

Dispute analysis of the South China Sea based on an international legal perspective

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Abstract

Due to competing maritime claims, the conflict between the Philippines and China over the South China Sea is still ongoing today. The Paracel and Spratly Islands are at the center of this conflict due to territorial disputes. The islands, claimed by both China and the Philippines, are known as the Spratly Islands. The Philippines sued China at the Permanent Court of Arbitration (PCA) over a sovereignty dispute, and the PCA sided with the Philippines and declared China the losing party. The study aims to examine the circumstances that led to the war between the two countries, as well as the role and perspective of International Law in this event. The study used normative legal writing that pays attention to statutory rules, policy regulations, principles, theories related to applicable international law, and examination of events from a factual perspective.

Keywords: Dispute, China, Philippines, PCA, international law

Introduction

The maritime boundary provisions of a country in Article 3 and also Annex VII in the United Nations Convention on the Law of the Sea (UNCLOS) regarding the Breadth of the territorial sea, which contains *"Every State has the right to establish the Breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention"* (United Nations Convention on the Law of the Sea).

According to the International Hydrographic Bureau (IHB), the South China Sea is a body of water that stretches from southwest to northeast, between latitude 3 degrees south (Karimata Strait) between Sumatra and Kalimantan and the island of Taiwan. A waterway connecting China's Fukien Peninsula with the northern point of Taiwan. Water covers almost four million square kilometers. Since humans first learned to travel long distances by boat, the South China Sea has served as an important trade corridor between the West and East. To facilitate trade between Asia and Europe, the South China Sea has become an important international shipping lane. The South China Sea serves as the main route for hundreds, if not millions, of ships involved in international import-export trade every day.

China maintains that the South China Sea is a legitimate part of China's territory because of its historical significance to ancient dynasties. Almost of the entire South China Sea is under Chinese sovereignty. According to Chinese charts, the nine-dash line includes the Paracel and Spratly Islands as part of China's sovereign territory. China asserts ownership of the islands based on archives dating back more than 2,000 years, including ancient writings and maps used by Chinese fishermen. The Spratly Islands have been Chinese territory since at least the Han, Yuan, and Ming dynasties. The Paracel and Spratly Islands were transferred to China in the 1887 border treaty between China and France (when Vietnam was a French colony) (Jock, 1997).

Since the Qing dynasty, China has claimed the Paracel and Spratly Islands as part of its territory. To this day, China maintains a strong military presence in the South China Sea to protect its claims to the islands and deter potential threats from other countries. After the Philippines' independence from the United States in 1946, the country's leaders paid

more attention to the Spratly Islands and officially claimed them as their own at the United Nations. In a declaration published after independence, the Philippine Minister of Foreign Affairs said that Japan had ceded sovereignty over the new southern islands (JN Mak, 1997) ^[3].

The Philippines accuses China of violating its sovereignty by carrying out fishing activities and land reclamation projects in disputed areas, including the creation of artificial islands. The Philippines opposes China's claims in the South China Sea, symbolized by the nine-dash line, on the grounds that it violates Philippine sovereignty and international maritime law. In recent years, rumors have circulated that China is building an artificial island in Sparkly. The Philippine government views these activities as a violation of Philippine sovereignty and insists that China has no jurisdiction over these activities. The South China Sea dispute then drove the dynamics of their relationship.



Fig 1: UNCLOS Nine Dash Map

The Arbitration Court has decided on the Philippines' lawsuit. But, China which claims almost the entire region, continues to obstruct negotiations, rejecting all efforts to resolve the South China Sea conflict. Considering the above

circumstances, the researcher's position on this issue is as follows:

1. What is the outcome of the decision from the Permanent Court of Arbitration in the trial of the Philippines' dispute with China over the South China Sea?
2. What is the impact of the final decision from the Permanent Court of Arbitration in the trial of the Philippines' dispute with China regarding the South China Sea?

Discussion

1. What is the outcome of the decision from the Permanent Court of Arbitration in the trial of the Philippines' dispute with China over the South China Sea?

There are usually two categories of approaches to resolving ongoing international conflicts. Forms of diplomatic resolution, negotiation, mediation, investigation, and conciliation are preferred because they place the power to resolve the conflict back into the hands of the disputants, who are free to accept or reject the terms offered as they see fit. On the other hand, binding decisions, often based on international law, can be obtained through arbitration or judicial settlement (Merrills, 1986). The International Arbitration Court has the following legal authority:

- If disputes between countries that have signed the convention cannot be resolved diplomatically, the International Court of Arbitration has legal jurisdiction to review the relevant decisions.
- Conflicts between members of the PCA or between members of the International Court of Arbitration and non-member states fall under the exclusive scope of the Court's special jurisdiction.

