

THE SOUTH CHINA SEA INTERNATIONAL DISPUTES WITH THE ASEAN AREA (IN INTERNATIONAL MARITIME LAW)

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Abstract

In history, the sea has been shown to have had various functions, including as a source of food for mankind, as a trade highway, as a means of conquest, as a place for battles, as a place for fun and recreation, and as a means of unifying or separating nations. nation. As one of the regions with a high degree of heterogeneity, the Asia Pacific region is often considered a region that is very vulnerable to conflict on the basis of a fragile regional balance. The purpose of this study is to find out that one of the territorial conflicts in the Asia Pacific is the South China Sea conflict which involves several countries including China, Taiwan, the Philippines, Vietnam, Malaysia and Brunei Darussalam. This research uses a normative approach in accordance with international maritime regulations, especially UNCLOS and the UN Arbitration Council. The results of this study indicate that she said the South China Sea entered a new chapter by submitting a dispute over the issue of territorial claims to the Arbitration Court in The Hague, Netherlands. The Philippines in January 2013 has officially brought the territorial dispute in the South China Sea to the international arbitration body. Political disputes have been stopped and entered a new phase, namely legal settlement. The issue that arises is whether legal settlement can be the key answer to this territorial dispute, then whether legal settlement can create justice for the disputing countries. Furthermore, whether a legal settlement can dampen and create stability and security in the region. It may be very far if a legal settlement can fulfill some of the questions above.

Keywords: Arbitration; Dispute; Sea; International; UNCLOS.

A. INTRODUCTION

The South China Sea issue is an issue that involves many claimant countries, including: China (PRC), Taiwan, Brunei, Malaysia, Vietnam, the Philippines. In addition, many countries have interests related to the South China Sea, both countries that have direct borders and countries that do not border the sea in question¹. So that it can be believed that the settlement

¹ Cogliati-Bantz, Vincent P., The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China), *The International Journal of Marine and Coastal Law*, Vol.

mechanism will be very complex and require a common understanding between the disputing countries and also the countries that have interests in the South China Sea.²

The South China Sea dispute can be understood to consist of 2 fundamental things, namely the issue of ownership of islands/reefs/geographical formations and issues of maritime boundaries. To resolve the dispute should be approached with a different method. The issue of ownership of islands/reefs/geographical formations will raise questions about who owns the island, what is the status of island ownership, and such ownership is regulated by standard international law, including how to acquire the area. In international law, the way to obtain territory can be seen in 4 ways, including: prescription, namely the acquisition of territory through occupation for a certain (long) period of time peacefully without being sued by any party and in the area a government administration is carried out involving the community³; conquest/annexation, namely the acquisition of territory through forced conquest, at present the conquest method is not justified under international law; cession, namely the acquisition of state territory through agreements between countries where the agreement regulates the transfer of state territory; accretion, namely the acquisition of state territory caused by nature or the geographical change of the area to be enlarged due to natural phenomena. In disputes in the South China Sea, each claimant country makes its own arguments regarding the ownership of islands/corals/other geographical formations.⁴

The second problem is related to the issue of maritime boundaries, in this issue several questions will arise, including: where are the maritime boundaries in the South China Sea; what type of boundary line is the territorial sea boundary line, the EEZ boundary line or the continental shelf boundary line; The determination of maritime boundaries including procedures, procedures and mechanisms for determining maritime boundaries is specifically regulated in international law and these maritime boundaries must be approved by the parties or determined by an international judicial body. In the case of the South China Sea dispute, claimant countries tend to draw boundaries unilaterally and are not based on standard international law.⁵

The problem of ownership of geographic features and the problem of maritime boundaries are different issues, but these problems are very

31, No. 4, 2016, page.759–74

2 Chapman, Bert., China's Nine-Dashed Map, *Geopolitics, History, and International Relations*, Vol. 8, No. 1, 2016, page.146–68

3 Prayuda, Rendi, and Fanesa Angeli., Analysis implementation Of The Coc (Code Of Conduct) Concept In Conflict Resolution In The North Natuna Sea, *Journal Pear: Power In International Relations*, Vol. 4, No. 2, 2020, page.137

