

## **China and the law of the sea**

**Urs Schoettli, Consultant on Asian Affairs and Member of the stars  
International Board, Tokyo and Mumbai**

July 2016

On July 12<sup>th</sup> the UN Permanent Court of Arbitration in The Hague made a landmark judgment and declared that there was “no legal basis” for China’s claim about “historic rights” to islets and waterways in the South China Sea. The Philippines had raised this issue regarding Chinese exploitation and presence on the sea and in the waters of disputed islets. The whole issue has to be seen within the wider context of multiple claims and frictions between China and South East Asian states. Traditionally Beijing claims sovereignty under the concept of the so-called “nine dash line” circumventing a number of islets, rocks and shoals in the South China Sea. They include the Scarborough Shoal (claimed by China and the Philippines), the Second Thomas Shoal, the Spratly Islands and the Paracel Islands. If all Chinese claims were accepted the People’s Republic would have sovereignty over more than 70 % of the South China Sea. Evidently, South East Asian nations and the United States are seriously concerned about what this means for the international freedom of navigation. At stake is in addition the access to substantial raw materials and energy sources that are suspected to lie under the floors of the South China Sea as well as access to rich fishing grounds.

China’s return to its traditional status as a world power, its emergence as the new-old Asian hegemon is causing considerable concern, all the more so, as there are a number of open or dormant crisis spots in its neighborhood. Think of the Korean Peninsula, think of the still tense Sino-Japanese relations, think of Taiwan and think of the South China Sea. The current court case and the reaction of the interested parties to it are important indications for how effective crisis management and international cooperation can be in East Asia. Bearing in mind that the two most important players in this game of power are the current super power, the United States, and the emerging super power, China, a lot is at stake for peace not only in the region but far beyond that. We must not forget that the sea lanes that lead through the South China Sea are of vital importance to global trade and therefore to the world economy.

As was to be expected, the Chinese reaction to the court decision was swift and decisive. Beijing outright refuted the decision as invalid and having no bearing on its stands. On the other side, the United States was very clear in its admonishment of Beijing to accept the verdict. Washington has made it clear that it sees the Chinese reaction as a test case for whether the new world power really accepts international norms. It stressed that how Beijing reacts in the South China Sea will have repercussions for possible disputes in other parts of the world, where China as an important player in the world economy and a major trading nation might have vital interests at stake. One American official was quoted: “The Chinese effectively say that freedom of navigation is guaranteed because they grant it. Our position is that freedom of navigation is not for them to grant.”

The main question hanging over the region now is how the various concerns will be effectively dealt with, whether reason will prevail or whether we will have an escalation not only of words but also of military tensions including a possible military stand-off. A lot is at stake, in the extreme case, even peace, as an irritated China and strong willed United States clash. The US has substantial naval units in the region and has made it clear that, if necessary, force will be used to secure the freedom of the seas. On the other hand, Beijing has ramped up its military capabilities. The Chinese leadership cannot afford to lose face, today, when it is facing economic headwinds and potential social unrest, even less than in other times.

Bearing in mind the crucial position of the People's Republic in geopolitics and in the global economic order the whole world must have an interest in Beijing showing restraint and reason. With its dependence on global trade and investment flows China must have a vital interest in the freedom of the seas, all the more so as it does not (yet) have the naval capabilities to protect its vital interests far away from its own shores. We are thinking of the Straits of Malacca or the Straits of Hormuz.

On the other hand, it is most important that the US and other countries involved in the controversy play their diplomatic cards carefully and competently. We must never forget that the Chinese have a long memory and that they have not forgotten the humiliation by foreign, mainly Western powers they had been subjected to in the 19<sup>th</sup> and 20<sup>th</sup> century. If a de-escalation implies a loss of face, even if it is only imaginary, we will find no possibility to engage China.

First reaction of Beijing regarding the Philippines indicate that at present China is keen to use its soft power. Basically this implies that China uses sticks and carrots to get Manila to end the standoff. Furthermore, it is to be expected that Beijing will use its traditional tactics of divide and rule to break-up any eventual common front amongst its afflicted neighbors. Some South East Asian nations have shown satisfaction about the surprisingly clear language used in the verdict of the court in The Hague. But it is clear that, as has been the case in the past, there will be no closing of ranks amongst the members of ASEAN. Too high are the stakes which each and every country in the region has in its dealing with Beijing.

*Disclaimer: The views expressed here are solely those of the author and do not necessarily represent or reflect the views of the stars Foundation or the stars International Board.*