



## China's Engagement with international judicial dispute settlement: will non-appearance be the new normal? (18 Nov 2021)

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In the South China Sea (SCS) Arbitration Case, China's act of non-appearance increased the risk of receiving an unfavorable decision. In fact, the non-participation of a party before an international court or tribunal is uncommon, and some argue that non-appearance may perhaps become the new normal for China to engage in international judicial dispute settlement in the future. Given the huge impact of China's engagement with multinational judicial controversy especially in East Asia, the Center for Chinese and Comparative Law (CCCL) of the School of Law of the City University of Hong Kong conducted a virtual academic seminar on November 18, 2021, inviting **Prof. Ling Bing** as the guest speaker to explain the argument.

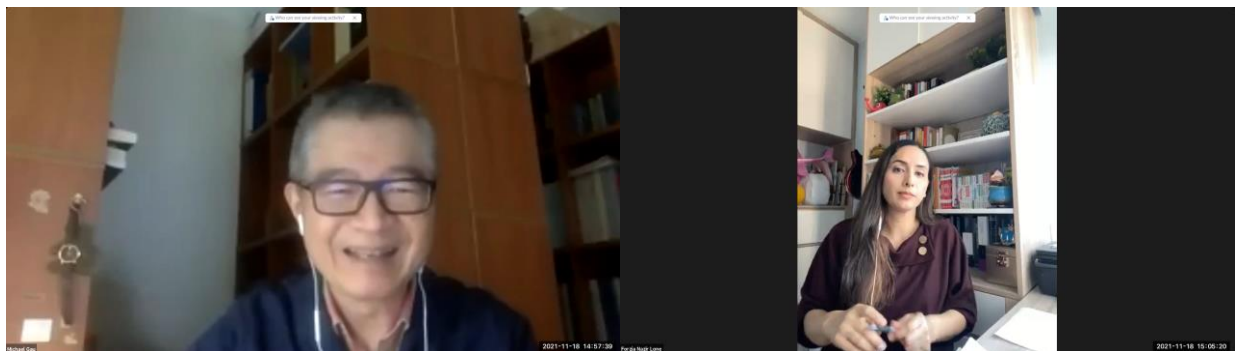
The webinar began with an introduction by CCCL Director **Prof. Wang Jiangyu**, who outlined the aim of the seminar and introduced **Prof. Ling Bing** to the participants. **Prof. Ling Bing** has been a Professor of Chinese Law at the University of Sydney Law School since September 2012. He is the author of many books and articles on Chinese civil and commercial law and international law, including *Contract Law in China* (Sweet & Maxwell Asia, 2002). Since he was admitted to the Bar of the PRC in 1990 and served as an expert witness on Chinese law questions in numerous global litigation and arbitration cases, he could provide a sufficient explanation and prediction of China's future engagement in international judicial disputes. Before focusing on the topic, he delivered an attractive remark about China's recent avowed commitment to the international rule of law. On November 11, the CPC issued a landmark resolution on the considerable achievements and historical experience of the Party over the previous century. Xi Jinping stated that "China has actively participated in the reform and development of the global system, It has worked to safeguard the international system centered on the UN, the international order underpinned by international law, and the basic norms of international relations based on the purposes and principles of the UN Charter." In the beginning, **Prof. Ling** introduced his argument for China's non-participation in SCS arbitration in 2013. Subsequently, he explained the arguments for and against whether appearance represents a legal obligation. He argued some believed appearance was a right and non-appearance was a litigation strategy at the same time, but some expressed appearance as required by a duty to cooperate only. As **Prof. Ling** pointed out, there are several possible reasons for non-appearance, including alleged lack of jurisdiction, lack of confidence in the international judicial process, or even lack

of confidence in the strength of one's own case. After precisely describing the benefits and drawbacks of non-appearance, he predicted that there would be an opportunity for non-appearance to be a new normal since the Ministry of Foreign Affairs of China solemnly declared that the award was null and void and had no binding force in 2016.

Following Prof. Ling's motivating speeches, a group discussion session was held, during which **Prof. Michael Sheng-ti Gau** and **Dr. Lone Fozia Nazir** prepared some thoughts on the topic. In light of China's non-participation in the SCS Arbitration, **Prof. Gau** outlined the character and roles of the Taiwan. With different points of view, all discussants and participants could use this opportunity to express their opinions on the issues of non-acceptance and non-participation in the SCS Arbitration. **Prof. Wang Jianguyu** gave a brief concluding remark in which he thanked the presenters for their excellent contributions and all of the participants for their attendance, which helped make this seminar a success.



Prof. Ling Bing, speaker of the seminar and Prof. Wang Jianguyu, Chairperson of the seminar.



Prof. Michael Sheng-ti Gau, and Dr. Lone Fozia Nazir, discussants of the seminar.