



Permanent Court of Arbitration Decision on the South China Sea

On July 12 2016 the Permanent Court of Arbitration ruled on a dispute between the Philippines and China over territorial claims in the South China Sea and found in favour of the Philippines.

Freedom of Navigation Operations

Should Australia run patrols in the South China Sea? America has run three freedom of navigation patrols that penetrated a 12 nautical mile radius around Chinese-claimed territory. An ACRI survey conducted in March 2016 confirmed no likeminded American friend, partner or ally was intending to join American freedom of navigation patrols. Our survey looked at New Zealand, the UK, India, Canada, Japan, Singapore and South Korea. This has not changed. **If Australia ran such patrols we would be the only American friend, partner or ally to do so.**

Two US admirals have suggested Australia should join the American operations. On February 22 2016 during a visit to Australia, US Vice Admiral Joseph Aucoin was asked whether it would be valuable for Australia to conduct freedom of navigation operations and he replied, "Yes".ⁱ On March 3 2016 US Admiral Harry Harris, Commander of the US Pacific Fleet, spoke from New Delhi to revive the idea of a Quadrilateral Security Dialogue between the US, Australia, India and Japan. He said: "By being ambitious, India, Japan, Australia and the United States and so many like-minded nations can aspire to operate anywhere in the high seas and the airspace above it".ⁱⁱ **If Australia began running such patrols it would look like we did it in response to statements by American admirals.**

After all on October 29 2015, two days after the USS Lassen was deployed, Foreign Minister Julie Bishop stated: "We have not been asked to join the United States and we have no plans to do other than what we already do, and that is traverse international waters in accordance with international law".ⁱⁱⁱ

While some Australian friends in Southeast Asia (Singapore) may be relaxed about Australia running patrols within a 12 mile radius, or even supportive (Vietnam, the Philippines) nothing would more dramatically cast Australia in the image of a US 'deputy sheriff'.

The Philippines' New President

Action before the Permanent Court of Arbitration was initiated by President of the Philippines Benigno Aquino III. The new President, Rodrigo Duterte, has spoken of direct negotiations between the Philippines and China. On May 10 2016 he said, "**I have a similar position as China's. I don't believe in solving the conflict through an international tribunal**".^{iv} The *Financial Times* reported that some observers believe he may have already reached a deal or understanding in Beijing.^v In February 2016 Duterte had raised the possibility of an agreement with Beijing: "Build us a railway just like the one you built in Africa and let's set aside disagreements for a while".^{vi}

Opportunities for Negotiation

Last week the official *China Daily* newspaper quoted “sources close to the matter” saying Beijing was ready to start negotiations on joint development of resources and cooperation in scientific research “if the Philippine Government puts aside the tribunal’s ruling”.^{vii}

Zhu Feng, director of the China Centre for Collaborative Studies of the South China Sea notes, “**There has been a stark change in the Philippines’ attitude toward the South China Sea arbitration after Aquino left office**”. China’s Ambassador to the Philippines reportedly visited Duterte on July 7 2016, five days before the Permanent Court of Arbitration ruling.^{viii}

China’s longstanding policy of deal-making with neighbours over maritime disputes has a name, roughly translated as “shelve disputes in favour of joint development”. China and **the Philippines could conduct bilateral negotiations to cooperate on research into coral reef restoration, joint resource development of oil and gas reserves as well as access to fishing**. Mr Zhu said: “If the Philippines and China take a pragmatic approach, this is of course what China hopes to see happen, as long as the results of the arbitration are laid aside. This might not be in line with US interests, but it is certainly a rational compromise”.

Arbitration Decisions

Even Americans look to a negotiated settlement. Bonnie Glaser, Senior Advisor for Asia at the Centre for Strategic and International Studies, stated: “**I think it’s wrong to say that the US does not want to see compromise**. I think the US really does want to see effective diplomacy, and to see China treat its neighbours with respect, but not a might-makes-right approach”.^{ix} There is room for negotiation and this renders calls for Australian patrols even more otiose.

