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RESEARCH ARTICLE

POSITION, ROLE AND MEANING OF THE DANGEROUS DECISION OF THE COURT OF THE COURT IN CHINA PHILIPPINES

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ABSTRACT

The 12 July 2016 ruling established by the Arbitral Tribunal in accordance with Annex VII of the 1982 United Nations Convention on the Law of the Sea - 1982 UNCLOS in the Philippines-initiated lawsuit against China is a step. a turning point in the dispute in the East Sea. Under Article 296 of the Convention and Article 11 of Annex VII This award is legally binding and final. Five years have passed since the Judgment was enacted, the position, role, meaning and topicality of this document are still valid. The article focuses on analyzing China's absurd claims and asserting the immutable values of the Arbitration Court Judgment.

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INTRODUCTION

The Arbitral Tribunal's ruling exposes China's unreasonable claim to sovereignty over the East Sea: The Philippines has submitted a petition to the Arbitral Tribunal defining the role of historic rights and the source of determining entitlement to waters in the East Sea, the statute of certain entities and the maritime zones of these entities, and the legality of China's acts.

The Arbitration Court's conclusions on China's historic rights and nine-dash line claim: On the Chinese side, this country has repeatedly stated not to accept or participate in the arbitration process initiated by the Philippines. However, under Annex VII of UNCLOS in 1982, the absence of a party or the failure of a party to exercise the defense does not create any barriers to the proceedings. At the same time, Annex VII also provides that in the event that a party does not participate in the proceedings, the Arbitral Tribunal must ensure that the Court has jurisdiction to resolve the dispute as well as the content of the lawsuit must be fully proven. enough both in legal and practical terms. Therefore, during the proceedings, the Arbitral Tribunal has taken the necessary measures to check the authenticity of the submissions made by the

Philippines, including asking the Philippines to provide additional arguments, posing questions to the Philippines before and during two sessions, appointing independent experts tasked with reporting to the Arbitral Tribunal on technical matters and gathering historical evidence relevant to entities in the East Sea and refer these evidence to the point of view. The Arbitration Tribunal found it competent to consider disputes between the parties regarding historic rights and the source of the right to enjoy waters in the East Sea. In terms of content, the Arbitral Tribunal concluded that the 1982 UNCLOS comprehensively provides for the rights to the seas, and that the protection of the rights existing before the Convention concerning resources has been considered, but they are not ratified or recognized in the Convention. Accordingly, the Arbitral Tribunal concluded that assuming China's historic rights to resources in the East Sea waters were real, these rights were also deleted because they were inconsistent with the regulations. Exclusive economic zone is defined in the 1982 United Nations Convention on the Law of the Sea. The Arbitration Court also found that although historically seafarers as well as fishermen from China as well as from other countries have used islands in the East Sea, there is no evidence to suggest that historically. China alone exercises control over this water and its resources. Therefore, the arbitral tribunal concluded that there is no legal basis for China to claim historic rights over resources in the waters within the nine-dash line.

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Conclusions of the Arbitral Tribunal on the statute of the entities: The Arbitral Tribunal considers the entitlement of seas and statutes of entities in Truong Sa. The Arbitration Tribunal first assesses whether some of the yards claimed by China are floating entities at peak tide. Under UNCLOS regulations of 1982, entities that are always floating at high tide will create at least 12 nautical miles of right to territorial sea while entities that are submerged at high tide will not enjoy the same waters. so. The Arbitral Tribunal found that the entities in the Spratly Islands today have been greatly altered, due to illegal accretion and construction, and the Arbitral Tribunal also reiterated that the 1982 UNCLOS classifies the entities based on on their natural condition, human influence cannot become a basis of judgment. Therefore, the Arbitral Tribunal relies on historical documents to evaluate the legal status of the entities before they are reformed. The Arbitral Tribunal then proceeded to assess whether any of the entities claimed by China could create waters beyond 12 nautical miles.