4 Cogliati-Bantz, Vincent P., 2016, Op.cit

5 Bangkok Declaration in 1967, ASEAN then had a legal personality with he agreed *ASEAN Charter in 2008. ASEAN was established on 8 August 1967 in Bangkok, Thailand, with signed Declaration ASEAN (Declaration Bangkok)*, <http://www.asean.org/overview/accessed> on January 1, 2018.

related. Determining the ownership of islands/corals/other geographical formations will greatly determine where a country's maritime boundaries are. This is because of the islands/reefs/geographical formations, the maritime zones and maritime boundaries of a country can be determined. International law unequivocally states⁶ "land dominated seas" that islands/reefs/geographical formations must be determined first, and then maritime boundaries can be determined⁷.

The South China Sea dispute arises over the ownership of islands/reefs/natural formations which are contested by claimant countries, as well as maritime boundary issues which are not only contested by claimant countries but will affect other countries, for example Indonesia. Therefore, the determination of ownership of islands/corals/natural formations must be determined first, then maritime boundaries will be determined through agreements or other mechanisms. The next issue is whether the state may determine the sea area without determining the geographical features in it. UNCLOS 1982 does not regulate such conditions⁸, UNCLOS 1982 only regulates historical bays. However, international legal literature regulates historical title to waters, even though it does not appear in the 1982 UNCLOS provisions⁹.

B. RESEARCH METHODS

This study uses a normative approach by prioritizing compliance with international maritime regulations including UNCLOS and in data collection using the literature method in searching for historical, political, dispute, arbitration and results of diplomatic relations between disputing countries, especially China and ASEAN.

C. RESULTS AND DISCUSSION

1. Peaceful Settlement Mechanism

International law (UN Charter and UNCLOS 1982) confirms that any dispute between countries must be resolved peacefully. The mechanism for peaceful dispute resolution can be taken outside the court or in the trial. Dispute resolution mechanisms outside the court can be pursued, including: negotiation, mediation, conciliation, and several other mechanisms. Meanwhile, the settlement of disputes in court can be

6 Mogato, Manuel., *Philippines sees Japan as a balance to China Ambitions*, Jakarta Post December 2012, Look Also <http://khabarsoutheastasia.com/id/article/s/apwi/articles/newsbriefs/2012/06/23/newsbrief-03>. See also Reuters., Vietnam Steps up Sea Patrols as Tensions with *China Rise*, Jakarta Post, December 5, 2012.

7 Korkut, Ekrem, and Woo Hyun Kang., China's Nine Dash Line Claim in Light of the Ruling by the Permanent Court of Arbitration (12 July 2016), *Penn St. JL & Int'l Aff.*, Vol. 5, 2017, page.425

8 Callista, Prameshwari Ratna, Muchsin Idris, and Nanik Trihastuti., China Claims About Traditional Fishing Ground in Indonesian Natuna Waters in the 1982 UNCLOS Perspective, *Diponegoro Law Journal*, Vol. 6, No. 2, S1 Study Program in Law, Faculty of Law, Diponegoro University, 2017, page.1-13

9 Rapang, I., Z. Fanani, S. Widagdo, and T. Domani., Maritime Policy Integration Model at Natuna on The Defense and Security Perspective, *Russian Journal Of Agricultural And Socio-Economic Sciences*, Vol. 100, No. 4, 2020, page. 73-85

reached through international courts or arbitration bodies¹⁰.

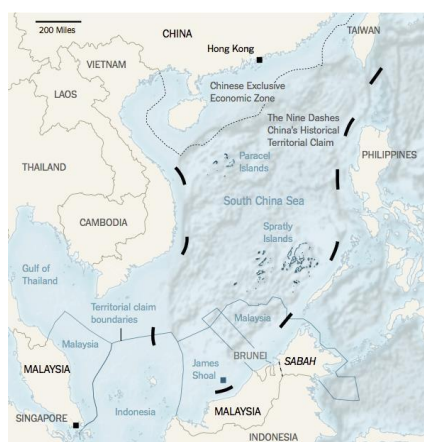


Figure 1. Nine-dash Line
(Geogearage From Rappler by Ayee Macaraig)

