

US lawyers argue Manila's case against China in The Hague

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On July 7, legal counsel for Manila in its case against Beijing in the South China Sea opened oral arguments before a five-member arbitral tribunal in The Hague. Beijing has disputed the court's jurisdiction and refused to participate in the proceedings.

The argumentation is expected to last until July 13 and is addressed exclusively to the question of the jurisdiction of the Permanent Court of Arbitration (PCA) over the case in accordance with the United Nations Commission on the Law of the Sea (UNCLOS).

Manila's legal case, which aims to invalidate the entirety of China's nine-dash line territorial claim to the South China Sea, is part of Washington's campaign of increasing military and political pressure against Beijing. Over the past year, Washington has not only brought military tensions in the sea to a fever pitch with its deliberate provocations against China, it has moved to undermine China's territorial claims as well.

In December 2014, the US State Department issued a 26-page memorandum studying China's maritime claim in the South China Sea, which concluded that, unless China revised its claim, it was "not in accordance with the law of the sea."

The case currently being argued is the development and escalation of Washington's aggressive moves against China.

Manila's case was drawn up, and is being argued, by US attorneys in the Washington-based firm, Foley Hoag. The law firm is a beltway institution and a leading supporter of the Obama administration. The case is being argued by two attorneys from this firm, Paul Reichler and Lawrence Martin. Three international consultants—an American and two British professors of international law—will provide corroborating information. Not a single Filipino will present any

portion of the argument.

The Philippine government sent 35 delegates from the top echelons of governance as observers, however, including two Supreme Court justices, the House of Representatives speaker, the executive secretary, justice secretary, defense secretary, solicitor general and secretary of foreign affairs. It seems that a majority of Aquino's cabinet is in The Hague.

The tribunal declared that the proceedings were not open to the public. Nevertheless, upon written request, it granted permission to the governments of Malaysia, Indonesia, Vietnam, Thailand and Japan to send observers to the hearing.

In early December 2014, Beijing responded to the PCA with a document entitled "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines."

Manila's case is founded on the 1982 UNCLOS, which derives and extends maritime rights from territorial claims. The UNCLOS grants a "territorial sea" that extends up to 12 nautical miles (nm) from a country's land territory, in which the country "may exercise complete sovereignty over that water, seabed, and subsoil." Beyond the territorial sea, a coastal state is granted an Exclusive Economic Zone (EEZ) that extends 200 nm from its land territory. Within the EEZ, the country has special rights for exploring and exploiting marine and seabed natural resources.

An island, defined as a human habitable land feature that stays above water at high tide, is granted the same maritime territorial rights: a 12 nm territorial sea and a 200 nm EEZ. A rock, defined as above water at high tide but not habitable, is granted a territorial sea, but no EEZ. A coastal state has the right to create artificial

islands within their jurisdiction but that does not grant any additional territory.

China's claim in the South China Sea is predicated upon an historical claim to the land territory within the sea, and Beijing extends its maritime rights from this land territory accordingly. In its response to the PCA tribunal, Beijing wrote "it is a general principle of international law that sovereignty over land territory is the basis for the determination of maritime rights. Only after the extent of China's territorial sovereignty in the South China Sea is determined can a decision be made on the extent of China's maritime claims in the South China Sea."

As the tribunal has no jurisdiction over land disputes, which would be brought before the International Court of Justice, and China's claim is an historical claim to land, Beijing wrote that the tribunal "manifestly has no jurisdiction over the present case."

In response, the tribunal in April split the case, agreeing to first conduct hearings on the subject of the jurisdiction of the court over the matter. Only after an affirmative initial ruling, would the substance of Manila's case be heard.

Philippine Foreign Affairs Secretary Albert del Rosario introduced the case before the tribunal before turning the affair over to Paul Reichler. Del Rosario summed up the Philippine case: "The Philippines is NOT asking the Tribunal to rule on the territorial sovereignty aspect of its disputes with China." What was at stake in the case, he said, was exclusively a question of "maritime entitlements."

Del Rosario argued: "The question raised by the conflicting positions of the Philippines and China boils down to this: Are maritime entitlements to be governed strictly by UNCLOS, thus precluding claims of maritime entitlements based on 'historic rights'? Or does the UNCLOS allow a State to claim entitlements based on 'historic' or other rights even beyond those provided for in the Convention itself?"

A ruling based on this argument that invalidated China's claims to maritime entitlement without examining China's historical territorial claims to South China Sea islands, would invalidate China's claim to the entire sea. The islands claimed and occupied by Beijing would be uncontested, but would be utterly isolated in a sea over which China had no sovereignty

Del Rosario concluded that the court should find that

"China is not entitled to exercise what it refers to as 'historic rights' over the waters, seabed and subsoil beyond the limits of its entitlements under the Convention" and "that the so-called nine dash line has no basis whatsoever under international law."

All the argumentation and legal reasoning is founded upon the 1982 UNCLOS. This is a treaty that Washington has steadfastly refused to sign for the past 35 years. Yet, through Manila, the US is using this law as the spearhead in a drive to invalidate China's claim in the South China Sea.

Reichler told the press that he expected a decision on jurisdiction to be handed down by the court within 90 days.

China continues to maintain that the court has no jurisdiction. Taiwan, which has a similar claim over the sea to Beijing, issued a quiet statement that: "Any arrangement or agreement—including arbitration proceedings—regarding islands in the South China Sea and their surrounding waters reached without Taiwan's participation and consent will have no legal effect and will not be recognized by the Taiwanese government."



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