



Philippines invokes UNCLOS in South China Sea wrangle

Alyx Barker • Tuesday, 22 January 2013 (9 months ago)

The Philippines has launched UNCLOS arbitration proceedings against China over disputed territory in the South China Sea, it was announced today.



The nine-dash line

The secretary of foreign affairs for the Philippines, Albert del Rosario, said the Chinese ambassador to the Philippines had been summoned and handed a notice of arbitration and [statement of claim](#) under the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

The country will challenge "the validity of China's 'nine-dash line' claim to almost the entire South China Sea including the West Philippine Sea."

The Philippines will argue that China's claim to the vast territory within the nine-dash line, which accounts for nearly 70 per cent of the South China Sea, is unlawful under UNCLOS, as are China's claims to a number of maritime structures, reefs and "low tide elevations".

The statement of claim notes that UNCLOS grants coastal states the entitlement to adjacent sea for 200 nautical miles only, while the nine-dash line reaches as far as 900 nautical miles from China's coast.

According to counsel to the Philippines, Foley Hoag, the dispute will go to ad hoc arbitration as the default procedure for resolving disputes that arise under UNCLOS, set out in Annex VII of the convention. The country has already appointed its nominee to the five-person panel that will hear the case, German arbitrator Rüdiger Wolfrum, who is accustomed to hearing such disputes as a judge at the International Tribunal of the Law of the Sea (ITLOS) in Hamburg.

China has 30 days to appoint its nominee after which the parties must agree on three others, including the president of the tribunal. If they fail to agree, the appointments will be made by the president of ITLOS.

The completed tribunal will rule on the validity of China's claim to the territory but will not determine the maritime boundary or make a decision as to who holds sovereignty over the disputed islands. China opted out of an UNCLOS article prescribing mandatory arbitration of disputes over sea boundaries and military activities in 2006.

The South China Sea, which spans 3.5 million square kilometres, has historically been widely disputed between the neighbouring countries. According to a [US army report](#) from 1995, claims to islands in the region, from China, Brunei, Taiwan, Malaysia, Vietnam, and the Philippines, can be traced back to 200 BC.

China and the Philippines clashed over the territory in 1995 when Chinese forces occupied Mischief Reef in the Spratly Islands, an archipelago claimed by the Philippines.

More recently, China and Japan's competing claims to the Senkaku/Diaoyu islands in the East China Sea [have dominated press](#).

Speaking about the arbitration claim earlier today, Rosario said that, as well as challenging the validity of its claim, the Philippine government wants China to desist from "unlawful activities that violate the sovereign rights and jurisdiction of the Philippines".

China's alleged illegal acts include its establishment of a new administrative unit under the authority of China's southernmost province, Hainan, in June. The province itself was created only in 1998 and includes all of the disputed waters and islands within the nine-dash line.

In November, the Hainan administrative unit passed a law, effective from 1 January, which orders "the inspection, expulsion or detention of vessels [...] illegally entering the waters claimed by China."

The Philippines team from Foley Hoag is led by Washington, DC based partner, Paul Reichler, who recently acted for Bangladesh in an UNCLOS dispute [with Myanmar](#) over maritime boundaries in the oil-rich Bay of Bengal. That dispute was heard by ITLOS, with Wolfrum among the judges.

He is also acting for Bangladesh in an Annex VII arbitration against India over the Bay of Bengal. The tribunal hearing that case also includes Wolfrum.

Tribunal

- Judge Rüdiger Wolfrum (Germany) appointed by the Philippines
- Remaining four members yet to be appointed

Counsel to the Philippines

- Foley Hoag

Partners Paul Reichler and Lawrence Martin and associates Constantinos Salonidis,
Tafadzwa Pasipanodya and Nicholas Renzler in Washington, DC.

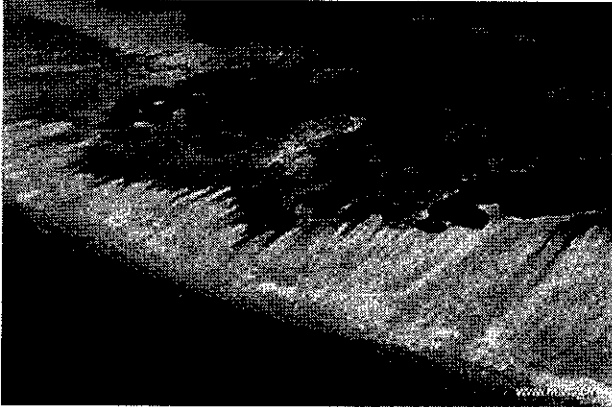
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China won't arbitrate maritime spat with Philippines

Alyx Barker • Thursday, 21 February 2013 (8 months ago)

China says it will not participate in an arbitration brought by the Philippines over disputed territory in the South China Sea.



