

UN Tribunal to adjudicate South China Sea legal dispute

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On October 29, the Permanent Court of Arbitration (PCA) in The Hague ruled that it had jurisdiction in the legal case filed by Manila against Beijing over a territorial dispute in the South China Sea. Having established its jurisdiction, the PCA will now examine the legal merits of Manila's case, with a final decision expected in 2016.

The ruling comes amid a series of dangerous provocations carried out by Washington in the South China Sea. On October 27, the United States sailed a guided missile destroyer within the 12-nautical-mile territorial waters of facilities occupied by Chinese forces. It termed this war-mongering act a "freedom of navigation" exercise, promising to repeatedly stage such provocations in the future.

Over the past five years, Washington has sought through its "pivot to Asia" to diplomatically, economically and militarily isolate and encircle China, seeking ultimately to dismember the country and subordinate it to the interests of US finance capital as a semi-colony. With each new provocation, the outbreak of war becomes increasingly likely.

Chinese Admiral Wu Shengli, speaking in a joint video teleconference with US chief of naval operations Admiral John Richardson on Thursday, warned: "If the United States continues with these kinds of dangerous, provocative acts, there could well be a seriously pressing situation between frontline forces from both sides on the sea and in the air, or even a minor incident that sparks war."

On Friday, the European Union (EU) announced its support for Washington's provocation. Reuters quoted a senior EU official parroting the US line that Washington was "exercising freedom of navigation." An EU foreign affairs spokesperson said the EU supported "a maritime order based upon the principles

of international law, in particular as reflected in the United Nations Convention on the Law of the Sea (UNCLOS)."

It was in this context of provocation and Washington's drive to war, that the PCA issued its decision on Manila's case. The PCA is not a neutral arbiter in the dispute. It serves the interests of the imperialist powers and its decision is a thoroughly political one.

Manila's case has been drawn up and argued by Washington attorneys. Not a single legal argument before the PCA was made by a Filipino.

Manila's suit was filed under the 1982 UNCLOS. The law, which establishes principles for adjudicating maritime boundaries and exclusive economic zones (EEZ), has 157 signatories, including China and the Philippines. The United States is not one of them.

China makes an historical claim in the South China Sea. It claims ownership of four archipelagos, Nansha, Dongsha, Xisha and Zhongsha. Each archipelago under the UNCLOS would be entitled to its own baseline surrounding all the islands and atolls within that archipelago. From that baseline, the 12-nautical-mile territorial sea of the archipelago would be determined. A number of continental countries exercise claim to archipelagic waters under the UNCLOS, including Ecuador with the Galapagos and Denmark with the Faroe Islands.

Manila's case seeks to invalidate China's claim by examining the maritime boundaries established by individual islands and atolls, disregarding the archipelagic nature of China's claim. Manila's case makes no reference to hundreds of atolls, reefs and islands in the disputed waters, focusing instead on a handful. A number of the islands whose maritime boundaries have been legally contested by Manila are

far outside the Philippines' 200-nautical-mile EEZ.

By asserting that it has jurisdiction over Manila's case, and will adjudicate the maritime boundaries of a select number of individual islands claimed by China, the PCA has already effectively undermined China's claim, which is not based on individual islands.

This tack was dreamed up in Washington and has served as the pretext both for the legal case and the provocative US naval operations.

The PCA's ruling also deliberately ignored the absence from the court of third party claimants to the dispute. While its ruling explicitly addressed Vietnam's claim, which does not overlap with the islands contested by Manila, it made no reference to Taiwan, whose claim is essentially identical to that of Beijing. The absence of Taipei from the case further underscores the politically rigged nature of the proceedings.

The PCA ruling is a blow to China and strengthens the propaganda of Washington, which will use it to provide a legal fig leaf to escalate its war mongering.

With stunning hypocrisy, US State Department spokesperson John Kirby stated that Washington is "opposed to coercion" and expects disputes to be resolved "peacefully, diplomatically and through international legal mechanisms such as arbitration." US imperialism has been the primary coercive force and the leading source of the military escalation of disputes, not only in the South China Sea, but around the globe.

US Assistant Secretary of State for East Asia Daniel Russel told the press that when the PCA issues its final decision, there "would be an international expectation that China would not flout its obligations under the convention." Washington is insisting on Beijing's obligations under a convention that the United States itself has not even signed.

China responded to the October 29 ruling in a sharply worded statement issued by the Ministry of Foreign Affairs on October 30. It wrote: "China has indisputable sovereignty over the South China Sea Islands and the adjacent waters." It described the arbitration proceedings as "a political provocation under the cloak of law. It is in essence not an effort to settle disputes but an attempt to negate China's territorial sovereignty and maritime rights and interests in the South China Sea."

Beijing reasserted that the PCA "manifestly has no

jurisdiction" over the case. The statement accused *both* "the Philippines and the Arbitral Tribunal" of having "abused relevant procedures and obstinately forced ahead with the arbitration, and as a result, severely violated the legitimate rights that China enjoys as a State Party to the UNCLOS, completely deviated from the purposes and objectives of the UNCLOS, and eroded the integrity and authority of the UNCLOS."

On the same day, the Taiwanese (ROC) Ministry of Foreign Affairs re-issued an earlier statement that concluded that any decision about "islands in the South China Sea and their surrounding waters that is reached without ROC participation and consent shall have no legal effect on the ROC and shall not be recognized by the ROC government."

By effectively dismissing the claims of China and also Taiwan over the South China Sea in advance of its ruling, the Tribunal has set the stage for a further escalation of tensions in this dangerous global flashpoint.



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