UNCLOS 1982 has comprehensively regulated the dispute settlement mechanism namely Chapter XV and Appendices V, VI, VII and VIII of the 1982 UN Convention on the Law of the Sea. Disputing countries are encouraged to use voluntary mechanisms, namely mechanisms agreed upon by the parties, regional mechanisms and conciliation, will but if this is not achieved, it can be reached through a compulsory procedure mechanism involving binding decisions which limits the selection of mechanisms to 4 ways, namely the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), the arbitral tribunal, and a special arbitral tribunal. The jurisdiction that can be owned by the established court is only related to “the interpretation and application of the provisions in UNCLOS. In addition, countries are allowed to make declarations regarding the implementation of this dispute resolution system, especially regarding articles 15, 74 and 83 of UNCLOS concerning the application of maritime boundaries, historical rights and traditional rights; disputes about military activity, and disputes related to the role of the United Nations Security Council. China, the Philippines, Malaysia, Thailand, South Korea and Australia are countries in the region that exercise this declaration right¹¹.

Dispute resolution through the mechanism stipulated in the 1982 UNLCOS has jurisdictional limitations, namely only on matters of interpretation and application of the 1982 UNCLOS provisions. This limitation will of course have consequences in resolving disputes involving ownership status of geographical features and maritime boundaries such as the South China Sea dispute. Settlement of disputes related to island/reef ownership status is usually resolved through

10 Emmers, Ralf., *ASEAN, China and the South China Sea: an opportunity missed*, *IDSS Commentaries*, 2012, <https://www.aa.com.tr/en/asia-pacific/3-reasons-china-tries-to-control-south-china-sea/2157110> [accessed March 16, 2021]

11 Buszynski, Leszek., *The South China Sea: Oil, Maritime Slaims, and US – China Strategic Rivalry*, The Washington Quaterly, Spring, 2012;

negotiation or the International Court of Justice.

The settlement mechanism regulated in the 1982 UNCLOS can be said to be a very complex mechanism, including accommodating peaceful settlements through a voluntary mechanism as adhered to in the UN Charter, however, UNCLOS 1982 also regulates a binding mechanism (compulsory procedure). In addition, countries are allowed to make declarations that are not bound by these binding settlements. Therefore these settlement mechanisms are very complex and require countries to study and understand these procedures. As in national law, dispute resolution in international law must also pay attention to the rule of procedure, material law (elements of crimes/subjects/matters), and budgeting.

2. Peace Issues between the Philippines and China

Based on article 287 and Annex VII of UNCLOS, the Philippines adopted a binding decision system mechanism by submitting a dispute settlement to the South China Sea to the Arbitration Court on January 23, 2013 through Philippine Diplomatic Note No. 13-0211. The Philippines submitted demands to the Arbitration Court, among others:

A statement that the PRC's rights in the maritime area of the South China Sea are governed by UNCLOS 1982 which consists of rights to territorial seas and ancillary zones, exclusive economic zones, and continental shelves;

- a. Statement that the PRC's maritime claims in the South China Sea based on the nine dash line have no legal basis and are contrary to UNCLOS 1982;
- b. Requesting the PRC to harmonize its national laws in accordance with the provisions of the 1982 UNCLOS;
- c. Declaring Mischief Reef and McKennan Reef to be subsea features of the Philippine continental shelf under Chapter VI of UNCLOS 1982 and all occupation and development activities on those features violates the sovereign rights of the Philippines;
- d. Call on the PRC to end its occupation of Mischief Reef and McKennan Reef;
- e. Declare Gaven Reef and Subi Reef as subsurface features of the South China Sea that do not appear at sea level during high tide, are not islands according to UNCLOS 1982 and are not part of the PRC's continental shelf, and declare all PRC occupation and development activities in these features against the law;
- f. Requesting the PRC to cease its occupation and activities on Gaven Reef and Subi Reef;
- g. Declare Scarborough Shoal, Johnson Reef, Cuarteron Reef and Fiery Cross Reef as features below sea level at high tide, except for one of these features which is visible above the surface at high tide, categorized as "reef" according to Article 121 paragraph 3 UNCLOS 1982 which only has territorial sea boundaries of 12 nautical miles; and alleges that the PRC has unlawfully claimed ownership of more

