

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

Participants' summaries

The Arbitral Award of 16 July 2016 and its Impact on the Establishment of the Outer Limits of the Continental Shelf

Prof. Dr. Suzette V. Suarez, LL.M. Professor at City University of Applied Sciences, Bremen

Five years after the Arbitral Award of 12 July 2016, China continues to question the legality of the arbitral proceedings as well the validity of the Arbitral Award. China also continues to expand and consolidate its control in key areas in the South China Sea. In reaction to China's seemingly unstoppable continued expansion in the disputed areas, the Philippines flipflops between calling the Arbitral Award unenforceable or useless on one hand, and on the other, referring to it as conclusive determination of the maritime entitlements in the South China Sea.

Contrary to China's position, the Arbitral Tribunal's decisions which 1) ruled the nine-dash line is not a valid source of China's maritime entitlement in the South China Sea, 2) confirmed that the legal source of maritime entitlements in the South China Sea is the United Nations Convention on the Law of the Sea, 3) clarified that none of the maritime features in the Spratly qualify to be islands and are therefore not qualified to claim EEZs or continental shelves – are not without any causative effects.

Far from being useless, these rulings all possess authoritative and far-reaching consequences in various legal, political, and judicial arenas within the UNCLOS system but also outside of it. The 2016 Arbitral Award especially plays a critical role in the delineation of the outer limits of the continental shelf in the South China Sea. The delineation of the limits of the continental shelf is a binding and mandatory procedure in UNCLOS. There are now four submissions by Malaysia and Vietnam for areas of extended continental shelf in the South China Sea. China has issued protests in all submissions. In the two submissions made before the Arbitral Award, China formulated its protests within the context of the nine-dash line and even attached a map of the nine dash line. However, in China's protest to the 2019 submission by Malaysia for an extended continental shelf in the South China Sea, it deleted any mention of the nine-dash line, and the map depicting the nine dash line was not attached. China's omission to refer to the nine-dash line was not explained but it could only be attributed to the power of the Arbitral Award.

Updating Security Situation in the South China Sea in an Era of COVID-19 through Comparison with the East China Sea

Dr. Takashi Hosoda, Charles University, Prague

I examine what has changed and what has not changed in China's behavioral patterns before and after the global outbreak of COVID-19 through evaluating China's behavior in the South China Sea and the East China Sea. To do so, I apply China's "three warfares (psychological warfare, public opinion warfare, and legal warfare), as well as trade relations with neighboring countries as items to be verified. As a result, the following points will be pointed out.

First, in response to the U.S. economic, military, and discursive pressure on China, Beijing has been increasing opportunities to show off its hard power (especially military power), even though it had tended to hide before, to show domestic audience how great Xi Jinping's leadership is. China has strengthened its stance to reject economic activities of other countries inside the so-called "nine-dash line" and in the disputing waters such as the Senkaku Islands.

Second, while strengthening its legal warfare with pretending to respect international law, Beijing increases interpreting international law for its advantage and utilizing ambiguities in international legal system. In particular, the Coast Guard Law of PRC brings out a new definition of "waters under China's jurisdiction," which are neither territorial waters nor Exclusive Economic Zones (EEZ) and allows China Coast Guard (CCG) exercising China's administrative sovereignty over those waters.

Third, "military build-up policy" is continued. The US Navy points out China became the biggest navy (quantitatively) in the world in 2020. It is crucial that China conducted tests of anti-ship ballistic missiles (ASBM) in the South China Sea in 2020 following 2019, to show off its A2/AD ability in the South China Sea and the East China Sea.

And finally, while there are political tensions, economically, all countries are becoming more dependent on the Chinese economy, and many Asian countries that are trying to assure their national security through bilateral security arrangement with the US face necessity of tough balancing between "keeping economic rationality" with China and "securing security guaranties" with the US. Increasing involvement of European countries in Indo-Pacific is also curious shift of security dynamics in Asia.

Europe's Indo-Pacific Strategy and the South China Sea

Dr. Rodion Ebbighausen, Managing Editor of Deutsche Welle's Asia department, Bonn

In 2016, when the International Court of Arbitration in The Hague ruled in favor of the Philippines and against the People's Republic of China (PRC) in almost all of the 15 submissions, it took the European Union three days to formulate a position. This was mainly due to a lack of unity within the EU, which did not have a unified policy towards Asia, especially with regard to China.

Much has changed since 2016. In March 2019, the EU referred to the PRC as a “systemic rival” for the first time. Three EU countries – France, Germany, and the Netherlands – have put forward a national Indo-Pacific strategy. In April 2021, the Council of the European Union published the “EU strategy for cooperation in the Indo-Pacific”, which will be further developed until the end of 2021.

In all these documents, which are broad in content, freedom of navigation, the rules-based international order, and in almost all cases, the South China Sea are mentioned. At the same time, the EU wants to pursue a multilateral and inclusive approach that does not exclude or contain China.

The question is whether the EU and its member states are thus offering a real alternative with regard to the conflict in the South China Sea in the context of Sino-US competition, or are they merely adding another layer to the already confusing and unstable security structure of the region?

The adoption of the term “Indo-Pacific” by the EU, which was first coined in Japan and then declared an official US strategy under Former President Donald Trump's leadership, shows at least a strong proximity to the US position. On the other hand, the US is hardly mentioned in these European strategy papers. The impression remains that the European Union has formulated a position with regard to the South China Sea that is in contrast to the US' Indo-Pacific strategy.

In any case, the European Union has raised expectations in the region by presenting these strategy papers. However, it remains to be seen whether the EU is also prepared to provide the resources to back up its words with deeds.

China's Place and Strategy in International Politics Five Years after the PCA Award

Dr. Gerhard Will, formerly Stiftung Wissenschaft und Politik, Berlin

Five years after the PCA Award, China has become a widely recognized superpower shaping more and more the international political and economic order. The Chinese leadership and many Chinese consider this process as a renaissance of their country to a legitimate place in world affairs, which held their country has held for nearly 2,000 years. In this narrative, China is seen as a part of the “Community of common destiny for mankind” (renlei mingyun gongtong ti), making increasing contributions to the common development and prosperity of mankind.

This Chinese narrative stands in stark contrast to China's military build-up, its international economic politics largely based on economic self-interest and its “wolf warrior diplomacy” (zhanlang waijiao) – an attribute seldom used in the field of diplomacy so far. Furthermore, this narrative is not based on a long-term foreign policy strategy, a new and widely acknowledged vision of international law and last not least on soft power capacities attracting the hearts and minds of people worldwide.

Whenever and wherever China is confronted with acts and developments which it considers as a violation of its interests, it reacts with a very belligerent rhetoric and often with massive economic sanctions. This aggressiveness reveals the contradictions of its own policy and should not be regarded as strength but as a weakness because it blocks mutual understanding and shaping of a compromise. Just the opposite, it starts a vicious circle and leads to a gridlock of mutual distrust rather destroying than creating an international awareness of a “Community of common destiny for mankind”.