In a [diplomatic communication](#) on 19 February, China said it "rejects and returns" the notice of arbitration and statement of claim filed by the Philippines [last month](#) under the United Nations Convention on the Laws of the Sea (UNCLOS).

China says the statement "contains grave errors of fact and law and includes many false accusations" and that its own rights over the territory are "indisputable". It also says the Philippines are illegally occupying a number of islands and reefs in the territory.

Counsel to the Philippines, Paul Reichler, partner at Foley Hoag in Washington, DC, says: "China's reaction is unfortunate. They had an opportunity to demonstrate their commitment to the international legal order, to show respect for its procedures, and to agree to be bound by its rules. One can only hope they will reconsider, and join the arbitral process at some point down the road."

Reichler says the arbitration will continue according to the ad hoc procedure set out in annex VII of UNCLOS. The Philippines have already nominated German arbitrator Rüdiger Wolfrum, and the four remaining panellists, due to China's non-participation, will be chosen by the president of the International Tribunal for the Law of the Sea (ITLOS) in Hamburg. Had China consented to take part in the proceedings, China would have nominated an arbitrator and the parties would have tried to agree on the remaining members of the panel.

In its UNCLOS claim, the Philippines challenges the validity of China's "nine-dash line" claim to nearly 70 per cent of the South China Sea. It argues that China's claim to the territory is unlawful, as are China's claims to a number of structures,



reefs and "low tide elevations". This is because UNCLOS grants coastal states entitlements to adjacent sea out to 200 nautical miles, while China claims sea as far as 900 nautical miles from its coast.

The 'nine-dash line'

Reichler says if the ad hoc tribunal rules in the Philippines' favour, "the award will have the force of

law" and that China's claim to the territory "will be exposed as unsustainable and contrary to the fundamental principles of the law of the sea. It will have no credibility internationally, and will be opposed by all neighbouring states and the international community at large."

He concludes, "China has a lot to lose, and they will not cut their losses by ignoring the arbitration process."

According to media reports, US government officials have expressed their support for the arbitration as a diplomatic and peaceful means to resolve the states' dispute.

Tribunal

- Judge Rüdiger Wolfrum (Germany) appointed by the Philippines
- Four members yet to be appointed by the president of ITLOS

Counsel to the Philippines

- Foley Hoag

Partners Paul Reichler and Lawrence Martin and associates Constantinos Salonidis, Tafadzwa Pasipanodya and Nicholas Renzler in Washington, DC.

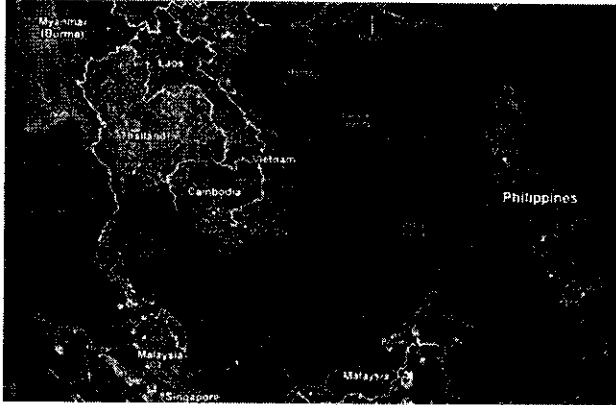
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Sri Lankan steps down from South China Sea panel

Leo Szolnoki • Tuesday, 11 June 2013 (5 months ago)

Chris Pinto of Sri Lanka has resigned as chair of the panel hearing a maritime dispute between the Philippines and China because of concerns about his wife's Filipino nationality.



The nine-dash line

Pinto disclosed his wife's nationality after being appointed last month to a five-member tribunal convened under the United Nations Convention on the Law of the Sea, or UNCLOS. He resigned on 21 May after the Philippines raised objections.