- than 12 nautical miles of the feature;
- h. Request that the PRC refrain from hindering Philippine vessels from sustainably exploiting biological resources in the waters around Scarborough Shoal and Johnson Reef, and not engage in activities that are not in accordance with UNCLOS 1982 in the waters around these features;
 - i. Declare that the Philippines has the right to territorial seas up to 12 nautical miles, an exclusive economic zone up to 200 nautical miles, and the continental shelf, in accordance with the provisions of Chapters II, V and VI of UNCLOS 1982, measured from the baselines of the Philippine archipelago;
 - j. Declare that the PRC has unlawfully claimed and exploited the living and non-living resources in the exclusive economic zone and the continental shelf of the Philippines, and has unlawfully prevented the Philippines from exploiting the living and non-living resources within its exclusive economic zone and continental shelf;
 - k. Declare that the PRC has unlawfully interfered in the exercise of the Philippine shipping rights and other rights pursuant to the 1982 UNCLOS within and outside the 200 nautical mile baseline of the Philippine archipelago; And
 - l. Requesting PRC to stop its unlawful activities.

The People's Republic of China (PRC/State of China) on 19 February 2013 and 1 August 2013 stated that they did not agree with the arbitration process and would not participate in the proceedings of the Arbitral Court that was formed. China does not agree with the settlement through the Arbitration Court because in the Declaration of Conduct (DOC) the claimant countries have agreed to resolve the South China Sea dispute to be resolved through a negotiation mechanism between the parties or with the ASEAN forum. Therefore China will not participate or participate in the Arbitration Court. The absence of a party to a dispute in the arbitral tribunal may be permitted pursuant to Article 3 (c and e) of UNCLOS Annex VII. Even though he was not present at the trial, China retains the right to follow and accept any developments in the trial. In addition, the rights of parties who are not present must still be considered and respected in the trial process.



Figure 2. Chinese Coast Guard ships in the Natuna Sea
Based on Article 9 of Annex VII UNCLOS, it is stated that the

absence of a party in a dispute settlement through the Arbitration Court does not stop the settlement process. However, before making a decision later, the arbitral tribunal must be sure that the court has jurisdiction over the case filed and the claims can be found both in fact and in law. On 11 July 2013, the Arbitration Court was formed and has held a meeting to determine the implementation mechanism (rule of procedure) and the trial time frame.

The Philippines appointed Rudiger Wolfrum as its Arbitrator, while China, because it would not participate in the arbitration process, based on Article 3 (c) of Annex VII UNCLOS appointed an ITLOS Judge, in this case Thomas Mensah (President of ITLOS) to represent China's position. The other 3 judges are: Jeanne-Pierre Cot, Stanilaw Pawlak, and Alfred Soons.

On December 7, 2014, China issued a position paper related to the Philippines arbitration claim. If we look closely at China's position paper, there are several important things, including:

- a. The Arbitral Court has no jurisdiction because the issue raised by the Philippines is a matter of sovereignty which is outside the scope of UNCLOS.
- b. China on August 25, 2006 submitted a declaration excluding the jurisdiction of the UNCLOS dispute settlement for delimitation issues based on Article 298 of UNCLOS.
- c. The Philippines and China have agreed to resolve this issue bilaterally

On December 5, 2014, Vietnam submitted a statement to the Arbitration Court regarding the arbitration process in the South China Sea related to Vietnam's interests. Furthermore, a spokesperson for the Vietnamese Ministry of Foreign Affairs stated that Vietnam requested the Arbitration Court to pay attention to Vietnam's rights and interests in the South China Sea. Vietnam's intervention brought a new chapter to the Arbitration Court and added to the complexity of the settlement. Vietnam, which is one of the claimant countries, has the right to convey its interests in the settlement process through the Arbitration Court. Furthermore, it is believed that the steps taken by Vietnam will encourage other countries with interests to do the same.

