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## II. Can Nuclear War Be Averted?

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### SOUTH CHINA SEA

# Behind the Phony Arbitration Ruling

by William Jones

July 16—A ruling on July 12 by an *ad hoc* arbitration panel, appointed by a Japanese judge under the Law of the Sea Convention, went well beyond its mandate in making a determination on the territorial disputes in the South China Sea between China and the Philippines, thereby pushing the region closer to military conflict between China and the United States. The July 12 ruling, if implemented, would effectively deprive China of territorial rights, recognized for centuries, over certain island chains in the South China Sea. While on the surface the decision appears to be a legitimate “court ruling,” it is actually based on a “hidden agenda,” as Chinese State Councilor Yang Jiechi noted in an interview with state media on July 14.

After reviewing in depth authoritative Chinese responses to this phony ruling, which are entirely justified as far as they go, we will conclude by referring to Lyndon LaRouche’s record on the issue.

The arbitration was initiated by Philippine President Benigno Aquino III in 2013, in an attempt to obtain a ruling on the status of islands generally recognized as Chinese territorial islands in the South China Sea, but which lie in close proximity to the Philippine coast. They have, however, never been considered a part of Philippine territory in any of the treaties defining the Philippines as a nation.

While the dispute directly involves China and the Philippines, State Councilor Yang Jiechi, for many years China’s Ambassador to the United States, clearly detects in the arbitration the long arm of the U.S. Administration, which is concerned about China’s rapid development, economically and militarily, in the region and would who like to see China “contained.” “The South China Sea arbitration has been a political farce all along,” Yang told reporters in his interview, “staged



*On May 26, 2015, President Vladimir Putin of Russia met with Chinese State Councilor Yang Jiechi at the Kremlin.*

under the cover of law and driven by a hidden agenda.” “Certain countries outside the region have attempted to deny China’s sovereign rights and interests in the South China Sea through the arbitration,” he said. “They have even brought other countries into the scheme to isolate and discredit China in the international community with a view to holding back China’s peaceful development.”

### **Instant Activation for the ‘Award’**

Just a few hours after the court had issued its “award,” effectively declaring most of China’s territorial claims in the South China Sea null and void, the Center for Strategic and International Studies held an all-day conference in Washington demanding that China abide by the ruling of this arbitration court.

Daniel Kritenbrink, the Asia Director of the U.S. National Security Council, speaking at the CSIS event, reiterated this demand. “The decision is final and legally binding,” Kritenbrink said. “Stability derives from order

and predictability. And order and predictability stem from all countries operating based on a common set of rules.” He reiterated U.S. policy that there should be “freedom of navigation” for civilian *and* military ships and aircraft throughout the length of the South China Sea. Therefore, already on Day One, a campaign was begun to accuse China of being in violation of international law if it did not accept the rulings of this *ad hoc* tribunal and give up its territorial claims in the South China Sea.

But the Chinese side, which had continually called for resolving the maritime disputes with the Philippines in accordance with international law—that is, first and foremost through negotiations between the parties themselves—found this avenue thwarted by President Aquino’s unwillingness to engage in talks. Arbitration, according to the UN Convention on the Law of the Seas (UNCLOS), remains an option if both parties conclude that the dispute cannot be settled through negotiation. That was not the case here. When Aquino announced that he was going to unilaterally request that the matter go to arbitration, China therefore formally withdrew from the case, which it had the right to do according to UNCLOS.

Given that state of affairs and the refusal of the Philippines to negotiate, it was surprising that the *ad hoc* arbitration court agreed to take the case at all. UNCLOS has no jurisdiction over territorial matters, as firmly stated in the preamble of the UNCLOS treaty, and this case clearly impinged on territorial disputes between China and the Philippines, thus providing a firm basis for the court to let the matter lie.

But nonetheless, the court took up the case and handed down a sweeping ruling which was a gross intrusion into a territorial dispute. By narrowing the definition of an “island” to a body of land having its own source of fresh water, the panel transformed the entire Nansha (Spratly) Island archipelago into a pile of rocks overnight, and thus not to be considered as territorial possessions. Some of these “rocks” then would become a part of the Philippine exclusive economic zone, as defined by UNCLOS as the surrounding waters measured out to 200 miles from the country’s coastline.

State Councilor Yang Jiechi suspected that there was

## South China Sea



much more to this arbitration gambit than the somewhat erratic action of a somewhat unpredictable Philippine President, and that the “hidden agenda” of the U.S. Administration in its “pivot to Asia” played a major role in bringing it about. The reaction of the United States to the decision, as clearly indicated by Krittenbrink’s comments, really corroborates that suspicion.

