.

First of all, the PRC created two new administrative districts in 2020, Xisha: Paracel Island and Macclesfield Bank, and Nansha, covering the Spratly Islands. Xisha is under the jurisdiction of “Sansha City” on Woody Island, whereas Nansha will be “administered” from Fiery Cross Reef. Administratively, both new districts are a part of Hainan province. This action gravely violates the result of the 2016 UNCLOS ruling and goes against the letter and the spirit of the “Code and Conduct”. It shows, that the PRC is seeking absolute victory in the conflict and nothing else.

China has singled out Vietnam and the Philippines for ‘special treatment’. A sinking of a Vietnamese fishing boat near the Paracels (April 2020), caused protests from both the Philippines and Vietnam. China, undeterred, called on Vietnam to use restraint. On April 20, 2021, the Philippine government protested against an armada of 165 Chinese fishing vessels that had entered the Exclusive Economic Zone of that country. At least five of the vessels, with visible Chinese Coast Guard markers, were sighted within the vicinities of the Philippines’ Pagasa Island (also known as Thitu), as well as the Second Thomas Reef and the Scarborough Shoal, the sea feature whose control was taken by China from the Philippines in 2012.

Japan delivered a one-note diplomatic note to the UN on January 23, 2021, officially rejecting China’s claims in the SCS. Similar statements have been made by the UK, France, Germany, Malaysia, Australia, New Zealand, Indonesia, Vietnam, the Philippines and the US.

In the past several years, the PRC has doubled its marine forces. Most recently the PRC marine put the first mobile helicopter landing dock into use, based on Hainan, and Chinese media stressed, that these forces could be used both in a landing operation on Taiwan and in the SCS. Fighter bombers and transport planes were stationed at Woody Island (Paracels). Naval exercises were carried out in the SCS, using the first Chinese aircraft carrier “Liaoning”. This can be regarded as a show of strength to intimate the US, Japan and other SCS riparian states.

These demonstrations of Chinese power resulted in the US becoming militarily more assertive in the area. In March 2020, two USS air carriers visited the Vietnamese harbor of Đà Nẵng (USS Theodore Roosevelt and USS Bunker Hill), the second time, after 2018, of a US air carrier visited in the country after the Vietnam War. In July 2020, two other air carriers (USS Nimitz and Ronald Reagan) patrolled the SCS. On January 21, 2021, the Air Carrier “USS Theodore Roosevelt” entered the SCS to conduct training operations to guarantee the freedom of navigation. The sign of the new Biden administration was: America’s friends can continue to count on the US. It remains to be seen, how the US government and military will further proceed in this conflict.

The aim of this roundtable discussion is an assessment of these recent developments and possible directions of the future. Three internationally known specialists will present their views and discuss them with each other, and also answer questions from the audience.