



The Importance of The Court's Rules of The Court of The Court in The Case Between the Philippines And China on The Resolution of The Survey Disputes in The East Sea

Le Van Bao

East Sea Research Specialist, 10 Nguyen Trai Street, Thanh Xuan District, Hanoi City, Việt Nam
lebaohanoi@yahoo.com

Abstract. On July 12, 2016, the lawsuit between the Philippines and China ended with the Final Judgment of the Arbitral Tribunal established under Annex VII of the 1982 United Nations Convention on the Law of the Sea - UNCLOS in 1982. The Arbitral Tribunal's ruling supported the majority of the Philippine submissions and was also a great victory for the country. It has been five years since the Arbitral Tribunal issued its ruling on the East Sea, although China continues to make aggressive, provocative moves in terms of policy, legislation and rampant tough action. in the field. However, this ruling will still be raised as an exalted praise of the law according to the flow of courtesy, and also be seen as a way to settle sovereignty disputes in a way civilization, progress of humanity. The article contributes to clarifying the importance of the Arbitral Tribunal Judgment for the East Sea through the analysis of the irrational content of China which has been rejected by the Judgment and the impact of the Judgment on the legal situation, East Sea

To cite this article

[Bao, L., V. (2021). The Importance of The Court's Rules of The Court of The Court in The Case Between the Philippines And China on The Resolution of The Survey Disputes in The East Sea. *The Journal of Middle East and North Africa Sciences*, 7(07), 1-4]. (P-ISSN 2412- 9763) - (e-ISSN 2412-8937). www.jomenas.org. 1

Keywords: Judgment, Arbitration Court, East Sea.

1. The award directly contradicts the absurd content of China's sovereignty claim in the East Sea:

In terms of proceedings, the Arbitration Court's issuance of a Judgment despite efforts to obstruct the Chinese's three-zero guise, which has contributed to affirm the spirit of law-abiding and strong vitality. paralysis of public international law. Judgment is proof that every nation, big or small, with sea or no sea must behave based on the standards of international law, international law of the sea.

In terms of content, the Judgment has directly concluded five false contents of China as follows: First, the unjustified claim from the nine-dash line based on historical rights is unfounded. Second, China misinterpreted and misapplied the 1982 UNCLOS provisions on islands and archipelagos. Third, China has violated its obligations to ensure safety at sea. Fourth, China has violated its obligations related to the protection of the marine environment.

The main, core, and fatal points of the Chinese death gravestone can be seen as follows: First, the Arbitral Tribunal concludes that within the scope of China's historic rights to resources in the regions sea in the East Sea, these rights are removed, because they are inconsistent with the EEZ regime in UNCLOS 1982. The Arbitration Tribunal has also found that though historically, seafarers as well as fishermen from China as well as from other countries

surrounding the East Sea have used islands in the East Sea, but there is no evidence that China historically has exercised control over this waters alone. as well as resources here.

Second, the Arbitral Tribunal found that these yards were drastically altered by accretion and construction and the Tribunal also reiterated that the 1982 UNCLOS classifies the structures based on their natural conditions and in historical documents to evaluate structures, not based on appearance change due to human action to evaluate. On the basis of the conclusion, there is no structure claimed by China capable of creating an exclusive economic zone. The Arbitration Tribunal found that it may not be necessary to delimit maritime boundaries but could still claim that some maritime zones were within the exclusive economic zone of the Philippines because they were not overlapping with any maritime rights that China National possible.

Third, the Tribunal held that China had violated the sovereignty of the Philippines in its exclusive economic zone by: (a). Interfering in Philippine fishing and oil exploration activities. (b). Build artificial islands and (c) not prevent Chinese fishermen from fishing in this area. The Tribunal also asserted that fishermen from the Philippines as well as fishermen from China had traditional fishing rights in Scarborough Beach and that China prevented these rights by restricting access to Philippine



ships. The Tribunal also asserted that China's law enforcement ships posed an illegal, serious risk of collision when they directly obstructed Philippine ships.

Fourth, the Tribunal examined the marine environmental impact of artificial accretion and construction activities on the seven structures of China's recent Spratly Islands, and found that China had caused serious harm to the environment of the coral reefs and the violation of obligations to preserve and protect vulnerable ecosystems and the habitat of species that are weakened, threatened and destroyed. The court also claimed that the Chinese authorities were aware that Chinese fishermen had been catching rare large-scale species of sea turtles, corals and giant clams in the East Sea by means of inflicting serious harm to the reef environment and has failed to fulfill its obligations to prevent and terminate these activities.