"While the Philippines does not doubt Pinto's impartiality, objectivity or fairness, it nevertheless felt compelled to object to his continued presence on the arbitral tribunal, to avoid any concerns that others might conceivably express about the strict impartiality of all of the members of the tribunal, or the legitimacy of its judgments," said the ministry of foreign affairs in an official statement.

Pinto has shown "transparency, integrity and dignity" in the matter, the statement adds.

Under UNCLOS, the president of the International Tribunal for the Law of the Sea in Hamburg, Judge Shunji Yanai, must appoint a replacement chair within 30 days.

The Philippines says it is ready to present its case as soon as the new chair is named.

A former diplomat, Pinto was the first legal adviser to Sri Lanka's ministry of foreign affairs and is a former member of the International Law Commission. He also served as secretary general of the Iran-US Claims Tribunal in The Hague between 1981 and 2011.

The Philippines brought the claim under annex VII of UNCLOS in January, seeking to challenge the validity of China's "nine-dash line" claim to nearly 70 per cent of

the South China Sea. The sea, which lies between China, the Philippines and Vietnam, has estimated oil reserves of 11 billion barrels and natural gas reserves of 266 trillion cubic feet. The Philippines argues that China's claim to the territory and a number of maritime structures, reefs and "low tide elevations" are unlawful.

China has declined to participate in the proceedings, arguing that the Philippines' claims rest on unresolved claims to a number of islands that are not covered by the Law of the Sea.

The other members of the ad hoc tribunal are Poland's Stanislaw Pawlak, France's Jean-Pierre Cot and the Netherlands' Alfred Soons, all appointed by ITLOS, and Rüdiger Wolfrum of Germany, who was nominated by the Philippines.

Malaysian prime minister Najib Razak has suggested recently that regional diplomacy may be a more appropriate solution to the South China Sea dispute, calling for the two states to jointly develop resources.

In a speech in Kuala Lumpur last week, Razak said the Philippines and China should follow the example of Thailand and Malaysia, which have agreed on a joint development zone in disputed waters. Such a zone could help to avoid conflict and prevent states from outside the region becoming involved, he argued.

"For Asian nations, this problem is ours to solve," said Razak. "Should we stray from the path of dialogue and cooperation, we may pave the way for other parties to take remedial action to protect the freedom of navigation and safe passage."

Tribunal

- Chair position vacant following the resignation of Chris Pinto of Sri Lanka
- **Jean-Pierre Cot** (France), appointed by ITLOS
- **Alfred Soons** (Netherlands), appointed by ITLOS
- **Stanislaw Pawlak** (Poland), appointed by ITLOS
- **Rüdiger Wolfrum** (Germany), appointed by the Philippines

Counsel to the Philippines

- **Foley Hoag**

Partner **Paul Reichler** in Washington, DC

Counsel to China

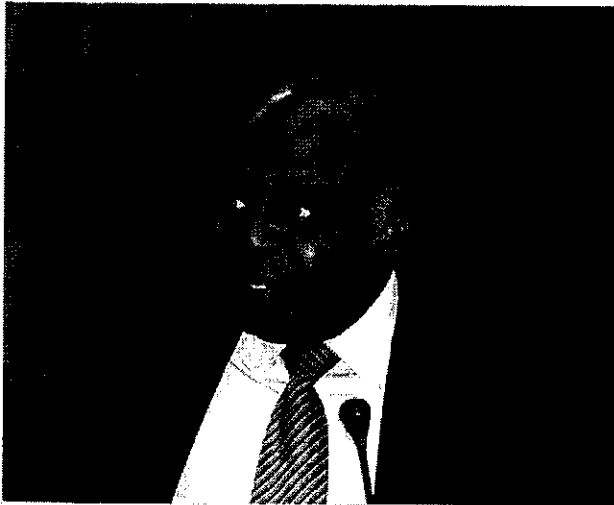
China has declined to appoint counsel.



Ghanaian to chair South China Sea panel

Douglas Thomson • Tuesday, 25 June 2013 (4 months ago)

A former president of the International Tribunal for the Law of the Sea, **Thomas Mensah** of Ghana, has been named as the new chair of the panel hearing a maritime dispute between China and the Philippines.



Thomas Mensah

Current ITLOS president **Shunji Yanai** appointed Mensah on 21 June to replace **Chris Pinto** of Sri Lanka, who resigned from the panel last month after the Philippines raised concerns about his wife's Filipino nationality.