The existence of intervention from Vietnam and the absence of a formal position of the State of China, forced the Arbitration Court to make several decisions related to procedural rules, including on December 17, 2014, the Arbitral Court decided, among others:

- a. Requests the Philippines to provide additional written arguments until March 15, 2015.
- b. Provide opportunity for PRC to respond to Philippines arguments until 16 June 2015.
- c. Regarding Vietnam's statement, the Arbitral Tribunal requires consultation with the Philippines and China

The next process that can be followed by the Arbitral Court is to

hear the positions of the Philippines and China, the arbitral tribunal can request written submissions and hold hearings, invite/listen to the opinions of experts, as well as site visits if necessary. The Philippines wants the decision of the Arbitration Court to be made before 2016. This is to avoid political changes in the Philippines because there will be elections.

3. Relationship Between Historic Waters Regime and UNCLOS

The United Nations Convention on the Law of the Sea (UNCLOS) just made a little statement about historic waters. In Article 10 paragraph (6) UNCLOS refers to historic bays and Article 15 UNCLOS refers to historic titles as one of the "special circumstances" that allow countries to reduce the rule of "equidistance" or "median" in determining territorial sea boundaries. In the rules regarding the territorial sea, UNCLOS establishes fairly clear and uniform rules regarding the width of the territorial sea as far as 12 nautical miles that can be enjoyed by coastal states, which also means that exceptions to these rules must be limited to rules that are explicitly accepted in UNCLOS. Failure to limit such exceptions will result in unacceptable variations in claims with respect to the baseline, which meant the loss of boundaries on state claims to the Exclusive Economic Zone (EEZ) and Continental Shelf areas, which led to the unequal encroachment of the *res communis* principle. So this means that the historical waters regime will only have meaning within the UNCLOS regime with respect to historic bays and territorial sea boundaries¹².

Although Article 15 of UNCLOS allows states to account for historic rights or waters within the boundaries of the territorial sea, this provision actually limits the scope within which historical waters claims can be articulated. The assumption of UNCLOS Article 15 is that states have overlapping claims with respect to their territorial sea, even when those claims are limited by UNCLOS Article 3, which limits it to 12 nautical miles from baselines. So the limitations of Article 15 UNCLOS will not apply if the length of the sea area between countries exceeds 24 nautical miles between the baselines of each country. A State may argue that historic waters are internal waters, referring to the scheme accepted by the ICJ in the case of UK and Iceland jurisdictional fisheries,¹³.

Thus, any historic internal waters claim that does not conform to the baseline regime developed by UNCLOS will not conform to the UNCLOS regime. These two limitations limit the scope within which historic waters claims can be made with respect to internal waters or the territorial sea. Even if it were able to circumvent this boundary, historic water claims would only serve as a "special circumstance" in

12 Ardila, Ririn, and Akbar Kurnia Putra., Indonesian Exclusive Economic Zone Area Dispute (Case Study of Chinese Claims Over the North Natuna Sea), *Uti Possidetis: Journal of International Law*, Vol. 1, No. 3, 2021, page.358–77

13 United Nations., *United Nations Convention on the Law of the Sea 1982*, 1982

delimiting the territorial sea where overlapping claims exist, meaning that claimsThis can be negotiated between the two countries or a judicial review based on fairness¹⁴.

In addition, the UNCLOS regime is relevant to customary law of baselines and the territorial sea, which means that historic property rights can coexist with normal or straight baselines drawn up by UNCLOS. If this argument is correct, then there must be no legal conflict between the historical water regime proposed by China and the water regimeinternal and territorial sea. However, if the territorial sea limits of waters considered historic exceed the 12 mile limit set from the normal or straight baselines established by UNCLOS, it is contrary to Article 3 of UNCLOS. This can be seen as a conflict between customary international law and new treaty law, whereby the principle of *lex posterior derogate legi priori* will apply. The potential is that the *lex specialis* principle will apply so that a special regime of historic waters may apply over the general law determined by UNCLOS, but UNCLOS clearly intends to limit the scope of historical rights. Accordingly, rules that conflict with this scope limitation cannot be considered as *lex specialis* rules that may deviate from UNCLOS¹⁵.

Article 311 paragraph (2) UNCLOS stipulates "This Convention shall not change the rights and obligations of States Parties which arise from other agreements in accordance with this Convention and which do not affect the enjoyment by other States Parties of their rights and the performance of their obligations under this Convention". Judging from the strategic location of the Natuna Islands, the Natuna Islands play an important role for the economic sustainability of neighboring countries, namely Vietnam, Malaysia, Brunei Darussalam and the Philippines. For Indonesia alone, the Natuna archipelago holds mineral resources in the form of natural gas, amounting to 46.96 TSCF. Currently, gas production in the region has only reached 489 MMSCFD and has oil reserves estimated at 36 million barrels with current production of 25 thousand barrels per day.¹⁶.