2. Judgment of the arbitral tribunal creates a new legal situation for the East Sea dispute:

The new legal perspective is based on a ruling in favor of countries wishing to uphold the role of UNCLOS in 1982 in the East Sea. The ruling has contributed to influencing perceptions and behaviors of stakeholders directly related to the East Sea as a legal case - a supplementary source of international law (Thao, 2020).

That means that if there is another case happening in the future in the East Sea with the same circumstances as the Philippines v. China, it is very likely that the trial panel will refer, cite, quoting from a 2016 Arbitral Tribunal Ruling between the Philippines and China.

Judgments or judgments of international courts and arbitration help explain and clarify specific legal questions. So there is a great deal of persuasion over similar problems. In addition, other third countries can completely base on correct, reasonable, and accepted conclusions to adjust their behavior and stance to increase persuasion and legitimacy, meaning and campaigning, taking advantage of the support from the international community.

The Arbitral Tribunal's ruling significantly narrowed the extent of the disputed waters in the East Sea, much of the exclusive economic zone of the Philippines, Malaysia, Brunei and Vietnam was no longer considered disputed and thus These countries have full jurisdiction over those waters.

The contemporary world has seen the war of notes taking place fiercely in late 2019 and early 2020, this event is a vivid expression and shows the vitality of the Judgment of the Arbitral Tribunal. In December 2019, Malaysia submitted an extended continental shelf to the north based on the Judgment that entities in Truong Sa do not have their own continental shelf to overlap on the country's extended continental shelf. Malaysia has initiated countries to clarify their positions on the East Sea after the ruling.

On March 6, 2020, the Philippine Note sent to China for the first time confirmed the conclusions of the ruling at

the United Nations forum. Philippine Foreign Minister Teodoro Locsin Jr, 4 years of the decision was born, declared: The verdict is not negotiable. The competent arbitral tribunal has ruled that China's claims to historic rights to resources in these waters have no legal basis (Thao, 2020).

In addition, the Note of Vietnam submitted on 30/3/2020 also affirms that UNCLOS 1982 is the only legal basis, comprehensive and thorough provisions on the scope of the right to enjoy the waters between Vietnam South and China. In which, implicitly affirms the jurisdiction of the jurisdictions as well as the validity of the decisions stemming from the dispute settlement mechanism of UNCLOS in 1982.

Indonesia, an almost neutral country in the maritime and island sovereignty dispute in the East Sea, with two notes dated May 26, 2020 and June 12, 2020, supports the in 2016 East Sea arbitral award on internal use of the legal regulations of the entities. In particular, no marine entity in the Spratly Islands has the exclusive economic zone and continental shelf, and China's nine-dash line map clearly lacks the basis of international law, in stark contrast to UNCLOS in 1982.

3. Whether or not you want it or not, the behavior of China in the East Sea is forced to change because of the Judgment of the Arbitration Court:

Reality shows that, although China on the one hand rejects the Judgment, on the one hand, it has made adjustments in the field and diplomacy to limit the spillover effects of the lawsuit, which is a testament to the see the indisputable impact and influence of the Judgment is very great.

On the diplomatic political level, China has proved to be softer, on the other hand proactively pushes political and diplomatic initiatives to address the South China Sea issue and prevent the countries concerned from raising and invoking the ruling (Hai, 2018).

At the field management level, China seeks to limit fishermen's activities with the adoption of the 13th Five-Year Fisheries Plan in January 2017, which includes: (1). Regulations to reduce by 1/6 of the catch, ie from 12 million tons currently down to 10 million tons within the next 5 years. (2). New regulations of the Hainan government are aimed at controlling catches of giant clam - giant clam of fishermen in Dam Mon - Tanmen. 3. China strengthened cooperation with the Philippines in the field of law enforcement with the establishment of the Joint Coast Guard Committee with the Philippines in February 2017 and joint patrol operations with the Philippines. 4. Stop deploying new oil and gas exploration activities in waters of other countries, or areas considered disputed (Hai, 2018).

China's actions on the ground show that the ruling has partly had the effect of changing the country's behavior. Despite claiming that the ruling is false and worthless,

China is forced to avoid aggressive activities, as the damage from the breach is greater than the cost of compliance. Specifically, China was forced to enter the water, descend the ladder, to accept allowing Filipino fishermen to return to Scarborough Shoal, because the Philippines rejected China's offer to resume negotiations on the condition of no mention to judgment. The fact that China continues to have invasive acts contrary to the ruling will have many negative consequences for this country: (1). China's international reputation was affected. (2). Other disputing countries are under greater internal pressure to fiercely resist and even sue China. (3). The US and Japan have more opportunities to gather forces against China. (4). the ability to form a front to contain China (Hai, 2018).

