Hague court decides South China Sea case today

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The Permanent Court of Arbitration (PCA) in The Hague is scheduled to release its decision today in Manila's legal case against Beijing over maritime disputes in the South China Sea.

The decision—termed an award—is being rendered by a five-judge panel that comprises the International Tribunal on the Law of the Sea (ITLOS), which adjudicated the case under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), under the auspices of the PCA.

Despite claims to the contrary in a great deal of the establishment press, the tribunal is not legally empowered to render a judgment on territorial disputes, but is limited in its jurisdiction to maritime disputes. In the case of *Philippines v. China*, the tribunal is reviewing whether certain disputed features in the South China Sea are islands, rocks or atolls, whether these features are exposed at high tide, and to what maritime rights—exclusive economic zones (EEZ) or territorial seas—these features are therefore entitled.

Manila's case before the tribunal was filed by former President Benigno Aquino's administration at the instigation of Washington. Over the six years of Aquino's presidency, from 2010 to 2016, Manila came to serve as Washington's leading proxy in the region, aggressively pressing its territorial disputes with Beijing in the South China Sea to further Washington's 'pivot to Asia' and military build-up in preparation for war with China.

In January 2013, Manila served notice to China that it would file a legal case before the ITLOS. The following month, China served notice of its non-acceptance of, and non-participation in, the proposed arbitration.

In 2006, seven years before Manila's case, China opted out of Part XV, Section 2 of UNCLOS, which specified "compulsory procedures entailing binding decisions" over maritime disputes. Article 298 of Part XV of UNCLOS states: "When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2." This included opting out of binding arbitration "relating to sea boundary delimitations, or those involving historic bays or titles."

Not only did China opt out of this portion of UNCLOS. A great many of the other signers of the treaty did as well, including the United Kingdom, Australia, Italy, France, Canada and Spain.

Washington, which drew up and argued Manila's case against Beijing, and denounced China's non-participation in the tribunal hearings, has not even ratified UNCLOS.

In March 2014, Manila submitted a detailed memorial, over 4,000 pages long, to the ITLOS disputing China's 'nine-dash line' map, which denoted Beijing's historic claims to much of the South China Sea. The case was written and argued by attorneys of the Washington-based law firm Foley Hoag, which is intimately tied to the Obama administration. Paul Reichler headed a team of US attorneys who argued Manila's case. During the various hearings in The Hague, none of the legal argumentation, other than perfunctory opening and closing remarks, was delivered by a Filipino.

In December 2014, China, while insisting that it was not participating in the legal proceedings, published a position paper arguing that the tribunal did not have jurisdiction over its dispute with Manila, which it claimed was a historical and territorial question and not merely a maritime matter.

In the same week, the US State Department published an official examination of "Maritime Claims in the South China Sea," as part of its Limits in the Sea series. The paper made it official US policy that "unless China clarifies that the dashed-line claim reflects only a claim to islands within that line and any maritime zones that are generated from those land features in accordance with the international law of the sea, as reflected in the LOS Convention, its dashed-line claim does not accord with the international law of the sea."

This State Department document was a direct response to China's position paper, and in effect insisted that the South China Sea dispute was subject to UNCLOS jurisdiction.

In March 2015, the tribunal issued a request to Manila for supplemental documentation of its claims. The tribunal held preliminary hearings in July 2015, where Reichler and his fellow Foley Hoag attorneys argued that the ITLOS had jurisdiction over the case.

Last October 29, the court ruled it had jurisdiction over seven of the fifteen submissions made by the Philippines. The judges said they could not determine if they had jurisdiction over seven other submissions, but would determine their jurisdiction on the basis of the "merits of the case." They requested that Manila "clarify and narrow" its fifteenth submission.

From November 24 to 30, Reichler and company presented arguments before the tribunal pertaining to the merits of the case.

The final award, scheduled to be handed down today, will announce the court's decision in the items over which it deemed it had jurisdiction. It will also announce on what other items, if any, it determined it had jurisdiction, on the basis of the merits of the case, and what its decision is regarding those items as well.

The items over which the court deemed it had jurisdiction were of a very specific and limited character. Today's ruling will establish whether Scarborough Shoal, a disputed atoll, portions of which are exposed at high tide, is entitled to an exclusive economic zone. The court will rule if various spits of sand and rock and coral—including Mischief Reef, Second Thomas Shoal, Subi Reef, Gaven Reef, McKennan Reef, Fiery Cross Reef, Johnson Reef and Cuarteron Reef—generate any territorial or economic entitlements. This will not establish who owns these features, but only what entitlements they create.

Manila's more critical disputes were those items over which the court has not yet ruled if it has jurisdiction. These other submissions accused Beijing of violating UNCLOS, of abuse of Philippine sovereignty, of illegal occupation and construction, and of dangerously risking collisions with Philippine vessels.

The majority of the disputation before the tribunal has been to adjudicate if individual rocks that poke above the waves of the South China Sea are in fact rocks, or are rather "low-tide elevations," or even islands.

On this basis, and on the pretext that it is defending "freedom of navigation," Washington, in pursuit of its geopolitical and economic interests, has escalated tensions with China to a palpable threat of war. It has repeatedly sailed its warships within the 12-nautical-mile territorial seas claimed by China, in what it terms freedom of navigation operations (FONOPs).

Regardless of the details of the decision released by the PCA today, Washington will use this ruling to escalate its war drive against China.

Abraham Denmark, deputy assistant secretary of defense for East Asia, testifying last week before joint subcommittees on Armed Forces and Foreign Affairs, stated that the ruling would determine "whether the Asia-Pacific's future will be defined by adherence to international laws and norms that have enabled it to prosper, or whether the region's future will be determined by raw calculations of power."

Washington is responsible for attempting to determine the Asia-Pacific's future through "raw calculations of power" as it seeks to establish its untrammeled hegemony over China and the region. It is the military and political maneuvers of US imperialism that have destabilized the region to such a point that a ruling in The Hague over a handful of atolls and rocks could mark a significant step on the path to a military confrontation with China that could precipitate a global war.