Mensah, 81, was ITLOS's first president, having led the tribunal from 1996 until 1999. He is currently serving on a tribunal in The Hague hearing a dispute between India and Bangladesh over maritime boundaries in the Bay of Bengal. Mensah was also appointed as a replacement in that case, after **Vaughan Lowe QC** resigned over an unforeseen conflict of interest.

His career began in the Ghanaian civil service, before he joined the UN International Maritime Organisation in 1968, working there until his retirement in 1990. He has also served as the Ghanaian ambassador to South Africa.

The Philippines brought the case at the start of this year under the United Nations Convention on the Law of the Sea. It has asked the panel to establish territorial rights in the South China Sea, also known as the West Philippine Sea, which lies between China, the Philippines and Vietnam. The sea, which contains some of the world's most heavily travelled shipping lanes, has estimated oil reserves over 11 billion barrels and natural gas reserves of 266 trillion cubic feet.

China has refused to participate in the arbitration, arguing that the Philippines' claim depends on claims to island territory that are not covered by the law of the

sea. It has declined to appoint counsel or nominate an arbitrator to the five-member panel.

Taiwan and Vietnam have also laid claim to parts of the same disputed territory. The Philippines has supported proposals by the Association of Southeast Asian Nations to negotiate en bloc with China over the sea's future. China wishes to resolve the dispute through separate bilateral negotiations with the contending countries.

The dispute has become more heated in recent weeks after a Philippine navy transport ship was wrecked on the Second Thomas Shoal, a coral reef near the disputed territory of the Spratly Islands. China claims the reef is within its territory and has dispatched ships to the area.

Counsel to the Philippines, Paul Reichler of Foley Hoag in Washington, DC, says the state is "very pleased" with Mensah's appointment. "As a former president of ITLOS and recognised expert on the law of the sea, as well as an individual of the highest integrity, Judge Mensah is an excellent choice."

The foreign secretary of the Philippines, Albert del Rosario, told an audience at Silliman University in the Philippines last week that "Arbitration is an open, friendly and durable approach. Arbitration benefits all nations."

Del Rosario said the proceedings will help each country "define and clarify" its maritime entitlements. "It will define where we can fish. It will define our access to our natural resources and it will define our enforcement of our laws within our own exclusive economic zone and continental shelf. For other countries, it serves a very useful purpose as well. We will be able to do away with the threat to freedom of navigation in the region."

Mensah will sit alongside France's Jean-Pierre Cot, the Netherlands' Alfred Soons, Poland's Stanislaw Pawlak and Germany's Rüdiger Wolfrum, who also serves on the Bay of Bengal panel.

The tribunal is expected to meet soon to agree on rules of procedure and the schedule for written and oral pleadings.

Tribunal

- **Thomas Mensah** (Ghana) (Chair), appointed by ITLOS
- **Jean-Pierre Cot** (France), appointed by ITLOS
- **Alfred Soons** (Netherlands), appointed by ITLOS
- **Stanislaw Pawlak** (Poland), appointed by ITLOS
- **Rüdiger Wolfrum** (Germany), appointed by the Philippines

Counsel to the Philippines

- **Foley Hoag**

Partner Paul Reichler in Washington, DC

Counsel to China

China has declined to appoint counsel.

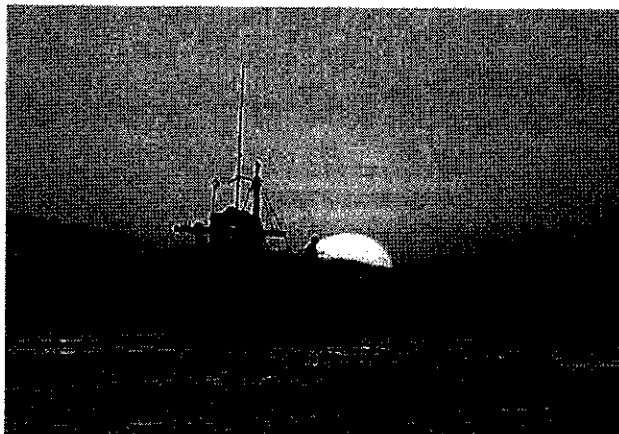
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South China Sea case underway, without China

Leo Szolnoki • Thursday, 29 August 2013 (2 months ago)

The tribunal that will decide the Philippines' claims to parts of the South China Sea has laid down a timetable for the case, with China reiterating its refusal to participate in the proceedings.