According to UNCLOS regulations in 1982, suitable islands for human living create the exclusive economic zone of 200 nautical miles and continental shelf, but the rocks are not suitable for people to live in and have their own economic life. There is no exclusive economic zone and continental shelf. The Arbitration Tribunal concluded that this provision depends on the objective ability of the entities when they are in natural state to be able to maintain a stable residential community or economic activities without dependence on the resources for support are from outside or are purely of an extractive nature. On that basis, the Arbitral Tribunal also found that the presence of public officials on entities is dependent on outside assistance and does not reflect the capabilities of the entities. The Arbitral Tribunal also found that historical evidence was more significant and found that the Spratly Islands historically were used by a small number of fishermen and that there was some activity of bat manure extraction and fighting. Japanese fish. Thus, the Arbitral Tribunal concluded that such short-term use was not the settlement of a stable community and that economic activities historically were merely extractive. Accordingly, the Tribunal concluded that no single entity in Truong Sa was capable of creating open seas. The Tribunal also decided that the Spratlys could not create the seas together as a unified archipelago. On the basis of the conclusion that none of the entities that China claims are capable of creating an exclusive economic zone, the Arbitral Tribunal found that it may not be necessary to delimit the boundaries of maritime zones and still be able to declare that Some waters are within the exclusive economic zone of the Philippines because they do not overlap with any maritime entitlement that China may have.

The Arbitral Tribunal's Conclusions on the Legality of China's Activities in the East Sea: The Arbitral Tribunal found that China's activities in certain areas within the Philippines' exclusive economic zone violated the Philippines' sovereignty in its exclusive economic zone by the following acts:

- Interfering in Philippine fishing and oil exploration activities.
- Build artificial islands.
- Do not prevent Chinese fishermen from fishing in this area.

The Arbitration Tribunal also asserted that fishermen from the Philippines, as well as fishermen from other Southeast Asian countries and China, had a tradition of fishing in Scarborough Beach and that China had prevented these rights by restricting access to this area. The Arbitral Tribunal also asserted that China's law enforcement vessels posed the risk of serious illegal collision when they directly obstructed Philippine ships.

The Arbitration Court's conclusions about China's harm to the marine environment in the East Sea: The Arbitration Tribunal examined the marine environmental impact of artificial accretion and construction activities on seven recent Chinese archipelagic features of the Spratly Islands, and found that China had seriously harmed the environment. coral reefs and in violation of their obligations to conserve and protect vulnerable ecosystems and degraded, threatened and destroyed species' habitats. The Arbitral Tribunal also said that the Chinese authorities were aware that Chinese fishermen had caught large-scale rare species of giant sea turtles, corals and clams in the East Sea, by means of damaging serious harm to the reef environment and has failed to adequately fulfill its obligations to prevent and terminate these activities.

The Arbitral Tribunal considers whether China's activities will exacerbate the dispute between the parties: The Arbitration Tribunal found that there was no authority to consider the impact of a confrontation between Philippine naval vessels and Chinese naval vessels and Chinese law enforcement on Co May Shoal as this dispute relates to operations. military - outside of the compulsory dispute settlement mechanism. However, the Arbitral Tribunal found that the recent large-scale accretion and construction of artificial islands by China was inconsistent with the obligations of the 1982 UNCLOS member state in the dispute settlement process, insofar as China has caused irreparable harm to the marine environment, built a large artificial island in the exclusive economic zone of the Philippines, and destroyed evidence of its natural conditions. entities in the East Sea that form part of a dispute between the Parties.

The arbitral tribunal's rulings have contributed to encouraging countries to use legal means to seek justice: Judgment of the Arbitral Tribunal on the East Sea is ultimate and legally binding, the parties in the case must comply. There, like it or not, and whether constantly refuting, China must in some way step-by-step modify its sovereignty claim. Because, as an emerging power, as a permanent member of the United Nations, as a responsible major country, China cannot be blatant against international law. The Arbitral Tribunal's ruling made China's old strategy, that is, changing the status quo to force the parties to accept, step by step legalizing the nine-dash line that officially went bankrupt. Because, even if China tries to militarize artificial islands, it cannot change the current legal status, or create a new legal status. In the field, the behavior of China showed the validity of the Arbitral Tribunal's Judgment. Although it always denies and rejects the Judgment completely, China is forced to avoid aggressive activities because the damage from the violation is greater than the cost of compliance. Specifically, China had to go into the water, accepting to allow Filipino fishermen to return to Scarborough Shoal because the Philippines rejected China's offer to resume negotiations on the condition that the verdict was not mentioned (Đo Thanh Hai 2018).