Notably, the decision contributes to changing China's view of the Code of Conduct in the South China Sea - COC. China sees the COC negotiation process as a way to undermine the ruling, legalize China's maritime claims and prevent interference from external powers (Thao, 2020).

Another aspect showing that China is under pressure from the 2016 Judgment is that although it does not give up its nine-dash claim, it has to find a way to adapt the terms in the 1982 UNCLOS for them (Thao, 2020).

Specifically, the term Sanskrit Claim or Nansha Islands is a form of old wine bottle, because it sounds new, but the content is still repeated: asserting that China has sovereignty over the South Sea islands, including the East. Sa, Tay Sa means Hoang Sa island district of Vietnam; Trung Sa and Nam Sa means the island district of Vietnam; China has internal waters, territorial waters, and areas contiguous to territorial sea on the basis of the East Sea islands; China has an exclusive economic zone and a continental shelf on the basis of the East Sea islands; China has historic rights in the East Sea.

4. Judgment is the foundation to guarantee freedom of the high seas in the South China Sea:

For countries around the world, the Judgment has contributed to the protection of the interests of the United States, Japan, India, Australia, South Korea and many other countries in the field of transport across the maritime route in the East Sea. The ruling is the foundation for countries outside the region to assert freedom of navigation and overflight for the international community in most of the East Sea.

For the 12-nautical-mile territorial waters of the rock-island entities, ships and boats of other countries are allowed to exercise the right of harmless passage and can go close to the Vanh Vai beach, within 12 nautical miles where China built building runways and large bases on artificial islands in the Spratly archipelago area.

The war of notes became more intense with the participation of the US with the official letter dated June 1, 2020 and the statement of Secretary of State Mike Pompeo

on July 14, 2020 on US policy in the East Sea. The US stance is consistent, neutral in the issue of sovereignty but condemns all illegal maritime claims, inconsistent with international maritime law. The US favors peaceful settlement of disputes, including legal measures instead of only emphasizing the diplomatic process (Thao, 2020).

The US declaration has drawn a series of support from other countries such as Japan, India, Australia, and the EU. Countries outside the East Sea are all demanding enforcement of the award to guarantee freedom of the sea (Thao, 2020). On that basis, the East Sea region is not simply a problem between contiguous countries but also a concern of many countries around the world. The three European powers, Britain, France, and Germany, have sent notes expressing their common views on the East Sea issue to the United Nations as one of the special events, clearly demonstrating the importance of the Sea. East towards regional and world security.

The note of the three countries reiterates the universality and unity of UNCLOS in 1982 in establishing a legal framework for activities on seas and oceans, emphasizing the importance of freedom of navigation at sea. stated in UNCLOS 1982, including freedom of navigation, overflight and harmless navigation, with scope covering the East Sea.

The three countries of England, France and Germany also asserted their neutral stance on disputes in the East Sea, but affirmed their status as a member of UNCLOS in 1982 and their responsibility to preserve international legal order. These European states will continue to exercise other freedoms and rights under the convention, contributing to the promotion of cooperation in the region.

5. Conclusion:

The five-year award of the Arbitral Tribunal has contributed to a profound impact on the legal situation in the East Sea. Although China has always denied the Arbitration Court's rulings, in one way or another, China has changed its approach and become softer with other countries, in order to change the legal battle. However, the value of the Judgment is the embodiment of international legal value, of the spirit of law-abiding. Therefore, the Arbitral Tribunal's ruling in the case between the Philippines and China has always been in an important and unchanging position in the settlement of disputes over sovereignty over islands, structures and geographical entities in the East Sea./.

Corresponding Author:

Le Van Bao, Master in International Relations
East Sea Research Specialist, 10 Nguyen Trai Street,
Thanh Xuan District, Hanoi City, Việt Nam
E-mail: lebaohanoi@yahoo.com



References:

1. Thao, N. H. (2020), Judgment of the East Sea, the strength of Phu Dong's age, Vietnam net, <https://vietnamnet.vn/vn/tuanvietnam/tieudiem/phan-quyet-bien-dong-suc-manh-tuoi-phu-dong-663140.html> # inner-article, accessed 30/4/2021.
2. Hai, D. T. (2018), Adjusting China's East Sea policy after the Judgment of the Arbitral Tribunal, Journal of International Studies, Diplomatic Academy, No. 1 (112) March 2018.

Received May 22, 2020; reviewed June 01, 2020; accepted June 15, 2020; published online July 01, 2021