China is not the only one to resist arbitration under international law. The lead lawyer for the Philippines in the case brought to the Permanent Court of Arbitration, Paul Reichler,

has previous experience with smaller countries taking on their bigger neighbours. He represented Nicaragua in its dispute with the United States in 1986. Nicaragua brought a case to The Hague against the US for its role in aiding rebel groups within Nicaragua. **The United States ignored the decision by the International Court of Justice which ruled in favour of Nicaragua**. Mr Reichler stated the case was a “blemish on the U.S. moral posture and its ability to project itself as a promoter of a rules-based international order”.^x In 1991 a new Nicaraguan government dropped the case in exchange for US aid.

Diplomatic Options

From the Chinese perspective America once enjoyed the opportunity of running patrols close to the Chinese coastline and collecting intelligence close to its submarine base on Hainan Island. China’s rising power makes this impossible. In response to China’s rise the US announced a rebalance or pivot to Asia; some US strategists (not necessarily the current US administration) have signalled the need to contest China’s rise, defining the South China Sea as part of a battle over dominance, leadership and primacy in the region.

Australia adhering to diplomacy in any such contest would appear to be the wiser course. It seems to fit the spirit of warnings by Prime Minister Turnbull and Foreign Minister Bishop about the inadvisability of a rush by Australia into patrolling disputed waters within 12 nautical miles of Chinese-claimed territory.

The best guarantor of Australian prosperity in the next 15 years lies in China becoming a middle class nation with an additional 850 million people enjoying middle income status by 2030.^{xi} Australia has national interests too.

^{vii} A Greene, February 22 2016, <<http://www.abc.net.au/news/2016-02-22/aus-should-challenge-claims-in-south-china-sea-says-admiral/7189598>>

^{viii} E Barry 2016, U.S. Proposes Reviving Naval Coalition to Balance China’s Expansion, *The NY Times*, March 2 <http://www.nytimes.com/2016/03/03/world/asia/us-proposes-india-naval-coalition-balance-china-expansion.html?_r=0>

^{ix} Julie Bishop 2015, Doorstop interview with Michael Sukkar, October 29 <<http://foreignminister.gov.au/transcripts/Pages/2015/10/151029.aspx>>

^x E Rauhala, May 10 2016, Rise of Philippines’ Duterte stirs uncertainty in the South China Sea, *The Washington Post*, <https://www.washingtonpost.com/world/rise-of-philippines-duterte-stirs-up-uncertainty-in-the-south-china-sea/2016/05/10/d75102e2-1621-11e6-971a-dad9ab18869_story.html>

^{xi} C Clover July 12 2016, Beijing to focus on blunting impact of South China Sea ruling, *Financial Times*, <<http://www.ft.com/cms/s/0/bb8d42d6-47fa-11e6-8d68-72e9211e86ab.html#axzz4EL115jMx>>

^{xii} E Rauhala, May 10 2016, Rise of Philippines’ Duterte stirs uncertainty in the South China Sea, *The Washington Post*

^{xiii} Z Yunbi, July 4 2016, Manila urged to put aside upcoming ruling, *China Daily*, <http://usa.chinadaily.com.cn/world/2016-07/04/content_25953433.htm>

^{xiv} C Clover July 12 2016, Beijing to focus on blunting impact of South China Sea ruling, *Financial Times*, <<http://www.ft.com/cms/s/0/bb8d42d6-47fa-11e6-8d68-72e9211e86ab.html>>

^{xv} Ibid

^{xvi} J Page, July 7 2016, China’s Defiance of International Court Has Precedent—U.S. Defiance, *The Wall Street Journal*, <<http://www.wsj.com/articles/chinas-defiance-of-international-court-has-precedent-u-s-defiance-1467919982>>

^{xvii} D Scott, May 14 2015, The rise of China’s middle class will create opportunities the world has never seen before, *Business Insider Australia*, <<http://www.businessinsider.com.au/chinas-rising-middle-class-will-create-opportunities-the-world-has-never-seen-before-2015-5?UK&IR=T>>