## China’s Historical Claims

The South China Sea is a relatively large body of water stretching around 1,200 miles north to south and 600 miles east to west. It is bordered by China, Malaysia, Indonesia, the Philippines, and Taiwan. China has utilized and administered four island groups in this sea for centuries, the most important of which are the Paracel Islands in the northern part of the sea, approximately 120 miles from China’s Hainan Island, and the Spratly Islands, some 560 miles from China.

There is clear documentation that China discovered and began to name the Spratlys as early as the Han Dynasty (2nd Century B.C.) and have exercised jurisdiction over the islands at least since the Tang Dynasty (late 8th to early 9th century A.D.).

In 1933, the French, who then controlled Vietnam, occupied nine Nansha (Spratly) Islands, a move vociferously protested by the Republic of China, which took measures to beef up its own presence on the islands. The

islands were occupied by the Japanese in World War II. In 1943, at the meeting in Cairo between President Franklin Roosevelt, Winston Churchill, and Chiang Kai-shek, the allies issued a declaration saying clearly that those islands still occupied by the Japanese must be returned to China after the war. This statement was reiterated after the death of Roosevelt by the Potsdam Declaration, signed by Truman, Churchill, and Stalin. And in 1946, officials from the Republic of China were brought by ship, with the blessing of the supreme commander, Douglas MacArthur, to reoccupy the islands.

The extensive documentation archived by China's National Institute for South China Sea Studies leaves little room for doubt about the legitimacy of China's territorial claims.

### **Rival Claims to Resources**

China's territorial claims were also upheld in U.S. documents at the time, and no one, including the other countries in the region, contested them. And yet with the rapid development of offshore drilling in the 1970s, the resources of the South China Sea became more attractive. Some of the other coastal states, including Vietnam and the Philippines, then began to occupy some of the islands and reefs in each of the island chains, sometimes with troops. As this was changing the facts on the ground in areas China claimed as its territory, China began to follow suit and began its own program of construction on the islands.

When the UN Convention on the Law of the Seas was formulated in 1982, it established the concept of Exclusive Economic Zones (EEZs) to create a framework for resolving disputes over newly accessible maritime resources. The UNCLOS stipulates that each country has its recognized 12-mile maritime territorial border, measured from its coast, but also has the right to a 200-mile EEZ in which it has exclusive rights to utilize the maritime resources. In the South China Sea, this created overlapping claims for EEZs, which clearly impinged on China's territorial claims. This was the source of the maritime disputes. In the 1980s, China's paramount leader Deng Xiaoping proposed to the other nations that they shelve these disputes and begin to carry out joint development of the maritime resources of the region.

China subsequently signed agreements with the Philippines with regard to the South China Sea. In 1999 the two countries held the first China-Philippines Experts Group Meeting on Confidence-Building Measures, issuing a joint statement "that the dispute should

be peacefully settled through consultation." In 2004, the China National Offshore Oil Corporation and the Philippine National Company signed the Agreement for Joint Marine Seismic Undertaking in Certain Areas in the South China Sea, and in 2005, national oil companies from China, the Philippines and Vietnam signed the Tripartite Agreement for Joint Seismic Undertaking in Certain Areas in the South Sea.

Largely due to foot-dragging by the Philippines, however, both of these undertakings have stalled. In 2000, after 26 years of negotiation, China settled with Vietnam the delimitation of territorial seas, EEZ, and continental shelf in Beibu Bay, which lies between Vietnam and China, and made arrangements for fishery cooperation.

In November 2002, China signed with ASEAN member states, which includes the Philippines, the Declaration on the Conduct of Parties in the South China Sea (DOC), which committed the signatories to resolve disputes through negotiation, to exercise restraint, and to refrain from carrying out activities that might complicate or escalate disputes and affect peace and stability. So with diplomacy moving forward on the issue of resource-sharing and a desire on the part of China to engage in negotiations on the issues of maritime delimitation, why did the Philippines in 2013 make the submission for arbitration?

### **Big Brother Steps In**

Since the initiation of the "Asia Pivot" by the Obama Administration, the United States has expressed concern about losing its absolute predominance in the region. By tightening up its traditional Cold War alliances with Japan, South Korea, the Philippines, and Australia, sending half of the U.S. fleet to the Pacific to engage in "freedom of navigation" operations in the South China Sea, and contesting Chinese territorial claims, the U.S. has made it clear to China that the United States intends to "contain" its rise.