There are three parts to the dispute resolution procedures established by UNCLOS 1982. UNCLOS provides a comprehensive legal framework for determining the rights and obligations of countries regarding the use and management of marine resources. In Article 1, the parties commit to working together to resolve any conflict. If the process in Part 1 fails to resolve the issue, the parties may use the forced dispute resolution methods outlined in Part 2 to come to a legally enforceable conclusion. The limitations and exceptions to processing in Section 2 are set forth in Section 3 to the extent permitted by applicable law. Upon request of the parties, the Court shall have exclusive jurisdiction over this matter (UNCLOS, 1982).

However, China's decision not to participate in arbitration has its consequences. The Chinese Party did not participate in the arbitration proceedings by appearing in person or appointing a representative, by submitting a Counter-Memorial in response to the Philippines' lawsuit, by attending the July 2015 Jurisdiction Session, or by responding to the Court's request for costs related to the costs of the arbitration.

International law plays an important role in resolving disputes that have arisen. The function of international law in resolving legal conflicts is to make it easier for disputing parties to resolve their legal problems in accordance with international law. International law has long recognized that there are peaceful and coercive means of resolving disputes. Article 2, paragraph 3 of the UN Charter states that states must make every effort to resolve their differences

peacefully. To accomplish this task, the country concerned does not need to use physical force or threats of violence. To maintain international peace, security, and justice, governments are obliged to work toward peaceful resolution of their conflicts (Adolf, 2014) ^[2]. According to the United Nations Charter, Article 33, paragraph 1, arbitration is a method of resolving international disputes that has been accepted by the international community, which adds further requirements to the need for peaceful resolution of international conflicts.

The South China Sea territorial dispute between the Philippines and China was resolved by the Permanent Court of Arbitration (PCA) on July 12, 2016. China's extensive maritime claims in the South China Sea are not permitted under international law, according to a PCA study.

Here are some highlights from the PCA decision between the Philippines and China:

- Rejecting China's expansive maritime territorial claims in the South China Sea based on UNCLOS principles, the PCA argued that China has no legal basis for such claims. According to the PCA, China has no reason to claim an EEZ or continental shelf in the area around the Spratly Islands.
- Based on their physical characteristics, the PCA also determined that several features that China claims as islands do not meet the criteria set by UNCLOS. Neither the EEZ nor the continental shelf can be formed by objects such as coral reefs.
- Manufacturing Development Activities in China: The PCA concluded that certain Chinese efforts to convert land features into artificial islands did not result in the acquisition of additional sovereign rights over those areas. The Philippines believes that China's reclamation and development of several Spratly Islands is a violation of their EEZ rights to utilize natural resources.
- Regarding the Philippines' right to free navigation in the South China Sea, the PCA also emphasized that China has violated this right. China was found to be unlawfully blocking Philippine vessels from engaging in fishing and exploration within the Philippines' EEZ (Permanent Court of Arbitration, 2015).

2. What is the impact of the final decision from the Permanent Court of Arbitration in the trial of the Philippines' dispute with China regarding the South China Sea?

The award given by the arbitrator is often final and binding so that conflicts can be resolved more quickly than in the traditional justice system, which takes longer due to the need to take legal action in the decision and court stages.

Specifically, in the South China Sea dispute, the PCA used UNCLOS 1982 to handle the dispute. Regarding the legal implications, you can see the provisions of Article 11 of Appendix VII to the 1982 Law of the Sea Convention, which reads: *"Unless the parties to the dispute have already consented to an appellate process, the award shall be final and not subject to further review. The parties to the dispute must adhere to it."* The terms "final" and "without appeal" in the article indicate that the arbitration award cannot be challenged, affirmed, or reviewed. This shows that there are no other legal options available to challenge the decision of the arbitration institution and the arbitration award. Furthermore, from this article, it can be concluded that China and the Philippines are required to negotiate a

peaceful resolution of the conflict and strictly comply with the PCA's decision on the South China Sea issue as well as the 1982 Law of the Sea Convention. In addition, both China and the Philippines have been signatories to the Law of the Sea Convention since 1982.

As stated by the Philippines in points 1) and 2), this really has to do with the nature and legality of the "historical rights" that China asserts in the South China Sea. The way these historical rights are interpreted will determine whether they are also covered by the exceptions in Article 298(1) of the 1982 UNCLOS and whether there is any overlap in areas where China asserts sovereignty and where it is believed to engage in activities. The occurrence of overlap in the areas concerned will have an impact on the application of limitations and exceptions to litigation regulated in Article 297 and Article 298. The Philippine case from point three) to point twelve) will be influenced by the nature of historical rights, especially in point five). In cases 8 and 9, the Philippines urged the court to rule that some maritime features of the South China Sea fall within its economic zone or continental shelf, giving it legal authority to exercise sovereignty (Hanifah, 2017) ^[1].