Based on reports from *Anadolu Agency*, Bonji Ohara, a senior fellow at the Tokyo-based Sasakawa Peace Foundation, says the South China Sea is key to China's security, arguing:

First, the South China Sea is important for China's SSBN (nuclear ballistic missile submarine) strategic patrols, which need to enter the western Pacific Ocean for its nuclear deterrence against the US.

14 Azanella, Luthfia Ayu., *Considered Violating Territory in Natuna, China's Ministry of Foreign Affairs Calls Its Country Has Rights*, 2020, Kompas.Com

15 Sumarlan, Sutrimo, Sudibjo, And Ahmad G. Dohamid., *Indonesia DefenseDiplomacy Strategy in Resolving China Claims to Indonesia Exclusive Economic Zone in North Natuna Sea, Journal of Contemporary Issues in Business and Government*, Vol. 27, No. 2, 2021

16 Hugh White of the Lowye Institute, *The Interpreter*: <http://www.lowyinterpreter.org/post/2012/08/02/ASEAN-wont-help-US-manage-China.aspx> Also see Khaliq, Riyaz Ul., 2021, 3 Reasons China Tries to Control South China Sea

- a. Second, the South China Sea will serve as a buffer zone for China if and when the US launches a military attack on the Chinese mainland.
- b. Third, China's sea transportation requires sea lanes. The South China Sea accounts for at least a third of global maritime trade. While vast reserves of oil and natural gas are said to lie beneath the seafloor, it is also an important fishing ground for food security.

Even if China's claims to historic waters can be justified by traditional agreement rules and historic ownership with UNCLOS, the grounds are if:

- a. First, the nine-dash line is not covered by a capemarking the surrounding landmass, meaning the area is not an example of a "bay" in customary international law. This removes the qualification as a "historic bay" within the meaning of Article 10 paragraph (5) of UNCLOS.
- b. Second, historic waters claim that the nine-dash line represents a stretch far beyond the 12-mile territorial sea zone that can be drawn from the baselines, even if assuming that all of the islands and rocks within the nine-dash line belong to China and that the low tide levels claimed by China as an "island" is actually an island, as referred to in Article 121 (1) UNCLOS. This means that the overlapping sovereignty claims between China, the Philippines, and Vietnam do not overlap with the 12 mile claim envisioned by Article 15 of UNCLOS, meaning that "historic circumstances" cannot function as "special circumstances" within the territorial sea boundaries between countries. -this country.
- c. Article 311 paragraph (2), that¹⁷ China's historic waters claims, for the reasons explained above, are indeed incompatible with the territorial sea regime proposed by UNCLOS, and affect the navigational rights of countries in the region.

4. Dispute Resolution in the South China Sea

Article 33 (1) of the UN Charter regarding Disputes Settlement, there are several ways to resolve international disputes, including: negotiation, investigation, mediation, conciliation, arbitration, and settlement through regional bodies or arrangements, or other peaceful means.

In 2016, the Permanent Court of Arbitration (PCA) in The Hague ruled against China's claims to rights in the South China Sea, supporting a 2013 case brought by the Philippines. The court said China's claims to historic rights within the nine-dash line, which China has used to demarcate its claims in the South China Sea, have no legal basis. And in the same year, a Navy ship named KRI Imam Bonjol faced seven fishermen and two coast guard ships in the

17 Ibid

Indonesian Exclusive Economic Zone.¹⁸

The basis of China's territorial claims over nearly the entire waters of the South China Sea in fact has been broken by the United Nations (UN) decision in 2016. This started after Indonesia's neighboring country, the Philippines, filed a lawsuit at the International Arbitration Court or the Permanent Court of Arbitration (PCA), which is a legal institution under the United Nations. The PCA has made a decision regarding the dispute in the South China Sea submitted by the Philippines, even though China has firmly rejected the PCA's decision. In fact, from the start China rejected the Philippines' lawsuit, arguing that the lawsuit was a confrontational way to resolve disputes. China's absence at trial, as confirmed by the PCA, does not reduce PCA's jurisdiction over the case. Even though the lawsuit was filed with the PCA by the Philippines, the decision has implications for ASEAN countries which have so far been in dispute with China in the South China Sea.¹⁹