Boats on the South China Sea (Credit: MikeRussia)

According to a [press release](#) by the Permanent Court of Arbitration on 27 August, the tribunal has issued its first procedural order. It directs the Philippines to submit a memorial by 30 March 2014 addressing "all issues", including jurisdiction, admissibility and the merits. The order itself has not been published.

The PCA, which is acting as registry in the case, has also published a counsel list for the dispute on its website. The Philippines has instructed Philippe Sands QC of Matrix Chambers and Alan Boyle of Essex Court Chambers in London, along with Bernard Oxman, professor at the University of Miami. The trio are co-counsel with Paul Reichler and Lawrence Martin, partners at Foley Hoag's Washington, DC office.

The Philippines is challenging the validity of China's "nine-dash line" claim to nearly 70 per cent of the South China Sea. It filed the claim in January under annex VII of the United Nations Convention on the Law of the Sea (UNCLOS).

China has not appointed counsel and refuses to participate in the proceedings. The state issued a note verbale to the PCA on 1 August reiterating its position that "it does not accept the arbitration initiated by the Philippines".

The five-member tribunal is chaired by Thomas Mensah of Ghana, sitting with Jean-Pierre Cot of France, Stanislaw Pawlak of Poland, Alfred Soons of the Netherlands and Rüdiger Wolfrum of Germany.

Wolfrum was appointed by the Philippines, with the other four members appointed by the president of the International Tribunal of the Law of the Sea, Shunji Yanai of Japan, as a result of China's refusal to participate. Mensah was

appointed to replace the original tribunal chair, Sri Lanka's Chris Pinto, who stepped down after the Philippines raised concerns about his wife's Filipino nationality.

According to the PCA, the tribunal's procedural order also established rules of procedure governing matters including communications, publicity, organisation of hearings, requests for provisional measures, and the appointment of experts.

China's refusal to participate in the arbitral proceedings has raised questions about the enforceability of an award in the Philippines' favour. US international law professor Julian Ku argued in a blog post in February that "the decision by the Philippines to continue with the arbitration (sans China) is not really any more futile than if China had fully participated. In both situations, China would likely not have complied with any unfavourable award. Any award is only going to be useful to rally other countries to the Philippines' side as well as in marshalling global public opinion to its cause."

In a speech delivered to the Philippine Bar Association earlier today, Associate Justice Antonio Carpio of the Supreme Court of the Philippines spoke of the importance of the UNCLOS proceedings in upholding the rule of law.

"The maritime dispute between the Philippines and China is an acid test to the very survival of UNCLOS – whether the rule of law will govern the oceans and seas of our planet, or whether the rule of the naval cannon will prevail."

Tribunal

- **Thomas Mensah** (Ghana) (Chair), appointed by ITLOS
- **Jean-Pierre Cot** (France), appointed by ITLOS
- **Alfred Soons** (Netherlands), appointed by ITLOS
- **Stanisław Pawlak** (Poland), appointed by ITLOS
- **Rüdiger Wolfrum** (Germany), appointed by the Philippines

Counsel to the Philippines

- **Foley Hoag**

Partners Paul Reichler and Lawrence Martin in Washington, DC

- **Philippe Sands QC** of Matrix Chambers in London
- **Alan Boyle** of Essex Court Chambers in London
- **Bernard Oxman** at the University of Miami School of Law in Miami, Florida

Counsel to China

China has refused to appoint counsel

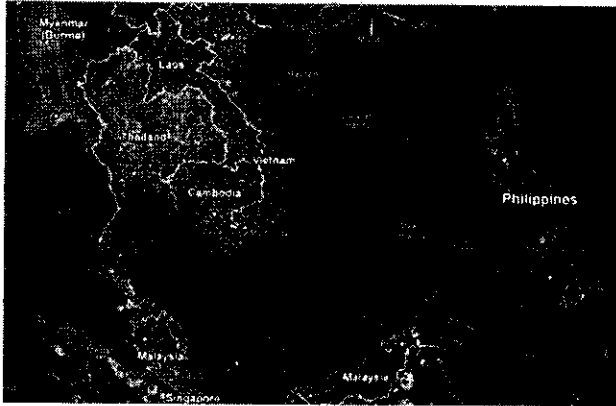
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Panel appointed in South China Sea dispute

Douglas Thomson • Monday, 29 April 2013 (6 months ago)

Arbitrators have been appointed to preside over a dispute between the Philippines and China over the South China Sea, despite China refusing to co-operate in the arbitration.



