

The Ruling in the Case “Philippines v. China”: Ambivalent Consequences

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In the more than two decades of ongoing territorial dispute with China, the Philippines referred the case for arbitration on 22 January 2013. The Philippines has been a party to the UN Convention of the Law of the Sea (UNCLOS) since 1984 and China since 1996. Beijing rejected the legal proceedings for several reasons: it made a declaration in 2006 that excluded disputes such as those of maritime boundaries from the compulsory process for conflict resolution. Beijing has since then confirmed its claim to islands and waters and declares that the arbitral ruling will be neither accepted nor recognized. However, the absence of a party is not an obstacle for arbitration. China therefore reiterated in a position paper its contrary legal position on 7 December 2014, and declared the ruling was “null and void” and had no effect on China in October 2015.

The Permanent Court of Arbitration (PCA) in The Hague decided surprisingly clear on all 15 applications except one according to the terms advocated by Manila on 12 July 2016 in the case “Philippines v. China”. The tribunal found, *first*, that the historical claims of the nine-dash-line, are not, as claimed by Beijing, consistent with the Convention and are therefore legally invalid. *Second*, the Court of Arbitration in distinguishing between islands, rocks and low-tide-elevations came to the conclusion that none of the high-tide-elevations in the area of the Spratly Islands are “islands” according to maritime law and thus have no exclusive economic zone (EEZ); a few reefs are not rocky outcrops, rather they are elevations without twelve-mile zones. Moreover, it was noted that, *third*, China has prevented the Philippines from exercising the exploration of oil and gas deposits and fishing in its exclusive economic

zone since 2010, and through measures for land reclamation has further violated more articles of the Convention and sovereign rights of the Philippines. *Fourth*, through various measures China has further expanded the dispute since the beginning of the arbitration process in 2013.

The ruling shall be binding to both parties in dispute, however, in international law there are no instruments to enforce it (and China would have to agree to self-sanction as a member of the UN Security Council). Nevertheless, several partially contradictory consequences that are relevant to the international debate on a possible political settlement of the disputes have arisen as a result of the ruling.

The President of the Philippines Rodrigo DUTERTE had hinted prior to the decision that he wanted to move away from the hard position of his predeces-



Volker KAUDER in discussion with JDZB-President SHINYO Takahiro (left) and the Japanese Ambassador YAGI Takeshi. The chairman of the CDU/CSU party in the Bundestag was guest of honor at a reception held at the Embassy of Japan on the occasion of a conference on higher education and society in the JDZB on 28 and 29 June 2016. (Photo © Dirk ENTERS)

CONTENT

Ruling “Philippines v. China”	
Michael PAUL	1–2
Interview	
Digitization/Data Security	3
Conference Report	
Interpreters Workshop	4
Exchange Program	
Junior Experts	5
Events Reviewed	6
Preview of Events 2016	7
Last Page	
Exhibition “In’ei raisan”	8

sor. The ruling now has the paradoxical result that Manila has indeed been awarded the rights but stands in no better position against Beijing. Instead of making a clean break from the AQUINO era, DUTERTE is now confronted with the Chinese demand to consider the ruling as a “worthless piece of paper”. Manila is also responsible to follow international calls for de-escalation, without undermining the interests of ASEAN partners. The interest of Philippine policy is for the resumption of fishing in their own economic zone, without further harassment by Chinese ships. The confirmation of claims under maritime law makes a political solution more difficult for both sides. Promising negotiations are therefore held preferably without preconditions. The Taiwan Island Itu Aba (Tai-ping) lost its island status due to the restrictive definition of the arbitration and therefore its exclusive economic zone (EEZ) – trilateral talks could offer opportunities for the management of this region. The rejection of the ruling by Beijing and Taipei created a rare agreement that could serve as the basis for talks with Manila. Their EEZ will no longer be affected by Chinese claims, which could enable new solutions.

The maritime ambitions of China are the result of its national policies, which are brought into question by its uncompromising persecution of the ruling. China is trying to behave as if it can continue to exercise self-imposed rights without limitations; thus it's only a matter of time until a confrontation at sea or in space occurs in the areas claimed by China. However, will Beijing continue in the long term to pursue a foreign policy where might makes rights and is more important than the rule of law? The international community should insist on the observance of international law, so that China ends its policy of salami tactics for appropriating disputed sea areas. In the end, compliance with central principles – like freedom of navigation – is in the interests of all states. Instead of increasing US patrols or Chinese naval manoeuvres with Russia, it would be more helpful to seek common approaches (for example in fisheries

management) and establish mandatory practices (Codes of Conduct) to build trust and prevent conflict. In the long term, only an acceptable *modus vivendi* in accordance with UNCLOS can secure critical sea-lines of communication, enable a balanced use of marine resources and promote the protection and preservation of the marine environment – at best with the United States as member of UNCLOS.

The rejection of an arbitration ruling is not unusual for a member of the Security Council. However, this does not mean that the unilateral revision of territorial claims of other countries is acceptable. China's behavior threatens to undermine the very foundations of an international order, on which also the Federal Republic of Germany stands. Based on the declarations of the G7 Foreign Ministers of Lübeck 2015 and Hiroshima 2016, Germany will therefore have to engage in an open debate with Chinese partners. Moreover, dialogues with democratic countries in the Pacific region such as Australia, Japan, South Korea and Taiwan should be intensified and possibilities for further cooperation should be explored. This includes a push for the completion of a binding Code of Conduct between ASEAN countries and China according to the G7 Foreign Ministers' declarations within the framework of the G20.



Dr. Michael PAUL is a senior fellow at the German Institute for International and Security Affairs (Stiftung Wissenschaft und Politik SWP, Berlin) and was a speaker at the conference “Law of the Sea and Maritime Security” on 26 February 2016 at the JDZB (Photo © SWP)

Dear Readers!

At the end of February we discussed with experts in the JDZB the importance of international maritime law for maritime safety and the processes for dispute resolution – drawing on the ongoing process of the Philippines against China. The surprisingly clear decision made by the Permanent Court of Arbitration in The Hague in July and its consequences have been analyzed by Michael PAUL in our main article. However, we cannot expect a sudden end to the conflict, the governments of Germany and Japan will therefore continue to need to work together for the enforcement of the “Rule of Law”. The JDZB will revisit this issue in the context of its security policy meetings where it will continue to support a common approach.

Similar to every year, summer is the time of exchange programs, the Japanese delegations of young scientists (Junior Experts), young professionals and the volunteer youth leaders all completed their intensive study visits and in September the eleventh year of Young Leaders will meet in Berlin and Potsdam for their Summer School. The Robert Bosch Foundation sponsorship of this program has now finished and will now focus on more multilateral formats. We would like to thank the Robert Bosch Foundation for the valuable collaboration and we are excited to see how the young professionals and alumni participating in the 2016 Forum will deal with the complex issue of digitization and data security. Notwithstanding, we will continue to look for ways to support this valuable German-Japanese network in the future.

Dr. Friederike Bosse
JDZB Secretary General

jdzb echo

Published quarterly in March – June – Sept. – Dec.

Publisher:

Japanese-German Center Berlin (JDZB)

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The jdzb echo can be downloaded as a pdf-document from the JDZB Homepage or subscribed to by E-Mail.

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