The idea of good faith states that the parties must carry out the contents of the contract in a manner that is consistent with its substance, essence, meaning, and purpose, as well as respecting the rights and obligations of each party and third parties who may be given rights or obligations. Respecting this concept means not taking any action that would hinder efforts to fulfill the aims and objectives of the agreement itself, either before, during, or after its implementation, depending on whether the parties are awaiting the implementation of another agreement.

According to Mr. I Made Andi Arsana, Director of the International Affairs Office at Gajah Mada University Yogyakarta, the PCA decision is conclusive and can be legally enforced. Because the decision is final and takes effect immediately after it is handed down, the Philippines cannot file a legal remedy in the form of an appeal. This decision cannot be challenged in court because of the wider legal consequences. He, however, warned that the Philippines could report back to China on its behavior if it continues to reject the PCA's decision, stand firm, and carry out its operations on the Nine Dash Line. China could be held accountable for its actions either to the PCA or other judicial organizations also qualified to adjudicate maritime disputes if it is determined that China's actions are harmful to the Philippines and violate Philippine sovereignty (Hanifah, 2017) ^[1].

A number of important effects flow from the final decision of the Permanent Court of Arbitration (PCA) in the South China Sea conflict between China and the Philippines:

- **Validity of Maritime Claims:** According to the PCA decision, China's extensive maritime claims in the South China Sea do not have a strong legal basis under the UN Convention on the Law of the Sea (UNCLOS). This shows the legitimacy of maritime claims made by other countries in the region that are at odds with China over territorial issues. The result is a stronger position for countries with territorial claims to the South China Sea, including Vietnam, Malaysia, Brunei, and Indonesia.
- **Determination of Exclusive Economic Zone (EEZ) Boundaries:** The PCA ruling clarifies that geographical

features claimed by China, such as the Spratly Islands, cannot create an EEZ or continental shelf that China can claim. This provides legal clarity for other countries with territorial claims in the region and strengthens their rights to access natural resources in their EEZs.

- **Freedom of Navigation:** The PCA ruling confirms that China violated the Philippines' right to freedom of navigation in the South China Sea region. This has important implications for other countries across the region, including their economic, fishing, and trade interests. The ruling strengthens the principle of freedom of navigation and supports the interests of other countries wishing to safeguard their rights in the region.
- **Legal Dispute Resolution:** The PCA decision sets an important precedent in resolving international maritime disputes through international legal mechanisms. This shows the importance of using legal procedures and institutions such as the PCA in resolving disputes between countries. The impact is to encourage other countries to seek peaceful solutions through existing legal mechanisms.

Considering that the PCA decision in the South China Sea conflict has become a source of international law, China must recognize the consequences of this decision. The international community will experience order, regularity, justice, and peace if a country obeys international law. On the other hand, if China continues to defy the PCA's assessment and carries out aggression in the South China Sea Region, regional instability may result, which could result in open hostilities.

PCA decisions are final and binding, although there is no mechanism for their implementation based on Annex VII to the Law of the Sea Convention (1982). In other words, the good faith of the parties will determine how the assessment is conducted because the PCA does not have the power to do so. The Philippines' readiness to stand firmly against China in light of China's reaction, which rejected the outcome of the PCA ruling, will play an important role in its efforts to oppose China as international law has no enforcement authority over the country in this situation.

Conclusions

The following conclusions can be drawn from the discussion in the previous chapter's findings:

1. The final PCA decision stated that China does not have a strong legal basis for claiming large maritime areas in the South China Sea based on UNCLOS principles. The PCA found that geographic features such as the Spratly Islands could not create an exclusive economic zone (EEZ) or continental shelf that China could claim.
2. China must comply with the PCA ruling in the South China Sea conflict because it has been recognized as a source of international law. The international community will experience order, regularity, justice, and peace if a country obeys international law. On the other hand, if China continues to defy the PCA's assessment and carries out aggression in the South China Sea Region, there may be regional instability that could result in open hostilities.

Disputes in the South China Sea underscore the important role of international law in maintaining peace and security. International law provides a framework for resolving disputes and promoting the principles of justice, security, and cooperation among states. This dispute has far-reaching regional and global impacts. Negotiations and dispute resolution require the involvement of various parties, including international parties who have interests in the region. It is important to continue monitoring the dynamics of this dispute and find a solution that is acceptable to all parties. The role of international organizations and regional cooperation is key in facilitating dialogue and finding sustainable solutions.

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