While China would like to engage the United States on an equal basis in the region and in the world at large, the U.S. still insists on maintaining the type of Pax Americana that characterized the world after the demise of the Soviet Union. And it is intent on maintaining its predominance at all costs. "We aren't going to let China make the rules," President Obama said, in relation to his nearly defunct Trans-Pacific Partnership trade proposal. This is the crux of the matter.

But given the ongoing collapse of the London-New



whitehouse.gov//Pete Souza

*China's then Foreign Minister Yang Jiechi meeting President Obama at the White House in 2009.*

York financial system, the “rules” governing the world today have serious flaws and have to be changed. As a responsible member of the international community, China desires—and deserves—a say in formulating the rules governing the world we live in. But the United States is not inclined to let that happen.

The reaction of the Chinese Government to the arbitration ruling has been swift and decisive. It will not accept the decision. The arbitration panel is not the International Court of Justice. It is not an arm of the United Nations, as the Secretary-General was keen on underlining after the decision was issued. And, China insists, the decision is not even consistent with the UNCLOS treaty under which such arbitration courts are allowed to be formed. China has received backing on that point from many nations and many noted legal scholars. And in this particular case, China notes, the decision to take the issue to arbitration was clearly made in bad faith.

Was it done in collusion with U.S. officials or individuals who wanted some decision unacceptable to China, in order to libel China as in violation of international law and to justify increased forays with heavily armed naval vessels on China's doorstep?

State Councilor Yang seems to think so. “Certain countries outside the region have attempted to deny China's sovereign rights and interests in the South China Sea through the arbitration,” he said. “They have even brought other countries into the scheme to isolate

and discredit China in the international community, with a view to holding back China's peaceful development.”

But China is not going to cede any territory on the basis of a decision made by a court without proper jurisdiction, and which acted in “bad faith.”

“Sovereignty is a bottom line for China,” Yang said. “Big as China is, we cannot afford to give away a single inch of territory that our ancestors have left to us. China's territorial sovereignty and maritime rights and interests in the South China Sea have been formed over the course of over two thousand years. They are fully backed by historical and legal evidence.

Under no circumstances can they ever

be negated by a so-called award that is full of nonsense. The award can neither change historical facts nor deny China's claims of rights and interests in the South China Sea. Still less can it make us waver in our resolve and determination to safeguard territorial sovereignty and maritime rights and interests. China's position of not accepting or recognizing the award will not change.”

### **Freedom of Navigation a Red Herring**

The other aspect of the South China Sea has to do with China's ability to defend itself. The devastation wrought on China during the last 150 years by the Opium Wars and the Japanese invasion is seen as largely a result of China's lack of an effective navy. And China is determined that it will not happen again. It is building a strong navy, and its naval presence in the South China Sea and East China Sea is paramount and will increase until the tensions with the United States and Japan recede.

China has never threatened freedom of navigation and is totally at ease about, and supportive of, the smooth coming and going of commercial maritime traffic. It is something else with regard to the naval vessels of foreign powers, some with possible hostile intent toward China. U.S. “freedom of navigation” forays with destroyers or aircraft carriers are viewed quite differently than ordinary commercial traffic by naval analysts.

As Senior Colonel Zhou Bo, the director of the Chinese Ministry of Defense's Center for International Security Cooperation, told CCTV News in an interview



*Britain's HMS Nemesis in 1841 destroys Chinese ships, during the Opium Wars; painting by Edward Duncan (1843).*

on July 8: “We have never impeded freedom of navigation for commercial vessels. But we do not endorse American naval reconnaissance in the South China Sea because we don’t consider that they’re coming with an olive branch, but that they’re breaking into my backyard and trying to read the pin number of the safe in my house. And they come here on a daily basis.”

But this is exactly the reason for the U.S. Navy’s stress on “innocent passage” for naval vessels in the region. The acceptance of Chinese territorial claims in the South China Sea would throw something of a monkey wrench into those close coastal reconnaissance operations, which are considered by the Pentagon as crucial for keeping China “boxed in.” Bringing Australia and Japan into the region in an attempt to “internationalize” these operations will only add fuel to the fire.

### **The Ball Is Now in Duterte’s Court**

The ruling of the arbitration panel has garnered a great deal of criticism from many nations and legal experts. Taiwan, which is also in possession of some of the islands as a result of the post-war agreements, also protested the decision. In an ironic twist, the newly elected leader of Taiwan, the head of a pro-independence party, has sent ships to Taiping Island, which is one of Taiwan’s possessions in the Spratlys. The island is fairly well populated and has its own hospital. While not coordinating its actions with the mainland, Taiwan is in agreement with the mainland in its refusal to accept

the arbitration decision.

