

Manila files legal case against Beijing's South China Sea claim

By Joseph Santolan
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On March 30, Philippine President Benigno Aquino's administration filed a legal case before the International Tribunal on the Law of the Sea (ITLOS) disputing Beijing's claim to waters and land features in the South China Sea. The ITLOS is an intergovernmental body established by the United Nations for adjudicating maritime disputes in accordance with the UN Convention on the Law of the Sea (UNCLOS).

Manila's case, which was electronically submitted, was nearly 4,000 pages long. It argues that China's South China Sea claim—referred to as “the nine-dash claim” because of the nine-dash line drawn around the disputed waters on Chinese territorial maps—is based exclusively on historical documents and not the proximate land features, such as the Spratly Islands. Manila insists that the Philippines has sovereignty over spits of rock, sandbars and atolls that continue to project above sea level at high tide and that each of these bits of earth grants Manila sovereignty over the surrounding waters.

The legal case marks a significant escalation of the tensions in the region, which have already reached a boiling point. As with each previous heightening of conflicts in the South China Sea, the real author of this latest provocation is not Manila, but Washington.

Beijing has consistently maintained that disputes in the region must be resolved on a bilateral basis and not through multilateral talks or international adjudication. Washington has repeatedly stated that “freedom of navigation” is an issue in which it has a “national interest.” It has pressured Beijing and the rival South China Sea claimants to address their disputes in multilateral discussions, with Washington as a participant.

Manila's legal case was drafted and will be argued

by the US law firm, Foley Hoag, which has close ties to the Obama administration. The firm gave hundreds of thousands of dollars to Obama's election campaigns, and Obama appointed a Foley Hoag senior partner as ambassador to Norway. The lead lawyer on the Manila's ITLOS case is Foley Hoag partner Paul Reichler.

Beijing has refused to respond to the case and will not appear before the ITLOS. A five-member panel of judges will review Manila's case and reach a legal decision, which is non-binding on the disputants.

According to the Aquino administration, Beijing sent requests to Manila during the final week of January through an emissary from Brunei and through “diplomatic backchannels” requesting that Manila delay the submission of its ITLOS suit in order to “ease tension in the region.”

The response was sharp and clearly orchestrated by Washington. The *New York Times* conducted an exclusive interview with President Aquino, in which he pointedly compared China to Nazi Germany and the disputed South China Sea to the Sudetenland, which Hitler annexed before the Nazi invasion of Czechoslovakia.

At the same time, the US State department issued several statements that for the first time openly disputed Beijing's claim to the South China Sea. Previously Washington adopted a posture of neutrality of territorial claims—while tacitly encouraging allies such as the Philippines to aggressively press their case.

Assistant Secretary of State for Asia Daniel Russel said, “We take a strong position that maritime claims must accord with customary international law ... This means that all maritime claims must be derived from land features and otherwise comport with the international law of the sea ... claims in the South China

Sea that are not derived from land features are fundamentally flawed.”

Russel called upon China to “clarify or adjust its nine-dash line claim to bring it in accordance with the international law of the sea.” His statements read like a summation of Manila’s case, which was in fact drawn up in Washington.

The Philippine case is far from legally sound.

On February 9, Oxford University Law Professor Stefan Talmon published a paper with the University of Bonn, arguing that the ITLOS should dismiss the case on the grounds that the claims made by Manila are inadmissible and the tribunal lacks jurisdiction.

Among other points, Talmon specifically stated that Manila had not demonstrated the need for “the general and abstract request that China refrain from activities inconsistent with UNCLOS” and “the Philippines in its Notification and Statement of Claim does not specify what these ‘inconsistent’ activities are or where they take place.”

On March 29, the day before submitting its case, the Philippines staged a reckless provocation that appears to be aimed at shoring this gaping legal hole.

The Philippine Armed Forces sent a civilian ship to the disputed Ayungin (Second Thomas) reef to resupply troops stationed there. In 1999, the Philippine Navy deliberately scuttled a former World War II transport ship on the Ayungin reef as a means of establishing the ability to base Marines in the disputed waters. As Washington has ratcheted up disputes throughout the region, the rusted hull on Ayungin has become a flashpoint. China has stationed ships in the vicinity as a means of staking out its claim.

Previously, Manila resupplied its troops at the Ayungin shoal by airdrop. On March 29, not only did the Aquino government send a civilian ship to resupply the garrison, it filled the ship with reporters, both from local news agencies and the Associated Press. Chinese ships reportedly ordered Manila’s vessel to leave the disputed waters, but it pressed ahead to Ayungin.

The US State Department immediately issued a press release denouncing China’s “provocative and destabilizing acts” that “raise tensions in the region.” Beijing responded pointedly. Chinese foreign ministry spokesperson Hong Lei told a press conference: “We urge the US to respect facts, stop making irresponsible remarks and cease to encourage the provocative and

risky actions ... It is without any doubt that the Philippine side is the one who provokes and makes trouble.”

Manila announced it was adding the Ayungin reef incident to the ITLOS suit. US State Department Spokesperson Jen Psaki stated that “pending resolution of competing claims in the South China Sea, there should be no interference with the efforts of claimants to maintain the status quo.”

The hypocrisy of this statement is staggering. The March 29 incident was a deliberate provocation carried out by Manila with the backing of Washington in order to bolster its claim before the international tribunal.

What is more, over the past four years Washington has done everything in its power to undermine the status quo in the South China Sea. It has provoked tensions with China, and is in the process of “rebalancing” a majority of its naval forces to the region. Washington has been engaged in negotiations with Manila—which under Aquino functions as a key proxy of US interests in the region—for the establishment of basing arrangements in the country.

The talks on the permanent basing of US forces in the Philippines are in their seventh round. It is widely expected that President Obama will sign a concluded agreement when he visits Manila later this month.

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