Figure 3. Permanent Court of Arbitration at the UN

The results of the decision issued by the PCA are as follows (Cogliati-Bantz 2016): "The Tribunal concluded that, as between the Philippines and China, China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the 'nine-dash line' are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention. The Tribunal concluded that the Convention superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein".

That between the Philippines and China, China's claims to historic rights, or other rights of sovereignty or jurisdiction, with respect to the maritime area of the South China Sea covered by the

18 Alex Calvo., China, the Philippines, Vietnam and International Arbitration in South China Sea, *The Asia-Pacific Journal*, Vol. 13, No. 2, October 2015

19 Xianshi, Jin Xianshi, *Marine Fishery Resources and Management in China*, (paper presented at the ICFO Seminar, Qingdao, PRC, 25-29 October 2000), 2000; See also Kuang-Hsiung Wang., Bridge Over Troubled Waters: Fisheries Cooperation as a Resolution to the South China Sea Conflicts, *The Pacific Review*, Vol. 14, No. 4, 2001

relevant part of the nine-dash line are contrary to the convention and without lawful effect to the extent that they exceed geographical and substantive boundaries of China's maritime rights under the convention²⁰.

However, the Ministry of Foreign Affairs of China issued a statement regarding the results of the PCA decision: "The ruling is null and void with no binding force. It will in no way ***affect China's territorial sovereignty and maritime rights and interests in the South China Sea***. We oppose and refuse to accept any proposal or action based on the ruling. China will continue safeguard territorial sovereignty and maritime rights and interests, maintain peace and stability in the South China Sea..." This decision is binding, but the Arbitral Court does not have the power to enforce it and it does not have the power to enforce it. The South China Sea dispute case handled by this Court was registered unilaterally by the government of the Republic of the Philippines to test the legitimacy of China's claims based on UNCLOS 1982²¹.

In addition to the dispute between China and one of the ASEAN member countries regarding historical rights to the Spratly Islands and the Paracel Islands, in fact the success of Indonesia together with ASEAN and China in efforts to resolve the South China Sea problem with the creation of the Declaration on the Conduct of Parties in the South China Sea in 2002. Viewed from the perspective of state security and sovereignty, the resolution of the South China Sea conflict, Indonesia through ASEAN carried out a settlement in the form of a Code of Conduct (Coc) in resolving maritime conflicts. The application of the CoC is very efficient in avoiding conflict without the occurrence of war because it has international legal rules that limit every country involved in the South China Sea area.²²

The other ASEAN countries that claim sovereignty in the South China Sea area have yet to come to an agreement. However, the Indonesian government continues to carry out bilateral diplomatic efforts with the Chinese government, so that the South China Sea dispute does not extend to Indonesia's sovereign territory in the Natuna Islands. In this case the two countries have agreed to prioritize diplomacy in resolving the China Sea dispute South, by fully and effectively implementing the Declaration on the Conduct of Parties in the South China Sea 2002, namely building mutual trust, enhancing cooperation, maintaining peace and stability in the South China Sea²³.

20 Ibid

21 Adi, Danang Wahyu Setyo., Analysis of Settlement of South China Sea Disputes by International Arbitration Board, *Lex Generalis Journal of Law*, Vol. 1, No. 3, 2020, page.39-51

22 Op.cit

23 Ibid

D. CONCLUSION

The basis of China's territorial claims over nearly the entire waters of the South China Sea have actually been decided on a United Nations (UN) decision in 2016 by the Permanent Court of Arbitration (PCA). China's claim to historic rights, or other rights of sovereignty or jurisdiction, with respect to the maritime area of the South China Sea covered by the relevant part of the nine-dash line is contrary to the 1982 Law of the Sea Convention. Based on this, ASEAN's stance on disputes in the Sea South China which intersects in the north of the Natuna Islands, in this case intersects with Indonesia's EEZ,

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