

## China's Claims are Built on Weak Foundations

*International law also applies to China – but how can its leaders be convinced to let go of their claim to the islands in the South China Sea? Europe cannot choose to remain neutral in this dispute.*

By Matthias Nass, August 2016

Following all the horror stories from Nice, Istanbul, Baton Rouge, and Munich, a major geostrategic conflict has almost been forgotten: the territorial dispute in the South China Sea. That does not mean it is getting less important or less dangerous.

On July 12th, the Permanent Court of Arbitration in The Hague passed a very harsh judgment against the People's Republic of China (PRC): There is no legal basis for Beijing's alleged historic claims to islands in the South China Sea. Thus, the five judges ruled that the Philippines, who filed the process in 2013, were legally fully correct: China had not only violated the rights of Manila, the judges ruled; it had also done irreparable ecological damage through the building of artificial islands.

China had never accepted the legitimacy of The Hague and did not participate in its international tribunal process. When the judgment was delivered, the government in Beijing was outraged, claiming that the Hague ruling was "invalid and has no binding force". Thus China positioned itself openly against the UN Convention on the Law of the Sea (UNCLOS) of 1982, which they themselves had signed. In other words, China has chosen to flout international law.

The South China Sea is one of the most important waterways in the world. More than 60,000 ships with goods worth more than five trillion dollars pass through it annually, equivalent to nearly a third of world trade. Asians, Americans, Europeans – they all have a vital interest in the freedom of this sea route.

China's claim to around 90 percent of the South China Sea has always been challenged by the other littoral states – Vietnam, the Philippines, Malaysia, Brunei, Indonesia. In the conflict with China these countries have moved politically and militarily closer to the United States, the strongest naval power in the Pacific. Even Vietnam now runs joint maneuvers with the US.

The Americans have left no doubt that they would, if necessary, enforce the freedom of navigation militarily. The "national interest" of the United States requires an unobstructed passage, as then-Secretary of State Hillary Clinton said in July 2010 at a summit of the Association of Southeast Asian Nations (Asean) in Hanoi.

In 2010 Clinton's Chinese counterpart responded with an outburst of anger. Nothing has changed since then on the sensitivity of Beijing. In 2012 when then-German Foreign Minister Guido Westerwelle politely remarked at a press conference in Beijing about Germany's hope for a peaceful resolution to the territorial dispute, he was reprimanded by his Chinese host who said this issue did not concern the Europeans. As diplomats reported later, Westerwelle was even asked behind closed doors if Germany wanted to continue selling cars in China.

When it comes to questions of sovereignty, China has no sense of humor. Beijing sees the island dispute as related to sovereignty, national security, territorial integrity and national unity. That is how China defines its "core interests"; for their government, sovereignty over the South China Sea has the same importance as sovereignty over Tibet or Taiwan.

It is therefore not easy to find a diplomatic solution. Only one thing is clear: even if Europe has equally good relations with China as with the Southeast Asian countries, it can not be neutral in this dispute. It must clearly designate this as a violation of international law by Beijing and condemn it. This is simply a question of credibility. Just as the Europeans demanded solidarity from their Asian partners in dealing with Russia regarding the Ukraine, so must they side with those partners in this dispute with Beijing.

At their meeting in April 2016 in Hiroshima the foreign ministers of the G7 criticized "unilateral provocations", without mentioning China by name. At the coming G20 Summit in September in Hangzhou, China, the issue will be not be on the agenda. However that doesn't mean the topic has ceased to exist.

China has already threatened to create an "Air Defense Identification Zone" (ADIZ) over the South China Sea. In the island dispute with Japan over the East China Sea, the country has already declared such a zone. It is Beijing's intention that foreign aircraft no longer be allowed to pass through the area unannounced. The Americans and Japanese have chosen to ignore this, continuing to fly their air forces through the zone as usual, and so far without incident.

The US Navy also sent warships close to the disputed islands when passing through the South China Sea. It is quite possible that in the future other nations, India or Australia for example, may also take part in such "freedom of navigation" operations.

It would not be wise - in fact, it would be highly dangerous - if all countries flaunted a military flag in the South China. At the same time, allowing a sustained violation of international law by China cannot remain without political consequences. In reference to the Ukraine, Angela Merkel has time and again reiterated that it is not the law of the

strongest that should prevail, but the strength of the law. A principle that Germany and Europe must persistently defend, not only in Moscow, but also in Beijing.

*This article is part of a regular series of contributions from Matthias Nass for the Bucerius network. Matthias Nass began his career with ZEIT in 1983, and from 1998 to 2010 served as Deputy Editor-in-Chief. Since 2011, he has served as Chief International Correspondent for the newspaper. His area of expertise is foreign and security policy. This article was originally published in ZEIT Online. The opinions expressed in this article belong solely to the author, and do not reflect the official position of any of the Bucerius Institutions.*