The nine-dash line

Four arbitrators have been named by the International Tribunal of the Law of the Sea (ITLOS) president Judge Shunji Yanai, as appointing authority, after China refused to nominate an arbitrator or co-operate in the nomination of a panel.

The Japanese judge's appointments to the panel are Poland's Stanislaw Pawlak, France's Jean-Pierre Cot, the Netherlands' Alfred Soons, and Sri Lanka's Chris Pinto, who will serve as chair.

The fifth member of the panel, Germany's Rüdiger Wolfrum, was nominated by the Philippines some time ago.

Had China participated in the process, it would have nominated its own arbitrator with the rest of the panellists chosen jointly by the parties.

The dispute was submitted to ad hoc arbitration by the Philippines in January under the Annex VII of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). It challenges the validity of China's "nine-dash line" claim, under which the state claims nearly 70 per cent of the South China Sea.

The South China Sea, which lies between China, the Philippines and Vietnam, is the second most used sea lane in the world, and possesses estimated oil reserves of around 11 billion barrels and estimated natural gas reserves of 266 trillion cubic feet.

As China has opted out of UNCLOS Article 268, which mandates arbitration of disputes over sea boundaries and military activities, the tribunal will not make determinations on sovereignty but only on the validity of China's claim.

China has protested against the Philippines' referral of the decision to arbitration and has stated that it will not co-operate. It is not expected to be represented at the tribunal's hearings.

In a statement posted on its website, the Chinese foreign ministry accused the Philippines of a "self-contradictory" position, in seeking "a durable solution" to the dispute while not seeking a determination of sovereignty. The ministry adds, "The Philippines has distorted the basic facts underlying the disputes. In so doing the Philippines attempts to deny China's territorial sovereignty and clothes its illegal occupation of China's islands and reefs with a cloak of 'legality'."

China maintains that UNCLOS arbitration is inappropriate as the claims to the South China Sea rest on unresolved claims to a number of islands, which as land territory are not covered by the Law of the Sea.

Counsel to the Philippines Paul Reichler, a partner at Foley Hoag in Washington, DC, says, "The Philippines is very pleased by the appointments to the arbitral tribunal. All the arbitrators are pre-eminent authorities and highly-esteemed experts on the Law of the Sea."

"This is exactly the kind of tribunal the Philippines wanted. Whatever decision the tribunal makes, it will not only be legally binding on the parties, but will carry great weight in the international community as a whole as an authoritative, unimpeachable, balanced and fair verdict that should be respected by all concerned."

Commentators may be struck by the number of ITLOS judges on the panel: Pawlak, Cot and Wolfrum are all part of the Hamburg-based judicial body (indeed, Wolfrum presided over it from 2005 to 2008.)

Under UNCLOS, the Philippines could also have opted to submit its dispute to ITLOS, along with other international judicial bodies such as the ICJ. While it instead went down the ad hoc arbitration route, the choice of arbitrators creates a likelihood that the panel will rule consistently with past ITLOS jurisprudence to the extent that similar issues arise.

Of the five arbitrators, Wolfrum is known to be appearing in other Annex VII arbitrations – to resolve a dispute between India and Bangladesh over maritime territory in the Bay of Bengal, and another between the UK and Mauritius over the Chagos Islands.

The two arbitrators who are not part of ITLOS are Pinto and Soons. Pinto is a former Sri Lankan diplomat, the first legal adviser to the Ministry of Foreign Affairs in Colombo and the former secretary general of the Iran-US Claims Tribunal in The Hague. Soons is a professor at the Institute of Public International Law at Utrecht University and a specialist in maritime law.

China's claims in the South China Sea are also challenged by Brunei, Malaysia, Taiwan and Vietnam.

Tribunal

- **Chris Pinto** (Sri Lanka) (President), appointed by ITLOS
- **Jean-Pierre Cot** (France), appointed by ITLOS
- **Alfred Soons** (Netherlands), appointed by ITLOS
- **Stanislaw Pawlak** (Poland), appointed by ITLOS
- **Rüdiger Wolfrum** (Germany), appointed by the Philippines

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