The political nature of the decision and the absence of China’s indispensable consent to arbitration also undermined the credibility of the whole affair. Graham Allison, the Harvard professor who coined the term “Thucydides trap,” said in an article in *The Diplomat* on July 11, that China can simply do as the United States and other powers have often done, and simply ignore the ruling—with impunity.

In one sense, the ball is now in the court of the new Philippine President, Rodrigo Duterte, who has clearly said that “war is not an option.” Duterte has indicated all along that he wants to begin serious negotiations with China.

When the ruling was issued, he asked former Philippine President Fidel Ramos to represent the Philippines in opening talks. Duterte is also eager to participate in the Belt and Road Initiative, which could provide the Philippines some of the much-needed infrastructure, particularly in the area of transportation, which it now lacks. But he will also come under a great deal of pressure from the United States to uphold the decision of the arbitration panel.

More important will be the direct reaction of the United States. If it continues to insist that China must forego its territorial claims, and continues to run its provocative reconnaissance operations under the guise of “freedom of navigation,” this behavior will inevitably lead to a clash which can easily result in a full-scale military conflict.

And the ultimate target is China’s ambitious attempt to bring the world back on the road to development through its Belt and Road Initiative. The success of the 21st Century Maritime Silk Road is dependent on a good working relationship with China’s maritime neighbors, a relationship which can be seriously destabilized by this ruling.

Meanwhile, at the Asia-Europe Meeting (ASEM) in Ulaanbaatar, Mongolia, that ended on July 15, EU Chairman Donald Tusk began to discuss this arbitration ruling, greatly angering the Chinese delegation headed by Premier Li Keqiang, and leading to the sudden cancellation of the planned joint press conference.



President Rody Duterte Videos

Newly elected Philippine President Rodrigo Duterte, shown here on July 17, 2016, said that “war is not an option” in the fake South China Sea conflict.

As the Belt and Road Initiative offers the only real hope for Asia and Europe, and ultimately the United States, chastising China for not accepting this bogus ruling will have repercussions for all, confirming the warning State Councilor Yang gave to those trying to

force China to give up its historical claims: “They are only lifting a stone to drop it on their own feet.”

Lyndon LaRouche had seen these developments coming years ago. The instant he learned of Obama’s brutal murder of Libyan leader Muammar al-Qaddafi on October 20, 2011, [La-Rouche exposed](#) how and why it was that this atrocity indicated that Obama was rapidly lurching towards thermonuclear war against Russia and China.

Subsequent developments have amply confirmed that warning. Obama’s “[Pivot to Asia](#),” a move towards war with China, was announced at just the same moment by Secretary of State Hillary Clinton. Now, at a moment when that war may be only weeks or days away, certain U.S. government figures have begun to waver.

Obama can be contained and removed, and that war can be prevented, if we rally on an international scale for Lyndon and Helga Zepp-LaRouche’s initiative, as presented in the July 15 webcast, “Bank Rescue Plan Is Last Chance.” See page 5 of this issue.

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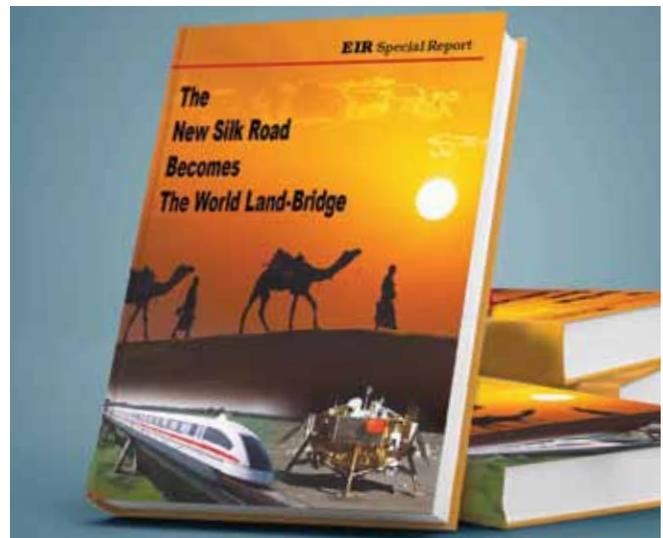
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