The fact that China continues to encroach on the sovereignty of the sea and islands of some countries around the East Sea is contrary to the arbitral tribunal's ruling and will have many negative consequences for this country: First, China's international reputation was affected. Second, the other disputing countries are under greater internal pressure to resist fiercely and even sue China. Third, the US and Japan have more opportunities to gather forces against China and the fourth is the ability to form a front to contain China (Đo Thanh Hai 2018). The ruling has become a great encouragement and a fulcrum for Southeast Asian countries in the struggle for a law-based order with the solid role of international law in protecting justice and justice in international order. The ruling has as precedent value, prompting countries to pursue a legal solution when China insists on its undisputed sovereignty and accepts only bilateral negotiations but rejects the measures. Juridical Judgment has the same value as a case law, a supplementary source of international law, this affects the perception and behavior of parties with direct interests related to the East Sea. If there is another case in the future in the East Sea with the same details as in the Philippines v. China, it is very likely that the trial panel will refer, cite, quote from the Arbitral Tribunal's Judgment. Account 2016. 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 well-accepted conclusions to adjust their behavior and stance to increase persuasion and legitimacy. meaning and mobilizing support from the international community.

Judgment of the Arbitral Tribunal is the driving force for the countries along the East Sea to adjust their policies:

Southeast Asian countries that have disputes in the East Sea all adjust their positions according to the conclusions on the interpretation and application of the 1982 UNCLOS provisions of the Arbitral Tribunal in the Judgment. In general, the countries have agreed in common that UNCLOS 1982 is the only legal basis for the settlement of sovereignty disputes over islands, geographical entities and structures in the East Sea. The Arbitration Court's ruling has the meaning of significantly narrowing the scope of the disputed waters in the East Sea, most of the exclusive economic zones of countries such as the Philippines, Malaysia, Brunei and Vietnam are no longer considered regions. disputes further and, therefore, these states have full authority over those waters. In December 2019, Malaysia submitted an extended continental shelf to the north when entities in the Spratlys reportedly did not have their own continental shelf to overlap this extended continental shelf based on the Arbitral Tribunal's conclusion. on the legal status of entities in the Spratly Islands.

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. That shows the immutable value of the Judgment and always a solid legal support for the Philippines, the Philippines is the pioneer country to use this measure. On 30/3/2020, Vietnam also sent a note affirming UNCLOS in 1982 as the only legal basis, comprehensive and thorough provisions on the scope of the right to enjoy the waters between Vietnam and China. Indonesia also participated in the war of notes with two notes on May 26, 2020 and June 12, 2020, supporting the 2016 East Sea arbitration ruling on the content of no marine entity in the Spratly archipelago. has

exclusive economic zones and continental shelf and China's nine-dash line claim lacks international legal basis, has no scientific basis. Notably, the US also participated in this war with the official letter dated June 1, 2020 and the statement of Secretary of State Mike Pompeo dated 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 (Nguyen Hong Thao 2020). The United States also adjusts to the policy set out in 1995 and is consistent with the ruling that only the land features have the right to claim the sea, the floating entities in the Spratlys do not have the right to have the exclusive zone. private economic and continental shelf, and support the peaceful settlement of disputes, including legal measures rather than only emphasis on the diplomatic process (Nguyen Hong Thao 2020). The East Sea is not simply an issue between contiguous countries but also a concern of many countries around the world. The US declaration drew in a series of support from allied countries such as Japan, India, Australia, and the European Union. The countries outside the East Sea all require enforcement of the decision to uphold the spirit of law abiding and guarantee freedom of the sea. The three European powers, Britain, France, and Germany, sent a note reiterating the universality and unity of UNCLOS in 1982 in the establishment of a legal framework for activities on seas and oceans, emphasizing the the importance of the freedom of navigation at sea, clearly stated in UNCLOS in 1982, includes freedom of navigation, overflight and harmless navigation, with a scope that encompasses the East Sea. Although Britain, France and Germany also asserted their neutral stance on disputes in the East Sea, but affirmed as a member of UNCLOS in 1982 and the responsibility to preserve the 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.

Conclusion

China's unsubstantiated sea and island claims in the East Sea have been clearly and convincingly pointed out and rejected by the Arbitration Court. Under the pressure of the international community, China more or less had to change their approach, as well as their behavior. The ruling has become an important international legal foundation for Southeast Asian countries to assert their equal standing in front of emerging powerhouses like China in order to protect justice, legitimate rights and interests at sea. legal system in the East Sea.

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